Privy Council Appeal No. 80 *of* 1924.

The Attorney-General - - - - - - - - *Appellant*

v.

Pang Ah Yew - - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE STRAITS SETTLEMENTS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 10TH MARCH, 1925.

Present at the Hearing:

LORD WRENBURY.
LORD PHILLIMORE.
LORD CARSON.

[*Delivered by* LORD CARSON.]

This litigation was commenced by a petition of right presented by Pang Ah Yew, the present respondent, in which she claimed a declaration that a sale of certain lands by one F. J. Morten, Collector of Land Revenue, Malacca, should be set aside and an inquiry be directed as to the damages sustained by reason of the said sale, or, in the alternative, as to the amount of compensation payable to her for the loss of her property.

The case arose on a motion by the appellant, who is the Attorney-General for the Straits Settlements, for an order that the petition of right presented by the respondent should be dismissed as being bad in substance and in law, and upon other grounds, and disclosed no cause of action against the Crown.

The case was heard before Mr. Justice Barrett-Lennard, sitting at Singapore, who, by his order dated the 16th April, 1923, ordered that the said motion should be dismissed. The appellant appealed against the said order and the appeal was heard before the Chief Justice and two other Judges sitting as the Appellate Court of the Supreme Court of the Straits Settlements; and the

said Court, by the order dated the 22nd December, 1923, ordered that the said appeal should be dismissed and that the costs of the respondent should be paid by the appellant.

The respondent held a certain rubber estate comprised under a Statutory Land Grant situated at Tanjong Minyak, which she had purchased at the price of $6,000, and which, under the said grant, was subject to a small quit rent payable to the Government. In her petition she averred that the quit rent for the year 1920 was duly paid, but that that for the following year 1921 had been inadvertently overlooked by her. She also averred that no notice of demand, as required by Section 4 of Ordinance No. 35 (Land Revenue Collection), was served on her or on her mandore and tappers in charge of the land; nor was any enquiry made from either of these persons as to her address; nor was it posted on the said land; and she also complained that resort was not first had against the personal property of the respondent on the land as required by Section 5 of the said Ordinance. Notwithstanding the fact that the provisions of the Ordinance, as before mentioned, had not been complied with, she complained that on the 27th March, 1922, her land was sold under Section 7 of the said Ordinance at the price of $45, and that the purchaser in taking possession of the said land appropriated all the personal properties of the respondent.

The two main questions argued in the Courts below and before this Board were (1) as to whether the Collector, in doing what was complained of, was acting as an executive officer of the Crown; and (2) whether, if so, the Crown could be held liable for the illegal acts of the Collector as being acts done within the scope of his authority.

The first question arises under the 20th Section of Ordinance No. 22 (Crown Suits), which is as follows:—

> "Any claim against the Crown founded on the use or occupation or right to use or occupation of Crown lands in the Colony, and any claim arising out of the Revenue laws or out of any contract entered into, or which should or might have been entered into on behalf of the Crown by or by the authority of the Government, which would, if such claim had arisen between subject and subject, be the ground of an action at law or suit in equity, and any claim against the Crown for damages or compensation arising in the Colony shall be a claim cognizable under this Ordinance."

And Section 21 under the heading of Petition of Right enacts that any person having such claim may prefer his complaint by petition.

No question can now be raised as to the right under the Ordinance to recover damages or compensation by a petition of right against the Government upon the grounds that the remedy of a petition of right is, as in this country, not available in the case of a tort. The words of the Ordinance seem to be perfectly clear upon this point, but the matter is finally settled by the case of *The Attorney-General of the Straits Settlements* v. *Wemyss*, 13 App. Cas. 192, at p. 196, decided with reference to this same Ordinance

As Shaw C.J. says in his judgment in the present case, referring to the case cited, "it is impossible to contend that the local Government, here representing the Crown, is not liable to compensate an individual injured by the wrongful act of an officer of the Government acting within the scope of his employment in similar circumstances to those in which an ordinary individual would be liable to pay compensation for the wrongful act of his servant or agent. In considering English authorities, therefore, it must be borne in mind that the liability of the Crown for actionable torts in this Colony is created by statute and renders in many respects the reasoning on which English cases have been decided entirely inapplicable." There can be no doubt that the claim made by the respondent in the present case was a claim against the Crown founded either "on the use or occupation of Crown lands in the Colony or a claim arising out of the Revenue laws, or any contract entered into on behalf of the Crown by or with the authority of the Government." It was said, however, that the Collector in the action he took was not acting as the agent of the Government or as its servant, but was acting under statutory authority. Their Lordships cannot accede to this view, and it is only necessary to look at the Ordinance under which the Collector acted, to disprove such a contention. Ordinance No. 4 of 1886 is an Ordinance "to provide for the collection of the land revenue of the Crown," and by Section 2 "Collector" means "Collector of land revenue of the settlement or district in which the land is situated in respect of which any sum is due and payable to the Crown on account of rent or assessment." In collecting the revenues of the Crown the Collector was undoubtedly acting as the agent or servant of the Crown, and the fact that he is carrying out his duties under statutory directions and limitations cannot make any difference. He is the intermediary employed by the Crown, even though the methods by which he is to proceed are prescribed by the Ordinance, and it is to be noted that under Section 13 of the Ordinance, powers are given to the Governor in Council to make rules for carrying out the provisions of the said Ordinance.

It is further to be observed that under the Public Authorities Protection Ordinance (No. 132) no action lies against any person acting in execution of statutory duties or other public duties, unless the party complaining can allege malice and want of reasonable or proper cause. The result therefore would be that if the contention of the appellant succeeded the subject would be, in the absence of malice, without any remedy.

There was some suggestion made before the Courts below that the Collector was in some sense a judicial, or quasi-judicial officer and that his acts could not be questioned. This argument was not much pressed before the Board, nor do their Lordships think there is any ground for supporting such an argument.

As to the other question whether the Crown or Government can be held liable for the acts complained of as not being within the scope of the Collector's employment, their Lordships agree with

the decision of the Chief Justice that this plea cannot prevail and that the Crown, under the Ordinance, like any other employer, is liable where in carrying out an authorised act or duty the servant employed does, or omits to do, something which renders his method of carrying out his duties unauthorised and wrongful. It is unnecessary to consider the authorities, which are very fully dealt with by the judgments in the Appellate Court.

The two cases mainly relied upon before this Board were the cases of *Tobin* v. *The Queen*, 16 C.B. N.S. 310, and *Canterbury* v. *The Attorney-General*, 1 Ph. 306. In the first of these cases the Captain of a Queen's ship employed in the suppression of the slave trade, seized a ship that he was not authorised to seize, and instead of carrying it into port, for the purposes of convenience destroyed it on the high seas. In that case the relationship between the Crown and the Captain of a ship of the Royal Navy did not produce the relationship of employer and employed, or principal and agent, and in doing what he did the Captain, while purporting to act in accordance with certain duties imposed upon him by statute, committed an act which the statutes did not authorise. Their Lordships cannot see any principle involved in that decision which conflicts with the judgment that has been given in the present case. Similarly, in *Canterbury* v. *The Attorney-General* (*supra*) the Commissioners of Woods and Forests, who are a statutory body established under an Act of the Imperial Parliament, were held not to have been acting in the capacity as agents or servants of the Crown. In both cases no action could lie against the Crown in this country as involving actions of tort, and in both cases the relations of the Crown to the alleged tortfeazor were entirely different. Indeed, no analogy can be found in either of these cases and the one under consideration having regard to the fact that the plaintiffs' claim is based upon the specific terms of the Ordinance already quoted.

Their Lordships are, therefore, of opinion that the decisions appealed against in this case were right and that the appeal should be dismissed. They will humbly advise His Majesty accordingly.

In the Privy Council.

THE ATTORNEY-GENERAL

v.

PANG AH YEW.

DELIVERED BY LORD CARSON.

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