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CHANCERY DIVISION

In re VISSER.

H.M. THE QUEEN OF HOLLAND (MARRIED WOMAN) v. DRUKKER AND OTHERS.

[1928. H. 307]

Also reported as: [1928] Ch. 877

COUNSEL: C. A. Bennett K.C. and Frank Gahan for the plaintiff.

A. M. Latter K.C. and H. Johnston for the applicant, the defendant I. Zeegen.

W. Hunt for the defendant W. R. Bisschop.

James Wylie for the defendant M. Drukker.

SOLICITOR: Waltons & Co.; Matthew J. Jarvis; Speechly, Mumford & Craig; Linklaters & Paines.

JUDGE: Tomlin, J.

DATE: 1928 June 29.

International Law – Foreign Revenue Laws – Action for Enforcement by Sovereign of foreign State in English Court – Claim for Debt under foreign Statute – Creditor a foreign Subject – Claim for Succession Duty – English Assets of Foreigner domiciled Abroad – Cognizance of English Courts in such Proceedings – Statement of Claim – Application to strike out – R. S. C., Order XXV., r. 4.

The English Courts will not entertain an action by a sovereign foreign State suing in this country on a claim for revenue due from one of its own subjects.

Municipal Council of Sydney v. Bull [1909] 1 K. B. 7 followed.

MOTION.

The question raised by these proceedings, which came before the Court by way of motion, was whether the English Courts would recognize and enforce a claim in England by a foreign State against the subjects of the foreign State in respect of revenue due from the foreign subject.

The plaintiff, H.M. The Queen of Holland, the reigning sovereign of the Netherlands, sued in an action as a married woman, and by her statement of claim alleged that she was a creditor of the estate of one David Visser deceased, who died at Amsterdam on or about December 27, 1926, a Dutch subject, domiciled in Holland.

The defendants to the action were Moritz Drukker, Israel Zeegen, and Willem Roosegaarde Bisschop. M. Drukker was the executor of the will of the said David Visser, and together with the defendant Israel Zeegen were the heirs of D. Visser. Willem Roosegaarde Bisschop was a resident in England, and, under a power of attorney from the defendant Moritz Drukker as executor of D. Visser to apply for letters of administration, was the administrator of the personal property of D. Visser in this country. Probate of the will of D. Visser was however granted on March 22, 1928, to [*878] M. Drukker in place of Willem R. Bisschop by the Principal Probate Registry, although W. R. Bisschop still held the English assets.

The personal estate left in England by D. Visser was, after paying all proper duties and the costs of administration, of the net value of about 1150*l*. or thereabouts.

By her statement of claim, the plaintiff alleged that according to the law of Holland and in particular by the Succession Act, 1859, a Dutch statute, as subsequently amended, the estate of the said D. Visser was liable for succession duty; and she claimed that by art. 25 of the said Act of 1859, the amount of succession duty on the said estate constituted a debt from the said estate to the plaintiff, with priority over all other debts not secured by pledges or mortgages.

It was further alleged by the plaintiff that the defendants M. Drukker and Israel Zeegen were bound by art. 28 of the said Act of 1859 to furnish to the plaintiff through the proper official, a memorial in writing, specifying (inter alia) the nature and value of the estate of the said D. Visser, and by art. 18 of the said Act to pay the succession duties due thereon.

The plaintiff therefore brought an action, as above stated, in this country, claiming (inter alia) a declaration that she was a creditor of the estate of the said D. Visser, and for an order for an account. She further asked that if and so far as was necessary that the personal estate of the said D. Visser might be administered by the Court. The defendants M. Drukker and I. Zeegen were sued as executors or administrators of the said D. Visser, and the defendant W. R. Bisschop as administrator of the personal estate in England of the said D. Visser.

The defendant Israel Zeegen now moved the Court in the action for an order that the plaintiff's statement of claim be struck out under R. S. C., Order XXV., r. 4, on the ground that it disclosed no reasonable cause of action and that the action might be dismissed, and that the costs of the defendants to the action, and the defendant's own motion be taxed and paid by the plaintiff. [*879]

A. M. Latter K.C. and H. Johnston for the applicant, the defendant I. Zeegen. It has been a long established principle that the Courts of this country will not assist foreign States to collect their revenue. The plaintiff's claim therefore should be struck out. The rule is correctly stated in Dicey's Conflict of Laws, 4th ed., r. 54, p. 224: see *Huntington v. Attrill* (1); *Indian and General Investment Trust v. Borax Consolidated* (2), where the remarks of Sankey J. are in point; *Attorney-General for Canada v. Schulze* (3); *Municipal Council of Sydney v. Bull* (4), which it is submitted is in support of the applicant's contention and is strongly relied on.

C. A. Bennett K.C. and Frank Gahan for the plaintiff. This is a debt lawfully due to the plaintiff. Rights acquiesced in by the laws of a civilized country are recognized by the English Courts, and the respondent's contention that this principle has no application to the revenue laws of a foreign State is not well founded. Although the word "revenue" appeared in Dicey's Conflict of Laws in the 4th and in the 3rd (1922) editions it does not appear in the two previous editions. The authorities in support of the proposition referred to in the 3rd and 4th editions rest on very slight foundations. *Huntington v. Attrill* (5) does not support the respondent's contention, and is no authority for the proposition that the plaintiff cannot sue in these Courts.

[TOMLIN J. The question is really, are the English Courts to be collectors of taxes for foreign governments?]

It is submitted that in cases of this kind the aid of the Court can be invoked. Further, the case of *Municipal Council of Sydney v. Bull* (6) is no authority; it is the case of a foreign municipality – not a sovereign State; and is no authority against the plaintiff's contention. Here there is a debt due; and a debt can be enforced in this country which has been incurred abroad, provided you can get jurisdiction over the debtor. Again, the case of *Indian and General Investment*

(1) [1893] A. C. 150, 155.

(2) [1920] 1 K. B. 539, 550.

(3) (1901) 9 Sc. L. T. 4.

(4) [1909] 1 K. B. 7.

(5) [1893] A. C. 150, 157.

(6) [1909] 1 K. B. 7, 11, 12. [*880]

Trust v. Borax Consolidated (1) is no authority; it is the pure construction of a contract. None of these cases, it is submitted, support the respondent's argument, or the proposition in Dicey's Conflict of Laws, 3rd or 4th editions. As for *Spiller v. Turner* (2), it is in the plaintiff's favour.

There are cases, such as *Cotton v. The King* (3) and *The Emperor of Austria v. Day* (4); but they are not really decisions on the point, but merely dicta, and the remarks in the judgments were not really part of the judgments in the particular case in question. In the latter case Lord Campbell was not dealing with revenue laws generally but a particular type of law – namely, smuggling. Although in the earlier cases judges have expressed their views that the revenue laws of a foreign country will not be recognized here, these expressions of opinion are only dicta; the point has never really been decided definitely, and they cannot be taken as authorities for the proposition that the Courts of this country will never enforce the revenue laws of another State: see the cases of *Holman v. Johnson* (5), the remarks of Lord Mansfield are simply dicta; as also in *Planché v. Fletcher* (6), again, it was only an observation of Lord Mansfield, and the real dispute there was concerning a contract. If the principle applies at all, it can only be in cases of contract. None of these cases really lay down the proposition so strongly put forward by the applicant. There is an American case, *Henry v. Sargeant* (Parker C. J.) (7); but again the point was not actually decided, but only the principle mentioned.

There are also cases, such as *Alves v. Hodgson* (8), where Lord Kenyon only touched on the point, and *Clegg v. Levy*. (9) There are cases which decide that the Courts of this country will take notice of the revenue laws of another; and the statement in the last two editions of Dicey's Conflict of Laws cannot be supported: see also *Bristow v. Sequeville* (10),

(1) [1920] 1 K. B. 539.

(2) [1897] 1 Ch. 911, 920.

(3) [1914] A. C. 176, 195.

(4) (1861) 3 D. F. & J. 217, 241, 242.

(5) (1775) 1 Cowp. 341, 343.

(6) (1779) 1 Doug. 251, 253.

(7) (1843) 13 New Hamp. Reps. (U. S. A.) 321, 332.

(8) (1797) 7 T. R. 241, 243.

(9) (1812) 3 Camp. 166.

(10) (1850) 5 Ex. 275, 278, 279. [*881]

where *Alves v. Hodgson* (1) is dealt with; and Pollock C.B.'s remarks cannot be taken as deciding the point.

The remarks of Scrutton L.J. in *Ralli Brothers v. Compañia Naviera Sota y Aznar* (2) show the matter is still not definitely decided: see also The Eva. (3) There is no authority that the Courts will not enforce foreign contracts. In the old cases, when they are considered, one sees that what really Lord Mansfield was dealing with was cases of contracts for sale of goods, and it really involved the question of free trade. None of the cases cited in Dicey really touch the point. In all these old cases the whole point was freedom of trade: see *Boucher v. Lawson* (4), where it is free trade Lord Hardwicke is considering. The view taken was that if you recognize the revenue laws of another country, you are interfering with freedom of trade and injuring this country.

Except for the case of *Municipal Council of Sydney v. Bull* (5) which, it is submitted, is not applicable to the present case, there is no direct decision laying down the principle that the Courts of this country will not recognize the revenue laws of another sovereign State.

W. Hunt for the defendant W. R. Bisschop.

James Wylie for the defendant M. Drukker.

A. M. Latter K.C. in reply. It is submitted the point has been settled long since – see *James v. Catherwood* (6) – and cannot now be considered.

TOMLIN J. This is an application by the defendants in the action that the plaintiff's statement of claim may be struck out on the ground that it discloses no reasonable cause of action and therefore should be dismissed. [His Lordship referred briefly to the facts as set out above.] The short ground for the application is that these Courts do not take notice of the revenue laws of a foreign State, and that the foreign State cannot sue in this country for the recovery of taxes falling to be paid under the foreign law. It seems to

(1) 7 T. R. 241, 243.

(2) [1920] 2 K. B. 287, 300.

(3) [1921] P. 454.

(4) (1734) Cases temp. Hard. 85, 89, and also p. 198.

(5) [1909] 1 K. B. 7.

(6) (1823) 3 Dow & Ry. 190, 191. [*882]

be plain that at any rate for somewhere about 200 years, since the time of Lord Hardwicke, the judges have had present to their minds the notion, and have repeatedly said that the Courts of

this country do not take notice of the revenue laws of foreign States. In Dicey's Conflict of Laws, 4th ed. (1927), p. 224, the rule is stated in this way. Rule 54: "The Court has no jurisdiction to entertain an action – (i.) for the enforcement, either directly or indirectly, of a penal, revenue, or political law of a foreign State." Now it appears that that word "revenue" appeared in the rule for the first time in 1922 in the 3rd ed., p. 230; and in the prior editions – the 2nd ed. (p. 207) and the 1st ed. (p. 220) – it was expressed to be only for the enforcement of a "penal" law of a foreign country. "Revenue" was added in 1922, and "political" was added in 1927; and it now runs: "directly or indirectly, of a penal, revenue or political law. …." I am now asked by Mr. Bennett to say that that is an addition that is not justified, and that the statement in the 4th edition is not well founded. Mr. Bennett argues that there has never been an actual decision in this country – at any rate except one decided comparatively recently in 1909 – in support of that proposition, that what has been said has been mere obiter, and therefore ought now, to-day, for the first time, to be disregarded. His contention is that whatever may be said as to there being no authority, no actual decision, in support of the proposition, there is certainly no actual decision which definitely establishes the contrary. Of course the absence of authority for what, on the one side, is called an elementary proposition, may indicate that the proposition is not well founded in principle, but it also may merely indicate that it is so well recognized that it has never been put to the test. A number of cases have been cited, and I agree with Mr. Bennett that it is very difficult to say of any of them that it is a direct decision, with the exception of one which I will mention. The same view of the matter seems to have been taken in America, although there again the case referred to does not appear to contain a direct assertion but only a dictum, and there is no case which [*883] supports the view that the revenue laws of a foreign country will be enforced here. Such cases as *Alves v. Hodgson* (1) and *Clegg v. Levy* (2) seem to me to be explained *in Bristow v. Sequeville*. (3) They really turn upon this, that where you are suing on an instrument or contract – a foreign instrument or contract – you have to establish its validity according to foreign law, but if it is valid according to foreign law, it is none the less valid because of a provision of revenue law. If, on the other hand, the revenue law does not operate to invalidate the instrument, but only affects its admissibility in evidence, then it is plain, on *Bristow v. Sequeville* (3), that the instrument would be admissible in evidence in our law. Now that seems to me to be the explanation of those cases, and all that those cases do is to indicate that however unwilling the Courts may be to recognize foreign law, there are certain cases in which, although they do not enforce the foreign revenue law, they are bound to recognize some of the consequences of that law – namely, those cases where, as one of the terms of the law, contracts are rendered invalid by the foreign law.

There remains the one case of *Municipal Council of Sydney v. Bull* (4), before Grantham J. I think it is plain that if the plaintiff there had been a foreign State instead of a foreign municipality, it would be impossible to say that it was not a direct decision in point. I do not see myself that any distinction, or valid distinction, could be drawn between a plaintiff sovereign State – a foreign sovereign State – and a plaintiff foreign municipality, seeking in the one case to recover State taxes, and in the other seeking to recover the local municipal taxes or rates: they seem to me to be in pari materia, and sitting here and being bound by the ordinary rule to follow decisions of co-ordinate jurisdiction, I should feel myself bound to treat the case of *Municipal Council of*

Sydney v. Bull (4) as one which it was my duty to follow, and to regard this matter as, so far as Courts of first instance are concerned, disposed of by that case; and to leave it to

(1) 7 T. R. 241.

(2) 3 Camp. 166.

(3) 5 Ex. 275.

(4) [1909] 1 K. B. 7. [*884]

higher jurisdictions to determine whether the rule ought to be maintained. That is apart from my own opinion. My own opinion is that there is a well recognized rule, which has been enforced for at least 200 years or thereabouts, under which these Courts will not collect the taxes of foreign States for the benefit of the sovereigns of those foreign States; and this is one of those actions which these Courts will not entertain. That being so, this application must succeed. The statement of claim must therefore be struck out and the action dismissed; and, as the sovereign State has submitted to jurisdiction by coming here, I am in a position to order the sovereign State to pay the costs of the action.