APPELLATE CIVIL.

Before Mr. Justice Varadachariar and
Mr. Justice Pandrang Row.

1938, February 2.

MASK & Co. BY PARTNERS M. VEDACHALA MUDALIAR AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

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

Sea Customs Act (VIII of 1878), ss. 188, 218 to 220—Land Customs Act (XIX of 1924), sec. 9—Applicability of Sea Customs Act under—Finality contemplated by sec. 188—Scope and effect of—Payment under protest of the higher duty claimed by customs officials—Suit to recover—Civil Court—Jurisdiction of.

There was some dispute between a consignee and the Customs authorities as to the correct duty leviable on certain goods. The former contended that a duty was leviable on an *ad valorem* basis which worked out at a lower figure but the latter contended that the duty was leviable on a tariff valuation basis which worked out at a higher figure. The consignee paid under protest the higher duty demanded and cleared the goods. The Assistant Collector of Customs passed an order that the duty was leviable on the latter basis. The Collector of Customs dismissed the appeal by the consignee against that order. The matter was taken to the Government of India in revision and the order of the Collector was confirmed. The consignee filed a suit in the Civil Court for the recovery of the excess customs duty paid by him under protest. On a contention that the Civil Court had no jurisdiction,

held: (i) The Civil Court had jurisdiction to entertain the suit, (ii) the finality enacted by the last clause of section 188 of the Sea Customs Act is not limited to cases falling under section 182 and the succeeding sections but must be limited to redress available before the executive authorities

* Appeal No. 179 of 1937.

themselves and it must not be understood as precluding the jurisdiction of the Civil Court.

Case-law reviewed and discussed.

APPEAL against the decree of the Court of the Subordinate Judge of Cuddalore dated 30th March 1937 in Original Suit No. 18 of 1934.

K. Bhashyam and *T. R. Srinivasan* for appellants.

Government Pleader (*K. S. Krishnaswami Ayyangar*) for respondent.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—This appeal arises out of a suit for recovery of excess customs duty paid by the plaintiffs under protest and raises a question as to the jurisdiction of the Civil Court to deal with a matter of this kind. This point as to jurisdiction was raised by issue 3 and was tried as a preliminary issue in the Court below. As the learned Subordinate judge held against the plaintiffs on this question, he dismissed the suit. Hence this appeal by the plaintiffs.

The following are the relevant facts. The plaintiffs are merchants carrying on business in the South Arcot District under the name of "Mask & Company" and towards the end of 1932 and in the course of 1933, they imported several consignments of betelnuts from Java. The consignments were landed in Pondicherry and had to be brought to British India across the land frontier there. To avoid delay in doing so, they put themselves in communication with the Customs authorities, but, as there was a dispute between them as to the correct duty leviable, the plaintiffs paid under protest the higher duty demanded by the authorities and cleared the

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goods. The Assistant Collector of Customs passed his order on 28th February 1933 ; and an appeal against it was dismissed by the Collector of Customs on 20th June 1933. The matter was taken to the Government of India in revision but by their order dated 13th August 1933, the Government of India confirmed the Collector's order.

The point in dispute between the parties was whether the betelnuts imported by the plaintiffs should be treated as falling under the category of "boiled" betelnuts. If they are not, the goods will be liable to duty on an *ad valorem* basis which works out greatly in the plaintiffs' favour as each cwt. was valued by them only at about Rs. 10. The Customs authorities were of opinion that the betelnuts should be treated as "boiled, split or sliced" which under the notification issued under the Tariff Act were liable to duty on a tariff valuation of Rs. 23 per cwt. during the year 1932 and Rs. 16 per cwt. during the year 1933. The plaintiffs produced a certificate from Java that the betelnuts did not undergo any process of boiling ; it would also appear that even in India the result of the chemical examination was that they had not been boiled but subjected to some lime process. The Assistant Collector of Customs nevertheless took the view that they were liable to be taxed as "boiled". When the matter went before the Collector, he stated that though the betelnuts had not undergone the process of boiling they were known in the trade as "boiled"; and as the note in the notification under the Tariff Act prescribed that the various heads in the tariff should be applied in the light of the ordinary trade description of each article, he held that the

order of the Assistant Collector of Customs was right. The plaintiffs challenge the correctness of this view of the Collector. The order of the Government of India in revision was to the effect that the order of the Collector of Customs was correct in law.

The plaintiffs instituted the suit on the ground that the goods imported by them ought not to have been taxed as boiled betelnuts and that the Customs authorities had acted on a wrong interpretation of the Sea Customs Act and the Tariff Act. The objection to the jurisdiction of the Civil Court was stated in paragraphs 8, 9 and 10 of the written statement to the following effect : that the Collector of Customs came to a judicial decision in the matter, that this decision had been confirmed on revision, that these orders are final as a legal adjudication and that their correctness or legality cannot be questioned in a Civil Court.

In dealing with the question thus raised it will be convenient to refer at the outset to the cases that have been decided under the Sea Customs Act itself. In the present case, the Act directly applicable is the Land Customs Act of 1924 ; but section 9 of that enactment makes various provisions of the Sea Customs Act applicable. As early as in *Hari Bhanji* v. *The Secretary of State for India*(1) it was observed by INNES J. that the corresponding provisions of the Sea Customs Act VI of 1863 did not by implication exclude the jurisdiction of the Civil Courts in cases like the present. Referring to sections 218 to 220 of the former Act, the learned Judge held that they only

(1) (1879) I.L.R. 4 Mad. 344.

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applied to awards of confiscations and forfeitures and duties increased by way of penalty ; and, as regards section 188 of the Act now in force (namely Act VIII of 1878), the learned Judge said :

"I do not understand the words 'decision or order' passed by a Custom-house Officer in section 188 of Act VIII of 1878 to refer to executive orders levying duty. In his capacity of levying duty he is simply the executive officer to carry out the Act. The words refer, I think, to judicial orders and adjudications under sections 182 and 183. But whether they be so restricted or not, I do not think sections 188 to 192, even by implication, exclude the jurisdiction of the Courts for wrongs done by Custom-house Officers, and section 198 recognizes that there may be suits against them."

We may in this connection refer also to the observation of MORGAN C.J. in *Collector of Sea Customs* v. *P. Chithambaram*(1) to the following effect :

"It is clear that when a law gives to certain persons or officials the power of adjudicating upon a particular matter, their decision concludes the inquiry."

These passages suggest a distinction between one class of cases contemplated by the Sea Customs Act and another class of cases, namely, instances in which, in respect of offences referred to in the Act, the Customs officers are given a kind of magisterial jurisdiction and instances in which in the ordinary discharge of their duty as executive officers, they assess and collect duty leviable on goods under the Act. The opinion of the learned Judges indicated in the passages above referred to clearly was that it is only in the former class of cases that their orders can be spoken of as "decisions" in the true sense, so as to preclude the Civil Court from questioning them.

(1) (1876) I.L.R. 1 Mad. 89, 104 (F.B.).

In two recent cases, however, there were observations by learned judges of this Court sitting on the Original side which are relied on as supporting a different view. In Civil Suit No. 747 of 1920 COUTTS TROTTER J. (as he then was) had to deal with a suit for recovery of a sum of Rs. 20,000 which had been deducted from the value of certain coins seized by the customs authorities, the Rs. 20,000 representing the *fine* which the authorities adjudged as payable by the importer in view of his attempt to bring these coins clandestinely into British India. Objection was taken by the Government that the trial of the suit was barred by section 188 of the Sea Customs Act and the learned Judge upheld the objection. We think that the decision in that case is, if we may say so, not open to exception and it does not help the Government in this case ; because, the act of the customs authorities in that case was an "adjudication" of a fine in respect of an offence committed by the importer and within the meaning of the passage that we have cited above from *Hari Bhanji* v. *The Secretary of State for India*(1) that adjudication was a decision of a tribunal which has been given jurisdiction to deal with such offences by the statute. In *Bhiwandiwalla & Co.* v. *Secretary of State*(2) GENTLE J. had to deal with a claim for recovery of duty alleged to have been levied in excess. As the suit was instituted on the Original Side in respect of what happened in the City of Madras, the learned Judge held that the jurisdiction of the High Court was excluded by section 106 of the Government of India Act.

(1) (1879) I.L.R. 4 Mad. 344. (2) (1936) 45 L.W. 394.

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He however added that the suit was also barred under section 188 of the Sea Customs Act. The observations on the latter point were only *obiter*. As against this recent judgment in this Court, we may refer to the fact that in two recent cases which came up before the Judicial Committee *Vacuum Oil Co.* v. *Secretary of State for India*(1) and *Ford Motor Company* v. *Secy. of State*(2), the Courts in India as well as their Lordships of the Judicial Committee adjudicated upon a question relating to the correct basis of assessment in respect of certain imported goods. It is true that in those two cases the objection to jurisdiction does not appear to have been raised and discussed. But we are unable to assume that, if the objection to jurisdiction was so obvious as has been suggested before us, the learned Counsel who appeared for the Government or their Lordships who dealt with the case on the merits would have overlooked such an objection. The decisions in *Ganesh Mahadev* v. *The Secretary of State for India*(3) and *Mahadev Ganesh* v. *Secretary of State for India*(4), to which the learned Subordinate Judge has referred, are clearly distinguishable. They fall within the principle already indicated, that adjudications by Customs Officers dealing with an offence committed under section 182 have *prima facie* to be regarded as adjudications by a special tribunal and as such are not examinable by a Civil Court except where they have acted without jurisdiction or in contravention of fundamental principles of judicial procedure. The learned Subordinate Judge has referred to the judgment of the Judicial Committee in *Vacuum*

(1) (1932) I.L.R. 56 Bom. 313 (P.C.).
(2) A.I.R. 1938 P.C. 15.
(3) (1918) I.L.R. 43 Bom. 221.
(4) (1921) I.L.R. 46 Bom. 732.

Oil Co. v. *Secretary of State for India*(1) but has tried to distinguish it on a ground which we find difficult to follow.

Such being the state of the authorities, we may now deal with the arguments advanced before us with reference to the language of the relevant provisions of the Act. The learned Counsel for the appellant contended that the finality enacted by the last clause of section 188 of the Sea Customs Act must be limited to redress available before the executive authorities themselves and must not be understood as precluding the jurisdiction of the Civil Court. He also contended that that finality can attach only to decisions or orders passed by Customs authorities when acting under section 182 of the Act and the succeeding sections. We are not prepared to accede to the latter contention. The opening words of section 188 refer to any decision or order passed by an officer of Customs under this Act and it has not been shown why those words should be limited to cases falling under section 182 and the succeeding sections. For one thing, such a construction may unduly curtail the right of appeal given to a party by section 188 and, unless such a construction is obvious, we are not disposed so to interpret the section. The first contention, namely, that the finality enacted by the last clause of that section should not be interpreted to take away the jurisdiction of the Civil Court, seems to us well founded. Cases have come up before this Court where upon similar provisions in other enactments the same argument against the jurisdiction of the Civil Court has been advanced but has been

(1) (1932) I L R. 56 Bom. 313 (P.C.).

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repelled. Many of these cases have been referred to in *Kamaraja Pandiya Naicker* v. *The Secretary of State for India in Council*(1) and it is unnecessary to deal with them again here.

The learned Government Pleader contended, in the alternative, that even if the exclusion of the Civil Court's jurisdiction is not to be inferred from section 188, the same result must be reached on general principles, on the ground that where the Legislature has created a special tribunal to give redress to a party in respect of particular wrongs it must be presumed that it was intended to be an exclusive remedy. Adopting the language used by the learned Judges in *Ramachandra* v. *The Secretary of State*(2) he contended:

> "When by an Act of the Legislature, powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary Courts is ousted, and, in case of injury, the party cannot proceed by action."

The scope and limits of this principle have been discussed at some length in *Kamaraja Pandiya Naicker* v. *The Secretary of State for India in Council*(1), already referred to, and *Ramachandra* v. *The Secretary of State*(2) has also been explained there. The question for consideration in such cases is, whether the order complained of can be regarded as anything in the nature of an *adjudication* by a *tribunal*. It seems to us too much to contend that every order of a Customs Officer under the Customs Act in whatever connection passed must be regarded as in the nature of an adjudication by a tribunal.

(1) (1934) 69 M.L.J. 695.

(2) (1888) I.L.R. 12 Mad. 105.

The learned Government Pleader also relied on the observations of the Master of the Rolls in *Wake* v. *Mayor, &c., of Sheffield*(1). No question arose in that case as to the limits of the jurisdiction of the Civil Court. A stipendiary magistrate was empowered to pass orders on the application of the urban authority on a default made by a private owner in carrying out certain works. There was an application for *certiorari* to move unto the High Court an order made by the stipendiary magistrate in connection with such an application. The Master of the Rolls observed that that was a case

> "where the statute has imposed on certain persons a liability not known to common law, and has given to other persons powers and duties also not known to common law; and it seems to me to follow that where that is the case, and where there is an Act of Parliament which has imposed a new liability, and given particular means of enforcing such new liability, such mode of procedure is the only one to be followed and used for that purpose."

We find it difficult to say that the present case is one of that kind. *Barraclough* v. *Brown*(2), which was also relied on by the learned Government Pleader, is likewise distinguishable. The proposition there laid down was that

> "where a statute gives a right to recover expenses in a Court of summary jurisdiction from a person who is not otherwise liable, there is no right to come to the High Court for a declaration that the appellant has the right to recover the expenses in a Court of summary jurisdiction."

It was on those facts that Lord WATSON said that

> "the right and the remedy are given *uno flatu*, and the one cannot be dissociated from the other."

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(1) (1883) 12 Q.B.D. 142, 145. (2) (1897) A.C. 61

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It has also been held that when executive authorities in the exercise or under colour of statutory powers interfere with the person or property of the subject, improperly or in excess of the limits authorized by law, the subject has the right to resort to the Civil Court, unless its jurisdiction has been taken away by express words or by clear implication. Judged by this test, we do not think it can be said in this case that the jurisdiction of the Civil Court has been excluded. The appeal is accordingly allowed and the case remanded to the lower Court for disposal on the merits. The court-fee paid on the memorandum of appeal will be refunded. The appellant will be entitled to the costs of this appeal.

G R.

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao and Mr. Justice Abdur Rahman.

1938, January 21.

VELLA VEERAN CHETTI, PLAINTIFF,

v.

V. VEERAN CHETTI AND ANOTHER, DEFENDANTS.*

Court Fees Act (VII of 1870), sec. 11 as amended by Madras Act V of 1922—Future mesne profits—Decree for, without directing inquiry as indicated by O. XX, r. 12, of Civil Procedure Code (Act V of 1908)—Execution of—Payment of court-fee for amount decreed, condition precedent if—Decree finally determining amount of future mesne profits without directing inquiry—Jurisdiction of Court to pass.

In a suit for recovery of possession of immovable property and for past and future mesne profits, the profits claimed were

* Referred Case No. 1 of 1936.