

FEDERAL HIGH COURT

Governor-General in Council

Vs

Shiromani Sugar Mills Limited

(Spens, C.J.)

11.03.1946

JUDGMENT

Spens, C.J.

1. The respondent company prior to being wound up, as hereinafter mentioned, carried on the business of proprietors of sugar mills in the Basti District of the United Provinces. The company was believed to have made some profits for the year ending 30th May 1940, but it was not until 25th February 1943, that an order for assessment of Income Tax was made for the year of assessment 1941-42 and the tax was eventually fixed at ₹ 18,493-12-0. In the meantime, however, a petition to wind up the company had been presented on 26th November 1941, a provisional liquidator had been appointed on 7th December 1941, and finally, on 17th April 1942, a winding up order had been made by the High Court at Allahabad. It will be noticed therefore that the company had been ordered to be wound up a very considerable time before the assessment was made. On 10th March 1943, a notice of demand was served on the Official Liquidators of the respondent company under Section 29, Income Tax Act, 1922, (hereinafter referred to as 'the Income Tax Act'). On 13th March 1943, the Official Liquidators pointed out to the Income Tax Department that the proper procedure to be followed was for the Income Tax Department to lodge a claim in the winding up in respect of the arrears of tax alleged to be due from the company.

2. Instead of adopting the procedure suggested, the Income Tax Department decided to adopt the procedure provided by Section 46, Income Tax Act, and accordingly, on 8th August 1944, the Income Tax Department sent an 'Arrear Demand' to the Official Liquidators with the intimation that the demand was recoverable as arrears of land revenue, and that a recovery certificate under Sub-section (2) of Section 46 had been forwarded to the Collector of Allahabad. In fact, on 10th July 1944, the Official Liquidators had already received from the Collector of Allahabad a demand for the recovery of the said amount of Es. 18,493-12-0 as arrears of land revenue. In these circumstances, the Official Liquidators, having taken legal advice, made an application to the High Court under Sections 171, 228 and 238, Companies Act, 1913, against the Governor-General in Council, through the Fourth Additional Income Tax cum Excess Profits Tax Officer, Excess Profits Tax Circle, Cawnpore, as respondent, asking for an order that the respondent be directed to put in a formal claim to the Official Liquidators in respect of the said sum of ₹ 18,493-12-0 and praying for an order restraining the Collector from effecting recovery of the said

sum as arrears of land revenue pending the disposal of the application. On the same day, viz., 21st September 1944, the Court made an interim order restraining the Collector from effecting recovery of the said sum. The application finally came before Iqbal Ahmad C.J., and Braund J. for argument and disposal, and on 18th November 1944, judgment was delivered and a final order passed by the said learned Judges. The said order directed that under Section 169, Companies Act, 1913, the respondent should be restrained from proceeding without leave of the Court with the subsisting proceeding before the Collector at Allahabad for the recovery of the said sum of its. 18,493-12-0 as an arrear of land revenue in accordance with Section 46, Income Tax Act, provided nevertheless that the said injunction should be without prejudice to such application, if any, as the respondent might be advised to make under Section 171, Companies Act, 1913, for leave to proceed with such recovery. The said order also provided that the present appellant should pay to the Official Liquidators the sum of ₹ 538-12-0 as costs.

3. It may be conveniently noticed here that the actual form of the order was not technically accurate. Section 169, Companies Act, 1913, only authorises the Court to restrain proceedings, "at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company." In view of the fact that the winding up order had already been made, no injunction in this case could be granted under Section 169. No formal objection, however, was taken in regard to this matter, and it is clear from the judgment of the learned Judges that in this respect the substantial question was whether or not the appellant should have obtained the leave of the Court under Section 171, Companies Act, prior to taking steps to put into action the machinery of Section 46, Income Tax Act. The effect of the decision was that such leave was required, and that as it had not been obtained, the Court could restrain further action under Section 46. The learned Judges also held that the objection raised by the present appellant to the exercise by the Allahabad High Court of any jurisdiction at all in the matter based on Section 226, Government of India Act, 1935, was ill founded, and that they were free to deal with the matter. They granted, however, a certificate under Section 205 of the last mentioned Act and accordingly the appellant has come to this Court, and asks that the order of 18th November 1944, be set aside, both on the ground that the High Court had no jurisdiction to deal with the matter, in view of the provisions of Section 226, Government of India Act, 1935, and on the ground that the action taken by the revenue authorities under Section 46, Income Tax Act, did not require any prior leave of the Court under Section 171, Companies Act, 1913. We propose to deal with the second question first. Section 171, Companies Act, 1913, is in the following terms:

When a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

4. In the High Court considerable discussion seems to have taken place as to the general position of debts due to the Crown and the prerogative rights of the Crown in a liquidation of a company under Companies Act, 1913. As the point was also raised in this Court, we think that it is desirable to dispose of that matter before discussing the matters that more directly arise under Section 171. The necessity on behalf of the Crown of obtaining the prior leave of the Court under Section 171 is in a measure connected with the question of the extent to which the prerogative or

priority rights of the Crown have been affected by the enactment of Companies Act, 1913.

5. In Section 230 of that Act a modified priority is expressly provided for a certain limited class of Crown debts. [See Sub-section (1)(a).] These include debts in respect of revenue, taxes, cesses and rates payable to the Crown, but the provision is limited to those due from the company at a prescribed date and having become due and payable within the twelve months next before that date, the prescribed date being the date of the commencement of the winding up, or in the case of a company ordered to be wound up compulsorily, which has not previously commenced to be wound up voluntarily, the date of the winding up order. Moreover, the priority expressly so given to Crown debts is not confined solely to Crown debts. They have to rank *pari passu* for payment with certain debts due to local authorities, certain debts in respect of salary or wages due to clerks, servants, labourers or workmen, Compensation payable under the Workmen's Compensation Act, 1923, and other classes of debts and expenses, and all have to abate equally if the assets are insufficient to meet them in full. In this connexion it is material also to notice Sub-section (2) of Section 232, Companies Act, 1913. This sub-section indicates that an express enactment was considered necessary to provide that the consequences set out in Sub-section (1) of Section 232 should not apply to proceedings of the Government. To these indications of the manner in which the Crown prerogative has been expressly dealt with by the provisions of the Indian Companies Act may be added a general consideration derived from the whole scheme of the Act in regard to the administration of assets in the liquidation of companies.

6. It is difficult to believe that where so much consideration has been given to rights of priority and the respective rights and position of secured and unsecured creditors, and the order and manner in which their debts are to be discharged, the Crown was to remain outside the scheme and unaffected by the provisions of the Act, except to the extent to which Crown rights have been expressly dealt with. It is difficult to think of any reason for qualifying the priority in respect of the Crown debts specified in Section 230(1)(a), if it was intended that other debts due to the Crown should enjoy unqualified priority. This provision is in marked contrast to the provision contained in the Indian Insolvency Acts allowing priority in respect of "all debts due to the Crown or to any local authority." (Presidency Towns Insolvency Act, 3[III] of 1909, Section 49; and Provincial Insolvency Act, 5 [v] of 1920, Section 61.) It was mainly the express provisions of Section 209, English Companies Act, 1908, (now reenacted as Section 264, Companies Act, 1929), and this general consideration of the whole statutory administrative scheme of company's assets in a liquidation provided for in the later English Companies Acts, and the anomalies and difficulties which would ensue if the Crown were not bound thereby, that led the English Court of appeal in *In re Webb & Co*¹. and the House of Lords (affirming the above decision) in *Food Controller v. Cork*² to determine, once and for all, that the Crown is not entitled to priority in payment of its claims over, or to issue process to obtain payment in full in priority to other creditors of a company in liquidation, except as expressly provided by Section 209, English Act of 1908, now Section 264, English Companies Act, 1929. These sections very closely resemble Section 230, Indian Companies Act, 1913, in so far as a very limited priority and preference is expressly given to certain Crown debts in the liquidation of a company. Having regard to the similarity of the provisions of the Indian Companies Act, 1913, to the English Acts of 1908 and 1929, in respect of the general statutory scheme of administration of a company's assets in liquidation, and to the correspondence between the provisions of Section 230 of the Indian Act with those of Section 209 or Section 264, English Acts, it is not surprising that later Indian decisions on the rights of the Crown in a liquidation in India have followed the reasoning

of the English cases above referred to: cf. *In re Damagoria Coal Co. Ltd*³ *Secretary of State v. Punjab Industrial Bank Ltd.*⁴ *Bank of Bihar Ltd. v. Secretary of State*⁵ In the matter of the Northern Bengal Co. Ltd. (37) I.L.R. (1937) 1 Cal. 684 and *Governor-General in Council v. Sargodha Trading Co. Ltd*⁶.

7. Counsel for the appellant invited our attention to these cases, but did not suggest that they were in any way wrongly decided, or that the scheme of the administration of assets of a company in liquidation under the Indian Act was materially different to that enacted by the English Acts, notwithstanding the decisions to the contrary in In the matter of *West Laikdih Coal Co. Ltd*⁷. and *commissioner of Income Tax v. Official Liquidators, Agra Spinning and Weaving Mills Co*⁸. We have no hesitation in coming to a conclusion and holding that the Crown is bound by the provisions of the Indian Companies Act, 1913, and is bound, in regard to the provisions relating to the liquidation of companies, "to a statutory scheme of administration wherein the prerogative right of the Crown to 'priority no longer exists." Lord Wrenbury in *Food Controller v. Cork*⁹ The Crown is accordingly not entitled, in our judgment, to any prerogative, priority, or preferential rights or treatment, save those expressly conferred and limited by the Act itself, in particular by Section 230 and Sub-section (2) of Section 232. Before we turn to the more detailed consideration of Section 171, Companies Act, it may also be noted that the particular arrears of Income Tax, which the appellant has endeavoured to collect through the machinery of Section 46, Income Tax Act, do not come within the prescribed class of taxes for which the Crown can claim even the limited priority given by Section 230, Companies Act. Having regard to the delay in assessment, these arrears were not due from the company at the date of the winding up order. In respect of them the Crown ranks as an ordinary unsecured creditor. Nonetheless, the appellant claims not only that the appellant is free to exercise in this case the machinery of Section 46, Income Tax Act, but that also the appellant is free to collect these arrears in full without any obligation to account to the Liquidators or to bring into Court any excess above what the appellant might receive if a claim as an unsecured creditor had been made. It appears that, excepting the power of the Court under Section 171 to impose a condition at the time of granting leave, there is no machinery or provision in the Act to compel the appellant to account for or bring into Court any such excess. Accordingly, this claim to exercise the machinery of Section 46, if successful, would in effect enable the Crown to secure for the arrears set out above, the very priority to which both in England and India the Crown has been held not entitled.

8. Hitherto, though it may be that attempts have been made to collect arrears of Income Tax due from a company in liquidation through the machinery of Section 46, Income Tax Act, the Income Tax authorities have, upon objection being taken by the Liquidators, submitted to prove their claim in the liquidation like any other creditor: of *Governor-General in Council v. Sargodha Trading Co. Ltd*¹⁰. above referred to. This they are now not prepared to do and the appellant presses for the sanction of the Court to be given to the right to exercise the machinery of Section 46, Income Tax Act, in respect of arrears of Income Tax due from a company in liquidation uncontrolled by the Court in which the company is being wound up.

9. How then is this claim in fact formulated? Counsel for the appellant urges (a) that under Section 46, Income Tax Act, the very special machinery therein set forth is not in any way limited in its application and is prima facie therefore applicable to the facts of this case and available and appropriate for the collection of arrears of Income Tax due from the respondent company, whether it be in liquidation or not; (b) that the powers of the Court in a winding up

under the Companies Act to control, restrain or interfere with claims or actions or remedies of creditors are very limited and are confined to Sections 169 and 171; (c) that the former section gives jurisdiction during the period only between the presentation of a petition and the making of an order for the winding up of the company and only upon the application of a company, a creditor, or a contributory, to restrain "further proceedings in any suit or proceeding against the company upon such terms as the Court thinks fit"; and (d) that Section 171 by contrast provides that "after a winding up order has been made or a provisional liquidator appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company, except by leave of the Court and subject to such terms as the Court may impose." Counsel emphasised the difference in wording between the two sections "any suit or proceeding" in Section 169, "no suit or other legal proceeding" in Section 171. He argued that for a proceeding to be within the scope of Section 171, it must be (i) in the nature of a suit, relying for this purpose on the words "suit or other," and the decision of a Lahore Full Bench (Tek Chand, Monroe and Beckett JJ.) in *Shukantla v. Peoples Bank of Northern India, Ltd*¹¹ and (ii) a proceeding in a Court of law, in which way only could proper effect be given to the phrase "legal proceeding" as contrasted with the word "proceeding" only. The correctness of the decision in the Lahore Full Bench above referred to, namely, that a suit under Order 21, Rule 63, Civil Procedure Code, for a declaration of title against a company in liquidation cannot be commenced without the previous leave of the Court which has passed the winding up order, cannot, we think, be doubted. But the observations of the learned Judges must of course be read in the light of the point before them for decision, which was a very narrow one. As a statement of law of general application, we, as were the learned Judges in the Allahabad High Court in this case, are unable to accept the narrow construction put upon the expression "or other legal proceeding" in the judgment of the Lahore Full Bench. In our judgment, it need not, and therefore should not, be confined to "original proceedings in a Court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint." Section 171 must, in our judgment, be construed with reference to other sections of the Act and the general scheme of administration of the assets of a company in liquidation laid down by the Act. In particular, we would refer to Section 232. Section 232 appears to us to be supplementary to Section 171 by providing that any creditor (other than Government) who goes ahead, notwithstanding a winding up order or in ignorance of it, with any attachment, distress, execution or sale, without the previous leave of the Court, will find that such steps are void. The reference to 'distress' indicates that leave of the Court is required for more than the initiation of original proceedings in the nature of a suit in an ordinary Court of law. Moreover, the scheme of the application of the company's property in the pari passu satisfaction of its liabilities, envisaged in Section 211 and other sections of the Act, cannot be made to work in co ordination, unless all creditors (except such secured creditors as are "outside the winding up" in the sense indicated by Lord Wrenbury in his speech in *Food Controller v. Cork*¹², are subjected as to their actions against the property of the company to the control of the Court. Accordingly, in our judgment, no narrow construction should be placed upon the words "or other legal proceeding" in Section 171. In our judgment, the words can and should be held to cover distress and execution proceedings in the ordinary Courts. In our view, such proceedings are other legal proceedings against the company, as contrasted with ordinary suits 'against the company.

10. That still leaves open the question whether action under Section 46, Income Tax Act, is covered by the phrase "other legal proceeding." Clearly it is not a proceeding in an ordinary Court of law. But we see no reason why in British India no "legal proceeding" can be taken

otherwise than in an ordinary Court of law, or why a proceeding taken 'elsewhere than in an ordinary Court of law, provided it be taken in a manner prescribed by law and in pursuance of law or legal enactment, cannot properly be described as a "legal proceeding." If it be considered that the effect of the Income Tax authorities putting the machinery of Section 46, Income Tax Act, in motion for the collection of arrears of Income Tax is to bring into operation all the appropriate legal enactments relating to the collection of land revenue in the province concerned, it is, in our judgment, very difficult to say that they are not taking a "legal proceeding." In fact, in this very case, had the company not been in liquidation, the appellant would have had the choice at his option of (a) proceeding by "suit" in the ordinary Courts in respect of the arrears, or (b) by forwarding (under Section 46(2), Income Tax Act) to the Collector the requisite certificate, initiating and putting into force collection of the arrears as arrears of land revenue under and in accordance with the appropriate provisions of the U.P. Land Revenue Act (3 [III] of 1901). Surely such last mentioned action on the part of the Income Tax authorities would be the adoption of another legal proceeding for the collection of the arrears as opposed to the institution of a suit. The proviso to Section 46(2) empowers the Collector, if he so chooses, to exercise all the powers which a civil Court may exercise in respect of the attachment and sale of debts due to a judgment-debtor. If the income - tax officer will be taking a "legal proceeding" when he moves the Collector - as we think he must be held to do - to realize the tax by attachment and sale of debts due to the assessee, it can make no difference in principle that the Collector is asked to exercise his summary powers under the land revenue law.

11. Accordingly, we agree with the learned Judges of the Allahabad High Court in holding that the words "other legal proceeding" in Section 171, Companies Act, 1913, comprise any proceeding by the revenue authorities under Section 46(2), Income Tax Act, and that accordingly before forwarding the requisite certificate under Section 46(2) to the Collector, which would put the machinery for the collection of the arrears of Income Tax as arrears of land revenue into motion, the appellant should have applied in the liquidation under Section 171, Companies Act, for leave of the winding up Court.

12. That leaves the question whether, inasmuch as the appellant moved under Section 46(2) without prior leave of the Court, the High Court at Allahabad, as the Court having jurisdiction under the Companies Act to wind up the respondent company, had jurisdiction to interfere by injunction or otherwise to prevent the completion of the collection of the arrears of land revenue. Were it not for the provisions of Section 226, Government of India Act, 1935, we should without hesitation answer this question in the affirmative and dismiss this appeal. Section 226 must however be considered in the light of decided cases and of the facts of this case. The section runs as follows:

(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial (legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

13. The first point to be determined is whether the section applies to the jurisdiction exercised by the Allahabad High Court under the Companies Act at all. This mainly depends upon the construction to be given to the words "any original jurisdiction." Counsel for the appellant submitted that "original" was used in distinction to "appellate," and that the word "any" covered all jurisdiction over proceedings of any kind which commence and originate in the High Court. He instanced the extraordinary original jurisdiction of the Court under Clause (9), Letters Patent, the jurisdiction in respect of infants and lunatics under Clause (12), the ordinary original criminal jurisdiction under Clause (15), the testametary and intestate jurisdiction under Clause (25), and the matrimonial jurisdiction under Clause (26), Letters Patent. He accordingly submitted that various types of original jurisdiction were conferred on the High Court by the Letters Patent, and that original jurisdiction could equally well be conferred by any valid enactment and that original jurisdiction had in fact been conferred by Sections 2 and 3, Companies Act, 1913, on the Allahabad High Court in respect of companies whose registered offices are situated within the territorial jurisdiction of that Court. On the other hand, counsel for the respondent stressed the well-known origin and history of this section: see *Kannusami Pillai v. Jagathambal*¹³ *Govindarajulu Naidu v. Secretary of State*¹⁴ and *Dewarkhand Cement Co. Ltd. v. Secretary of State*¹⁵ and asked us to construe it as a section "with an ancestral history": see *Hansraj Gupta v. Dehra Dun Mussorie Electric Tramway Co. Ltd*¹⁶ and to confine the meaning of the words "original jurisdiction" to the original jurisdiction exercised by the Supreme Courts and by the High Courts of Madras, Calcutta and Bombay as successors to the Supreme Courts, and to hold that High Courts, other than those three, though they may exercise special or particular jurisdiction conferred on them by Letters Patent or Statute, exercised no original jurisdiction within the meaning of the words as used in Section 226. In our opinion, the history itself of the section does not justify such a method of construction. It was clearly re-enacted in Section 106 (2), Government of India Act, 1915, in a setting where it was impossible to confine its operation to the High Courts of Madras, Calcutta and Bombay, [vide Section 106(1)], and where [vide Section 101(5)] the High Court at Allahabad was expressly referred to amongst the High Courts. In the Government of India Act, 1935, the very opening words of Section 226 and Sub-section (2) thereof show that it is no mere repetition of a section without consideration. It has again been deliberately re-enacted with appropriate provision for its repeal or modification having regard to the changes in the constitution. We note too that the Allahabad Letters Patent in Clause (30) refer to "any final judgment, decree or order made in exercise of original jurisdiction." That orders in company matters do not differ in substance from decrees in suits, is shown by Section 199, Companies Act, providing that such orders shall be enforced in the same manner in which decrees in a suit may be enforced. The present order of the High Court is thus in effect a decree in a suit granting an injunction. We are accordingly unable to accept the argument on behalf of the respondent and feel bound to hold that Section 226 applies to the jurisdiction conferred on the Allahabad High Court, by the Companies Act, 1913.

14. It was suggested on behalf of the respondent company that the opening words "Until otherwise provided by Act of the appropriate Legislature" need not necessarily be confined to future legislation, and that if the Companies Act had in fact "provided otherwise," the section would not apply to jurisdiction exercised under the Companies Act. In our judgment, this construction also cannot be maintained. Reading the two sub-sections of Section 226 together, in our judgment that which is contemplated is future legislation enacted in accordance with the changes in the constitution. So far there has been no such legislation, either by way of repeal or modification. The section with all its anomalies, so constantly commented upon by High Court

after High Court and before now by this Court, remains on the Statute Book. Once again, we point out this anomalous situation that if a District Court, such as the District Court at Cawnpore, upon which jurisdiction under the Companies Act of 1913 has been conferred under the proviso to Section 3(1) of the Act, had been dealing with this claim of the Crown, or the matter had come before the High Court itself in its appellate jurisdiction, neither the District Court nor the High Court would have had to consider Section 226. But so long as the section remains on the Statute Book, it is our duty to give to it what we consider to be its true effect, however capricious that may be. The next two points which require consideration are: (a) Did the High Court purport to exercise jurisdiction, in a matter concerning the revenue or concerning any act ordered or done in the collection thereof and (b) if so, do the last words of the sub-section "according to the usage and practice of the country or the law for the time being in force" qualify "original jurisdiction in any matter concerning the revenue" as well as "concerning any act ordered or done in the collection thereof"?

15. As regards (a), there was much discussion before us in this case, as there had been in other cases, whether a matter concerning an act ordered or done in the collection of the revenue would not also be included in a matter concerning the revenue, or whether it would not be something additional to or different from a matter concerning the revenue. In *Dewarkhand Cement Co. Ltd. v. Secretary of State*¹⁷ the learned Judge (Rangnekar J.) basing himself on an observation in the judgment delivered by Lord Phillimore in *Alcock Ashdown and Co. Ltd. v. Chief Revenue Authority Bombay*¹⁸ came to the conclusion that two different ideas are expressed in the respective parts of the section; the first refers to the preliminary proceedings taken for the purpose of determining the amount of the revenue in any case, and the second to the machinery to enforce payment of the revenue so determined. Another view suggested in the course of the hearing before us was that all claims directly in respect of revenue by or against the Crown would be matters concerning the revenue, whereas claims against individual officials in respect of acts ordered or done in the collection of the revenue might not be included in matters concerning the revenue and that accordingly the latter words had to be added for the prosecution of officials and to prevent indirect attacks upon the revenue. It is not, in our judgment, necessary to come to any final conclusion on these views. On the facts of this case, we are satisfied that by reason of the making out and forwarding to the Collector of a certificate in the form and manner prescribed by Section 46(2), Income Tax Act, thereby putting into operation the machinery of Section 46 for the collection of the arrears of Income Tax in question as arrears of land revenue, an act was done in the collection of the revenue, and in granting the injunction in this case the High Court was exercising original jurisdiction in a matter concerning an act done in the collection of the revenue. As regards (b), we are satisfied that grammatically the last words of the sub-section in question can only qualify the words immediately preceding "concerning any act ordered or done in the collection thereof."

16. That brings us to the last and final point of construction. Was the action of the appellant which is challenged in this case an act done in the collection of the revenue "according to the usage and practice of the country or the law for the time being in force"? It was not suggested that the usage or practice of the country comes into this case. The question to be determined is, was the action of the appellant in the collection of the revenue "according to the law for the time being in force" within the true meaning to be given to these words in the light of the facts of this case and decided cases. The learned Judges in the Allahabad High Court were able to come to their conclusion in favour of the respondent on the ground that what the appellant did in this case

was contrary to the law for the time being in force, in the sense of all the law applicable to the matter, including the Companies Act, 1913. An attempt has been made to collect arrears from a company in liquidation by a procedure not authorized by law generally. Accordingly, they say, the matter is outside the limitations to jurisdiction imposed by Section 226. It has been urged on behalf of the appellant that the learned Judges were wrong in allowing the phrase "law for the time being in force" to embrace all law for the time being in force in respect of the act ordered or done in the collection of the revenue, and that they should have confined the phrase to law directly concerned with the collection of the revenue. We are not prepared to differ in this respect from the learned Judges in the Court below.

17. It would be difficult, if not impossible, to delimit satisfactorily the law which had to be considered in relation to any matter from that which could be excluded from consideration. But in our view the more important question in this case is whether the act ordered or done in the collection of the revenue must in truth and in fact have been "according to the law for the time being in force," or whether it is sufficient that the person or persons ordering or doing the act should bona fide and not absurdly have believed that the act was "according to the law for the time being in force." Counsel for the appellant pressed us with the view that the latter only was sufficient to bring this case within Section 226(1), and he relied upon the well-known case in *Spooner v. Juddow*¹⁹ The learned Judges in the Court below were able to come to the conclusion that the principles in *Spooner v. Juddow (1846-51) 4 M.I.A. 353* did not apply when the complaint was that the whole procedure was not according to the law for the time being in force, or that the revenue authorities had no legal power to do what they had done, as opposed to complaint of some irregularity in carrying out procedure authorised by law or an irregularity in doing something which they had power to do. We regret that with respect we feel bound to differ from the learned Judges in their limited view of the application of the principles in *Spooner v. Juddow (1846-51) 4 M.I.A. 353(Supra)*. On the facts of that case, we doubt if the officials were only guilty of a mere irregularity of procedure. But be that as it may, it seems to us that there is really no difference in principles between the case of an official believing bona fide and not absurdly that some illegal step which he takes, in executing a legally authorised procedure is itself according to the law for the time being in force, and that of another official believing bona fide and not absurdly that the procedure which he adopts in a particular case is itself according to the law for the time being in force. The following passage from the opinion delivered by Lord Campbell at pp. 379-80 appears to us to apply as much to one such bona fide mistake as to the other:

The point, therefore, is whether the exception of jurisdiction only arises where the defendants have acted strictly, according to the usage and practice of the country, and the Regulations of the Governor and Council. But upon this supposition the proviso is wholly nugatory; for if the Supreme Court is to inquire whether the defendants in this matter concerning the public revenue were right in the demand made, and to decide in their favour only if they acted in entire conformity to the Regulations of the Governor and Council of Bombay, they would equally be entitled to succeed, if the Statutes and the Charters contained no exception or proviso for their protection. Our books actually swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established, than that if parties bona fide and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the

special protection which the Legislature intended for them, although they have done an illegal act. In this case it may well be that the warrant against the goods of Tookaydass did not authorize the taking the goods of Hurgovundass, or even that Hurgovundass might not be liable for the arrears of "quit-rent" which accrued before he became owner of the house. Still the Collector was evidently of opinion, that a distress might be made for the whole of the arrears due, and that it was sufficient to introduce into the warrant the name of Tookaydass, in whose name the house continued to be registered. The other defendant never could have doubted the sufficiency of the warrant. If Indian revenue officers have fallen into a mistake, or without bad faith have been guilty of an excess in executing the duties of their office, the object of the Legislature has been, that they should not be liable to be sued in a civil action before the Supreme Courts. Liability to be prosecuted criminally, stands upon a totally different foundation.

18. If accordingly we are of opinion that the certificate prescribed by Section 46(2) was made out and forwarded to the Collector under that sub-section by officials bona fide and not absurdly believing that the machinery under Section 46 was legally proper and available for the collection of the arrears of Income Tax in question due from the respondent company, we must conclude that Section 226(1) applies to this case, and that in granting the injunction appealed against the High Court was purporting to exercise original jurisdiction concerning an act ordered or done in the collection of the revenue bona fide and not absurdly believed to be according to the law for the time being in force, and that by reason of Section 226(1) and the decision in *Spooner v. Juddow (1846-51) 4 M.I.A. 353(Supra)*, the High Court had no jurisdiction in the matter, and their order was ultra vires and void.

19. Now so far as the facts of this case on the record are concerned, it is not absolutely clear on which date the certificate under Section 46(2), Income Tax Act, was made out and forwarded to the Collector. The first intimation which the liquidators received that the Section 46 procedure was going to be adopted was the receipt on 10th July 1944 of the demand from the Collector for the recovery of the arrears as arrears of land revenue. This was fully explained to the liquidators by a letter from the Income Tax Department of 8th August 1944, which made clear that a certificate had been forwarded to the Collector under Section 46(2). It is true that these steps were taken more than a year after the liquidators had suggested that the proper course for the Income Tax Department was to lodge a claim in the liquidation. But on those facts it is difficult to suggest that in July and August 1944, the Income Tax authorities were not acting bona fide, or were acting absurdly in determining to proceed under Section 46(2). Nor has anyone suggested anything of that sort in this case. It is also true that in the other similar cases the Income Tax Department had previously submitted to lodge claims for arrears claimed due from a company in liquidation in the liquidation. But it still is not impossible that a perfectly bona fide and not absurd determination was come to in this case to try to recover the arrears by a procedure believed to be available to the Income Tax authorities according to their view of the law for the time being in force. Indeed the number of points raised and debated before us and the High Court show that it would be very difficult to hold that the challenged procedure had clearly been adopted male fide or absurdly. At the stage therefore when the procedure which we have held to be unauthorised by law was in fact put in force in this case, we can see no reason for holding that the officials concerned were not acting bona fide or were acting absurdly.

20. In this case, on the facts, the appellant must in our judgment succeed on the plea that Section 226(1), Government of India Act, 1935, deprived the High Court of jurisdiction in the matter. Any further action under Section 40(2), Income Tax Act, in the future will be taken in the light of this judgment and may not be saved by the provisions of the said Section 226. The appellant fails on all points except the objection taken under Section 226, Government of India Act, 1935. By reason of that we must allow the appeal and declare that the order of the High Court of 13th November 1944, must be set aside, and that in lieu thereof there shall be substituted an order dismissing the application of the liquidators of 21st September 1944, and directing repayment by the liquidators of the sum, if any, received for costs in respect of the said application in the High Court, but without any further order as to costs. We make no order as to costs in respect of this appeal to this Court.

Cases Referred.

- 1(1922) 2 Ch. 369
- 2(1923) 1923 A.C. 647
- 3('32) 19 A.I.R. 1932 Cal. 430
- 4(331) 18 A.I.R. 1931 Lah. 351
- 5('32) 19 A.I.R. 1932 Pat. 1
- 6(43) 30 A.I.R. 1943 Lah. 228
- 7('26) 13 A.I.R. 1926 Cal. 781
- 8 ('34) 21 A.I.R. 1934 All. 170
- 9(1923) 1923 A.C. 647 at p. 672
- 10('43) 30 A.I.R. 1943 Lah. 228
- 11('41) 28 A.I.R. 1941 Lah.
- 12392(1923) 1923 A.C. 647 at p. 671
- 13('19) 6 A.I.R. 1919 Mad. 1071
- 14('27) 14 A.I.R. 1927 Mad. 689
- 15('39) 26 A.I.R. 1939 Bom. 215
- 16('33) 20 A.I.R. 1933 P.C. 63 at p. 65
- 17('39) 26 A.I.R. 1939 Bom. 215
- 18('23) 10 A.I.R. 1923 P.C. 138
- 19(1846-51) 4 M.I.A. 353