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of the schedule of the Limitation Act, he has a right to execute the decree. That clause runs as follows: "(Where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree." His contention is that he has made an application to the Court to take a step in aid of execution. There is no such application on the record. If we were to decide the case upon such an application, we would be deciding it upon a document which has never been put before us, which we have not seen and of which we do not know anything.

Moreover, I agree in considering that a mere order of Court which requires no application does not fall within that clause. That clause evidently means that there must be some application to the Court to take some step. And where a step has been taken or an order has been passed without any application at all, it does not seem to fall within the purview of the law.

Then it is said that an application to get a copy of the decree returned which was in the record room of the Judge's Court, is an application to the Court to take a step in aid of execution. It appears to me that an application for the return of a document in the record room is by itself an indifferent act. And there is nothing on this record to show us how or in what way it would aid execution. No copy of the decree is required by law to be filed in execution. I therefore concur in thinking that the application for execution should be dismissed.

P. O'K. *Appeal allowed.*

ORIGINAL CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Wilson.

JUDAH (DEFENDANT) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF.)*

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January 5.

Insolvent Act (11 & 12 *Vict. c.* 21), *s.* 62—*Crown-debts—Judgment-debt in name of Secretary of State for India in Council.*

A judgment-debt due to the Secretary of State for India in Council, arising out of transactions at a public sale of opium held by the Secretary of State

* Original Appeal No. 14 of 1885, against the order of Mr. Justice Norris, dated the 16th of February 1885.

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for India in Council, is a debt in respect of Crown property, and therefore a "debt due to our Sovereign Lady the Queen" within the meaning of s. 62 of the Insolvent Act.

In determining whether or no a debt falls under the denomination of a Crown-debt, the question is not in whose name the debt stands, but whether the debt, when recovered, falls into the coffers of the State. Principle in *Secretary of State for India in Council* v. *The Bombay Landing and Shipping Company* (1) followed.

ON the 1st May 1884, A. N. E. Judah purchased at a Government opium sale held at Calcutta a large quantity of opium, and under one of the conditions of sale, which directed that a promissory note should be taken as a deposit from the purchaser on each lot purchased, signed 29 promissory notes in favor of the Secretary of State for India in Council, the sum total of which amounted to Rs. 2,14,500, which notes were, under the same rules, made redeemable within five days. The notes were not redeemed, and the opium was put up again for sale, the second sale resulting in a loss. A suit was, therefore, brought by the Secretary of State for India in Council against A. N. E. Judah for the amount of these notes, which, under the rules before mentioned, had become forfeited to Government, the amount of the notes being made recoverable irrespective of any amount recovered by the re-sale of the opium. On the 12th May 1884 the Secretary of State for India in Council obtained a decree for the amount sued for. On the 26th August 1884, A. N. E. Judah filed his petition in the Insolvent Court, and on that day he further filed his schedule, in which he inserted and admitted the claim of the Secretary for India in Council, and an order was made vesting the whole of his properties in the Official Assignee. On the 3rd September 1884 the insolvent obtained a protection order.

On the 14th January 1885 the Secretary of State for India in Council applied to have his name expunged from the schedule on the ground that the debt owing to him was a Crown-debt. After hearing counsel on both sides, the Court directed the name of the Secretary of State for India to be expunged from the schedule. On the same day subsequently to the making of the last mentioned order the insolvent obtained his personal discharge.

(1) 5 Bom. H. C., O. C., 23.

On the 15th January 1885 the Secretary of State for India in Council applied for and obtained an *ex parte* order in execution of his decree for the arrest and imprisonment of the defendant.

On the 19th the defendant obtained a rule calling upon the Secretary of State for India in Council to show cause why the order of the 15th January 1885 should not be set aside.

The *Standing Counsel* (Mr. *Bonnerjee*) showed cause.—I submit it is a Crown-debt. The case of *Nobin Chunder Dey* v. *Secretary of State for India*, &c. (1) deals with the position of the Secretary of State in such matters. Also the case of the *P. & O. Steam Navigation Co.* v. *Secretary of State for India* (2). By 3 & 4 Wm. IV. c. 85, the Company were prohibited from carrying on commercial business, with the exception of such as might be carried on for the purpose of Government, and by s. 4, the Company was allowed to carry on trade for the purposes of Government only. The opium sale is carried on for the purposes of Government; the proceeds of such sales form part of the revenues. Could a person put claims against him for land revenue in his schedule? Section 4 of Act I of 1878 lays down that no one but Government can sell opium, so the Secretary of State cannot be considered an ordinary vendor.

[NORRIS, J.—The 15th condition of sale which states, "that in the event of a dispute or difference touching any question arising out of the sale, or adjustment of the account thereof, the same shall and may be tried and decided in the High Court of Judicature at Fort William in Bengal," is some evidence that the Government were private vendors, and were not in these sales exercising sovereign powers.] The character of the debt is not altered by the mode of the recovery of the debt. The Secretary of State under 21 & 22 Vic. c. 106 represents the Crown, in whom the territories of the East India Company were vested, and promises made to him and debts contracted in his favor must be taken to be for the benefit of the Crown. I submit the matter falls under s. 62 of the Insolvent Act.

The *Officiating Advocate General* (Mr. *Phillips*) on the same side contended that the question before the Court was whe-

(1) I. L. R., 1 Calc., 11. (2) Bourke., Pt. VII., 167.

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ther the order of the 15th January could be set aside, and this matter had already been adjudicated on by the Insolvent Court on the 14th January. The Insolvent Court, after hearing the parties, had decided that the debt was a Crown-debt. The debt has been deliberately struck out by the Insolvent Court, and this Court has no control over the Insolvent Court, and therefore cannot restore the debt to tho schedule.

Mr. *Pugh* (with him Mr. *Evans*) *contra*.—If this is a debt due to the Crown, there must be a co-relative remedy in the hands of the subject. The question in the case of *Nobin Chunder Dey* v. *Secretary of State for India* (1) was whether or not this Court had jurisdiction to interfere with contracts in respect of licenses. It was a question relating to the revenue, and the Court held that it had no power to go into the question. As regards the order of the Insolvent Court, the order simply says that plaintiff's name shall be expunged and assigns no reason. The defendant having put the name of the Secretary of State in the schedule, he had done all that he was bound to do. If the plaintiff chooses to withdraw his name, it is not the fault of the defendant. There is nothing in the Insolvent Act which says that a debt and name shall remain in the schedule, all that is necessary is that it should be inserted. At the time of the passing of the Insolvent Act the East India Company were carrying on business as traders for the purposes of Government; and from the case of the *P. & O. Steam Navigation Co.* v. *Secretary of State for India* (2), it is clear that the Secretary of State is treated as a trader with regard to salt and opium. By 21 & 22 Vic. c. 106, the territories of the East India Company became vested in Her Majesty, and by s. 3 of that Statute, one of Her Majesty's principal Secretaries of State was to exercise all the powers exercised previously by the Company. The Secretary of State, therefore, could not stand in a higher position, after the passing of the Act, than the Company did before. By s. 65 it was expressly enacted that the Secretary of State should sue and be sued as a body corporate, and that all persons should have and take the same remedies against the Secretary of State in Council as they could have taken against the Company. The case of *Secretary of State for*

(1) I. L. R., 1 Calc., 11. (2) Bourke, Pt. VII., 167.

India v. *Hari Bhanji* (1), referred to 3 classes of acts—(*a*), acts of State; (*b*), acts done under Municipal Laws which the Government had passed; and (*c*), acts done as traders. The present contract fell under clause *c*, and therefore the Secretary of State could not claim personal exemption from any suit. Moreover the Government of India, and not the Crown, would get the benefit of the debt, and from the case of *Frith* v. *The Queen* (2), it would follow that if the Crown had a right to debts of this description they must go to the revenues of England and not India. The words of s. 62 of the Insolvent Act were "debts due to our Sovereign Lady the Queen." This debt was one due to the Secretary of State as representing the East India Company, and it could not be said that a debt due to the East India Company was a debt due to our Sovereign Lady the Queen. A debt in the name of the Crown for the benefit of the subject is a Crown-debt—*In re Smith* (3), but a debt in the name of the subject for the benefit of the Crown is not a Crown-debt.

Mr. Justice NORRIS held that the debt was a Crown-debt and discharged the rule with costs.

The defendant appealed.

Mr. *Pugh*, for the appellant, contended that the Secretary of State was created by 21 & 22 Vic. c. 106, and that he had no powers saving under that Act; no prerogative of the Crown is vested in him except by the Act.

The Crown had no interest in such debts as the present up to the time of the passing of 16 & 17 Vic. c. 95. But whether, apart from specific enactment, this would be a Crown-debt or not, the effect of s. 65 of 21 & 22 Vic. c. 106, is to place it on a different footing. That section, in connection with former sections, shows that in matters of this description the Secretary of State does not stand in any better position than the East India Company would have stood in had the events happened whilst the Company was in power; he also contended that the present debt was not a Crown-debt, because, if incurred in England, it would not be the subject of extent. The following cases were also cited—*The Secretary of State for India in Council* v. *Hari Bhanji* (1), *Frith*

(1) I. L. R., 5 Mad., 273. (2) L. R., 7 Ex., 365.
(3) L. R., 2 Ex. D. 47.

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v. *The Queen* (1), *In re Smith* (2), *Appaya* v. *Collector of Vizagapatam* (3).

The *Advocate General* (Mr. *Paul*) and the *Standing Counsel* (Mr. *Bonnerjee*) who appeared for the respondent were not called upon.

The following judgments were delivered :—

GARTH, C.J.—I think this is a very plain case; and I entirely agree with the Court below that the rule should be discharged.

The question is, whether the debt owing by the defendant, and which he desires to insert in his schedule, is a Crown-debt within the meaning of s. 62 of the Insolvent Act.

[Here the learned Judge set out the facts of the case.]

The only question therefore is, whether this is or is not a Crown-debt. In my opinion it is clearly a Crown-debt. It is admitted that the opium which was sold belonged to the Crown; and it is also admitted that this very debt, when recovered, would belong to the Crown; but it is contended that, in the meantime, the promissory notes sued upon which were given by the defendant to the Secretary of State were so given to him, not on behalf of the Crown, but as of a body corporate of a special character; and although he may be a trustee for the Government, he is not an officer of the Crown in such sort, as that the debt which is due to him from the defendant can properly be considered a Crown-debt.

I confess I am unable to understand this nice distinction. It seems to me that, since the Statute 21 & 22 Vic. c. 106, the Secretary of State in Council represents the Government here to all intents and purposes. He is the officer of the Crown authorized to sue and be sued in respect of all Crown-debts and contracts. In that character these promissory notes were given to him by the defendant, and I consider that the debt is as much a Crown-debt before it is recovered from the defendants as afterwards.

This seems to me to be the true and short answer to the argument which has been addressed to us.

There is nothing in this view which conflicts in any way with

(1) L. R., 7 Ex., 365. (2) L. R., 2 Ex. D. 47.
(3) I. L. R., 4 Mad., 155.

the principle of the case of the *Peninsular and Oriental Steam Navigation Company* v. *The Secretary of State* (1), on which the appellant relies. That case only laid down the rule that, where the Government of this country carries on a trade, and in the course of that trade employs a number of persons, they are as much liable for any negligence of which their servants may be guilty as any private person, and may be sued for such negligence in the name of the Secretary of State.

I cannot help thinking that in this case a good deal of time has been unnecessary occupied in discussing a large amount of old English law with regard to extent and Crown-debts, which, I am happy to say, does not concern us here. Our procedure, as well as our law, upon that subject is of a much more simple character.

I think that the appeal should be dismissed with costs.

WILSON, J.—I am of the same opinion.

The question which we have to answer is, whether the debt in question is a "debt due to our Sovereign Lady the Queen," within the meaning of s. 62 of the Insolvent Act.

Under the Act for the better Government of India 21 & 22 Vict. c. 106, which is amended and its effect somewhat defined by 22 & 23 Vict. c. 41, there is no doubt that the territories formerly governed by the East India Company, and all those subsequently acquired, are vested in the Crown; that all moveable property of the State belongs to the Crown; and that the revenues of India of all kinds, regular or casual, are vested in the Crown, although the control and management of them, in the manner prescribed by the Statutes, are entrusted to the Secretary of State.

Now the debt in the present case is a debt in respect of the price of Crown property sold, and the amount when received would be a part of the revenues of India. It appears to me, therefore, that the debt is in substance a debt due to the Crown.

But it is said that it is not a debt due to the Queen within the meaning of the section in question for two reasons. I shall deal with these in the reverse order to that in which they were argued.

(1) Bourke, Pt. VII, 167.

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First, it is said that this is not a Crown debt, because, if incurred in England, it would not be the subject of extent.

I think it unnecessary to inquire into the English law relating to extents. It appears to me that the principle laid down by the High Court in Bombay, in the case of the *Secretary of State for India* v. *The Bombay Landing and Shipping Company* (1) is the true principle applicable to such cases as the present; and it is abundantly supported by the authorities there referred to. That principle is that, in these cases, the question is, not in whose name the debt stands, but whether the debt, when recovered, falls into the coffers of the State.

Applying that principle to this case, I think it clear that this is a debt due to the Crown.

Secondly, it was argued that whether, apart from the specific enactment this would be a Crown debt or not, the effect of s. 65 of the Act for the better Government of India is to place it on a different footing. It was contended that the effect of that section, read in connection with some earlier sections, is that in matters of this nature, neither the Secretary of State nor any higher authority represented by the Secretary of State shall, in any respect, stand in a better position than the East India Company would have stood in if the same events had occurred during the time of its Government.

I do not think there is any such intention to be gathered from the Act. The section first empowers the Secretary of State to sue and be sued; so far it deals only with the manner in which suits are to be brought, and has nothing to do with substantive rights. The latter part of the section says nothing as to what rights may be acquired either by the Secretary of State or by the Crown through the Secretary of State, nor as to the nature or character of rights so acquired. It leaves that to be governed by the ordinary principles of law. But with regard to liabilities which may be enforced against the Secretary of State there are express words: and the reason of that, as explained in the judgment in the case of the *Peninsular and Oriental Steam Navigation Company* v. *The Secretary of State in Council* (2) would seem to be that the East India Company,

(1) 5 Bom. H. C. O. C. 23, see p. 47. (2) Bourke, Pt. VII, 167.

not being a sovereign body, might have been made liable by suit in cases in which such a remedy would not, without special enactment, be available either against the Crown or against any servant of the Crown as such; and that it was intended to give the same remedies, in some cases at least, against the revenues of India by suit against the Secretary of State which were formerly admissible against the East India Company. But whether this be the true view or not, it has nothing to do with the nature of a Crown debt; and no bearing, therefore, upon the construction of s. 62 of the Insolvent Act.

T. A. P. *Appeal dismissed.*

Attorney for the appellant: Mr. *G. Gregory.*

Attorney for the respondent: The Govt. Solicitor (Mr. *U. L. Upton.*)

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Agnew.

BUKSHI RAM PERGASH LAL (ONE OF THE DEFENDANTS) *v.* SHEO PERGASH TEWARI (PLAINTIFF).*

1886 *January* 6.

Limitation Act (XV of 1877), Sch. II, Art. 11—Civil Procedure Code (Act XIV of 1882), ss, 280, 283—Mortgagee, Suit by, against mortgagor and third party who has intervened and obtained an order under s. 280, Civil Procedure Code—Execution of decree.

Article 11, Sch. II of the Limitation Act (XV of 1877), refers only to suits contemplated by s. 283 of the Civil Procedure Code. Where, therefore, a mortgageo having obtained a decree on his mortgage, and caused the property to be attached was successfully opposed by a third party who intervened in his attempt to have the property sold, and an order was passed under s, 280 of the Code of Civil Procedure releasing the property from attachment, and when the mortgagee, more than a year after the date of that order, instituted a suit against such third party and his mortgagor, to have his lien over the mortgaged property declared, and to bring it to sale in execution of his decree alleging that the title set up by such third party was a fraudulent one, collusively created between the mortgagor and such third party with a view to deprive him of his rights, and asking to have the order passed under s. 280 set aside;

* Appeal from Appellate Order No. 214 of 1885, against the order of J. Tweedie, Esq, District Judge of Shahabad, dated the 4th of May 1885, reversing the decree of Baboo Gopal Chandra Bose, Munsiff of Buxar, dated the 14th of June 1884.