

1920.

 EMPEROR
 v.
 HAJI
 ABOO.

in the information disclose an offence under section 273 of the Indian Penal Code. It is clear that the complaint related to an offence under a special Act, and not to an offence under section 273, and it would not be fair to allow the case at this stage to be treated as one relating to an offence under the Indian Penal Code. Further, having regard to the wording of the last para. of the sub-section, the Magistrate's finding involves the result that the provisions of section 273, Indian Penal Code, do not apply to this case. We, therefore, set aside the convictions and sentences, and direct the fine, if paid, to be refunded.

Convictions and sentences set aside.

R. R.

 APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

 case 7.

MADHAVRAO MORESHWAR BHADANEKAR SARDESAI PANT AMATYA, STATE BARODA (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT*.

Pensions Act (XXIII of 1871), sections 4 and 6—Suit to recover Sardeshmukhi Haq—Pensions and grants in Ratnagiri District—Pensions Act, whether ultra vires—Bombay Regulation (XXIX of 1827), section 6—Civil Court—Jurisdiction.

Plaintiff filed a suit against Government to recover two per cent. Sardeshmukhi Haq on certain villages in Ratnagiri District not on the old Jamabandi but on survey assessment. The District Judge held that the suit was barred under section 4 of the Pensions Act, 1871. On appeal it was contended that the Pensions Act so far as it dealt with pensions and grants of land revenue in Ratnagiri District was *ultra vires*.

Held, that the Pensions Act was not *ultra vires* and that the suit was barred under section 4 of the Act.

* First Appeal No. 86 of 1918

Secretary of State for India v. Moment⁽¹⁾, distinguished.

Vasudev Sadashiv Modak v. Collector of Ratnagiri⁽²⁾, relied on.

The Pensions Act could not be *ultra vires* unless it was established that a suit would have lain against the East India Company on a grant of land revenue. But such a suit would not lie inasmuch as the East India Company exercised sovereign rights in collecting land revenue. If they chose to grant any share of that land revenue to individuals, they did so, not as a mere matter of contract in the ordinary affairs of life, but in the exercise of sovereign rights.

FIRST appeal against the decision of C. C. Dutt, Acting District Judge at Ratnagiri.

Suit to recover cash allowance.

The plaintiff was entitled to receive the Sardeshmukhi Haq from Government consisting of a two per cent. share of the revenue of certain villages in Malvan and Deogad Talukas in Ratnagiri District. The plaintiff contended that the two per cent. should be paid not on the old Jamabandi but on survey assessment. He alleged that Government had been pleased to allow his contention with regard to the villages in Malvan Taluka and so he brought the present suit with regard to the villages in Deogad Taluka only.

The District Judge dismissed the suit on the ground that it was barred under section 4 of the Pensions Act and that the plaintiff had failed to produce the certificate required under section 6 of the Act. He also held that section 4 of the Pensions Act was not *ultra vires*.

The plaintiff appealed to the High Court.

Patwardhan with *P.B. Shingne*, for the appellant:—The suit has been thrown out on a preliminary point on the ground that the suit cannot go on without a certificate under the Pensions Act.

By virtue of section 22 of the Indian Councils Act of 1861 (24 & 25 Vic. c. 67) the Governor-General in Council has no power to repeal or in any way affect any provision of the Government of India Act, 1858

⁽¹⁾ (1912) L.R. 40 I. A. 48.

⁽²⁾ (1877) L.R. 4 I. A. 119.

1920.

MADHAVRAO
MORESHWAB
v.
THE
SECRETARY
OF STATE
FOR INDIA.

1920.

MADHAVRAO
MORESHWAR
v.
THE
SECRETARY
OF STATE
FOR INDIA.

(21 & 22 Vic. c. 106) and the effect of section 65 of the latter Act is to debar the Government of India from passing any Act which can prevent a subject from suing the Secretary of State for India in Council in a civil Court in any case in which he could have similarly sued the old East India Company. In determining the question whether the East India Company would have been liable to an action, the general principles applicable to Sovereigns and States and the reasoning deduced from the maxim that the King can do no wrong should not be given any force.

The grant in favour of the appellant created a right in his favour and the right so created cannot be disregarded or impeded and if the right be affected or disregarded a suit can lie.

Suits could have been filed against the East India Company as no such suits had been barred by any provision of the Legislature, so far as the Ratnagiri District was concerned (see Bombay Regulation XIX of 1827).

Hence the Pensions Act, so far as it affects the questions of grants of land revenue in Ratnagiri District, is *ultra vires*; *Secretary of State for India v. Moment*⁽¹⁾ and *The Peninsular and Oriental Steam Navigation Co. v. The Secretary of State for India*⁽²⁾.

S. S. Patkar, Government Pleader, for the respondent:—No suit could be filed against the East India Company inasmuch as the grant of land revenue related to a question of sovereign rights and not to contractual rights and in this view of the case, the cases cited for the appellant are distinguishable. By section 15 of Regulation II of 1815 the continuance of pensions depends solely on the pleasure of Government. If so,

(1) (1912) L. R. 40 I. A. 48.

(2) (1861) 5 Bom. H. C. App. A. 1.

no suit will lie against the East India Company and also against the Secretary of State for India in Council.

Patwardhan, in reply:—Section 15 of Regulation II of 1815 allows a suit and the Regulation is rescinded by Regulation I of 1827.

MACLEOD, C. J.:—The plaintiff filed this suit against the Secretary of State to recover his two per cent. Sardeshmukhi Haq in certain villages in Deogad Taluka not on the old Jamabandi but on the survey assessment. The suit was dismissed by the District Judge on the ground that the suit came within section 4 of the Pensions Act, and that as the plaintiff had not produced a certificate as provided for by section 6, he could not proceed any further in the suit.

The only ground which has been argued in appeal is that the Pensions Act, so far as it deals with pensions and grants of land revenue in Ratnagiri, is *ultra vires*. The appellant relies on the decision in *Secretary of State for India v. Moment*⁽¹⁾. The question, therefore, arises whether a suit would have lain against the East India Company to recover on a grant of land revenue in Ratnagiri; if such a suit would have lain, then it would also lie against the Secretary of State, and any provision to the contrary contravenes section 65 of the Government of India Act of 1858.

In *The Peninsular and Oriental Steam Navigation Co. v. The Secretary of State for India*,⁽²⁾ Sir Barnes Peacock, Chief Justice, considered what suits would lie against the Company and what suits would not lie. At page 14 he said: "Where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exercised except by a sovereign, or private individual delegated by a sovereign to exercise them, no action will lie".

⁽¹⁾ (1912) L. R. 40 I. A. 48.

⁽²⁾ (1861) 5 Bom. H. C. App. A. 1.

1920.

MADHAVRAO
MORESHWAR
v.
THE
SECRETARY
OF STATE
FOR INDIA.

1920.

MADHAVRAO
MORESHWARv.
THE
SECRETARY
OF STATE
FOR INDIA.

In *Vasudev Sadashiv Modak v. Collector of Ratnagiri*⁽¹⁾ the plaintiff filed a suit to recover from Government certain emoluments due to him as Deshmukh of four Mahals, the plaintiff alleging that he was the hereditary Deshmukh thereof. It was held by the Privy Council that the learned trial Judge was right in dismissing the suit on the ground that it was excluded from the jurisdiction of the civil Courts by the Pensions Act of 1871, section 4. At page 125 their Lordships say: "It is difficult to see how the Government could impose upon the ryots the obligation of paying these allowances to their officers, except by the exercise of their sovereign right of imposing and receiving a revenue from all lands which were not in their nature rent free".

The East India Company, therefore, were exercising their sovereign rights in collecting land revenue. It would follow that if they chose to grant any share of that land revenue to individuals, they were doing so, not as a mere matter of contract in the ordinary affairs of life, but in the exercise of sovereign rights. It would follow then from the passage I have already cited from the judgment of Sir Barnes Peacock, that an action would not lie against the East India Company on a grant of land revenue. It is true that the point was not taken in *Vasudev Sadashiv Modak v. The Collector of Ratnagiri*⁽¹⁾ that the Pensions Act, so far as it barred a suit against the Secretary of State on a grant of land revenue, was *ultra vires*. But in my opinion it would have to be directly pointed out to us that a suit on a grant of land revenue would have lain against the East India Company before we can say that the Pensions Act is *ultra vires*. I do not think that it can be argued that, because under Regulation 29 of 1827, which applied only to the Zillas of Poona and Ahmednagar subsequent

(1) (1877) L. R. 4 I. A. 119.

to the conquest by the Company of the territories of the late Paishwa in the Deccan and Khandesh, such suits would not lie in those Zillas, it can be deduced therefrom that such suits would have lain as regards grants of land revenue in any other territories of the East India Company. In my opinion the real test is whether the East India Company was exercising sovereign rights and powers, or was acting as an ordinary individual, as it would be doing, for instance, if it engaged in trade and in the course of such business caused wrongful damage to the inhabitants within its territories. In my opinion, therefore, the judgment of the learned Judge in the Court below was right and the appeal must be dismissed with costs.

FAWCETT, J.:—I concur. The point before us was considered in *The Secretary of State for India in Council v. Jawahir Lal*^(a), where a similar contention was overruled on the ground that the jurisdiction of the Courts had, prior to the enactment of the Pensions Act of 1871, been expressly barred by Regulation 24 of 1793, section 17. Accordingly it was held that the East India Company could not have been sued in respect of a pension falling under the Pensions Act at the time of the transfer of the Company's powers and liabilities to the Crown.

The appellant's counsel has no doubt been able to show that a similar clear enactment does not apparently exist in regard to the territories administered by the East India Company in the Bombay Presidency, except the Zillas of Poona and Ahmednagar, under section 6 of Bombay Regulation XXIX of 1827. The learned Government Pleader has not referred us to any enactment for the other territories which expressly bars claims against Government on account of pensions

1920.

MADHAVRAO
MORESHWAR
v.
THE
SECRETARY
OF STATE
FOR INDIA.

^(a) (1915) 37 All. 338.

1920.

MADHAVRAO
MORESHWARv.
THE
SECRETARY
OF STATE
FOR INDIA.

except Regulation II of 1815, section 15. That enactment lays down the principle that except in certain specified cases, the continuance or discontinuance of all pensions shall depend solely on the pleasure of Government, and shall not be subject to cognizance or determination in any Court of justice. But the efficacy of this is somewhat weakened by the subsequent provision that, where any person deems himself aggrieved by the act of the Collector in respect to a pension, he can sue for redress in a civil Court. This enactment is also rescinded by section 1 of Regulation I of 1827; and it is possible to contend that claims against Government on account of pensions fell under the wide terms of section 21 of Regulation II of 1827. But in view of the clear principle laid down in Regulation XV of 1815, I very much doubt whether in practice claims against Government on account of pensions were taken cognizance of by civil Courts in the time of the East India Company, and no such case has been cited to us. It is possible, therefore, that it was not considered necessary to make an express enactment in regard to the old territories of the kind specified in Regulation XXIX of 1827.

If the question before us depended entirely on this particular point, I think further inquiry would be desirable. But I agree with the learned Chief Justice that a suit could not have lain against the East India Company, because the continuance of pension on which the plaintiff bases his claim was a sovereign act, as is clearly shown by the judgment in the case of *Vasudev Sadashiv Modak v. The Collector of Ratnagiri*⁽¹⁾. Therefore I am of opinion that the contention fails and the appeal should be dismissed with costs.

Decree confirmed.

J. G. R.

⁽¹⁾ (1877) L. R. 4 I. A. 119.