enforce payment of money charged on immovable property and that it fell within article 132 of the Limitation Act. Having regard to the nature of the relief claimed in the suit, we hold that article 120 does not apply to the case and that it is governed by article 132 and is not barred by limitation.

No other points were argued before us. In the result, the appeal is dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Curgenven and Mr. Justice Sundaram Chetti.

1933, February 10.

M. S. GOPALASAMI CHETTIAR (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, REPRESENTED BY THE COLLECTOR OF SALEM (DEFENDANT), RESPONDENT.*

Cotton Duties Act (*II of* 1896), *sec.* 9—*Assessment of duty by Collector under—Power of—Condition of—Submission of return by owner of factory not a—Assessment made independently of any return—Suit contesting legality of—Maintainability of—Liability for duty—Owner of factory at time when return called for under sec.* 8 *of Act ceasing to be such at time when assessment made—Liability of—Delay in assessment—Person liable for duty and failing to submit return required by sec.* 8 *cannot complain of—Statute—Fiscal statute—Strict construction of—Rule as to—Applicability of—Procedure—Matters of.*

Section 9 of the Cotton Duties Act (II of 1896) gives the Collector power to assess the duty payable. The power of the Collector to make the assessment, so given, cannot be limited either by any defect in the return or even by the absence of any

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* Appeal No. 45 of 1927.

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return. The mere fact that the duty is described as "payable in respect of the period to which the return relates" cannot be read as meaning that if no return be made there can be no period in respect of which it is payable. The return is only intended to facilitate assessment and cannot be described as an indispensable pre-requisite of it.

When an assessment is made independently of any return, the method and result of such assessment may be the subject of departmental appeal, but so long as it conformed to ordinary notions of fairness it cannot be questioned in a suit contesting the legality of the assessment.

A person who has become liable to pay duty and who fails to submit the return required by section 8 of the Cotton Duties Act cannot plead lapse of time between the production of his goods and the initiation of steps to assess them as a defence to the claim.

A person who was the owner of a factory at the time when he was called upon to submit a return under section 8 of the Cotton Duties Act and who made a profit from the goods which were liable to duty does not cease to be liable for the duty merely because at the time when the assessment was made he had ceased to be the owner of the factory and another person had become its owner by purchase from him.

The principle that a statute which imposes a duty must be strictly construed applies only in so far as the imposition of the liability is concerned. It does not extend to mere matters of procedure devised as the best means in all ordinary circumstances to collect the impost.

Where the liability to duty is clear, it would be improper to conclude that no means exist of realising it unless the language of the statute compelled such a view.

APPEAL against the decree of the Court of the Subordinate Judge of Salem, dated the 24th day of August 1926 and passed in Original Suit No. 3 of 1924 (Original Suit No. 56 of 1924 on the file of the District Court, Salem).

K. V. Sesha Ayyangar for appellant.

Government Pleader (*P. Venkataramana Rao*) for respondent.

Cur. adv. vult.

JUDGMENT.

CURGENVEN J.—The plaintiff, now appellant, sued to recover a sum of Rs. 6,300 from the Government in the following circumstances. In 1913 he started the Salem Knitting Factory and remained its proprietor until March 1923 when he sold it to the Salem Industrials. The factory produced cotton banians and it is not disputed that its products were liable to duty under the Cotton Duties Act II of 1896. Although the duty was payable monthly, no steps were taken to collect it until February 1923, when the Revenue Divisional Officer called upon the plaintiff to submit a return showing the quantity and value of goods produced in the factory up to 31st December 1922, so that the duty might be assessed and levied. The plaintiff did not answer this reference, and a further demand was made on 5th April 1923. This also met with no response and on 11th July the Revenue Divisional Officer passed orders assessing the goods produced in the factory from its establishment up to the end of 1922 at Rs. 6,300. The plaintiff, who had as already stated ceased to be the proprietor, paid this sum in instalments under protest and filed this suit to recover it as an illegal levy. He bases his claim upon three separate grounds; firstly, that no duty can be assessed or collected in the absence of a return made by the proprietor; secondly, that the Act does not provide for the collection of arrears; thirdly, that the liability, if any, has devolved upon the company which purchased the mill.

To understand the first contention it is necessary to look at some of the provisions of the

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Cotton Duties Act. Section 6 directs that there shall be levied and collected at every mill in British India upon all cotton goods produced in such mill a duty at the rate of three and a half *per centum* of the value of such goods. Under section 8 the owner has to prepare and deliver to the Collector each month a return of the cotton goods produced at his mill during the preceding month, stating quantity and value. This return has to be delivered within three working days and at most within seven days of the period to which it relates. Sub-section (1) of section 9 runs as follows :

> " The Collector shall assess the duties payable in respect of the period to which the return relates, and unless the amount thereof is immediately tendered shall cause a notice, in such form as may be prescribed by any rules under this Act, to be served on the owner requiring him to make payment of the amount assessed within ten days of the date of service of notice."

Section 11 provides that if the duty so assessed is not paid within the time fixed a sum not exceeding double the amount may be levied, recovery being in the manner provided in section 30 of the Income-tax Act (I of 1886). Upon these provisions the learned Advocate for the appellant bases the argument that no duty whatever is leviable unless the mill-owner submits the return required by section 8. His contention is in brief that the Act provides a certain definite procedure for the realization of the duty and that if any essential part of that procedure is wanting the remainder must remain inoperative. In other words, if no return is made there can be no assessment, because the assessment is made upon the data supplied by the return, and without assessment there can of

course be no collection. He draws our attention to other Acts dealing with the collection of taxes or duties which make provision for an alternative procedure in the case of a default occurring. Section 22 of the Income-tax Act for instance requires a return to be made of the total income during the previous year and, if a failure to make this return occurs, under section 23 (4) the Income-tax Officer shall make the assessment to the best of his judgment. Similarly, under section 80 of the Madras Local Boards Act (XIV of 1920), certain landholders have to furnish the Collector with lists of the lands held by them, together with certain other particulars to afford a basis for the assessment of land cess, and under section 83, if no such list be furnished within the time allowed, the Collector shall himself fix the annual rent value of the lands held by the defaulting land-holder. It is true that the Cotton Duties Act does not expressly provide for the consequences of failure to submit a return. But that is not to say that no power remains to collect the duty. Section 9 gives the Collector power to assess the duty payable, and the mere fact that it is described as "payable in respect of the period to which the return relates" cannot be read as meaning that if no return be made there can be no period in respect of which it is payable. The section is so worded because it has in contemplation the normal case when the mill-holder complies with the terms of the Act. But the power of the Collector to make the assessment, so given, cannot be limited either by any defect in the return or even by the absence of any return. Under section 16 the Collector is given wide powers of

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inspection, examination of records and accounts of the mill, etc., for the purpose of testing the accuracy of any return or of informing himself as to any particulars regarding which information is required for the purpose of the Act, and under rule 3 of the rules framed under the Act he has to check the return in any manner that may appear to him desirable and may for such purpose examine and compare the records and accounts of the mill. Ample provision is thus made for arriving at a correct assessment of the duty independently of the information furnished by the return. The return in fact is only intended to facilitate assessment and cannot be described as an indispensable pre-requisite of it.

But even if the Act and the rules thereunder were less explicit, I think that, the liability to duty being clear, it would be improper to conclude that no means exist of realising it unless the language of the Act compelled such a view.

"One of the first principles of law with regard to the effect of an enabling Act is that, if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view."

(Craies on Statute Law, Third Edition, page 227.)

"It seldom happens",

says CLEASBY B. in *Scott* v. *Legg*(1),

"that the framer of an Act of Parliament or the Legislature has in contemplation all the cases which are likely to arise, and the language therefore seldom fits every possible case. Whenever the case is clearly within the mischief, the words must be read so as to cover the case if by any reasonable construction they can be read so as to cover it, though the words may point more exactly to another case; this must be

(1) (1876) 2 Ex.D. 39.

done rather than make such a case a *casus omissus* under the statute."

A case decided upon these principles, raising a question somewhat similar to that with which we are dealing, is *Dutton* v. *Atkins*(1). Under the Vaccination Act of 1867, a Justice had the power, upon information laid, of summoning a parent to appear before him with the child and of ordering the child's vaccination. A parent who was so summoned refused to produce his child and the Justice deemed himself unable to make an order on the ground that the appearance of the child was necessary in order to give him jurisdiction. Upon this, BLACKBURN J. observed:

"The meaning of the Act seems to be this. In the first instance, the parent is to be summoned, and he is to be directed to bring the child with him; but it cannot be a condition precedent to the Magistrate's jurisdiction to make an order that the child is brought, otherwise the absurdity would follow that by appearing without the child the parent might always defeat the operation of the statute. If the child is brought the examination of the child might be sufficient, but evidence would probably have to be taken; and if, without examination of the child, the Magistrate is satisfied, after examination of evidence, that the child has not been vaccinated, he may, if he thinks fit, make an order."

MELLOR J. delivering judgment to the same effect observed:

"If the parent refuses to produce it, it is not to be supposed that that is to obstruct the operation of the Act and prevent the Magistrate from proceeding and making an order, if, after examination of the evidence, he finds that the child has not been vaccinated."

Similarly here the return which the mill-owner has to submit would afford good *prima facie* evidence of the quantity and value of the

(1) (1871) 6 Q.B. 373.

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goods produced at the mill. But if the owner refuses to make the return he must not thereby be allowed to obstruct the working of the Act and prevent the Collector from obtaining the required information in some other manner and so making the assessment. It is no doubt true that a statute which imposes a duty must be strictly construed, but only I think in so far as the imposition of the liability is concerned. The principle does not extend to mere matters of procedure devised as the best means in all ordinary circumstances to collect the impost. A case which emphasizes this distinction is *Werle & Co.* v. *Colquhoun*(1), where the contention was raised that the Crown could not assess a firm of wine merchants operating from abroad to income-tax because they possessed in England no such agent or factor as was contemplated by the statute. This consideration was characterized by Lord ESHER M.R. as only a matter of machinery and in no way limiting the right to make an assessment; and similar language was used by FRY L.J. Dealing with the principle that a person should not be permitted to profit by his own default, Lord ESHER M.R., in *Gowan* v. *Wright*(2), says:

"I find in Maxwell on the Interpretation of Statutes, page 184 (page 180 in the seventh edition), in a section headed, 'construction against impairing obligations or permitting advantage from one's own wrong', the principle resulting from the various authorities there collected expressed as follows:—'On the general principle of avoiding injustice and absurdity any construction would be rejected, if escape from it were possible, which enabled a person to defeat a statute or impair the obligation of his contract by his own act or otherwise to profit by his own wrong.'"

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(1) (1888) 20 Q.B.D. 753.

(2) (1886) 18 Q.B.D. 201.

The learned Master of the Rolls proceeds to summarize a number of cases illustrative of this principle.

The only argument that remains to be considered under this head is that the statute does in fact provide an alternative procedure, because under section 25 a penalty not exceeding Rs. 1,000 is awardable for the offence of omitting to make the return required by section 8. If the argument is that by resorting to a prosecution a sum of money equal to the duty may be extracted the answer is in the first place that the amount of the fine lies in the discretion of the Court and not of the Revenue authorities, and secondly that a fine imposed for failing to make a return is in no sense duty and the duty would still remain unpaid ; nor does the Act provide any means whereby, even if a prosecution is resorted to and a fine imposed, the owner can be compelled to furnish the return.

We are not here concerned with the precise means adopted by the Revenue Divisional Officer in assessing the duty in the absence of any information supplied by the mill-owner. Not only did the latter fail to submit any returns, but he failed to maintain or at any rate to preserve the registers and accounts which the Act required him to keep, so that in the absence of them an estimate had to be formed of the value of the goods produced upon the best information available. If it be granted that the power to assess independently of any return is given by the Act the method and result of such assessment may be the subject of departmental appeal, but so long as it conformed to ordinary notions of fairness it cannot be questioned in a suit of this character.

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The second contention is that, even if the Act allowed an assessment to be made in the circumstances of this case, it does not authorize the collection of arrears of duty—at any rate—arrears occurring over a period of years. Admittedly it does not expressly impose any time limit but it is contended that there is implied in its provisions a more or less immediate assessment and collection of the duty. The duty, it is said, is leviable on a monthly basis in the interests of the producer, so that he may be in a position to fix the price of his goods and to dispose of them; and it would work hardship if it were allowed to remain for any length of time unassessed and uncollected. There are I think several considerations which weaken the force of this argument. In the first place the producer can be under no misapprehension as to his position because he will know the quantity and value of the goods produced, and the duty is fixed by the Act at three and a half per cent of the value. No restriction is imposed upon the disposal of the goods pending the completion of the process of collection under the Act. Lastly, the argument from convenience comes somewhat ill from a party whose grievance if any arises from his own failure to comply with the Act. It may be that collection and assessment of the duty was fixed upon a monthly basis in the interests of the assessee as well as of the revenue, but, if the return which was to form the initial step in such a procedure is withheld, it would be unreasonable to insist that it is still incumbent upon the revenue department either to assess the duty month by month or to forego their revenue altogether. Where there is a liability and no express

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provision limiting its realization it is to be inferred that it may be realized at any time after it arises. I can find nothing in the Act to preclude the Collector from so collecting it. Indeed Mr. Sesha Ayyangar frankly admits that he cannot formulate any exact rule upon this point. But unless there can be such a rule, it is not possible to say that, in respect of the duty payable for any particular month, the assessment and demand are out of time. Section 34 of the Income-tax Act affords an example of the existence of such a provision, income which has escaped assessment in any one year being assessable if a notice be served within one year of the end of that year. We have been asked to find another analogy in the payment of profession tax under the Madras City Municipal Act (IV of 1919) and some reliance has been placed upon *Prince of Arcot* v. *Corporation of Madras*(1), which deals with a case arising under that Act. In respect of an allowance received from Government the Commissioner of the Corporation assessed the Prince of Arcot to profession tax in September 1926 for the ten half-years commencing from the second half-year of 1920-21 and the question arose whether this assessment could be made so as to comprise such arrears. The answer given by the Bench was in the negative, the scheme of the Act requiring that the assessment must be made during the period to which it relates. I do not think that this decision affords much help in the present case. In the first place it lay upon the Municipality and not upon the tax-payer to take the initial step and some consideration was

(1) (1929) I.L.R. 52 Mad. 866.

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given to the inconvenience or hardship which would be involved in such arrear collections. There was no question in that case of a default on the part of the assessee. It was also held that the tax was in the nature of a licence which has to be paid contemporaneously, whereas here it is recoverable after the expiry of the period to which it relates. In their discussion of the question whether the tax was "due" I do not understand the learned Judges to mean that liability had never arisen for its payment, because section 113 of the Madras City Municipal Act clearly makes residence *ipso facto* give rise to liability, thereby differing from the case of water-cess dealt with in *Raja Ramachandra Appa Row* v. *Secretary of State for India*(1). There was in fact a liability to the tax, but it was not "due" until it had been assessed, and the same is true in the present case. But that does not affect the question whether or not liability for arrears can be enforced. Some attempt has also been made to derive assistance from the Sea Customs Act (VIII of 1878) several of the provisions of which have by section 10 of the Cotton Duties Act been applied to the assessment and recovery of duties under that Act. Section 39 provides that where customs duties have been short-levied the deficiency shall be recoverable on demand made within three months from the date of the first assessment. This is one of the sections which has been extended, but it can be of no help to the appellant, even if it applied to circumstances like the present, because the three months is to run not from the date when the liability arises but from the assessment of it.

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(1) (1911) I.L.R. 35 Mad. 197.

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I must find accordingly that a person who has become liable to pay duty and who fails to submit the return required by section 8 of the Act cannot plead lapse of time between the production of his goods and the initiation of steps to assess them as a defence to the claim.

The third point taken is that the duty is payable by the owner, and that the owner of the factory at the time when the assessment was made was the plaintiff's vendee. I do not think it is necessary to decide the general question which would have arisen had the requirements of the Act been complied with. There is no doubt that at the time when the plaintiff was called upon to submit a return and failed to do so he was the owner of the factory. Had he duly complied there is equally little doubt that he would have been liable to make the payment. It is not possible to hold that he escapes by reason of his failure to comply with the direction. He was the person who made a profit from the goods which were liable to duty and I think he was properly called upon to pay it.

The result of these findings is that the levy of duty made by the defendant was legally valid and that the plaintiff's suit for refund has been rightly dismissed. The appeal is dismissed with costs.

SUNDARAM CHETTI J.—I agree.

A.S.V.