

They are the power to revoke or grant sanction given or refused by the Court (and only that Court) from which appeals to it ordinarily lie. The power cannot travel beyond the orders of that Court. In the present case the sanction we are asked to revoke is the sanction given by the Munsif of Ghaziabad. Appeals from that Court do not "ordinarily lie" to this Court as those words are defined in clause 7(a) of section 195.

The answer then I would propose to the reference is that this Court has no power under section 439 of the Code of Criminal Procedure to call for the proceedings of the Munsif of Ghaziabad and to pass orders on them. On the other hand, it has power under section 622 of the Code of Civil Procedure to call for those proceedings and to pass on them such order as it may deem expedient.

BURKITT, J.—I have already frequently expressed my opinion on the question mooted in this case. I therefore think it unnecessary to say more than that I am of the same opinion as the other members of the Court.

BY THE COURT:—Our answer to the question of the learned Judges who made the reference in this case, namely, whether the application lies on the Civil Revisional side of the Court or should have been made under section 439 of the Code of Criminal Procedure is that the application lies on the Civil Revisional side of the Court and not under section 439 of the Code of Criminal Procedure. The case will therefore be returned with this answer to the Divisional Bench of this Court.

## APPELLATE CIVIL.

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April 10.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.*

TULSA KUNWAR (PLAINTIFF) v. JAGBSHAR PRASAD AND OTHERS  
(DEFENDANTS).\*

*Act No. IX of 1872 (Indian Contract Act), section 69—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 183 and 233—Suit to recover money paid to release property from unlawful attachment—Jurisdiction—Civil and Revenue Courts.*

The plaintiff sued in a Civil Court to recover money from the defendants on the allegation that certain property belonging to her having been wrongfully attached in order to realize arrears of Government revenue due from

\* Second Appeal No. 621 of 1904, from a decree of Syed Muhammad Ali, Esq., District Judge of Jaunpur, dated the 7th of April, 1904, confirming a decree of Maulvi Syed Zain-ul-abdin, Subordinate Judge of Jaunpur, dated the 7th of December, 1903.

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the defendants, she, the plaintiff, had, in order to save her own property, paid the arrears of revenue due from the defendants to Government. *Hold* that the cause of action was a good cause of action having regard to section 69 of the Indian Contract Act, 1872, and that the jurisdiction of the Civil Courts to entertain the suit was not ousted by the provisions of the United Provinces Land Revenue Act, 1901, sections 183 and 233(m).

*Smith v. Dinomath* (1) and *Bama Sundari Das v. Adhar Chunder* (2), referred to by Banerji, J.

THIS was a suit for the recovery of Rs. 480-9-8 *plus* Rs. 173 interest brought under the following circumstances. The defendants, who were zamindars, made default in payment of their Government revenue. In order to realize the revenue payable by the defendants certain property which in fact belonged to the plaintiff was by mistake attached. To save this property from sale the plaintiff paid up the amount due by the defendants and thereupon brought the present suit to recover from them the amount so paid. The Court of first instance (Subordinate Judge of Jaunpur) dismissed the plaintiff's suit, holding that it would not lie in a Civil Court under the provisions of the United Provinces Land Revenue Act, 1901, and on appeal this decree was upheld by the District Judge. The plaintiff thereupon appealed to the High Court.

Munshi Gokul Prasad and The Hon'ble Pundit *Mudan Mohan Malaviya*, for the appellants.

Babu Durga Charan Banerji, for the respondents.

STANLEY, C.J.—Questions of some difficulty arise in this appeal. The suit was brought by the plaintiff to recover a sum of money paid by her in satisfaction of Government revenue under the following circumstances. Arrears of Government revenue, amounting to Rs. 480-9-8, were due by the defendants for 1304 Fasli and subsequent years. The Government attached certain movable property of the plaintiff, which was found in the female apartments, and in order to remove the attachment the plaintiff paid the amount due. It is not denied that the defendants were liable to pay the arrears or that the plaintiff paid them in order to remove the attachment, nor is it denied that the property which was attached in the female apartments was the property of the plaintiff. The plaintiff instituted the suit out of which this appeal has arisen for

recovery from the defendants of the amount so paid by her with interest.

The Court of first instance held that if the plaintiff had any cause of action it was against the Government and not against the defendants, and dismissed the suit. On appeal the learned District Judge held that the plaintiff was debarred from maintaining the suit by the provisions of sections 183 and 233 of the Land Revenue Act (No. III of 1901); hence this appeal.

The contention of the learned vakil for the appellant is that neither section 183 nor section 233 applies to a case such as the present one, and that under section 69 of the Indian Contract Act the plaintiff is entitled to succeed. That section is in these words:—"A person who is interested in the payment of money which another is bound by law to pay and who therefore pays it is entitled to be reimbursed by the other." The argument of Mr. *Mohan Lal* is that when the property of the plaintiff was attached she had such an interest in the payment of the arrears due by the defendants as entitles her on payment to be reimbursed under this section.

Before I deal with this matter it will be convenient to consider the true effect and meaning of the sections of the Land Revenue Act upon which the defendants respondents base their case. Section 183 runs as follows:—"Whenever proceedings are taken under this Chapter against any person for the recovery of any arrears of revenue, he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may sue the Government in the Civil Court for the amount so paid, and in such suit the plaintiff may, notwithstanding anything contained in section 145, give evidence of the amount, if any, which he alleges to be due from him. Section 145 is the section which renders the statement of account certified by the Tahsildar conclusive evidence of the existence of an arrear of revenue, of its amount and of the person who is the defaulter. It appears to me that section 183 does not provide for a case in which a third party who is not a defaulter in the matter of payment of Government revenue, but whose property has been improperly

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attached to satisfy arrears of revenue, has paid the arrears in order to remove the attachment. It contemplates, I think, proceedings taken against a defaulter or defaulters only. This is shown by the provision which enables the party who may sue Government in a Civil Court for the amount paid by him under protest to give evidence of the amount, if any, which he alleges to be due from him. The Act, as its title denotes, deals with a special subject, it is an Act which regulates the relations of the Government and shareholders in revenue-paying land in respect of Government revenue and other matters connected with revenue-paying land and purports to be an Act to "consolidate and amend the law relating to land revenue and the jurisdiction of revenue officers in the North-Western Provinces and Oudh." It is not an Act which purports to control the rights and obligations of the public generally. Section 183 seems to have been intended to give a remedy to a party who is liable to pay Government revenue and who disputes the amount claimed enabling him to pay that amount under protest and sue the Government in the Civil Court for the amount so paid. Then we come to section 233. This sections provides that no person shall institute any suit or other proceeding in the Civil Court with respect to a number of matters and, amongst others, under clause (m):—"Claims connected with or arising out of the collection of revenue (other than claims under section 183) or any process enforced on account of arrears of revenue or on account of any sum which is by this or any other Act realizable as revenue."

Mr. *Durgu Oharan Banerji*, on behalf of the respondents, strongly urged that this provision barred the present suit; that the claim was connected with or arising out of the collection of revenue and could not be brought in a Civil Court. There is no doubt that the claim of the plaintiff is in a sense connected with the collection of revenue, but had the Legislature when it enacted this clause in contemplation any other claims than claims which might be advanced by parties liable to pay revenue? I think not. The Act is one which regulates the relations of the Government on one side, and a limited class of persons, namely, sharers in revenue-paying mahals on the other,

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General words admit of restriction according to the subject to which they relate and the scope and object of the enactment. If the Legislature intended so important an innovation as is contended for, it would, I think, have manifested its intention in clear and explicit terms. The general presumption is against an intention to disturb the established state of the law, or to interfere with the vested rights of subjects, and there is a strong leaning against so construing a statute as thereby to oust or restrict the jurisdiction of the Civil Courts. In the provision that "no person shall institute a suit" it seems to me that the Legislature had in contemplation the class of persons to whom the Act in its general bearing is applicable, that is to shareholders liable to pay Government revenue and not to strangers outside this body. I do not think it was intended to protect the Government against claims in respect of illegal acts done to the detriment of persons who are under no liability to pay Government revenue. It was merely intended to protect the Government against claims of members of the revenue-paying class. But whether I am right or not in this view, it seems to me that this provision cannot protect the defendants against the claim of the plaintiff if that claim be in other respects legal and maintainable. If in this case there had been no attachment of the plaintiff's goods, but at the request of the defendants she had paid the Government revenue, according to the respondents' contention her claim in the Civil Court could not be sustained. I cannot yield to this contention. It seems to me that the jurisdiction of the Civil Court has not in a case like the present been ousted.

I now come to the second question. Was the payment made by the plaintiff such a payment as comes within the purview of section 69 of the Indian Contract Act? That section lays down a wider rule than is recognised by the English authorities. The words "a person who is interested in the payment of money which another is bound by law to pay" are very wide. In order that the aid of the section may be invoked all that apparently is necessary is that a person has paid money which another was bound by law to pay and that he had an interest in the payment of that money. Undoubtedly the

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plaintiff was interested in the payment of the arrears of revenue which the defendants were liable by law to pay seeing that her property was attached, illegally it may be, to satisfy these arrears. In his recent work on the Indian Contract Act, Sir Frederick Pollock notices the wideness of the language of this section. He says in his comment on the section, at page 239:—"The words 'interested in the payment of money which another is bound by law to pay' might include the apprehension of any kind of loss or inconvenience or at any rate of any detriment capable of being assessed in money. This is not enough in the common law to found a claim to reimbursement by the person interested if he makes the payment himself." Later on he says:—"The English authorities do not cover a case where the plaintiff has made a payment operating for the defendant's benefit, but was not under any direct legal duty to do so, nor where the defendant was not bound to pay though the payment was to his advantage." But under the section in question he holds that "it is enough for a person claiming under the provisions of this section to show that he had an interest in paying the moneys claimed by him at the time of the payment." It seems to me that the language of the section is quite wide enough to embrace the case of the plaintiff, and it is certainly consonant with justice that she should be entitled to recover from the defendants the money which they were liable to pay, but which she *bond fide* paid for the protection of her property, the benefit of which payment the defendants have enjoyed.

I would therefore allow the appeal, set aside the decrees of the lower Courts and give a decree to the plaintiff for the principal amount claimed with interest thereon at the rate of 6 per cent. per annum from the 12th of September, 1900, to the date of realization, together with her costs in all Courts.

BANERJI, J.—I agree with the learned Chief Justice. It is manifest from the provisions of section 183 of the United Provinces Land Revenue Act (No. III of 1901) and specially the second paragraph of the section that the suit contemplated by the section is a suit against the Government by the defaulter himself and not by a third party. In the first paragraph it is provided that "the person against whom such proceedings (that

is, proceedings under Chapter VIII for collection of arrears of revenue) were taken may sue the Government in the Civil Court." As proceedings under the Chapter are only taken against the proprietor of a mahal (*vide* section 142) it is the proprietor who is thus authorized to sue. Again, the second paragraph of the section provides that in such a suit the plaintiff may give evidence of the amount, if any, which he alleges to be due from himself. It is therefore clear that the plaintiff in the suit must be the person who is alleged to be the defaulter and in regard to whom a certificate has been granted under section 145.

I also concur in holding that section 233, clause (*m*), does not bar the suit. The language of the section is no doubt very wide; but, as the learned Chief Justice has pointed out, the Legislature could not have intended that except a suit under section 183 (which in our opinion can only be brought by the defaulter) no other suit of any description could be instituted by anyone in connection with "the collection of revenue or any process enforced on account of an arrear of revenue." It seems to me that the section forbids a suit by the defaulter against Government or possibly by any other person against the Government; but it does not, I think, preclude a person in the position of the plaintiff from maintaining a suit like the present. Were we to accept the contention of the respondent, the plaintiff would be wholly without remedy. The Land Revenue Act does not contain any provision similar to the provisions of section 278 and the following sections of the Code of Civil Procedure, and therefore, upon the attachment of her property for recovery of arrears of revenue due by the defendant, she could not have preferred an objection claiming to have her property released from attachment. If it were held that she could not bring a suit like the present by reason of the provisions of section 233, clause (*m*), she would have no remedy for the wrong done to her. Such surely could not have been the intention of the Legislature in enacting that clause.

As the property of the plaintiff was attached and would have been brought to sale had she not paid the amount of revenue due by the defendant she was "interested in the

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payment of money which the defendant was bound by law to pay." She is therefore entitled under section 69 of the Contract Act to be reimbursed by the defendant. The principle of the rulings of the Calcutta High Court in *Smith v. Dinonath* (1) and *Bama Sundari Dasi v. Adhar Chunder* (2) is applicable to the present case. Further, as the defendant has enjoyed the benefit of the payment made by the plaintiff and such payment was not made voluntarily or gratuitously, the case may come within the purview of section 70 also.

For the above reasons I agree in the order proposed by the learned Chief Justice.

*Appeal decreed.*

## PRIVY COUNCIL.

DHANIPAL DAS AND ANOTHER (REPRESENTATIVES OF AUSERI LAL,  
PLAINTIFFS) v. MANESHAR BAKHSH SINGH (DEFENDANT).

[On appeal from the Court of the Judicial Commissioner of Oudh, Lucknow.]  
*Disqualified proprietor—Power of, to contract debts and borrow money—Estate under superintendence of Court of Wards—(Oudh Land Revenue Act) Act No. XVII of 1876, sections 161 to 177—Act No. IX of 1872 (Indian Contract Act), section 16, as amended by Act VIII of 1899—Bond—Unconscionable bargain—Compound interest.*

A taluqdar who has been declared "a disqualified proprietor" under the provisions of the Oudh Land Revenue Act (XVII of 1876) and his estates placed under the management of the Court of Wards is not prohibited by the Act from contracting debts or borrowing money without the sanction of the Court of Wards. By the group of sections of the Act (161 to 177) relating to the property when under the superintendence of the Court it was not intended to interfere with the personal status or rights of an adult disqualified proprietor, who is neither idiot nor lunatic, except as regards the management of his property or anything expressly prohibited. But he cannot without sanction of the Court of Wards create any charge upon the property.

*Mohammed Zahoor Ali Khan v. Thakooranee Rutta Koer* (3) and *Rai Balkrishna v. Masuma Bibi* (4), referred to.

*Present*:—Lord DAVEY, Lord ROBERTSON, Lord ATKINSON, Sir ANDREW SCOBLE, and Sir ARTHUR WILSON.

(1) (1895) I. L. R., 12 Cal., 213. (3) (1867) 11 Moo. I. A., 468.

(2) (1885) I. L. R., 22 Cal., 28. (4) (1882) L. R., 7 I. A., 182; I. L. R., 5 All., 142.