1935 *Present :* **Koch J.**

THE BANK OF CHETTINAD *v.* TEA EXPORT CONTROLLER.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF MANDAMUS ON THE TEA EXPORT CONTROLLER.

Tea Control—Administrator of estate registered as proprietor—Agreement by Bank to finance estate and to receive coupons—Application by heirs to be registered as proprietors—Decision by Rubber Controller—Writ of Mandamus—*Tea (Control of Export) Ordinance, No. 11 of 1933, s. 12 (2) and (4).*

Where the Tea Controller has decided the question who was entitled to be registered as the proprietor of an estate under section 12 (2) of the Ordinance his decision cannot be reviewed by a writ of *mandamus.*

A person, who has advanced money for the payment of debts and the maintenance of an estate under an arrangement by which he was appointed agent to receive coupons, is not entitled to notice before a decision is given under the section.

Where a person who is aggrieved by a decision of the Controller fails to appeal to the Board of appeal under section 12 (4) of the Ordinance, the remedy by way of *mandamus* is not open to him.

THIS was an application for a writ of *mandamus* on the Tea Export Controller to compel him to issue coupons in respect of certain tea estates to the petitioner, the Bank of Chettinad Ltd. The estates belonged to one Muttaiyapillai who died in 1928, leaving a widow and eight children of whom the eldest, Sadayapillai, obtained letters of adminis-

[1] *37 N. L. R. 53.*

tration to the estate of his father. He was duly registered as the proprietor of the estate under the Tea (Control of Export) Ordinance.

Under an agreement with the Bank, the administrator undertook to consign to the Bank all the tea crops of the estates and to deliver all the tea coupons that may be issued in respect of the estates in consideration of certain moneys advanced by the Bank for the purpose of maintaining the estates. It was further agreed that the administrator should have the Bank appointed and registered as the person entitled to the tea coupons under the Ordinance until the liquidation of the moneys due.

The petitioner complained that after the tea coupons had been issued to him for some time, the Controller without notice to him had altered the name of the registered proprietor by substituting the other co-heirs of the estate in place of the administrator, who was entered up to that time as sole proprietor.

J. E. M. Obeyesekera, Deputy S.-G. (with him *Wickramanayake, Acting C.C.*), for the respondent.—A party applying for a writ of *mandamus* must have a legal right to the performance of a legal duty on the part of the person on whom the writ is asked (*Ex parte Napier, 1852, L. J. R. Q. B. 332 at 335*). The petitioner to this application has no such legal right. Under section 12 (2) of the Tea (Control of Export) Ordinance the Controller is under a legal duty to decide whether a person or persons is or are entitled to be registered as proprietor or proprietors. Proprietor is defined in section 2 as the owner or lessee of an estate and includes for the time being the person in charge of that estate or any other duly accredited agent of such owner Therefore it is that class of persons who come within the definition of proprietor in the Ordinance who have a legal right to the performance of the legal duty imposed upon the Controller by section 12 (2). The petitioner claims to be assignee of S who was the registered proprietor of the right to receive the tea coupons. He does not therefore come within the definition of " proprietor " in the Ordinance.

The Controller has decided this matter within the meaning of section 12 (2), and his decision, no matter however erroneous, cannot be reviewed by process of *mandamus*. (*Samynathan v. Whitehorn* [1], *Board of Education v. Rice* [2], *Rex v. The Mayor of Stepney* [3], *King v. Port of London Authority* [4]).

H. V. Perera (with him *D. W. Fernando*), for the petitioner.—The petitioner is the duly appointed agent of the registered proprietor to receive the tea coupons, and as such comes within the definition of " proprietor " in the Ordinance. The right to claim the performance of the legal duty imposed by section 12 (2) of the Ordinance is available not merely to the proprietor but also to any person interested. The petitioner at the lowest is a party interested. The Controller was aware of his interest and had expressly undertaken to issue the tea coupons to him. In these circumstances any decision under section 12 (2) should have been made after giving notice to the petitioner. No notice had been given to the petitioner who had thereby been denied an opportunity of being heard. When the legislature imposes a duty on a person to decide a matter he

[1] *35 N. L. R. 225.*
[2] *(1911) A. C. 179.*
[3] *(1902) 1 K. B. D. 317.*
[4] *(1919) 1 K. B. D. 176.*

must give the other side an opportunity of being heard; otherwise there is no decision or the decision is merely colourable. (*Rex v. Housing Appeal Tribunal*[1], *Board of Education v. Rice*[2], *Local Government Board v. Arlidge*[3], *Spachman v. The Amerstead District Board of Works*[4]. A *mandamus* will be to compel such person to hear the other side before making his decision.

Obeyesekere, Deputy. S.-G., in reply.—The petitioner cannot make a legal demand for the coupons from the Controller under section 26 (1); it is only the registered proprietor who is entitled to receive the coupons. If the Controller undertook to issue the coupons to the petitioner it was only a concession. If the petitioner is a party interested and he was aggrieved by the decision of the Controller he was entitled to appeal from that decision to the Board of Appeal under the provisions of section 12. The petitioner therefore cannot claim any relief in an application by way of *mandamus*.

Cur. adv. vult.

September 24, 1935. KOCH J.—

This is an application for a writ of *mandamus* on the Tea Export Controller to compel him to issue tea coupons in respect of three tea estates to the petitioner on the footing of an alleged registration that is said to have been in operation in the petitioner's favour prior to May 11, 1935. These estates, which are known as Manickawatte, Sinna Golconda, and Sinna Angoda, belonged to one Sadayan Kangany Muttaiyapillai. He died intestate in the year 1928, leaving as his heirs his widow and eight children.

The eldest of these children was S. M. Sadayapillai. He obtained letters of administration in testamentary case No. 4,666 of the District Court of Kandy to the estate of his deceased father. All the other heirs consented to the grant. He was therefore duly registered by the then Tea Export Controller as the proprietor of these estates, under the Tea (Control of Export) Ordinance of 1933.

Under a deed of agreement No. 941 of March 28, 1934, while the administration in case No. 4,666 was proceeding, the aforesaid Sadayapillai in his capacity as administrator covenanted *inter alia* with the petitioner, the Bank of Chettinad Ltd., to consign, forward, and deliver to the said Bank all the tea crops of the said estates and tea manufactured from bought leaf in the factory of Manickawatte Group, and to endorse and deliver to them all tea coupons that may be issued in respect of the said estates and other tea coupons that the administrator may procure, purchase, or obtain to cover the sale of manufactured tea from bought leaf. The consideration for doing so was that the Bank should advance to the administrator a sum not exceeding Rs. 30,000 on interest at the rate of 8 per cent. per annum. There was a recital in the deed that these advances were required for the purpose of maintaining these estates and meeting testamentary expenses.

In paragraph 4 of this deed it was also stated that 'the contract of agency hereby created shall commence on the date hereof and continue for a period of not lsss than twelve months and shall not be determined

[1] *(1920) 3 K. B. 334.*
[2] *(1911) A. C. 179 at 182.*
[3] *(1915) A. C. at 133 and 141.*
[4] *10 A. C. 229 at 234 and 240.*

until the said sum of Rs. 30,000 and other sums payable under this deed have been duly recovered by the Bank".

Another deed No. 946 of April 11, 1934, followed, which was for all practical purposes to the same effect, except that after reciting the covenants of the prior deed provision was made for the advance of further sums over and beyond the sum of Rs. 30,000 previously stipulated. Paragraph 4 of this deed was to the effect that "Sadayapillai in consideration of the sums lent and advanced doth hereby *irrevocably* constitute and appoint the said Bank the attorney of the said Sadayapillai for the purpose of having itself registered as the person entitled to the tea coupons under the Tea Restriction Ordinance and of having the said coupons issued to the said Bank". There was also in paragraph 3 the additional recital that the parties mutually agree that the tea coupons to be hereafter issued be issued directly in the name of the Bank of Chettinad Ltd. from April 1, 1934, until payment and liquidation of moneys and interest due.

The manager of the petitioner Bank has in his affidavit affirmed that the Bank has from time to time lent and advanced to the said Sadayapillai the sum of Rs. 30,000 and that there was due and owing at the date of this petition a sum of Rs. 12,562.39, futher interest, and commission.

Certain certified copies of documents and correspondence that passed between the Tea Export Controller and the petitioner have been annexed to this application and are relied on to show that the position of the petitioner had been recognized by the respondent, and that tea coupons on this footing had been duly issued to the petitioner until the end of April, 1935. One letter (H) in particular has been emphasized by the petitioner, whereunder the Tea Export Controller on February 16, 1935, in writing to the petitioner informed him that the writer had noted "to issue to you (petitioner) whatever coupons I (the Tea Export Controller) may issue between the period January 1, 1935, and December 31, 1936, in respect of the above estates".

The complaint of the petitioner is that in these circumstances, and after tea coupons had been duly issued to him for some time, the Controller without noticing him or holding an investigation wrote to him on May 11, 1935 (letter I), informing him that Sadayapillai had been registered as the proprietor of a 1/16 share only of the said estates, and that future coupons would therefore be issued to him for the said share only. This 1/16 share, it will be noted, is the precise share of the deceased's estate that Sadayapillai would be entitled to legally under the intestacy.

It is common ground that the administration of the intestate's estate had not been, and is still not, formally concluded.

Mr. H. V. Perera, counsel for the petitioner, argues that as his client was irrevocably appointed an agent by the administrator Sadayapillai to receive tea coupons and to have them issued to him by the Controller, and as his client was entitled to these issues under a legal agreement whereunder moneys were advanced to the administrator by his client for the payment of the debts of the estate and for the maintenance of the aforesaid estates, and as the administrator was legally entitled to enter into this agreement on behalf of the heirs of the estate, the Controller had

no authority to alter the register and substitute the names of the other heirs as co-proprietors in the place of the name of the administrator who was up to that time entered as sole proprietor.

On behalf of the Tea Export Controller objection is taken to the application on three grounds, which I briefly summarize from the arguments addressed to me by the learned Deputy Solicitor-General. They are :—

(1) That under section 12 (2) of the Tea (Control of Export) Ordinance, No. 11 of 1933, the Tea Export Controller had the right to alter the name of the proprietors, that this was a matter in his discretion, that he exercised this discretion, and whether right or wrong, his decision cannot be questioned by a proceeding such as this.

(2) That a grievance, if any, suffered by the petitioner should have been made the subject of an appeal to the Board of Appeal under section 12 (4) of the Ordinance, and no relief therefor can be claimed in an application by way of *mandamus*.

(3) That the petitioner cannot be considered, as the result of the agreement such as is pleaded, a "proprietor" under the definition set out in section 2 of the Ordinance, and is therefore not vested with the necessary legal interest to make this application.

I am of opinion that the grounds of objection must prevail and the rule be discharged with costs.

To deal with the first objection first, section 10 (1) provides for the Controller keeping a register of estates in prescribed form. Section 12 (1) lays down that the forms prescribed for the registers under section 10 shall provide for the registration of the proprietor of each estate. The "proprietor" of an estate is defined in section 2, and section 12 (2) demands that when any question does arise as to whether a person or persons is or are entitled to be registered as proprietor or proprietors, such question shall be decided by the Controller.

I think it is clear that such questions may arise in respect of estates from time to time as the result of altered circumstances, *e.g.*, on the death of a registered proprietor, and decisions can correspondingly be made as occasions arise.

Now, "proprietor" has been defined to mean the owner or lessee of an estate and includes for the time being the person in charge of that estate or any *other* duly accredited agent of such owner. To my mind, the person in charge of an estate therefore means a person in the character of an agent in possession, *e.g.*, a superintendent.

It follows that once the Controller is satisfied who the owners or the lessees are, he will have the right to register the name of an accredited agent as proprietor, if satisfied that the owners or lessees have appointed the latter an agent and are willing to have such agent's name registered accordingly. Finding that Sadayapillai was the legally appointed administrator of Muttaiyapillai's intestate estate, and that he was administering the said estate presumably with the consent of all the intestate heirs, the Controller had the right to enter Sadayapillai's name in the register as "proprietor", which he did.

Under section 26 (1) of the Ordinance such registered proprietor would alone be entitled to receive from the Controller the tea coupons in respect of the estate of which he has been registered proprietor.

On grounds of convenience or otherwise the proprietor may depute some other person to receive the coupons on his behalf. If the Controller is satisfied with the authority he can make a note to issue the coupons thereafter to this person, but this is a concession. The "proprietor" may at any time direct the Controller to the contrary and request a cessation of the issue to this other person. The Controller in that event would be obliged to act accordingly. It is no part of the duty of the Controller, nor has he the power, to enter into the equities of the countermand.

Therefore so long as the petitioner had authority from the administrator—the registered owner—to receive the coupons, the Controller under the note he made saw to the issue of coupons to him as they fell due. Exhibit C, dated April 11, 1934, is the letter whereunder the Tea Controller was informed that the petitioner "had been appointed nominee for the purpose of receiving further tea coupons to be issued hereafter in respect of the above estates". This request was made to the Controller even before copies of the agreements I have already referred to were forwarded to him. The very next day, to wit, April 12, the Controller replied as follows:—"In reference to your letter dated April 11, 1934, I have to inform you that I have noted to issue future coupons in respect of the above estates to the Bank of Chettinad Ltd., Colombo" (Exhibit D).

It will be seen that there is no reference to the receipt of the agreements promised, and from the immediate reply of acquiescence that followed it would transpire that the Controller exercised no discretion in the matter of a claim to receive coupons on the part of the Bank but merely agreed to obey the directions of the "proprietor". Later in early 1935 copies of the deeds of agreement were forwarded and also a letter (Exhibit E) informing the Controller that the petitioner "was appointed by the proprietor his agent entitled to receive tea coupons". A letter of authority (F) containing an undertaking not to revoke the authority signed by the administrator was also forwarded to the Controller. Thereafter the petitioner received the letter H, which I have referred to before.

In the following month Mr. K. Namasivayam, Proctor, on behalf of his clients eight in number, the co-owners of 15/16 of these estates, informed the Tea Controller by letter, dated March 31, 1935, that these co-owners were entitled to have 15/16 of the tea coupons for these estates issued to them (Exhibit J). He also mentioned that if necessary he would obtain and send in a declaration from Court that his clients were entitled to a 15/16 share. This letter was accompanied by other letters, one of which was by the manager of these estates who was in actual charge of them on behalf of the co-owners (Exhibit L). Exhibit L desired the Controller in the event of rival claims to decide as to who the party entitled to the coupons was after notice to the writer.

The Controller on April 3 (Exhibit M) wrote to Mr. Namasivayam that the first provisional coupons for the year 1935 had already been issued to Sadayapillai and the Bank of Chettinad. He desired to have the declaration promised to enable him to take action. Sadayapillai was duly informed of this claim and further correspondence with

interviews followed which culminated in the letter I. by the Controller to the petitioner already referred to. It must be stated that Sadayapillai had no objection to the claim of Mr. Namasivayam's clients.

Mr. Perera argues that the Controller, in acting as he did, did not decide in the manner contemplated by the Ordinance, that is to say, he exercised no discretion but automatically so to speak substituted one set of names for another; that his client the petitioner was not even noticed and the assent of Sadayapillai to the Controller's recognition of the claims of the outstanding co-owners was a fraudulent act.

Now, it is the law that where the proper office or tribunal determines a matter within his jurisdiction and in doing so exercises his discretion, his decision, no matter however erroneous, cannot be reviewed by process of *mandamus*, but if there is a refusal to perform his duty or exercise his jurisdiction or discretion on the question before him, the case would be different. (Vide *Samynathan v. Whitehorn* [1], *Board of Education v. Rice et al.* [2], *Rex v. The Mayor of Stepney* [3], *King v. Port of London Authority* [4].)

It is contested on behalf of the petitioner that he was a party interested and that he should have been noticed and given a hearing before the order complained of was made. The case of *Local Government Board v. Arlidge* [5] was cited in support. In this case the borough council made a closing order under section 17 of the Housing and Town Planning Act, 1909. The respondent was the assignee of a lease of the house, the use for habitation of which was prohibited. The respondent thereupon appealed to the Local Government Board. The Board deputed an Inspector to hold a local inquiry. The respondent was noticed to appear before the Inspector. The Inspector duly submitted to the Board his report. The Board thereupon decided the appeal on the report of the Inspector and on other documents before it. The respondent was not given an opportunity of being heard orally before the Board. The respondent next applied to the King's Bench Division for a writ to quash this decision on the ground that the appeal had not been determined in manner provided by law. The Divisional Bench held against the respondent who appealed to the Court of Appeal. The Court of Appeal took a different view and reversed this decision of the Divisional Bench. The Board thereupon appealed to the House of Lords. The House of Lords was of opinion that the Court of Appeal was wrong, reversed its decision and restored the order of the Divisional Bench. The House of Lords went particularly into the provisions of the Housing Act and decided that the Board acted in order in deputing the Inspector to hold an inquiry, before whom the respondent had the opportunity of presenting his case, and that the Board was also justified in determining the appeal before it without hearing the respondent orally. Viscount Haldane said "I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had". It would appear that the respondent in this case was an interested party under the Housing Act and that he had a right to be heard at some stage of the proceedings.

Is the present petitioner in a similar position? It is argued that the administrator had the right to borrow money for the purpose of paying

[1] *35 N. L. R. 225.*
[2] *(1911) A. C. 179.*
[3] *(1902) 1 K. B. D. 317.*
[4] *(1919) 1 K. B. D. 176.*
[5] *(1915) A. C. 120.*

off the debts of the estate even without consent of Court and the creditor would in the circumstances have a right to recover from the estate. I agree. The deed No. 941 recites that money was to be lent for this purpose, but the deed also recites that money was to be lent for the maintenance of the estates. In regard to a borrowing on this latter account I am not so sure that the borrowing could be effected without permission of Court. However this may be, does such an agreement constitute the lender of money a party interested in the contemplation of the Tea (Control of Export) Ordinance for the purposes of a decision under section 12 (2)? I am of opinion not, even though under the agreement the lender was appointed an agent irrevocably to receive the tea coupons of the estate.

The Tea Controller is concerned—under the definition of "proprietor" in the Ordinance—with owners, lessees, and agents in possession. The petitioner is not such a person and was therefore not entitled to notice. To apply for a writ of *mandamus* a party must have a right and the right must be a legal right—*Exparte Napier (1852) L. J. R. Q. B. 332 at p. 335.*

If there is substance in the argument that he was a person legally interested and therefore aggrieved by the Controller's decision, he should have appealed to the Board of Appeal under section 12 (4) of the Ordinance. The notification No. 7,993 published in the *Government Gazette* of July 21, 1933, rule 2 says that in the case of any assessment, decision, or order an appeal may be preferred to this Board. This he failed to do, and having failed to take advantage of the remedy prescribed, he is debarred from proceeding by way of *mandamus*. There is ample authority for this proposition (*Samynathan v. Whitehorn* (*supra*), *King v. Port of London Authority* [1], *Rex v. The Mayor of Stepney* [2]).

The Controller before he altered the register had material before him on which he acted. He had previously issued tea coupons to the petitioner on the directions of the administrator, who was *primâ facie* controlling the intestate estate for the purposes of administration and supposed to be in possession. The title nevertheless to estate property is in the heirs subject to the payment of the debts of the estate. The administrator was not in physical possession of the properties of the estate. The documents and affidavits show that one T. L. S. Sunderam was in actual possession on behalf of the heirs. The Controller under the Ordinance is concerned with possession and incidentally ownership—*Samynathan v. Whitehorn* [3]. In his affidavit the Controller says that "after due inquiry he was satisfied that Sadayapillai was only entitled to a 1/16 share and that the other co-owners were entitled to the balance 15/16 and he thereupon altered his register". It is no part of his duty to enter upon the legal intricacies of the rights of third parties who have brought themselves into financial contractual relations with the parties legally entitled. Such questions must be settled in a Court of law of proper jurisdiction.

The Controller has not failed to exercise his discretion, nor has he refused to perform a duty he was legally bound to do.

I discharge the rule with costs.

Rule discharged.

[1] *(1919) 1 K. B. D. 176 at 187 and 188.*

[2] *(1902) 1 K. B. D. 317.*

[3] *35 N. L. R. 225 at p. 230.*