

The appellant contends that this transaction comes within the definition of a sale in execution of an order of a Civil Court. We cannot accept this contention.

The sale in the present case was an ordinary private transaction and only required the sanction of the Court because one of the parties to it was under disability. Section 29 of the Guardians and Wards Act prohibits the sale by a guardian of the property of a ward without permission of the Court. The Court under this section makes no order for sale, but merely authorises a transaction which would otherwise not be binding upon the minor. The sale is in fact a transaction *inter parties* approved of by the Court. The Court having approved of the contemplated sale has no further say in the matter.

We are accordingly of opinion that section 3 (5) (a) of the Pre-emption Act has no application to the case before us and we dismiss the appeal.

C. H. O.

Appeal dismissed.

CIVIL REFERENCE.

Before Mr. Justice Martinson.

GIAN SINGH-BAHADUR SINGH—Petitioner,

versus

THE CROWN—Respondent.

Civil Reference No. 20 of 1922.

Excess Profits Duty Act, X of 1919, section 18, rules—meaning of the words "proceedings for the recovery of any sum" in sub-rule (3) of rule 24.

Sub-rule (3) of rule 24 of the rules made by the Governor-General in Council under section 18 (1) and (2) of the Excess Profits Duty Act, X of 1919, provides that save in accordance with the provisions of sub-rule (1) of rule 11 no proceedings for the recovery of any sum payable under the Act or these rules shall be commenced after the 31st March 1921. The question before the High Court was whether "proceedings for the recovery of any sum" refer to proceedings taken after default has been made in payment or whether such proceedings begin when a notice of demand has been served on the assessee.

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SALIG RAM
v.
BARAKAT ALI

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GIAN SINGH-
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Held, that the words in sub-rule (3) of rule 24 "proceedings for the recovery of any sum" mean proceedings taken under sub-rule (1) of that rule after default has been made in payment.

Case referred by C. M. King, Esquire, Financial Commissioner, Punjab, with his No. 721-914-D-9696, dated the 18th November 1922, for orders of the High Court.

G. C. NARANG, AMIN CHAND and MAN SINGH,
for Petitioner.

NEMO, for Respondent.

MARTINEAU J.—This is a reference from the Financial Commissioner, made on the application of Messrs. Gian Singh-Bahadur Singh under section 51 of the Income-tax Act, VII of 1918, the provisions of which apply to the Excess Profits Duty Act, X of 1919, by virtue of section 15 of the latter Act, for a decision as to the interpretation of sub-rule (3) of rule 24 of the rules made under section 18 (1) and (2) of Act X of 1919 and published in Finance Department Notification No. 1749-F., dated the 23rd June 1919. Sub-rule (3) of rule 24 provides that save in accordance with the provisions of sub-rule (1) of rule 11 no proceedings for the recovery of any sum payable under the Act or these rules shall be commenced after the 31st of March 1921, and the question for decision is whether the words "proceedings for the recovery of any sum" refer to proceedings taken after default has been made in payment, or whether such proceedings begin when a notice of demand has been served on the assessee. The learned Financial Commissioner is inclined to the opinion that the presentation of the demand statement to the assessee is the beginning of the proceedings for the recovery of the tax, whereas the petitioners contend that this is not a correct interpretation of the rule.

It seems to me clear that the view for which the petitioners contend is the correct one. Rule 24 (1) describes how the excess profits duty is to be recovered when default has been made in payment. This is the only rule dealing with the mode of recovery, and the subject of the rule is entered as "mode and time of recovery." Also rules 23 and 24 are classed under

the heading "recovery of duty," whilst rule 13, which is the rule providing for a notice of demand being served on the person assessed, is put under the heading "demand." From this it is evident that the demand made on the assessee is treated in the rules as something quite distinct from the recovery of the duty, the proceedings for which begin when default has been made. The same distinction is made in the Income-tax Acts, VII of 1918 and XI of 1922, where the notice of demand is provided for in a chapter the subject of which is "Deductions and Assessment," whilst there is a separate chapter dealing with the subject of the recovery of the tax.

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My decision, therefore, on the point referred is that the words in sub-rule (3) of rule 24 "proceedings for the recovery of any sum" mean the proceedings taken under sub-rule (1) of that rule after default has been made in payment.

The petitioner's costs in this case will be borne by the Government.

C. H. O.