APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Somayya.

RATHNAMMAL *alias* RAJAMANI AMMAL (NIL), APPELLANT,

1939, May 1.

v.

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

Madras Irrigation Cess Act (VII of 1865), sec. 1, pro. 2—Effect of—"Single crop wet" land—Land classified as—Source authorized for irrigation of one crop in respect of—Water taken without permission from, during second crop season for irrigating such land—Imposition of penalty in case of—Legality of—Rules framed by Government under sec. 1 of Irrigation Cess Act empowering Government to impose penalty in such a case—Validity of.

The Revenue authorities of the Province have no power to impose a penalty under the Madras Irrigation Cess Act, 1865, when water is taken without permission during the second crop season for the purpose of irrigating land classified as "single crop wet" and the source from which the water is taken is the source authorized for the irrigation of one crop.

The effect of the second proviso to section 1 of the Madras Irrigation Cess Act is this. No cess shall be leviable under the Act in respect of land held under ryotwari settlement which is classified and assessed as wet, unless the land be irrigated by using without due authority water from a source mentioned in the first part of the section *and* the source is different from or in addition to that which has been assigned by the Revenue authorities or adjudged by a competent Civil Court as the source of irrigation of the land. The word "and" which follows the words "from any source hereinbefore mentioned" in the proviso ought not to be read as meaning "or". To enable the revenue authorities to impose a penalty in respect

* Letters Patent Appeal No. 26 of 1937.

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of land held under ryotwari settlement and classified and assessed as wet, there must, therefore, be unauthorized use of water from a source other than the authorized source. The mere taking of extra water from the authorized source does not come within the exception to the proviso.

The rules framed by the Government under section 1 of the Madras Irrigation Cess Act and set out at page 136 of Volume I of the Standing Orders of the Board of Revenue (Fourth Edition), in so far as they provide for the imposition of a penalty in such a case, go beyond the Act.

Kanakamma v. *The Secretary of State for India*(1) disapproved.

Kanniappa Mudaliar v. *Secretary of State for India*(2) distinguished.

Krishna Row v. *The Collector of Kistna*(3) considered.

APPEAL under clause 15 of the Letters Patent against the judgment of KING J., dated 18th December 1936, and passed in Second Appeal No. 146 of 1933 preferred to the High Court against the decree of the Court of the Subordinate Judge of Coimbatore in Appeal Suit No. 7 of 1932 preferred against the decree of the Court of the District Munsif of Tiruppur in Original Suit No. 637 of 1930.

K. S. Sankara Ayyar for appellant.

Advocate-General (*Sir A. Krishnaswami Ayyar*) and *Government Pleader* (*B. Sitarama Rao*) for respondent.

Cur. adv. vult.

JUDGMENT.

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LEACH C.J.—This appeal raises the question whether the Revenue authorities of the Province have the power to impose a penalty under the Madras Irrigation Cess Act, 1865, when water is taken without permission during the second crop season for the purpose of irrigating land classified as "single crop

(1) (1927) 54 M.L.J. 230.
(2) (1935) I.L.R. 59 Mad. 107.
(3) (1914) 26 M.L.J. 210.

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wet" and the source from which the water is taken is the source authorized for the irrigation of one crop. One Krishnammal was the pattadar of lands in the village of Sulur, Coimbatore District. The lands, which are registered as Survey Nos. 182 and 269, are single crop wet lands. For many years betel leaves have been grown on Survey No. 182 and cocoanut trees on Survey No. 269. The surrounding lands are all registered as double crop wet lands. On 1st February 1928 Krishnammal applied to the Collector for permission to convert her lands into double crop wet lands, but she died before her application could be considered. Her daughter Venkatalakshmi Ammal then made a similar application, but she was told to present it again after the patta had been registered in her name. The lands were irrigated by water flowing through a channel constructed by the Government from a tank known as the Sulur tank. In the year 1925–26 permission had been given to Krishnammal to take water from the channel during the second crop season, but in the following year she took extra water without permission, which resulted in the Revenue authorities charging her twice the water cess ordinarily payable for a first irrigated crop under the rules framed by the Government in purported exercise of the powers conferred by the Madras Irrigation Cess Act. For the year 1927–28 water was again taken without permission by Krishnammal and on this occasion a penalty of five times the ordinary water cess was imposed. In the year 1928–29 her daughter Venkatalakshmi Ammal took water without permission during the second crop season and on this occasion the penalty imposed was ten times the ordinary water cess, amounting to Rs. 257–10–0. This resulted in Venkatalakshmi Ammal filing a suit in the Court

of the District Munsif of Tiruppur for the recovery of the amount on the ground that the infliction of the penalty was unlawful. The District Munsif dismissed the suit and his decision was upheld by the Subordinate Judge of Coimbatore. Venkatalakshmi Ammal had died in the meantime and the appeal was preferred by her daughter as her legal representative. Having lost before the Subordinate Judge the appellant appealed to this Court. The appeal was heard by KING J., who concurred in the decisions of the District Munsif and the Subordinate Judge, but granted a certificate permitting the present appeal under Clause 15 of the Letters Patent.

The decision of the appeal depends upon the interpretation to be placed upon the second proviso to section 1 of the Madras Irrigation Cess Act. This section, omitting the first proviso which has no bearing here, reads as follows :

"1. (*a*) Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank or work belonging to, or constructed by, Government, and also,

(*b*) whenever water by direct or indirect flow or by percolation or drainage from any such river, stream, channel, tank or work from or through adjoining land irrigates any land under cultivation or flows into a reservoir and is thereafter used for irrigating any land under cultivation, and, in the opinion of the revenue officer empowered to charge water cess, subject to the control of the Collector, the Board of Revenue and the Government, such irrigation is beneficial to, and sufficient for, the requirements of the crop on such land, it shall be lawful for the Government before the end of the revenue year succeeding that in which the irrigation takes place to levy at pleasure on the land so irrigated a separate cess for such water, and the Government may prescribe the rules under which, and the rates at which, such water cess as aforesaid shall be levied: and alter or amend the same from time to time: . . .

Provided also that no cess shall be leviable under this Act in respect of land held under ryotwari settlement which is classified and assessed as wet, unless the same be irrigated by using without due authority water from any source hereinbefore mentioned and such source is different from or in addition to that which has been assigned by the Revenue authorities or adjudged by a competent Civil Court as the source of irrigation of such land."

The appellant's case is that inasmuch as her mother had the right to take water for one crop from the channel from the Sulur tank, no penalty could be imposed upon her for taking water during the second crop season. It is said that the Government's power to impose a penalty is limited by the proviso to a case where water is taken from a different source or a source in addition to that assigned. On behalf of the respondent it is said that if a source has been assigned for a single crop and the same source is used during the second crop season, it must be deemed to be a different source within the meaning of the proviso. It is also urged that the rules framed by the Government under section 1 govern the interpretation of the section, as there is, it is said, ambiguity in the wording. It is further contended that the Court should read the word "and" which follows the words "from any source hereinbefore mentioned" in the proviso as meaning "or".

The present rules were promulgated in 1917 and are set out at page 136 of Volume 1 of the Standing Orders of the Board of Revenue, Fourth Edition. Rule I says:

"Water from a Government source or work is said to be irregularly taken to or used for the irrigation of any land—

(a) when it is taken to or used for such land without the permission of any officer authorized by Government to grant such permission, or

(b) when it is taken or used, contrary to the orders of any authority authorized to give such orders, or

(c) when it is taken or used in breach of any rule or regulation directing from what source or under what conditions water may be taken to or used for such land."

Rule II provides for the imposition of twice the water cess ordinarily payable for the first infringement of the rules. Rule III says that for the second infringement five times the ordinary cess shall be imposed, and rule IV provides for a penalty of ten times the ordinary cess for an infringement on the third or any subsequent occasion. If the appellant's contention is correct these rules cannot be applied in a case like the present one, as they go beyond the section. It has been impressed upon us by the learned Advocate-General that the rules have been in force for many years and a decision adverse to the respondent would mean the discontinuation of a course of practice which has been followed in the Presidency for a long time. It has not been suggested, nor could it be, that the appellant is not entitled to raise the question now, and the Court must decide it without regard to the bearing which the decision will have in other cases.

I consider that the wording of the proviso is free from ambiguity and that its effect is this. No cess shall be leviable under the Act in respect of land held under ryotwari settlement which is classified and assessed as wet, unless the land be irrigated by using without due authority water from a source mentioned in the first part of the section *and* the source is different from or in addition to that which has been assigned by the Revenue authorities or adjudged by a competent Civil Court as the source of irrigation of the land. A source which is in addition to the assigned source must necessarily be a different source. To enable the

Revenue authorities to impose a penalty in respect of land held under ryotwari settlement and classified and assessed as wet there must be unauthorized use of water from a source other than the authorized source. The mere taking of extra water from the authorized source does not come within the exception to the proviso. The authorized source of irrigation in this case is the Sulur tank and the channel leading from it. The application of Krishnammal for the transfer of her holdings from dry to wet classification has been put in evidence. The source of irrigation is stated therein to be the Sulur tank and the Revenue Inspector recommended that the application be granted. The application was granted by the Collector, whose order is in these words : "The transfer of the fields to single crop wet under the Sulur supply channel and tank is sanctioned." The words "from any source hereinbefore mentioned" which appear in the proviso can therefore only be read in this case as meaning the Sulur tank and the channel connected therewith. To prevent any misconception I will here say that I do not suggest that if water were taken from an unauthorized channel connected with the Sulur tank this would not be a different source within the meaning of the proviso. I think that it would be a different source, but that question does not arise. The extra water taken by the appellant's mother was taken from the authorized channel. This being the case the appellant is clearly outside the mischief of the section if the words used are to be given their ordinary meaning.

In support of his contention the learned Advocate-General has referred to a statement in Craies on Statute Law, Fourth Edition, page 146, where it is said that where the language of an Act is ambiguous and difficult to construe, the Court may, for assistance in its construction, refer to rules made under the provisions of the

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Act, especially where such rules are by the statute authorizing them directed to be read as part of the Act. This statement is based on the observation of MELLISH L.J. in *Ex parte Wier. In re Wier*(1) where he said :

> "We do not think that any other section of the Act throws any material light upon the proper construction of this section, and if the question had depended upon the Act alone we should have had great doubt what the proper construction was ; but we are of opinion that, where the construction of the Act is ambiguous and doubtful on any point, recourse may be had to the rules which have been made by the Lord Chancellor under the authority of the Act, and, if we find that in the rules any particular construction has been put on the Act, that it is our duty to adopt and follow that construction."

In this case the rules are not made part of the Act and the knowledge of the person who framed them is not a factor. What is important is that there is no ambiguity in the wording of the proviso. Therefore the Court does not need to call in aid the rules in the matter of interpretation. In fact it is clear that the rules go beyond the Act in a case where the facts are as they are here.

Neither can I see any justification for the Court changing the word "and" into the word "or". It is pointed out in Maxwell on the Interpretation of Statutes, Eighth Edition, page 209, that to carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other, and several instances are given. I will not pause to examine them because the law is clearly stated by Lord HALSBURY L.C. in *Mersey Docks and Harbour Board* v. *Henderson Brothers*(2). In that case the Court was called upon to construe the following words in a statute :

(1) (1871) 6 Ch. App. 875. (2) (1888) 13 App. Cas. 595, 603.

"Vessels arriving in ballast, but trading outwards, and also vessels built within the port of Liverpool, or trading outwards, shall be liable to the rates payable in respect of the most distant of all the ports to which they shall trade outwards, and vessels built within the said port on first trading outwards shall be liable to one moiety only of such rates, but shall thereafter pay full rates."

The Court of Appeal had read "or" as "and" and in expressing his dissent Lord HALSBURY L.C. said:

"In the first place I know no authority for such a proceeding unless the context makes the necessary meaning of 'or' 'and', as in some instances it does; but I believe it is wholly unexampled so to read it when doing so will upon one construction entirely alter the meaning of the sentence, unless some other part of the same statute or the clear intention of it requires that to be done, as in the case of *Fowler* v. *Padget*(1), where the Act of Jac. 1; c. 15, made it an act of bankruptcy for a trader to leave his dwelling-house to the intent *or* whereby his creditors might be defeated or delayed. These words if construed literally would have made every trader commit an act of bankruptcy if he casually left his dwelling-house and some creditor called for payment during his absence. It may indeed be doubted whether some of the cases of turning 'or' into 'and' and *vice versa* have not gone to the extreme limit of interpretation, but I think none of them would cover this case."

If the word "and" is read as "or" in the proviso to section 1 of the Madras Irrigation Cess Act, it would entirely alter the effect of the proviso, and there is nothing in the Act which justifies such a reading. Moreover, to give the proviso the meaning which the words used justify would not mean that the Government would be without remedy. It would still have the rights open to all persons whose proprietary rights are infringed.

In the course of his argument the learned Advocate-General quoted three decisions of this Court on questions arising under the Act. The first decision is

(1) (1798) 7 T.R. 509; 101 E.R. 1103.

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that in *Krishna Row* v. *The Collector of Kistna*(1). There a ryot had irrigated his land from two pipes instead of the one which was authorized and it was held that he was liable to a penalty under the rules. AYLING and TYABJI JJ. regarded the additional pipe as being an unauthorized source of supply, but the judgments which they delivered do not discuss the proviso or the rules. The decision of the learned Judges does not apply to this case because here the extra water came entirely from the authorized source of supply. In *Kanniappa Mudaliar* v. *Secretary of State for India*(2) a sluice was erected to allow two and a half inches of water to pass through. The sluice was forced open with the result that water two feet deep passed into the distributary channel and irrigated the plaintiff's lands. RAMESAM and VENKATASUBBA RAO JJ. held that this was water from a different source from, or in addition to, that which had been assigned by the Revenue authorities as the source of irrigation. We are not called upon to decide whether a sluice is a source within the meaning of the Act, because in the present case the Government has declared the source to be the Sulur tank and the channel connected therewith. The third case is *Kanakamma* v. *The Secretary of State for India*(3) which was decided by DEVADOSS J. sitting alone. The case has been cited because in the course of his judgment DEVADOSS J. observed:

> "In order to bring the ryotwari tenant in possession of lands classified and assessed as wet within the meaning of the section, he must do something in order to let water into his lands or must raise or attempt to raise a crop with the help of the water from a source to which he is not entitled or at a time when he is not entitled to get water from his legitimate source."

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(1) (1914) 26 M.L.J. 210. (2) (1935) I.L.R. 59 Mad. 107.
(3) (1927) 54 M.L.J. 230.

Emphasis has been laid on the words "at a time when he is not entitled to get water from his legitimate source". There is nothing in the proviso which makes the time of the taking of the water a factor. The proviso has merely regard to the source and DEVADOSS J. read into the section something which was not there.

The statute being one entailing penal consequences, the Court ought not to do violence to its language to bring people within it, but ought rather to take care that no one is brought within it who is not brought within it in express language; *London County Council* v. *Aylesbury Dairy Company*(1). I consider that it would be doing violence to the wording of the proviso to hold that this case falls within the exception. The plaintiff did nothing to justify the imposition of a penalty under the Act and consequently I hold that the suit was rightly instituted.

The appeal should be allowed and a decree passed in favour of the appellant with costs here and below. From the amount claimed, Rs. 20–5–6 will be deducted as the appellant is admittedly liable for this by way of land revenue.

SOMAYYA J.—I agree.

A.S.V.

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(1) [1898] 1 Q.B. 106.