

## ORIGINAL CIVIL.

*Before Mr. Justice Leach.*

## SONIRAM RAMESHUR v. MARY PINTO.\*

1933

July 10.

*Crown debt—Priority—Funds in Court—Payment to Crown on application without formal attachment.*

The Crown has priority over unsecured creditors in the payment of debts. Where there are funds in Court belonging to the debtor the Court can order payment of a Crown debt due by the debtor, on the application of the Crown without a formal attachment being issued.

The plaintiff sued the defendant on a mortgage, and a receiver was appointed to take charge of the mortgaged property and to collect the rents therefrom. The rents were not subject to the mortgage. The Commissioner of Income-tax applied to the Court for payment of the income-tax due by the defendant out of the rents in the hands of the receiver.

*Held*, that the Crown was entitled to such payment.

*C.R.M.A. Chettyar Firm v. Aung Ban Zeya Rice Mill*, Civil First Appeal No. 74 of 1928, H.C. Ran. ; *Ganpat Putaya v. The Collector of Kanara*, I.L.R. 1 Bom. 7 ; *Gayanoda v. Bairagee*, I.L.R. 33. Cal. 1040 ; *Gulzari Lal v. The Collector of Barcilly*, I.L.R. 1 All. 596 ; *Ramdass v. The Secretary of State*, I.L.R. 18 All. 419 ; *Rev v. Curtis, Parker*, 95 ; *Secretary of State v. Bombay Landing and Shipping Company*, 5 Bom. H.C.R. 23—referred to.

*A. Eggar* (Government Advocate) for the Crown. The Crown has priority over creditors of equal degree to payment out of the assets of a debtor which are distributed by a receiver or an administrator. It is an "incontrovertible rule of law that where the King's and the subject's title concur the King's shall be preferred." *In re Henley & Co.* (1) ; *Rex v. Wells* (2) ; *The Bank of Upper India v. The Administrator-General of Bengal* (3). This rule may be said to be the outcome of the maxim *salus populi suprema lex* ; it is but natural that a debt due to the Crown, as representing the public at large, should be preferred to the debt of a single creditor.

\* Civil Regular No. 555 of 1932.

(1) (1878) L.R. 9 Ch. D. 469, 481. (2) (1812) 16 East 278, 282.

(3) I.L.R. 45 Cal. 653, 663.

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All debts due to the Crown take precedence over other debts unless there is a special provision in any enactment affecting the right of the Crown. See *The Secretary of State v. The Bombay Landing and Shipping Company, Limited* (1); *Ganpat Putaya v. The Collector of Kanara* (2); *Puthia Valappil v. V. Veloth Assenar* (3); *Gayanoda v. Butto Kristo* (4); *Gulzari Lal v. The Collector of Bareilly* (5). The decision in *Gayanoda v. Butto Kristo* is the basis on which the present application is founded. In that case it was held that the Crown need not actually attach the fund available for distribution before claiming payment, but may proceed by way of an application as in the present case.

*The Collector of Moradabad v. Muhammad Khan* (6) was overruled by *Dost Muhammad Khan v. Mani Ram* (7), but the principle laid down in the earlier case was not affected thereby. All that the latter case purported to lay down was that the Crown's prerogative cannot take precedence over a prior mortgagee's right. The Crown's debt is payable out of the estate of the debtor, and in the case contemplated above he has only the equity of redemption out of which to satisfy the Crown debt; see also *In the matter of the Petition of Pandya Nayak* (8) and *Ibrahim Khan v. Rangasami Naicken* (9). In Civil First Appeal No. 74 of 1928 of this Court a receiver in a mortgage suit was ordered to pay out of the moneys in his hand the amount due to the Crown for income-tax as a first charge. The moneys in the hands of the receiver were not subject to the mortgage.

(1) 5 Bom. H.C.R. (O.C.J.) 23.

(5) I.L.R. 1 All. 590.

(2) I.L.R. 1 Bom. 7.

(6) I.L.R. 2 All. 196.

(3) I.L.R. 25 Mad. 733.

(7) I.L.R. 29 All. 537.

(4) I.L.R. 33 Cal. 1040.

(8) I.L.R. 7 Mad. 434.

(9) I.L.R. 28 Mad. 420.

*Masani* for the plaintiff and *Robertson* for the defendant had no objection to the application being granted.

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LEACH, J.—This suit was filed on the 11th October, 1932, to recover a sum of Rs. 16,918-10-0 due on a mortgage. A receiver was subsequently appointed to take charge of the mortgaged premises and to collect the rents therefrom. The defendant is indebted to the Crown to the extent of Rs. 29-5-0 due under the Indian Income-tax Act. As the result of the collection of rents of the mortgaged premises the receiver has in hand moneys sufficient to pay the amount of income-tax due by the defendant. In these circumstances the Commissioner of Income-tax has applied for an order directing the receiver to pay to him this sum of Rs. 29-5-0. The Commissioner of Income-tax claims that the Crown is entitled to a first charge on the rents which the receiver has collected. Mr. Masani for the plaintiff and Mr. Robertson for the defendant have no objection to the application being granted, but the learned Government Advocate asks for a ruling on the question of the Crown's right to priority and also for a ruling on the further question whether the Court can order payment on an application of the nature of the one before me.

The Crown has by common law a right to priority. In *Rev v. Curtis* (1), Parker C.B. said :

“ By the common law the King has a prerogative of preference in payment to all his subjects, and to be first satisfied ; the reason of it is given in *Sir William Herbert's case*, 3 *Rep.* 12 b, *Quia thesaurus Regis est pacis vinculum et bellorum nervi.*

This preference which the King had by the common law, was the foundation of Magna Charta, c. 18, which was only declaratory of the common law.”

(1) *Parker*, 95, 100 ; E.R. Vol. 145, p. 724.

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This right to priority has received recognition in India, as far as unsecured creditors are concerned.

The leading case in India is *The Secretary of State v. The Bombay Landing and Shipping Company, Limited* (1), where, after an exhaustive examination of the authorities by Westropp J., the Court held that a judgment debt due to the Crown was entitled to the same precedence in execution as a like judgment debt in England, if there was no special legislative provision affecting that right in the particular case. It was pointed out that whatever rights the Crown had to any portion of the Indian revenue before 1858 it still had and that s. 2 of the Statute of that year, 21 & 22 Vic., c. 106, vested in the Crown all the territorial and other revenues of or arising in India, and directed that all of those revenues should be received not only for but in the name of Her Majesty. It may be observed that s. 131 of the Government of India Act provides that nothing in the Act shall derogate from any right vested in His Majesty or any of the powers of the Secretary of State in relation to the Government of India.

In the case of *Gaupat Putaya v. The Collector of Kanara* (2), it was held that the Crown had the first claim to the proceeds of a pauper suit to the extent of the amount of the Court fee that would have been payable at the institution of the suit had the plaintiff not been a pauper. S. 309 of the Civil Procedure Code of 1859 (which provided that in a pauper suit the Court fees should be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as the costs of a suit were recoverable) did not preclude the Crown or its representative from urging its prerogative. The plaintiff in that case

(1) (1866) 5 Bom. H.C.R. 23.

(2) (1875) I.L.R. 1 Bom, 7.

obtained a decree against one Jivaji and in execution caused the debt due by one Meghji to Jivaji to be attached by prohibitory order. This attachment was placed when Jivaji's suit against Meghji (which was brought *in formâ pauperis*) was pending. At the conclusion of the pauper suit, in which Meghji was directed to pay to Jivaji Rs. 200, the Collector intervened and applied to have a sum of Rs. 70-2-2 paid to him, that being the amount which Jivaji would have had to pay as Court fees if he had not been allowed to sue as a pauper. The Collector's application having been granted and this sum paid to him, the plaintiff, Ganpat, brought this suit to recover the money, alleging that his attachment was prior to the Collector's, and that he had therefore a right to prior satisfaction. The plaintiff contended that s. 309 of the Code of 1859 expressly enacted that the value of the Court fees was to be recovered in the same manner as costs would be recovered in ordinary cases. No precedence was given to the Crown which was, therefore, in the same position as any other judgment-creditor. This argument was rejected. West J., in delivering the judgment of the Court said :

“The decision of this case turns upon the construction of s. 309 of the Code of Civil Procedure. Its direction that the amount of fees, which would have been paid by the pauper plaintiff shall, on decision of the suit, be recoverable by Government from any party ordered by the decree to pay the same in the same manner as costs of suit are recoverable, does not preclude the Crown or its representative from urging its prerogative and insisting upon its right to precedence. The circumstance of its being placed in the position of judgment-creditor does not reduce its right of necessity to those of a private judgment-creditor in case of a contest as to prior satisfaction but of moneys realized in execution. It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in a Statute. This rule of interpretation is well established, and applies not only to the

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Statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England."

The Court, therefore, approved of the Collector being paid on the money due to the Crown on mere application. This case was followed by the Allahabad High Court in *Gulzari Lal v. The Collector of Bareilly* (1). In *Ramdus v. The Secretary of State* (2), the same Court held in a suit brought *in formâ pauperis* in which the plaintiff was successful, that it was not necessary for the Government to bring a separate suit to recover the Court fee, but that the same might be realized from the property the subject of the suit by proceedings in execution. Here the decree directed that the Court fee should be a first charge on the property, and should be recoverable from the defendant in the same manner as costs of the suit.

The latest reported decision to which my attention has been drawn is in the case of *Gayanoda Bala Dassee v. Butto Kristo Bairagee* (3). The plaintiff obtained a decree in a suit filed *in formâ pauperis*. The decree directed that the property in suit should be conveyed to the plaintiff. The taxing officer was required to certify the amount of Court fees that would have been payable by the plaintiff, had she not sued *in forma pauperis*, and to tax the plaintiff's other costs of suit. The decree further required the defendants to pay the amount of Court fees to be certified by the Government Solicitor, and directed that these should form a first charge on the property conveyed. Subsequently, the plaintiff attached other premises belonging to the defendants and obtained an

(1) (1878) I.L.R. 1 All. 596.

(2) (1896) I.L.R. 18 All. 419

(3) (1906) I.L.R. 33 Cal. 1040.

order for sale. The sale-proceeds were paid into Court in accordance with the Court's order. The plaintiff's attorney without notice to the Government Solicitor or the defendants made an application for payment to him of the amounts realized in execution from the defendants. Thereupon the Government Solicitor presented a petition asking that the amount of Court fees certified as due and payable by the defendants to the Government Solicitor in terms of the decree be paid in the first instance and in precedence to all claims. It was held that the Court fees formed a Crown debt and under ordinary circumstances the principle would apply that the Crown would be entitled to precedence in payment of this debt over all creditors. In this case it was contended that the Crown in order to recover Court fees must proceed to enforce the charge on the subject matter of the suit, and that as regards other properties of the judgment-debtor the Crown had only the right of a private judgment-creditor and could only proceed to realize its claim in the usual method by attachment and sale. Sale J., before whom the case came, refused to accept this argument and held that inasmuch as the Crown represented by the Government Solicitor was entitled to precedence over all creditors no necessity existed for attachment of the fund before claiming payment. S. 411 of the Code of Civil Procedure of 1877 (which corresponds to Order 33, rule 10 of the present Code) was an enabling section, and though it indicated the manner in which the Crown might proceed to realize the debt it did not prejudice the Crown or its representative from urging its prerogative and insisting on its right to precedence over all creditors. With this view I respectfully agree.

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In the unreported case of *C.R.M.A. Chettyar Firm v. The Aung Ban Zeya Rice Mill Company, Limited* (Civil First Appeal No. 74 of 1928), a Bench of this Court held that the receiver in a mortgage suit had been rightly directed to pay out of moneys representing rents (not the subject of mortgage) the amount due to the Crown by way of income-tax before paying the mortgagee the amount due under his personal decree. In this case an attachment had been issued by the Collector of Prome to the Judge of the District Court of Prome, and had been sent by him to the Bailiff as receiver for necessary action.

It is not necessary for me to consider the question whether the Crown has a right to preference in payment as against a secured creditor as it does not arise on the present application. With regard to unsecured creditors I hold that the Secretary of State for India in Council representing the Crown is entitled to priority in payment, and that where there are funds in Court out of which payment can be made the Court can order payment without prior attachment. Of course, notice of any such application must be given to interested parties. In this case the advocates of the interested parties have appeared, and do not dispute that the amount claimed is due to the Crown. The application is accordingly granted.