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With these remarks, I may say that I agree in substance with the proposed reply to the reference made; that is to say, sanction given by any one Court cannot be disturbed by a superior Court, and that when sanction is refused by one of those Courts, the refusal does not deprive the superior Courts of the discretion given to them.

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BEFORE A FULL BENCH.

(Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.)

RAM DIAL AND OTHERS (DEFENDANTS) *v.* GULAB SINGH AND OTHERS (PLAINTIFFS.)*

Act XIX. of 1873, *s.* 241, *cl. (i)—Revenue—Pattídár—Suit for Contribution—Jurisdiction—Civil Court—Revenue Court.*

The question in the case was whether the plaintiff, a pattídár who had paid a sum on account of a demand for Government revenue, should sue to recover from the defendants, his co-pattídárs, the balance in excess of his own quota in the Civil or in the Revenue Court.

Held (SPANKIE, J., dissenting) that the Civil Courts were competent to entertain suits of the nature.

Per SPANKIE, J., *contra.*

THE plaintiff, a pattídár who had paid a sum on account of a demand for Government revenue, not merely in respect of his own share, but also in respect of the shares of the defendants, his co-pattídárs, sued to recover the sum paid in excess of his own quota. The suit was instituted in the Court of the Munsif of Chibramau. The Munsif dismissed the suit, deeming it to be a claim connected with or arising out of the collection of revenue, and that he was therefore prohibited by s. 241 of Act XIX. of 1873 from entertaining it. On appeal by the plaintiff, the Judge held that there being no special provision for the trial of such a suit by the Revenue Court, the Civil Court had jurisdiction, and remanded it for disposal on the merits.

The defendants appealed to the High Court on the ground that the suit was not cognizable by the Civil Courts.

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* Special Appeal, No. 293 of 1875, from a decree of the Judge of Farukhabad, dated the 16th January, 1875, reversing a decree of the Munsif of Chibramau, dated the 24th August, 1874.

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The Court (Turner, Offg. C. J., and Spankie, J.) referred to a Full Bench the question whether the plaintiff should have sued in the Civil or in the Revenue Court.

The *Senior Government Pleader* (Lála *Jwala Parshád*) and Munshi *Hanumán Parshád* for appellants.

Pandit *Ajudhia Náth* and Pandit *Bishambar Náth* for respondents.

TURNER, OFFG. C. J., and PEARSON and OLDFIELD, JJ., concurred in the following opinion:—

We are of opinion that the Civil Courts are competent to entertain claims of this nature, and that the Munsif is in error in regarding it as a claim connected with or arising out of the collection of revenue within the meaning of that term in s. 241, Act XIX. of 1873. Looking to the context, it appears to us that that provision of the law may have been intended to apply to wrongs arising out of or connected with the collection of land revenue, such as suits against the revenue officers for the illegal exaction of revenue or for the illegal issue of process. In such cases, the claim arises out of a wrong done in the collection or connected with the collection. In the case before us the plaintiff seeks no remedy for a wrong done to him in the collection of revenue or arising thereout, because, assuming the revenue to have been due, he suffered no wrong in its collection, and certainly no wrong at the hands of the defendants; he sues because he has been compelled to pay a debt for which they were all jointly liable, a payment which gives him the right to call on them for contribution.

It strengthens the view we have taken that, as pointed out by the Judge, neither in the sections of this Act nor in those of Act XVIII. which declare what powers may be exercised by the several revenue authorities do we find any mention made of suits of this nature.

SPANKIE, J.—Until the passing of Act XIX. of 1873 I am willing to admit that a suit of the nature of a claim for contribution, as this is, would be heard in the Civil Courts. But it appears to me that Act XIX., which is one to consolidate and amend the law relating to land revenue and the jurisdiction of

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the revenue officers, aims at keeping in the hands of those officers the settlement of every dispute connected with the collection of revenue, whether such disputes arise between the revenue-payers themselves, or between the Government officers and the revenue-payers.

The question that we have to determine is whether or not the suit involves a dispute regarding one of those matters included in s. 241 of the Act, over which the section declares, in so many words, the Civil Courts shall exercise no jurisdiction.

Now cl. (*i*) of the section provides for claims connected with or arising out of the collection of revenue (other than claims under s. 189) or of any process enforced on account of an arrear of revenue. The exception relates to proceedings taken under Ch. v. of the Act to enforce the recovery of any arrears of revenue against a person. He may pay the amount under protest to the officer taking the proceedings, and upon such payment the proceedings shall be stayed, and the person against whom such proceedings were taken may sue the Government for the amount so paid in any Civil Court in the district where such proceedings were taken. Here, possibly, the party who brings the suit may contest altogether any liability to pay revenue to Government, or that only a portion of what was taken was due from him, because the latter part of the section allows him to give evidence of the account which he alleges to be due from him, notwithstanding the provisions of s. 149. This section declares that a statement of account certified by the tahsíldár shall be conclusive evidence of the existence of the arrear, of its amount, and of the person who is the defaulter.

Cl. (*i*) appears to provide generally for any dispute being a claim connected with or arising out of the collection of revenue or any process enforced on account of an arrear of revenue as in this case, in which the tahsíldár enforced the joint and several responsibility of the proprietors declared by s. 146, by calling upon the plaintiff to pay Rs. 1,293, which sum was not the proportionate share due by himself, but included also the quota due by 38 other persons.

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This is not a case of a lambardár suing under Act XVIII. of 1873 for arrears of revenue payable through him due by the co-sharers, whom he represents. It is the case of a pattídár who is known or supposed to be solvent, who is made to pay what other pattídárs owe, or refuse to pay contumaciously or from design, or by the reason of some dispute in the pattí. The revenue officer has done no wrong to the plaintiff in getting the arrears out of him. It is not pretended that he has made the plaintiff pay more on his own account than he is bound to pay. He has simply enforced against him the common liability of the pattídárs, for which he also made himself responsible.

It is contended that the plaintiff does not seek a remedy for wrong done to him in the collection of revenue, because, assuming the revenue to be due, he suffered no wrong in the collection and none at the hands of the defendants. But it is, I think, apparent that whatever he has suffered is owing to the conduct of the defendants, and the enforced payment by him of revenue due by them has given to him the right of forcing them in return by suit to re-imburse him. In the course of such a suit it would not be sufficient for the plaintiff to produce the revenue officer's receipt for Rs. 1,293. He would have to show what was the amount due by each of the pattídárs, and they would have to account for not having paid their quota. It may surely be assumed that existing disputes connected with or arising out of the collection of the revenue (very large and wide words) would be disclosed in the suit disputed, which, in my opinion, the legislature intended should be heard and determined by the revenue authorities.

Such a claim as the one before us seems to me to arise out of the collection of the revenue and the enforcement of the plaintiff's liability to pay the arrear due by his co-sharers, and it is, I think, included in cl. (*i*) of the section. If this be so, then, in the last words of the section, "in all the above cases, jurisdiction shall rest with the revenue authorities only."

Thus the first words of the section bar the jurisdiction of the Civil Courts in any of the matters included in the section, and its last words declare that the revenue authorities only shall have

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jurisdiction. If the claim is one that will come under cl. (*i*) of the section, the Civil Courts can take no cognizance of it.

But the Judge finds that there is no special provision for the hearing of this particular class of suit by the revenue authorities, and that the prohibition entered in the last clause of s. 241 applies only to those cases for which there is a special provision. I do not understand whether the Judge means that a suit of this nature is not mentioned in s. 241, or whether he means expressly that no power is given to revenue officers elsewhere in the Act to hear suits of this nature.

As to the first point, some confusion is caused by regarding this case as a suit. It is sufficient that the dispute between plaintiff and defendants should be one connected with or arising out of the collection of the revenue. Being one of that description, it would be one of "the matters" over which the Civil Court could not, and the revenue authorities alone could, exercise jurisdiction. As to the second point, the jurisdiction being with the revenue authorities, those authorities must be one or more of the officers named in s. 207, the Commissioner, Collector, Assistant Collector, Officer in charge of a Settlement or Assistant Settlement Officer, or a tahsíldár. Any one of those officers can summon persons before him, if he considers their attendance necessary for the purpose of any investigation, suit, or other business before him (s. 208), so it is not only suits that may be tried under the Act. The Act recites the powers of Collectors and Assistant Collectors generally and also particularly, and Collectors, in addition to their own powers, may exercise the powers of Assistant Collectors, and Assistant Collectors in charge of a sub-division exercise the same powers that a Collector could if there was no sub-division, subject to the control of the Collector. It is true that there is no particular mention of claims under cl. (*i*), s. 241, outside that section. But s. 241 is a portion of Ch. vii. which, amongst other matters, treats of the powers of Collectors and others. S. 241 expressly gives to those officers as revenue authorities alone the power of dealing with the matters contained in it. And where this is the case, it seems to me to be idle, in this particular reference, to raise any difficulty regarding the revenue officer who is to

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determine any one of the matters contained in the section. If this is one of those matters referred to in cl. (*i*), s. 241, no want of clearer specification of the powers of the different revenue authorities, no omission of the class of case outside the section, and no ambiguity or defect in the Act, can give the Civil Courts the jurisdiction which the opening words of the section expressly bar.

I would answer that this case should be heard by the revenue authorities.

BEFORE A FULL BENCH.

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(*Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

GHASÍ RAM (DECREE-HOLDER) *v.* MUSAMMÁT NURÁJ BEGAM (JUDGMENT-DEBTOR.)*

Letters Patent, cl 10—*Appellate Civil Jurisdiction—Appeal from Judgment of Division Court.*

To allow of an appeal to the High Court against the judgment of a Division Court, under the provisions of cl. 10 of its Letters Patent, there must be such a judgment on the part of all the Judges who may compose the Division Court as disposes of the suit on appeal before it.

APPLICATION was made on the 8th October, 1874, to the Subordinate Judge of Cawnpore by Musammát Nuráj Begam, on behalf of her minor daughters, to set aside the sale in execution of a decree of their rights and interests in certain villages on the ground that written notifications of the sale were not affixed in the villages, in consequence of which irregularity they were sold for a price inadequate to their value. The Subordinate Judge rejected the application, holding that no irregularity in the publishing of the sale was shown. The judgment-debtors appealed to the High Court. The appeal came on for hearing before a Division Court consisting of Stuart, C. J. and Spankie, J. It was contended by the appellant that notifications of the sale were not affixed in all the villages, whereby the judgment-debtors sustained substantial injury. The learned Judges differed in opinion.

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* Appeal under cl. 10 of the Letters Patent, No. 6 of 1875.