## CIVIL REVISION.

*Before Mr. Justice Mya Bu, and Mr. Justice Mackney.*

1937

*Feb. 19.*

# THE SECRETARY OF STATE FOR INDIA

*v.*

# MA NYEIN ME AND OTHERS.*

*Crown debts—Priority—Moneys in custody of civil Court—Attachment by decree-holders—Crown's prior claim for arrears of income-tax—Income-tax Act (XI of 1922), s. 46 (2)—Lower Burma Land and Revenue Act (II of 1876), s. 45—Powers of the Collector—Civil Procedure Code (Act V of 1908), s. 73—Limitation of Crown's prerogative.*

The combined effect of s. 46 (2) of the Income-tax Act, and s. 45 of the Lower Burma Land and Revenue Act is that on receipt of the certificate of the Income-tax officer, the Collector, in proceeding to realize the arrears, exercises all the powers conferred on, and has to conform to all rules of procedure prescribed for a Court executing a decree by the Code of Civil Procedure, and it is not intended that the Collector should regard himself as a Revenue Officer in whose favour a decree for money has been passed against the defaulter and be obliged to institute proceedings for realization before another Revenue Officer.

A Township Officer, at the instance of the Collector, attached certain moveable property of a person in respect of arrears of income-tax which was under attachment and in the custody of a civil Court. By some mistake the Township Officer obtained possession of the property and sold it. The sale proceeds were however refunded to the civil Court. There were other creditors of the defaulter who had attached the property or claimed the sale proceeds before they were received by the civil Court.

The Collector in forwarding the amount to the civil Court wrote a letter claiming the sale proceeds to satisfy the arrears of income-tax or in the alternative a rateable distribution.

*Held* that whatever defect there might have been in the procedure adopted by the Collector in claiming the money, the original attachment by the Township Officer was, in virtue of the powers contained in the above Acts, valid and subsisting, and the Crown's claim to priority in respect of income-tax arrears prevailed over other creditors of equal degree. S. 73 of the Civil Procedure Code applied to civil Courts only and the Collector could not claim rateable distribution with the other creditors. *Secretary of State for India* v. *The Bombay Landing and Shipping Co.*, 5 Bom. H.C. Rep. 23, followed.

*Commissioners of Taxation, N.S. Wales* v. *Palmer*, (1907) Ap Ca. 179 ; *Judah* v. *Secretary of State for India*, I.L.R. 12 Cal. 445 ; *Soniram Rameshur* v. *Mary Pinto*, I.L.R. 11 Ran. 467, referred to.

The fact that certain Acts of the Legislature specifically set out the priority of Crown debts in circumstances arising under those Acts does not affect the

* Civil Revision No. 323 of 1936 from the order of the District Court of Thatôn in Civil Execution Case No. 5 of 1936.

general right of priority which the Crown enjoys in other cases. Express words or necessary implication is required to affect the prerogative of the Crown in a municipal statute.

*British Coal Corporation* v. *The King*, (1935) A.C. 500, referred to.

*Tun Byu* (Assistant Government Advocate) for the Crown. The Crown is entitled to priority over all ordinary creditors. This prerogative of the Crown is recognized in India. *Soniram* v. *Mary Pinto* (1); *Gayanoda* v. *Butto* (2); *Bank of Upper India* v. *The Administrator-General of Bengal* (3); *Secretary of State for India* v. *The Bombay Landing and Shipping Co.* (4); *Ganpat* v. *Collector of Kanara* (5); *Gulzari Lal* v. *Collector of Bareilly* (6); *In re Henley & Co.* (7); *Commissioners of Taxation, N.S. Wales* v. *Palmer* (8); *The King* v. *Edward Wells & John Allnutt* (9); Eggar's Laws of India, Parts 22-24; Government of India Act, ss. 20, 23.

There is no special procedure prescribed by which the claim to priority can be made. But the general rule of law is that the Crown is not affected by any statute unless expressly mentioned in it. *In the matter of the West Laikdih Coal Co., Ltd.* (10). One cannot import the procedure relating to execution and attachment into a claim by the Crown for priority. *Soniram* v. *Mary Pinto* expressly decided this point, and this decision applies to this case. *The Deputy Commissioner of Police, Madras* v. *Vedantam* (11) and *Gayanoda* v. *Butto* suggest that a mere application to the Court for payment of the money due to the Crown is sufficient. In *Panna Lal* v. *Collector of Mandalay* (12) the Crown was not represented.

(1) I.L.R. 11 Ran. 467.
(2) I.L.R. 33 Cal. 1040.
(3) I.L.R 45 Cal. 653.
(4) 5 Bom. H.C.R. 23.
(5) I.L.R. 1 Bom. 7.
(6) I.L.R. 1 All. 596.
(7) (1878) 9 Ch.D. 469.
(8) (1907) A.C. 179.
(9) (1812) 16 East. 279.
(10) I.L.R. 53 Cal. 328.
(11) I.L.R. 59 Mad. 428.
(12) I.L.R. 8 Ran. 294.

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The revenue proceeding which was taken out for the recovery of income-tax was still pending when the Collector put in a claim for prior payment in the Court of the District Judge, and the District Judge had the proceeding before him when he passed the order disallowing the Crown's claim to priority. The fact that other creditors had attached the property before the Collector made his application is not relevant, because the attachment does not create a charge or lien on the property. See *The Deputy Commissioner of Police, Madras* v. *Vedantam* (1).

*K. C. Sanyal* for respondents 1 to 4. The case is governed by the decision in *Panna Lal Jagannath* v. *Collector of Mandalay* (2). If it is a decree there must be a regular application by the Collector under s. 73 of the Civil Procedure Code. A mere letter is not sufficient. But under s. 46 (2) of the Income-tax Act and s. 45 of the Lower Burma Land and Revenue Act the order of the Collector is executable *as if* it were a decree; that is to say the order in this case is not a decree. S. 73 of the Civil Procedure Code has therefore no application. Further the property was seized by a decree-holder by attachment. The Township Officer took away the property from the hands of the bailiff for arrears of income-tax. The action of the Township Officer was held to be illegal and the money realized by the illegal sale by the Township Officer was ordered to be returned to the Township Judge. The money so returned was the proceeds of the property attached by the decree-holder and so it was no longer the judgment-debtor's money, but money to the credit of the decree-holder. The Collector cannot claim it for arrears of income-tax due by the judgment-debtor.

(1) I.L.R. 59 Mad. 428. (2) I L.R. 8 Ran. 294.

*P. K. Basu* for the 5th respondent. Crown debts in England have priority under the common law, but, in India and Burma, from the earliest times this prerogative of the Crown, even if it were applicable, has been abrogated. The reason is historical. India and Burma were governed in the beginning not by the Crown directly but by the East India Company, a Corporation with limited powers of sovereignty, and treated as a subject by the Courts. When the Crown took over the government it placed itself in the same position as the East India Company so far as civil rights of subjects were concerned. See s. 65 of the Government of India Act, 1858, and s. 32 of the 1919 Act. The Secretary of State, through whom the government of India was to be carried on, was created a body corporate for the purpose of suing and being sued. There is a fundamental difference between the legal position of the Secretary of State for India and the Crown in England. In England the Crown cannot sue or be sued ; the remedy is by petition of right. That remedy is confined only to contracts, and for torts there is no remedy. But in India the Secretary of State can be sued in tort also. *Peninsular and Oriental Co.* v. *Secretary of State* (1). This case was approved by the Privy Council in *Moment*'s case (2). This shows that the Secretary of State has no prerogatives like the Crown in England. The term "Crown debt" here is a misnomer. It is a debt due to the Secretary of State, a body corporate. This position has not always been appreciated.

This is further exemplified by the course of legislation in India and Burma. In the Income-tax Act, XXXII of 1860, passed two years after the Government of India Act, 1858, s. 158 gave priority to the Crown

(1) 5 Bom. H.C.R. App. 1. (2) 7 L.B.R. 10.

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only when the claim arose out of a particular property, and even that priority was restricted only to such property. By section 186 it was expressly enacted that the right could not be otherwise exercised. This principle has been accepted and acted upon in later statutes. In all other cases the Crown is in the position of an ordinary litigant. See the Income-tax Act of 1922, s. 46 (2), Burma Forest Act, The Rangoon Development Trust Act and the Excise Act.

In *Secretary of State for India* v. *The Bombay Landing and Shipping Co.* (1) priority was given to the Crown in the liquidation of a company. That was because the Supreme Court of Bombay had to administer the same law and equity as is administered in the English High Court, and English law gave preference to Crown debts in liquidation cases. This right has been preserved by clause 19 of the Letters Patent. This law is not applicable in the districts. In the Companies Act and the Insolvency Acts Crown debts have priority over ordinary creditors, but they are placed on the same footing by these Acts as debts due to local bodies and other preferential debts. See s. 230 (1) of the Companies Act, s. 61 of the Provincial Insolvency Act, and s. 49 of the Presidency-Towns Insolvency Act. If it were the general law that Crown debts have priority these provisions would be unnecessary. *Commissioners of Taxation, N.S. Wales* v. *Palmer* (2) is no authority in India because the N.S. Wales Bankruptcy Act specifically gave the Crown priority.

*Judah* v. *Secretary of State for India* (3) was a case in which the point for decision was whether the debt due to Government was a Crown debt, "a debt due to our Sovereign Lady the Queen." It was held that it was so. The Bankruptcy Act (11 & 12 Vic. c. 21, s. 62)

(1) 5 Bom. H.C.R. 23. (2) (1907) A.C. 179.
(3) I.L.R. 12 Cal. 445.

provided that Crown debts will have priority; there was no question as to the general right of priority before the Court. In *Soniram* v. *Pinto* (1) there was a consent application. Further the decision can be supported by clause 20 of the Letters Patent which makes the English law applicable on the Original Side of the High Court. The question of priority was not considered. The decision in *Ganpat* v. *Collector of Kanara* (2) was given at the time when Order 33, r. 10 of the Civil Procedure Code did not exist. The same argument applies to *Gulzari Lal* v. *Collector of Bareilly* (3) and *Ram Das* v. *Secretary of State* (4). In *Gayanoda* v. *Butto* (5) the money realized by the decree-holder was by execution of the decree and Government had a first charge over the decree. Except on that basis the decision cannot be supported because the sale proceeds did not belong to the judgment-debtor but to the decree-holder.

In *Ramachandra* v. *Pitchaikanni* (6) the learned Judges stated "we hesitate to import into places outside the presidency-towns the doctrine of the common law of England relating to Crown-debts."

MACKNEY, J.—This is an application to review the order of the learned District Judge of Thatôn in Civil Execution case No. 5 of 1936, wherein he made a rateable distribution of certain assets at the disposal of the Court between certain parties, but rejected the claim made by the Collector of Thatôn on behalf of the Secretary of State for India in Council to the whole or part of the said assets.

In order to reduce the complexity of the case it will be necessary to set out its history and to construe the

(1) I.L.R. 11 Ran. 467.
(2) I.L.R. 1 Bom. 7.
(3) I.L.R. 1 All. 596.
(4) I.L.R. 18 All. 419.
(5) I.L.R. 33 Cal. 1040.
(6) I.L.R. 7 Mad. 434, 436.

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legal position of the parties. In Civil Execution case No. 152 of 1935 of the Township Court of Thatôn, the fifth respondent, A.R.N.A.R. Karuppan Chettyar, sought to execute his decree against one Ma Fati. In pursuance thereof, certain moveable property said to belong to Ma Fati was attached, and the same apparently came into the custody of the Court. On the 18th May, 1935, the Collector of Thatôn received a certificate under section 46 (2) of the Indian Income-tax Act, 1922, from the Income-tax Officer, Thatôn, certifying that a sum of money was due from Ma Fati in respect of arrears of income-tax and requesting the Collector to take steps to recover the same as if it were an arrear of land revenue. The Township Officer, Thatôn, was directed to take steps to recover the amount. In due course the Township Officer issued a warrant of attachment of the property which had already been attached by the Township Court and was in its custody. By some mistake the Township Officer obtained possession of the property and sold it. He then reported his proceedings to the Collector of Thatôn. A third party put in a claim for the property, and this claim was heard in appeal by the Commissioner of the Tenasserim Division. The Commissioner came to the conclusion that the sale of the property by the Township Officer of Thatôn was invalid and must be set aside. The Deputy Commissioner was directed to apply to the Income-tax Department, to whom apparently the proceeds of the sale had already been paid, for refund of the sale proceeds. The money was then to be made over to the Township Court, Thatôn, which had attached the property. The appellant was directed to address her claim to the sale proceeds to that Court. The claim of this person does not now concern us. The Deputy Commissioner, by a letter dated the 6th February, 1936, forwarded the proceeds of the sale to

the Township Officer, and at the same time lodged a claim on behalf of the Income-tax Department to the whole or a portion of the amount in rateable distribution among the several creditors. Meanwhile, in Civil Execution No. 1 of 1936 of the Subdivisional Court of Thatôn, the sixth respondent, Messrs. The Bombay Burma Electric Company, by one of their partners, R. A. Nagari, sought to execute their decree against Ma Fati, and in pursuance thereof the said sale proceeds were attached whilst in the custody of the Treasury Officer of Thatôn and before they had been forwarded to the Township Court. In Civil Execution case No. 5 of 1936 of the District Court of Thatôn, the first four respondents, Ma Nyein Me, Ma Kyu Yin, Ah Ma Bu and Daw Thit, had also attached the sale assets in the hands of the Treasury Officer in execution of their decree against Ma Fati. The proceedings came before the District Judge under section 73 of the Civil Procedure Code in order to determine the rights of the various claimants.

Now, it appears to me that the intention and result of the order of the Commissioner of Tenasserim Division was to restore as near as might be the position at the time the Township Officer of Thatôn had issued his attachment of the property of Ma Fati in the custody of the Township Court. Being unable to restore the actual property, the proceeds of the sale thereof were restored, and it seems to me that they must be regarded as being in the same position as the original property, that is to say, they were in the custody of the Township Court in virtue of the attachment that had been made in Civil Execution case No. 152 of 1935: so also, the sale proceeds must be regarded as being held at the disposal of the Township Officer of Thatôn by virtue of the attachment made by him.

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Under Order XXI, rule 52, Code of Civil Procedure, the Court had to decide the question of priority arising between the various decree-holders and the Collector of Thatôn, in whose behalf the Township Officer, Thatôn, was acting. Much time was occupied at the hearing of this petition by argument on behalf of the respondents that there was no effective application on behalf of the Collector of Thatôn before the Court to which it could pay attention. Section 46, sub-section (2) of the Indian Income-tax Act is as follows :

"The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment debtor for the purpose of the recovery of an amount due under a decree."

Now, section 45 of the Lower Burma Land and Revenue Act, 1876, is as follows :

"An arrear may be realized as if it were the amount of a decree for money passed against the defaulter in favour of any Revenue Officer whom the Local Government may from time to time appoint in this behalf by name or as holding any office.

Proceedings with a view to the realization of such arrears may be instituted by such officer before any other Revenue Officer whom the Local Government may from time to time appoint by name or as holding any office and, except in so far as the Local Government may otherwise by rule direct, such other officer may exercise all the powers conferred on, and shall conform to all rules of procedure prescribed for, a Court executing a decree by the Code of Civil Procedure : . . . . ."

I think, taking these two provisions of the law together, that what is meant is that on receipt of the certificate of the Income-tax Officer, the Collector, in proceeding to realize the arrears, exercises all the powers conferred on, and shall conform to all rules of procedure prescribed for, a Court executing a decree by the Code of Civil Procedure, and that it is not intended that the Collector should regard himself as a Revenue Officer in whose favour a decree for money has been passed against the defaulter and be obliged to institute proceedings for realization before another Revenue Officer. This I think is made clear by the wording of the proviso to section 46, sub-section (2) of the Income-tax Act, where it is definitely stated that in certain circumstances and in regard to certain procedure the Collector shall have certain powers of a civil Court.

It was in pursuance of these powers that the warrant of attachment of the property of Ma Fati in the custody of the Township Court of Thatôn was issued.

It has been argued that the letter of the Collector dated the 6th February, 1936, in which he forwarded the sale proceeds to the Township Court and laid claim thereto was not such a compliance with the procedure laid down by the Code of Civil Procedure as was required. It may be that there is considerable force in this contention ; although, in the confusion which had overcome the proceedings, it is not hard to understand how the Collector came to act in this way, and it is possible that, in the peculiar circumstances of the case, the letter of the Collector might be construed as amounting to an order to the Township Court under Order XXI, rule 52, to hold the sale proceeds subject to the further orders of the Collector. However, it is not necessary to consider this point, because, as I have already pointed out, it is clear that the prohibitory order or attachment previously issued by the Township

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Officer of Thatôn was still effective in regard to these assets. There can be no doubt that the previous attachment ordered by the Township Court of Thatôn was still effective, and that has never been doubted. The same reasoning applies to the previous attachment by the Township Officer of Thatôn. That being so, it is clear that the Collector must be deemed to have adopted the proper procedure in regard to the recovery of the income-tax arrears.

As already stated, the rule applicable was that set out in Order XXI, rule 52. The claim of the Collector certainly cannot be deemed to fall under section 73 of the Code of Civil Procedure. Although the Collector is empowered to exercise all the powers conferred on a Court executing a decree by the Code of Civil Procedure, he does not thereby become a civil Court. The provisions of section 73 of the Civil Procedure Code can only be applied to civil Courts. There can be no rateable distribution between such decree-holders as come within the scope of section 73 of the Civil Procedure Code; and the Collector consequently, unless he can have recourse to some other rule of law, must inevitably fail in his claim in such circumstances as the present. Such a rule of law is that whereby the Crown has priority over unsecured creditors in the payment of debts. This is a well-known principle of law applied both in England and in India. In virtue of that rule and in such circumstances as the present, the Court holding the assets was bound to recognize the prior claim of the Crown and to hand over the whole of the assets in question to the Collector of Thatôn.

It has been argued at great length before us that this doctrine of priority of Crown debts is not a rule of law in India. But if that were so, the Crown would have no recourse in such a case as the present, and it surely would be a most remarkable omission on the part

of the Legislature if this state of affairs had passed unnoticed. The rule of law referred to is universally recognized in India, and that being so, the powers given to the Collector on behalf of the Crown under the Income-tax Act and the Lower Burma Land and Revenue Act are sufficient to accomplish the purpose in view. In *Soniram Rameshur* v. *Mary Pinto* (1) the leading cases on the question of the Crown's right to priority were reviewed and discussed, and the conclusion, in the words of Leach J., is :

" 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."

The learned Judge went even further and added :

" Where there are funds in Court out of which payment can be made the Court can order payment without prior attachment. "

The *locus classicus* for a consideration of this question is in the case of the *Secretary of State for India in Council* v. *The Bombay Landing and Shipping and Company* (2). The state of the law on the subject is fully set out in this judgment, and towards the conclusion thereof it is stated :

The East India Company, at all events down to the passing of the Act 3 & 4 Wm. IV., c. 85, were beneficially interested in the revenues of India, and, even after the passing of that statute, and down to the close of their career as a governing power, in 1858, continued so interested to the extent of the dividends on their capital stock ; yet we have shown that, with respect to many items of their revenue, they were entitled to the same advantages of suit as the Crown. The Secretary of State in Council has no interest whatever in the revenue of India. Whatever rights the Crown had to any portion of Indian revenue before 1858, it still has. Further, sec. 2 of the statute of that year (21 & 22 Vict., c. 106) vested in the Crown all the territorial and other

(1) (1933) I.L.R. 11 Ran. 467. (2) 5 Bom. H.C. Rep. 23.

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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."

Although most of the enactments considered by the learned Judges were enactments relating to the Supreme Courts at Fort William and Madras, the Recorder's Court at Bombay, and the Court of Judicature at Prince of Wales's Island, yet it is obvious that the principles of law deduced cannot be limited to effect within only the jurisdictions of those Courts. There can be no distinction between revenue collected outside those jurisdictions and revenue collected within them, and the same rules of law must apply to both under the present regimé, inaugurated by the Imperial Statute of 1858 which, in this respect, has been in no way altered by subsequent enactments. This decision has been followed by all the High Courts in India, and decisions to that effect are so well known that I consider it unnecessary to quote them in detail.

In the *Commissioners of Taxation for the State of New South Wales* v. *Palmer and others* (1) the rule was applied in New South Wales.

The argument as to the limitation of the prerogative of the Crown which was urged before us is one that was brought to the notice of the learned Judges who decided the case of *Judah* v. *The Secretary of State for India in Council* (2). The following passage from the judgment is pertinent. At page 452 they say :

"Secondly, it was argued that whether, apart from the specific enactment, this would be a Crown-debt or not, the effect of section 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

(1) (1907) App. Cas. 179. (2) (1886) I.L.R. 12 Cal. 445.

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* (1), would seem to be that the East India Company 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."

There can be no question that the same rule of law as has been applied in India is applicable in Burma also. It cannot be contended that the Kings of Burma, in the matter of the collection of revenue, exercised a lesser prerogative than that of the Crown in England. Their authority in such matters in fact extended even to the selling of revenue defaulters of Rs. 30 and upwards into slavery. (See Harvey's " History of Burma", page 359.)

In Act No. XXXII of 1860, (an Act for imposing duties on profits arising from property, professions,

(1) Bourke, Pt. VII, 167.

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trades and offices,) which is the first of the Income-tax Acts of India, in section 185 it is said :

"The claim of the Government for all sums payable for the said Duties shall have priority over all private claims, arising after the said Duties accrued due, upon any immoveable property attached, or upon any moveable property distrained upon under this Act. Provided that if the property attached be itself the subject of the assessment in respect of which the attachment shall have issued, the claim of the Government for the arrears due on the said assessment shall have priority over all private claims."

Section 186 reads :

"No goods or chattels shall be liable to be taken by virtue of any execution or other process, warrant, or authority, or by virtue of any assignment, or on any pretence whatever, unless the person at whose suit the execution or seizure shall be sued out or made, or to whom such assignment shall be made, shall, before the sale or removal of such goods and chattels, pay or cause to be paid to the proper officer all arrears of the said Duties which shall be due by the judgment-debtor or assignors at the time of seizing such goods or chattels, or which shall be payable for the year in which such seizure shall be made, provided that the said Duties shall not be claimed under this section for more than one year."

Section 188 is as follows :

"The claim of the Government for all sums payable for the said Duties shall have priority over all claims in administering the assets of any deceased person by his representative, or of any bankrupt or insolvent by his assignee, provided that the said Duties shall not be claimed under this section for more than one year."

Those provisions were not re-enacted in the present Income-tax Act. It would appear that the provisions set out in section 46, sub-section (2) of that Act, already quoted, were considered sufficient, in view of the well-known principle of the priority of Crown-debts. It is

useful in this connection to revert to the case of the *Secretary of State in Council of India* v. *The Bombay Landing and Shipping Company* (1), where the learned Judges referred to these sections of Act XXXII of 1860. At the foot of page 30 and on page 31 they say :

"The reservation of prerogative privileges to the Commissioners in their litigation and the reservation of the Crown's right to proceed in the Exchequer, no doubt, afford an argument in support of the legal necessity for such provisions ; but such an argument is never, when it stands alone, a very strong one, and does not relieve us from the duty of inquiring into the state of the law previous to such enactments. Legislation of that kind is often merely declaratory, and resorted to *pro majori cautela*, and for the purpose of clearly notifying to the public what the law is . .

. . . .

What has been said with respect to those statutes is in great part applicable to the provision in Sections 185 and 188 of Act XXXII of 1860. A clear declaration of the priority of income-tax over private claims may have been considered especially necessary for the Mofussil, where the extent to which English law should be applied is much less clearly defined than in the Presidency towns. There are, moreover, certain special provisions which are variations from the English law, as to the priority of the claim of the Crown, introduced into both of those sections."

There are, of course, various Acts of the Indian Legislature which do expressly set out the priority of Crown-debts in circumstances arising under those Acts, but such express enactment cannot be deemed to derogate from the general right of priority which the Crown has. What these enactments do is merely to make clear the particular application of the rule. Express words or necessary implication is required to affect the prerogative of the Crown in a municipal statute. See *British Coal Corporation and others* v. *The King* (2).

(1) 5 Bom. H C. Rep. 23. (2) (1935) A.C. 500.

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The learned counsel for the respondent has not been able to indicate to us any authority in India which takes a contrary view from that set out in the decisions cited above. In the present case, the decree-holders concerned were in no better position than the Crown : their debts were on an equal footing, and in these circumstances the right of the Crown must prevail. It is not contended that an attachment confers any title.

It would not appear that the learned District Judge fully understood the real facts of the matter before him. Nor did he understand the application of the principle of the priority of Crown-debts. Doubtless it was stated to him in too blunt a fashion, else he would not have been aroused to such depths of emotion as he apparently was by what he conceived to be an unprecedented attack on the rights of the subject. It appears to me that owing to this misapprehension, the learned District Judge in rateably distributing the assets among the respondents acted illegally and with material irregularity in the exercise of his jurisdiction.

I would therefore allow this application, set aside the order of the District Court and direct that the sum of Rs. 466, which was the subject of the order, shall be refunded to the District Court by the parties who have drawn it and shall be handed over to the Collector of Thatôn for disposal in accordance with law. The respondents shall pay the costs of this application, advocate's fee ten gold mohurs.

MYA BU, J.—I agree.