

APPELLATE CIVIL.

*Before Mr. Justice Cornish.*1935,
August 20.THE DEPUTY COMMISSIONER OF POLICE, MADRAS
(PETITIONER—APPLICANT), PETITIONER,

v.

S. VEDANTAM AND ANOTHER (PLAINTIFF AND DEFENDANT—
RESPONDENTS), RESPONDENTS.*

Madras Motor Vehicles Taxation Act (III of 1931)—Tax payable under, in respect of licence for motor-car—Arrears of—Crown debt, if—Sale proceeds of sale of motor-car of defaulter attached and sold in execution of money decree in deposit in Court—Crown's right to be paid arrears of tax out of, in priority to attaching decree-holder—Secs. 8 and 9 of Madras Motor Vehicles Taxation Act—Effect of—Attachment—Effect in India of.

In execution of a money decree a motor-car belonging to the judgment-debtor was attached and sold. The Crown, represented by the Deputy Commissioner of Police in charge of licences, applied to the Court claiming a portion of the sale proceeds paid into Court (and which had not been paid out to the decree-holder) as arrears of tax due by the judgment-debtor under the Madras Motor Vehicles Taxation Act, the tax being one made payable by the Act in respect of licences which owners of motor-cars were required to take out under the Act.

Held that the arrears of unpaid tax due by the judgment-debtor were clearly a debt due to the Crown, that is to say a Crown debt, that the debt being created by an Act was a specialty debt which had priority over all other debts, and that the Crown was entitled to receive payment of its debt out of the money in Court.

Even regarding the debt as a simple debt the Crown would have the prior right to payment over the decree-holder, because, whenever the right of the Crown and the right of the subject in respect of payment of a debt of equal degree compete, the Crown's right prevails.

* Civil Revision Petition No. 1546 of 1933.

In re Henley & Co., (1878) 2 Ch. D. 469, and *New South Wales Taxation Commissioners v. Palmer*, [1907] A. C. 179, relied upon.

DEPUTY
COMMISSIONER
OF POLICE
v.
VEDANTAM.

The money, the sale proceeds paid into Court, did not become the decree-holder's money, because the effect of an attachment in India under the Code of Civil Procedure is not to create a charge or to convert the attaching creditor into a secured creditor.

Gayamoda Bala Dasse v. Butto Kristo Bairagee, (1906) I.L.R. 33 Cal. 1040, followed.

The provisions of sections 8 and 9 of the Madras Motor Vehicles Taxation Act do not exclude the Crown's power to enforce its prerogative right by other means.

PETITION under sections 115 of Act (V of 1908) and 107 of the Government of India Act praying the High Court to revise the judgment of the Full Bench of the Court of Small Causes, Madras, in New Trial Application No. 80 of 1932.

Government Pleader (K. S. Krishnaswami Ayyangar) for petitioner.

G. Rajagopalan for *S. Rajam Ayyangar* for first respondent.

Cur. adv. vult.

JUDGMENT.

This is a petition to revise the order of a Full Bench of the Small Cause Court disallowing a claim based on the prerogative right of the Crown to be paid its debt in priority to other creditors. The Full Bench took the view that the debt in question was not a Crown debt. This decision is so fundamentally wrong that I think a revision petition is justified.

The facts shortly stated are that the plaintiff-respondent had obtained a money decree on a debt, and in execution had attached and brought to sale a motor-car belonging to his judgment-debtor. The decree was made on 9th September

DEPUTY
COMMISSIONER
OF POLICE
v.
VEDANTAM.

1931 and the attachment made absolute on that date. The motor-car was sold on 28th November 1931 for a sum of Rs. 53. On 4th December 1931 the Crown, represented by the Deputy Commissioner of Police in charge of licences, sent a written notice to the Court claiming Rs. 50 out of the money paid into Court (and which had not been paid out to the decree-holder) as arrears of tax due by the judgment-debtor under the Madras Motor Vehicles Taxation Act. This tax is made payable by the Act in respect of licences which owners of motor-cars are required to take out under the Act. The arrears of unpaid tax due by the judgment-debtor were clearly a debt due to the Crown, that is to say a Crown debt, and the learned Advocate for the plaintiff-respondent has quite properly not attempted to justify the Full Bench's decision to the contrary. The debt being created by Act was a specialty debt, and debts due to the Crown by record or specialty have priority over all other debts. Even regarding the debt as a simple debt, the Crown would have the prior right to payment over the plaintiff-respondent, because, whenever the right of the Crown and the right of the subject in respect of payment of a debt of equal degree compete, the Crown's right prevails; *In re Henley & Co.*(1) and *New South Wales Taxation Commissioners v. Palmer*(2).

It has been contended that the money paid into Court had become the decree-holder's money and was no longer available to the Crown for the satisfaction of its debt. No doubt under English law, if the subject has completely executed his distress by actual sale of his debtor's property

(1) (1878) 9 Ch. D. 469.

(2) [1907] A.C. 179.

before distress proceedings are taken by the Crown, the Crown's right will be defeated; *Attorney General v. Leonard*(1). But this is because under the English law a creditor is, after seizure of his debtor's goods under a writ of *fi fa*, in the position of a secured creditor, with a legal right to have the goods sold and to be paid out of the sale proceeds; see *Clarke, In re*(2). But the effect of an attachment in India under the Civil Procedure Code is not to create a charge or to convert the attaching creditor into a secured creditor. The money, the sale proceeds, being in Court and unpaid to the decree-holder, I think that the Court on receiving notice of the Crown debt was bound to recognise the Crown's prerogative right to priority of payment of its debt out of that money. The question is covered by authority. In *Gayanoda Bala Dasse v. Butto Kristo Bairagee*(3) the plaintiff in a pauper suit had obtained a decree for the conveyance of property to him by the defendants. Defendants were further ordered to pay the court-fee as certified. The plaintiff afterwards attached and sold other property of the defendants and the proceeds were paid into Court. The Government Solicitor, representing the Crown, applied to have the certified amount of court-fees paid out of this money. The application was allowed.

“ It seems to me ”,
said SALE J.,

“ that, inasmuch as the Crown represented by the Government Solicitor is entitled to precedence over all other creditors, no necessity exists for attachment of the fund before claiming payment. The Court is bound by section 284 of the Code (of

DEPUTY
COMMISSIONER
OF POLICE
v.
VEDANTAM.

(1) (1888) 38 Ch. D. 622.

(2) [1898] 1 Ch. 336, 339.

(3) (1906) I.L.R. 33 Cal. 1040.

DEPUTY
COMMISSIONER
OF POLICE
v.
VEDANTAM.

1882) to pay the proceeds of the attached property to such parties as are entitled under the decree to recover the same, and, inasmuch as I must hold that the Crown is entitled to be paid the amount of the court-fees in precedence to the plaintiff by whom the amount in Court was realised, it follows that the Crown is entitled to an order for payment of its dues in priority out of that sum."

It was next contended that the Motor Vehicles Taxation Act provided the proper methods of recovering the debt in sections 8 and 9, and that the Crown should be left to take these remedies. Under section 8 the Crown might have seized the debtor's motor-car for non-payment of the tax; and section 9 gave the power to levy by a distraint of the debtor's property for the debt due. But I think that these particular provisions do not exclude the Crown's power to enforce its prerogative right by other means. In *In re Henley & Co.*(1) it was held that notwithstanding that the Income-tax Act gave the Crown the right to distrain upon a debtor's chattels for arrears of tax, this did not prevent the Crown from putting forward its claim in liquidation proceedings.

I hold therefore that the order of the lower Court must be reversed; that the proper order is that the Crown is entitled to receive payment of its debt for Rs. 50 out of the money in Court; and that this petition must be allowed with costs throughout.

Attorney for petitioner—*Government Solicitor.*

A.S.V.

(1) (1878) 9 Ch. D. 469.