

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Balwant Singh v. The Secretary of State for India in Council, through the Collector of Agra, from the High Court of Judicature for the North-western Provinces, Allahabad ; delivered the 7th July 1903.

Present :

LORD DAVEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The history of this case has been rather a curious one. As originally framed, the Plaintiff asked for the recovery from the Secretary of State of a sum of money which the Plaintiff alleged to have been wrongly taken from him under the head of canal dues, such canal dues not being, in fact, payable by him or his ancestors, who were the proprietors of the lands in respect of which the dues were claimed, but by the occupiers of the lands. He accordingly brought the action out of which this Appeal arises to recover the money as having been paid under a mistake of fact.

The only plea which need be noticed is the plea of limitation, and the facts with reference to that plea, as found by the District Judge, are these:—The payment was only effectually discovered by the Appellant's *karinda* on the 12th May 1891. His suspicions were no doubt aroused earlier, but he only verified the fact of

payment by an examination of documents which may have taken him some time; and he had only completed that examination and comparison of documents on the 12th May 1891. He then immediately went to Agra and presented a petition in the name of the Raja to the Court, asking for a return of the money. There were two petitions in fact, but only one need be mentioned. Those petitions were considered, and on the 1st August 1891 an Order was made rejecting them. The question therefore arose, from what date did the limitation run? If it was a case under Article 96 of Schedule II. to the Indian Limitation Act, 1877, then the limitation was three years, and the suit having been instituted on the 11th May 1894, and the fact only discovered on the 12th May 1891, the three years had not expired when the suit was instituted, and limitation would not be a defence. If, on the other hand, it came within Article 14 of the Schedule, which relates to suits to set aside any act or order of an officer of the Government in his official capacity, the period of limitation is one year only, and in that case the cause of action having arisen on the 2nd August 1891 the suit would be out of time, and would be properly dismissed.

The Subordinate Judge of Agra dealt with the case from both points of view. He held that, if the cause of action arose on the 1st August 1891, the suit was time-barred; but, on the other hand, he held, on the evidence, that the *karinda* discovered the mistake more than three years before the institution of the suit, so that even if the case fell within Article 96, the suit was still time-barred, and that it was not necessary for him to say under which Article he thought the case came.

The District Judge, on Appeal, dissented from the Judgment of the Court of the Subordinate Judge as to the question of fact, and

held that the *karinda* had full knowledge only on the 12th May 1891, after a comparison of the canal *jamabandis* with the *patwari* papers; and that, therefore, if the case came under Article 96 of the Schedule, the suit would not be time-barred. He came, however, after full consideration and after some apparent hesitation, to the conclusion that the case fell within Article 14, because, though the suit was not so described in the **Plaint**, and there was no prayer in the **Plaint** to set aside the Order of the Collector's officer of the 1st August 1891, it was, in effect, one to set aside the Collector's Order. The suit having been brought more than one year after the cause of action arose, it was accordingly time-barred, the result being that he affirmed the Decree of the Subordinate Judge.

The Plaintiff appealed to the High Court, and in the High Court—whether by the Plaintiff or by the Court itself does not appear—an entirely new point was started, not dealing with the Limitation Act at all, but arising out of another set of sections of another set of Acts. Whether the point was pleaded or not, the Court no doubt could take cognizance of it. The point is this: Section 241 of the North-Western Provinces Land Revenue Act (Act xix. of 1873) enacts that:—“No Civil Court shall exercise jurisdiction “over any of the following matters.” Then a number of matters are specified and sub-section (i) is in these terms:—“Claims connected with or “arising out of the collection of revenue (other “than claims under Section 189) or any process “enforced on account of an arrear of revenue, “or on account of any sum which is by this or “any other Act realizable as revenue.” There is no doubt that the canal dues are realizable as revenue under Section 45 of the Northern India Canal and Drainage Act (Act viii. of 1873), and therefore the only question is whether this claim made by the Plaintiff was a claim “connected

“ with or arising out of the collection of revenue,
“ or on account of any sum * * * realizable as
“ revenue.” The exception “ other than claims
“ under Section 189” appears to their Lordships to
throw some light upon the meaning of the Section,
because Section 189 enables a party from whom
revenue is demanded to pay under protest, and
upon such payment being made then, “ subject
“ to the pecuniary limitations prescribed by law,
“ the person against whom such proceedings
“ were taken may sue the Government for the
“ amount so paid in any Civil Court situate in
“ the district where such proceedings were taken,
“ and in such suit the Plaintiff may, notwith-
“ standing Section 149, give evidence of the
“ amount which he alleges to be due from him.”
That is an exception from what the Act describes
as “ claims connected with or arising out of the
“ collection of revenue.” It will be observed
that it is a claim of exactly the same description
as the present one. It is the claim of a person
who says that revenue has been wrongly demanded
from him which he was not under any liability
to pay, and the only difference is that, if he pays
it when it is demanded from him under protest,
then he has a right, subject to the pecuniary
limitations prescribed by the law, to sue the
Government to recover it as money paid by him
under a mistake. The exception does not apply
to this case, because at the time when the money
was paid there was no protest, and it was paid
by the officer of the Raja under a common
mistake as money that was due from him. But
though that Section does not apply, it illustrates
what is intended to be included in claims con-
nected with or arising out of the collection of
revenue or on account of any sum realizable as
revenue. The effect of the latter words in the
Section is to make the earlier part applicable not
only to revenue properly so called, but also to
sums realizable as revenue.

The Judgment of the High Court, which is none the less excellent because it is short, is as follows: "In our opinion the suit does not lie " by dint of Section 241, second paragraph of " clause (*i*) of the Land Revenue Act, No. 19 " of 1873, and Section 45 of Act No. viii. of " 1873. This question was not raised in the " Appeal or indeed elsewhere at all. The Court " below dismissed the Suit by applying Article 14 " of Schedule 2 of the Limitation Act. The " Appeal is therefore dismissed, but under the " circumstances, without costs." Another bench of the High Court, consisting of Sir Arthur Strachey, C.J., and Banerji, J., expressed an opinion to the same effect on an application for leave to appeal to His Majesty in Council, the application being refused on the ground that no substantial question of law was involved.

Their Lordships agree with the High Court. The subject of the action is either a claim connected with or arising out of the collection of revenue, or else it is a claim for a sum which is realizable as revenue. Mr. Cowell, on behalf of the Appellant, brought every point which could be properly raised to the attention of their Lordships, but the utmost he could say was that, although it was in a sense a claim connected with or arising out of the collection of revenue, or a sum realizable as revenue, it was only remotely, and not directly, arising out of the collection of revenue. Their Lordships fully appreciate Mr. Cowell's point, but it does not seem to them a good one, and they cannot do otherwise than agree with the High Court that this claim is one arising under Section 241, sub-section (*i*) of Act xix. of 1873, over which therefore no civil court can exercise jurisdiction. They will therefore humbly advise His Majesty that the Appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.
