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Feb. 11

BANK OF COMMERCE, LIMITED, KHULNA ... APPELLANT;

AND

AMULYA KRISHNA BASU ROY CHOWDHURY AND OTHERS ... RESPONDENTS.

AND

ADVOCATE-GENERAL OF BENGAL ... INTERVENER.

ON APPEAL FROM THE FEDERAL COURT OF INDIA

Bengal Money Lenders Act (Beng. Act X of 1940)—Intra vires the Provincial legislature—Re-opening of decrees passed on promissory notes.

The pith and substance of the Bengal Money Lenders Act, 1940, was "money lending", and the Act was therefore in whole within the sole competence of the Provincial legislature under entry 27 of the Provincial List, and accordingly effective to enable the respondent borrowers to institute suits against the appellant lender under s. 36 of the impugned Act claiming to reopen decrees which had been passed against them on promissory notes which they had signed.

Judgments of the Federal Court of India [1944] F. C. R. 126, affirmed in effect.

CONSOLIDATED APPEALS (No. 9 of 1946) from a judgment and two orders of the Federal Court of India (December 8, 1943), and from a judgment and four orders of that court (December 12, 1944). The judgment and two orders of December 8, 1943. were made in two appeals preferred separately by the appellant against the judgment and order of the High Court at Calcutta in its revisional jurisdiction (June 19, 1942) which had affirmed the judgments and decrees of the subordinate Judge, Khulna (December 15, 1941, and January 26, 1942). The judgment and four orders of December 12, 1944, were made in four appeals preferred separately by the appellant from the judgment and order of the High Court at Calcutta in its revisional jurisdiction (February 24, 1944) which had affirmed the judgments and decrees

* *Present :* LORD WRIGHT, LORD PORTER, LORD UTHWATT, SIR MADHAVAN NAIR and SIR JOHN BEAUMONT.

of the subordinate judge, Khulna (February 2, May 28, and June 24, 1942, and June 26, 1943.)

Each of the respondents to this appeal had borrowed money on promissory notes from the predecessor in title of the appellant bank, and before the impugned Act was passed the appellant or its predecessor had obtained decrees against the debtors. Each of the respondents had applied to the court for relief under s. 36 of the Bengal Money Lenders Act, 1940, which empowered the court to re-open decrees for the payment of borrowed money or for the repayment of interest thereon, to reduce the judgment debts within the limits of liability prescribed by s. 30 of the impugned Act, and to order the repayment to the borrower of any amounts found to have been overpaid on the taking of an account in accordance with the provisions of the Act.

In answer to the respondents' applications the appellant contended that the impugned Act, so far as it empowered the court to re-open decrees obtained on promissory notes, went beyond the powers conferred on a Provincial legislature by the Government of India Act, 1935. That contention was rejected in each case by the judge of first instance, by the Calcutta High Court on appeal, and, on further appeal, by the Federal Court (Spens C.J., Varadachariar and Zafrulla Khan JJ.).

1946. Nov. 21. *Sir Herbert Cunliffe K. C., Khambatta K. C.* and *P. C. Basu* for the appellant. Most of the argument relative to this appeal has been covered in the discussion in the previous appeal, in which the same question was raised. Here the Federal Court upheld the decision of the High Court that the impugned Act was intra vires, distinguishing their decisions in the previous case on the ground that in this case the lender's rights, though based on promissory notes, had passed into claims under decrees, and that that part of the impugned Act which they had held to be invalid was severable from the rest. It is submitted that the Federal Court did not give the weight it should have done to item 53 in List I, which gave the Federal legislature power to deal with "jurisdiction and

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"powers of courts except the Federal Court with "respect to any of the matters in this list...." The question is whether the Bengal legislature by the impugned Act purported to legislate with regard to "jurisdiction and powers of courts." If our submission is right that they have sought to legislate beyond their powers with regard either to promissory notes or banking, then it is clear, looking at the provisions of the impugned, Act, that they have also attempted, and to a very serious extent, to legislate with regard to the jurisdiction and powers of courts with respect to matters which are in the legislative powers of the Federal legislature. They can deal with the jurisdiction of courts in respect of any matter which is completely within their jurisdiction, but the magnitude of the interference by the impugned Act in respect of matters in the Federal List supports the submission that the whole Act is bad, and not merely a part. The one supreme test is, has the Provincial legislature gone beyond its powers in attempting to do something which is exclusively and completely reserved to the Federal legislature. There are at least sixteen sections of the impugned Act which interefere with the powers of the court: ss. 13, 14, 20, 30, 31, 32, and 34 to 43. The decree itself is in respect of a promissory note. Anything which interferes with a decree which the court has made is an interference with the jurisdiction and powers of the court, and the jurisdiction and powers, if they are in respect of one of the forbidden matters, are by item 53 reserved exclusively to the Federal legislature. The validation Ordinance has no application to this case.

P. C. Basu followed, and referred to *Attorney-General for Alberta* v. *Attorney-General for Canada* (1), *Reference as to Validity of the Debt adjustment Act, Alberta*(2) and *Renula Bose* v. *Rai Munmatha Nath Bose* (3).

Sir Walter Monckton K. C. and *B. Mackenna* for the intervener.

(1) [1943] A. C. 356, 361.
(2) [1942] S. C. R. (Can. 31, 38.
(3) (1945) L. R. 72 I. A. 156

B. Mackenna. The reasoning which underlies the distinction which the Federal Court drew between cases where a decree was in existence and cases where there was a promissory note appears from *Subrahmanyan Chettiar* v. *Muttuswami Goundan* (1), where it was said that "the liability on which the Act "operated was a liability under a decree of the court "passed before the commencement of the Act. It had "ceased to be a debt evidenced by or based on the "promissory note, for that had merged in the decree "and had become a judgment-debt; nor could the "appellant any longer have sued upon the note." That puts all that can be said on our side of the case. The appellant's proposition was that there is an interference with the jurisdiction and powers of the court if a decree made by the court is interfered with in any way. That proposition must be very much too wide for the purposes of the three legislative lists. It would make it impossible for a Provincial legislature to pass any legislation for relief of a debtor where a debt had been incurred in respect of a Federal list transaction, and it would render it impossible for a Provincial legislature to pass a bankruptcy and insolvency Act, which undoubtedly it has power to do under the Concurrent List. [reference was made to *Attorney-General for Alberta and Winstanley* v. *Atlas Lumber Co., Ld.* (2).]

Sir Herbert Cunliffe K. C. replied.

1947. Feb. 11. The judgment of their Lordships was delivered by LORD PORTER. These consolidated appeals, like those which immediately preceded them, raise the question of the validity of the Bengal Money Lenders Act, 1940. The respondent in that appeal is the appellant in this, but the borrowers in the one case differ from the borrowers in the other. The facts and circumstances in either appeal are sufficiently similar to raise precisely the same questions of principle save in one particular. In the present appeal the borrowers had all been sued to judgment on the promissory notes which they had signed whereas in the former they had not. On the strength of this circumstance the Federal

(1) [1940] F. C. R. 188, 202. (2) [1941] S. C. R. (Can.) 87, 97.

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Court held that no question arose as to liability on promissory notes. The actions had originally been instituted by several respondents against the appellant before the subordinate judge at Khulna under s. 36 of the impugned Act claiming to reopen the decrees passed against them in Small Cause Court suits in order to scale down the debts and to direct repayment of amounts that might be found to have been overpaid on taking accounts. On these facts all the courts in India have held that the actions are not concerned with promissory notes, but with decrees for the payment of money. The respondent's liability in each case was said to rest on a judgment, and one judgment had been obtained all previous liability on the promissory note was merged in the judgment. There being no question of liability on a promissory note, and no question being raised of liability in respect of banking, it was decided that in so far as concerned debts due on a decree the Act did not invade the field reserved to the Federal legislature by item 28 of the Federal List, unless it could be said that the Act was void as a whole.

If the Act as a whole was void because its provisions were applicable to transactions in which promissory notes formed a part, even though it might also apply to those in which they do not come into consideration, then in the view of the Federal Court the Act as a whole would be ultra vires. In their opinion, however, it need not be so applied. Its provisions could be taken advantage of in a case where promissory notes or banking did not come into question, but it was void where either of those matters was involved. When, therefore, the liability in the promissory notes had passed into liability under a decree, as in the present consolidated cases, there was nothing to prevent the respondent suing and no reason to declare the Act void. Accordingly they held that it would be valid in cases where judgments were sought to be reopened, but invalid where no judgment had been obtained and the borrower's liability was still secured by a promissory note.

Having regard to their Lordships' decision in the previous case, they do not find it necessary to make

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any pronouncement as to the soundness of this view. In this, as in the last case, they are of opinion that the pith and substance of the Act is money lending, and that therefore it is within the competence of the Provincial legislature and of that legislature alone under item 27 of the Provincial List. They will humbly advise His Majesty accordingly that the appeal should be dismissed. There will be no order as to costs.

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitor for the intervener: *The Solicitor, India Office.*

RALEIGH INVESTMENT COMPANY, LIMITED APPELLANT;

AND

GOVERNOR-GENERAL IN COUNCIL RESPONDENT

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ON APPEAL FROM THE FEDERAL COURT OF INDIA

Revenue—Income-tax—Suit for declaration of statutory invalidity —In substance a suit to modify assessment made under this Act" —Statutory bar—Civil court jurisdiction excluded—Indian Income-tax Act (XI of 1922) (as amended by Act VII of 1939), s. 67—Construction.

The appellant joint stock company, incorporated in the Isle of Man, with its registered office there and its main office in England, held shares in nine companies carrying on business in British India. Some of those companies were incorporated in England and the others in the Isle of Man, and while their businesses in India were managed by local boards, the ultimate control lay with the London boards. All the dividends received by the appellant company from the nine companies were declared, paid and received in England; no part of them was ever remitted to British India. The appellant having been assessed in respect of income tax and super-tax for the assessment year 1939-40 as a non-resident on an income which included the dividends received from the nine companies, and having paid the tax under protest, instituted a suit in the High Court at Calcutta in its ordinary original civil jurisdiction claiming a declaration that in so far as explanation 3 and the other provisions of s. 4 of the Indian Income-tax Act, 1922,

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