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producing any further evidence on this issue which they may choose to do. The finding should be returned by the 31st of October, 1927, and the usual ten days will be allowed for objections.

Issue remitted.

FULL BENCH.

Before Mr. Justice Lindsay, Acting Chief Justice, Mr. Justice Iqbal Ahmad and Mr. Justice Sen.

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July, 26.

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

Act No. XII of 1884 (*Agriculturists Loans Act*), *section* 4—Taqavi *loan—Act* (*Local*) *No. III of* 1901 (*United Provinces Land Revenue Act*), *sections* 145, 183, 233(*m*)—*Alleged wrongful attachment of property to realize* taqavi—*Payment under protest followed by suit against Secretary of State.*

One RN having died owing a certain sum to Government as *taqavi*, the revenue authorities attached a she-buffalo in the possession of DR on the ground that the latter was the heir of RN and that the buffalo was the property of the deceased. DR objected to the attachment, but his objection was overruled. He thereupon paid under protest the amount of *taqavi* claimed, and got back the buffalo, but meanwhile its calf had died owing to its separation from the mother. He then sued the Secretary of State for India in Council for refund of the money paid, for damages for the death of the calf, and for the price of the milk of which he had been deprived owing to the alleged wrongful attachment.

Held, that section 183 of the United Provinces Land Revenue Act applied, and the applicant was competent to maintain a suit against the Secretary of State, but only for the recovery of the amount paid and not for damages.

*Civil Revision No. 98 of 1927.

Balwant Singh v. *The Secretary of State for India* (1), followed. *Tulsa Kunwar* v. *Jageshar Prasad* (2), *The Secretary of State for India in Council* v. *Mahadei* (3), *The Secretary of State for India in Council* v. *Sukhdeo* (4) and *Sahai* v. *Bindeshri Singh* (5), referred to.

THE facts are fully stated in the judgement of the Court.

Munshi *Girdhari Lal Agarwala*, for the applicant.

Pandit *Uma Shankar Bajpai*, for the opposite party.

LINDSAY, A. C. J., IQBAL AHMAD and SEN, JJ. :—The suit giving rise to the present application for revision was instituted by the applicant, Daya Ram, for recovery of Rs. 200 as compensation from the Secretary of State. The facts which led to the suit are these. A certain sum of money was advanced by the Government to two persons, Ram Nazar and Jagannath, under section 4 of the Agriculturists Loans Act (Act XII of 1884). This kind of loan is popularly known as a *taqavi* advance, and its character has been described in the Act as a loan granted to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle, or for any other purpose connected with agricultural objects.

The loan was not repaid either by Ram Nazar or Jagannath. Ram Nazar having died, the revenue authorities, in pursuance of the provision of section 5 of the Act, attached a she-buffalo in the possession of Daya Ram on the ground that the latter was the heir of Ram Nazar and the she-buffalo was the property of the deceased. Daya Ram objected to the attachment on the ground that he was not the heir of Ram Nazar, and that the she-buffalo belonged to him; but his petition of objections was summarily dismissed by the Collector. Thereupon Daya Ram paid under protest in writing duly signed by him Rs. 76-12-11 being the amount of the *taqavi* demand and Rs. 4 the fees for attachment, in all

(1) (1903) I.L.R., 25 All., 527. (2) (1906) I.L.R., 28 All., 563.
(3) (1896) I.L.R., 19 All., 127. (4) Weekly Notes, 1898, p. 173
(5) Weekly Notes, 1905, p. 237.

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Rs. 80-12-11 and procured the release of the she-buffalo. During the intervening period, i.e., between the date of the attachment and removal of the buffalo from the possession of Daya Ram and the date of its release, the calf of the buffalo died in consequence of its separation from its mother. Then the present action was commenced for a refund of Rs. 80-12-11 with interest and for recovery of damages caused by the death of the buffalo calf and for the price of the milk of which the plaintiff was deprived on account of the unlawful attachment of the she-buffalo. Rupees 200 were claimed in all.

The suit was resisted on the ground that Daya Ram was the heir of Ram Nazar and in possession of his estate; that the buffalo was rightly attached, and that the suit was barred by section 233 (*m*) of the Land Revenue Act (Act III of 1901).

The trial court decreed the suit. It found that the plaintiff was not the heir of Ram Nazar, and that the suit was not barred by section 233 (*m*) of the Land Revenue Act which applied to persons " who were connected with the payment of revenue or *taqavi* due from them and could not affect the rights of third persons " like the plaintiff, " who had nothing to do with the *taqavi* loan . . . and was in no way responsible for its payment".

The defendant appealed. The lower appellate court, in concurrence with the trial court, found that the plaintiff was not the heir of Ram Nazar, that the attachment of his she-buffalo was undoubtedly illegal, and that the plaintiff had suffered damages from deprivation of milk and the death of the buffalo calf. It held, however, on the authority of *The Secretary of State for India in Council* v. *Mahadei* (1), that the suit was not cognizable by the civil court, and it further held, on the authority of *The Secretary of State for India in Council* v. *Sukhdeo* (2), that the Naib-Tahsildar having attached

(1) (1896) I.L.R., 19 All., 127. (2) Weekly Notes, 1898, p. 173.

the she-buffalo, acting under the provisions of section 145 of the Land Revenue Act, no legal liability attached to the Government for the act of the Naib-Tahsildar. It accordingly allowed the appeal, and dismissed the plaintiff's suit.

It may be noticed here that neither of the two courts below applied itself to the question whether the plaintiff's suit was maintainable under section 183 of the Land Revenue Act.

Section 233 (*m*) of the Land Revenue Act provides that "no person shall institute any suit or other proceeding in the civil court with respect to claims connected with or arising out of the collection of revenue (other than claims under section 183) or any process enforced on account of an arrear of revenue or on account of any sum which is by this or any other Act realizable as revenue". There is no ambiguity and there can be no difficulty in ascertaining the meaning of section 233. It raises a general bar against the institution of any suit or proceeding with reference to the several matters enumerated therein, subject to certain exceptions contained in clauses (*i*), (*k*), (*l*) and (*m*). We are here concerned with the exception engrafted upon clause (*m*) which distinctly provides that claims under section 183 of the Act are outside the bar raised by the section. It is argued for the applicant that no *taqavi* loan was due from the plaintiff, that the plaintiff therefore was not amenable to any coercive processes enumerated in section 146 of the Land Revenue Act, and that the scope of section 233 was limited to members of the revenue paying class who had made a default in the payment of revenue; and it did not apply to the case of the plaintiff from whom no arrears were due. This contention receives some countenance and support from the following observations of

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STANLEY, C.J., in *Tulsa Kunwar* v. *Jageshar Prasad* (1) :—

"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 share-holders 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."

BANERJI, J., while recognizing that the language of the section was no doubt very wide, observed that the section forbade a suit by the defaulter against Government or possibly by any other person against the Government. We are of opinion that, in the absence of any ambiguity in the language of section 233, we have to give full effect to the words "no person shall institute any suit or other proceedings" subject to the exceptions set out therein. Where the words of the legislature are clear and unambiguous, it is not our province to scan its wisdom or its policy. The denotation of the word "person" cannot be confined to a member of the revenue paying class to whom the Act in its general bearing is applicable. The framers of the Act were providing a rule barring all members of the general public from instituting suits or other proceedings in civil courts excepting in cases provided for in clauses (*i*), (*k*), (*l*) and (*m*). While providing for these exceptions they did not exclude the case of a person who did not belong to the revenue paying class, or the case of a person from whom no revenue was due. A Bench of this Court, in construing clause (*i*) or (*j*) of section 241 of the N.-W. P. Land Revenue Act (Act XIX of 1873) which corresponds to section 233, clause (*m*) or (*l*), of Act III of 1901, held

(1) (1906) I.L.R., 23 All., 563 (567).

that there was nothing in these clauses to suggest that the exclusion of jurisdiction was limited to claims made by persons actually in default—*The Secretary of State for India in Council* v. *Mahadei* (1). In this case some cattle and a cart belonging to Mahadei plaintiff had been wrongly sold by the tahsil officials for arrears of revenue not due by her, but due by the defendants second party. This Court dismissed the suit against all the defendants. While in accord with the said decision of this Court as to the bar of the suit against the Secretary of State, we are not called upon to decide whether section 241, clause (*i*) or (*j*), was an answer to a suit against the defendants second party. It may be noticed here that the arrears demanded do not appear to have been paid by the plaintiff under a written protest duly signed by her, and this Court was justified in dismissing the suit against the Secretary of State. This decision was followed by STANLEY, C. J. and BURKITT, J., in *Sahai* v. *Bindeshri Singh* (2). Certain cattle belonging to the plaintiff who was a tenant in the village were sold by Pandit Bishun Dat, a Naib-Tahsildar, for recovering arrears of revenue due from the defendants, Bindeshri Singh and Udit Narain Singh who were the zamindars of the village. The suit was dismissed on the ground that the civil court was debarred from entertaining this suit, which was not a claim under section 183, but was clearly a claim connected with, or arising out of, the collection of revenue. We are not concerned with the soundness or otherwise of the decision dismissing the claim against the defaulting zamindars. The Secretary of State was no party to the suit. In view of the general language of section 233, the suit appears to have been rightly dismissed against the defendant Naib-Tahsildar. There is still another case—*Abdullah* v. *Secretary of State for India in Council* (3) in which the case of *The Secretary of State for*

(1) (1896) I.L.R., 19 All., 127. (2) Weekly Notes, 1905, p. 237.
(3) (1927) I.L.R., 49 All., 761.

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India in Council v. *Mahadei* (1) was followed. This case does not call for any detailed reference.

We have next to see whether the plaintiff is entitled to succeed under section 183 of the Land Revenue Act. Section 183 provides :—

"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.

No protest under this section shall enable the person making the same to sue in the civil court unless it is made at the time of payment, in writing and signed by such person, or by an agent duly authorized in his behalf".

It has been contended before us that the plaintiff is a person against whom proceedings were taken under chapter VIII of the Land Revenue Act, for the recovery of arrears of revenue, that he paid the amount claimed under a written protest duly signed by him to the officer taking such proceedings. He has therefore a right to sue the Government in the civil court for the amount claimed. In answer to this contention, the respondent relies on *Tulsa Kunwar* v. *Jageshar Prasad* (2), already referred to, where it was held that the suit contemplated by the section is a suit by the defaulter and not by a third party. In our view of the case, the word "defaulter" in the Land Revenue Act has a technical meaning, and it includes the case of every person in regard to whom a certificate has been granted under section 145 of the said Act. It is agreed that the procedure for realization of *taqavi* dues has been prescribed in chapter VIII of the Land Revenue Act and in no other Act. Before any coercive

(1) (1893) I.L.R., 19 All., 127. (2) (1906) I.L.R., 28 All., 563.

measures enumerated in section 146 can be initiated or enforced against any person who is said to be in arrear of revenue, a statement of accounts must be certified under section 145 of the Act by the Tahsildar for purposes of Chapter VIII, which deals with collection of revenue. This certificate is conclusive evidence of the arrear, of its amount and of the person who is the defaulter. This rule of evidence incorporated in section 145 appears to be grounded upon fiscal considerations and upon broad principles of public expediency, with this object in view that public revenue may be realized with the greatest expedition. Whether, therefore, a certain sum of money realizable as revenue is due from a particular person or not, if the Tahsildar certifies that the said sum of money is recoverable from him, a finality attaches to the certificate, and the person certified against must be taken to be a defaulter within the meaning of the Act. In other words, the person treated as a defaulter is placed on the same footing as the actual defaulter.

Under section 5 of the Agriculturists Loans Act (Act XII of 1884) a *taqavi* loan is recoverable as if it were an arrear of land revenue. The procedure for recovery of arrears of land revenue is provided for in chapter VIII of the Land Revenue Act. The initial step is the certificate given by the Tahsildar which affords the basis for further proceedings. Section 146 provides that an arrear of revenue may be recovered by attachment and sale of his movable property; and section 149 authorizes the Collector to attach and sell his movable property. Where proceedings, therefore, have been taken under chapter VIII against *any person*, which includes the case of a person situated like the present plaintiff from whom as a matter of fact no *taqavi* loans were due, he is entitled to use the Government in the civil court if he fulfils the requirements of section 183. The right of suit is given to the person against whom proceedings are taken under

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chapter VIII and it does not matter whether or not he belongs to the revenue paying class, and whether or not he is a person from whom *taqavi* loans are actually due.

There are no provisions in the Land Revenue Act corresponding to the provisions contained in order XXI, rules 58—63, of the Code of Civil Procedure. Again there are no provisions made in the Land Revenue Act whereby the attachment or sale of movable property may be set aside on the ground of any irregularity or illegality in the proceedings. To make up for these omissions the legislature appears to have given a right of suit to the person aggrieved under section 183 of the Land Revenue Act and we are not prepared to hold that the case like the present was a *casus omissus*.

We hold, therefore, that all the conditions necessary for the maintainability of a suit against the Government are fulfilled in this case, and the lower appellate court was not justified in dismissing the suit in its entirety under section 233 (*m*).

It was contended on behalf of the respondent that section 183 did not apply to a case which was not for recovery of Government revenue but where the amount was made recoverable by the same process as applied to Government revenue. We do not think that this is a plea of substance, and it is indeed concluded by the decision of the Privy Council in *Balwant Singh* v. *Secretary of State for India* (1). This was a suit for the recovery from the Secretary of State of a sum of money wrongly realized from the plaintiff, who was the proprietor, under the head of canal dues. Under section 45 of the Northern India Canal and Drainage Act, canal dues are realizable as revenue. The suit was contested *inter alia* on the ground that section 241 of the Land Revenue Act of 1873 barred the institution of the suit in the civil court. Their Lordships agreed with the High Court in holding that

(1) (1903) I.L.R., 25 All., 527.

"the subject of the action is either a claim connected with, or arising out of, the collection of revenue, or else it is a claim for a sum which is realizable as revenue," and the suit was barred by section 241. In another part of the judgement their Lordships made the following observations which we may usefully reproduce here:

"The exception 'other than claims under section 189' appears to their Lordships to throw some light upon the meaning of the section, because section 189 enables a party, from whom revenue is demanded, to pay under protest, and upon such payment being made . . . . . may sue the Government for the amount so paid in any civil court . . . . . That is an exception from what the Act describes as 'claims connected with, or arising out of, the collection of revenue'. It will be observed that it is a claim exactly of the same description as the present one. It is the claim of a person who says that revenue has been wrongfully demanded from him which he was not under any obligation to pay, and the only difference is that if he pays it when it is demanded from him, under protest, then he has a right, subject to the pecuniary limitations prescribed by the law, to sue the Government to recover it as money paid by him under a mistake. The exception does not apply to this case, because at the time when the money was paid, there was no protest, and it was paid by the officer of the Raja under a common mistake as money that was due from him, but though that section does not apply, it illustrates what is intended to be included in claims 'connected with, or arising out of, the collection of revenue, or on account of any sum realizable as revenue'. The effect of the latter words in the section is to make the earlier part applicable not only to revenue properly so called, but also to sums realizable as revenue".

The above is a complete answer to the defendant's contention and supports our decision.

The plaintiff is therefore competent to maintain a suit against the Secretary of State for the recovery of the amount paid by him to the officer taking proceedings against him under chapter VIII of the Land Revenue Act. His right of suit is restricted to the *recovery of*

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the amount paid. He is not competent to sue the Government for damages either for the price of milk or the buffalo calf. We, therefore, disallow this part of the plaintiff's claim.

The learned Subordinate Judge has relied upon *The Secretary of State for India in Council* v. *Sukhdeo* (1) for the proposition that the Government cannot be made liable for the act of the Naib-Tahsildar in attaching the she-buffalo. This case was not founded upon section 189 of Act XIX of 1873. One Nathe was sentenced under section 417/511 of the Indian Penal Code to six months' rigorous imprisonment and a fine of Rs. 200. The Magistrate having issued a warrant for the levy of the fine by distress and sale of the movable property of Nathe, the property of Sukhdeo plaintiff was seized and sold. The latter instituted a suit for damages against the Secretary of State. It was held that the Crown was not liable to pay compensation for the illegal acts of its servants but was bound to make restitution to the extent it has benefited by the illegal acts. Obviously this case has no application to the present case.

The result of our decision, therefore, is that the plaintiff is entitled to succeed in part. We set aside the decrees of both the courts below and pass a decree in plaintiff's favour for recovery of Rs. 80-12-11 with proportionate costs in all courts.

Application allowed in part.

(1) Weekly Notes, 1898, p. 173.