1902.
March 7 and 12.

PALANIAPPA CHETTY *v.* ISMAIL SEIDIK.

D.C., Colombo, 14,310.

Competition between creditors—Right of Crown to preference for Customs duties and warehouse rent—Its right to intervene without a decree in its favour, as against other judgement-creditors—Civil Procedure Code, s. 352.

Where a debtor's money is brought into Court, the Crown has a right to intervene even without a judgment in its favour, and be awarded preference for Customs dues and warehouse rent payable by the debtor, as against other creditors who are armed with judgments.

The Crown has only to satisfy the Court that it has a *bonâ fide* claim.

MESSRS. Mack, Proctors, moved the District Court of Colombo for a notice on the Attorney-General, plaintiff in Crown case No. 2,194 of that Court, to show cause why orders of payment should not be issued in favour of the plaintiff in case No. 14,310, and the plaintiffs in cases Nos. 14,266, 14,241, 14,311, &c., for the proportionate share due to each out of the sum of Rs. 6,065.25 belonging to the defendant and brought into Court.

After argument heard, the Additional District Judge (Mr. Felix Dias) made the following order, which explains fully the facts of the case:—

"A sum of Rs. 6,065.25 realized by the sale of some rice belonging to the defendant has been seized under the plaintiff's writ and paid into Court.

"The defendant has left the country, and several other decree-holders against him have also seized the fund in Court. The Crown has a claim against the man for some Customs dues and warehouse rent, for which an action No. 2,194 has been instituted; but no decree has been entered in that case as the summons has not yet been served on the defendant. The plaintiff and other judgment-creditors now apply to divide the money in Court rateably, but the Crown appears and applies for preference of payment of its claim under section 5 of the Crown Debts Ordinance, No. 14 of 1863. I am of opinion that this claim cannot be supported under this section, which clearly shows that such preference is only allowable as against private debts contracted subsequent to the date of the accruing of the Crown debt. The alleged debt to the Crown was incurred between the 24th and 30th October, 1900, but the debts to the present plaintiff were contracted between the 20th August and the 24th October. The plaintiffs' claim is based on six promissory notes, and even laying aside the note of the 24th October for Rs. 2,007.50 the balance of

his claim alone is far in excess of the sum in Court. This decree was signed on the 30th November, 1900, but that fact has no bearing on the contention now put forward by the Crown. The date to be considered under section 5 of the Ordinance is the date on which the debt was 'contracted,' and not the date on which a decree was obtained on it.

"In any case it seems to me that in claiming concurrence with other creditors in the proceeds of sale of a debtor's property the Crown is in no better position than a private party. Section 352 of the Civil Code is the law to be applied in such cases, and under it no one who is not a decree-holder has any voice in the matter, and in the present instance the Crown has no decree

"I therefore allow the application of Messrs. Mack of the 17th May with costs."

The Attorney-General appealed.

Walter Pereira, for appellant.—The Crown claims preference in respect of Rs. 906.51 under the Roman-Dutch Law, as for duties due to it. The District Judge thinks the Crown cannot claim concurrence under section 252 of the Procedure Code without a decree. That section does not bind the Crown, as it is not named in it. The Crown cannot be deprived of its prerogatives except by express legislation. The old summary procedure which was available to the Crown before the introduction of the Code is still available to it. No decree is necessary. An affidavit setting forth the claim is amply sufficient to give preference (*1 Thomson's Institutes, 456*). Here the claim is for Customs dues and warehouse charges. The Crown is entitled to priority. *King v. De Bedier, Râmanâthan, 1820-33, p. 158, per Marshall, J.; in re* Henley & Co., *L. R. 9, Ch. Div. (1878) 469.*

Sampayo, for plaintiff, respondent.—The Crown should have a judgment. The passage from *Thomson* will not bear the construction put upon it. It simply says that questions of claim and preference may be tried summarily, but it does not relieve the claimant of the duty of being armed with a decree. Civil Procedure Code. § 352. The question of the claim need not be decided by a separate action since the Code. The old procedure and the Roman-Dutch procedure have been repealed (*Konamalai v. Sivakolunthu, 9 S. C. C. 203*). The preferential rights of special mortgages must be conceded. *Velliappa Chetty v. Pitcha Maula, 4 N. L. R. 311.* Preference is a claim for full satisfaction as against proportionate division, which is concurrence. It is not disputed that the Crown has a prior right, but it must have a judgment. Taxes and other dues to the Crown are

1902. March 7 and 12.

governed by section 5 of the Ordinance No. 14 of 1843. The Crown prerogative under the Roman-Dutch Law is a Common Law prerogative, and it can be extinguished only by express statute, and § 5 touches all claims, even those of the Crown. The preamble of the Ordinance No. 14 of 1843 shows what is meant by a debt to the Crown. That Ordinance is for the security and recovery of all debts due to the Crown, and this is a debt due. It is an implied contract. It is a contract by implication of law. [MIDDLETON, J.— Where is the contract?] One need not expressly agree to pay taxes, but by simply being a citizen or staying in this country one agrees to pay taxes which such citizenship and residence involves. Compare the contract by record. In that a man does not expressly agree to the judgment, but the fact that a judgment has been passed against him imports a contract against him. Leak *On Contracts*, *p. 10*, speaking of implied contracts, says that a simple contract is that raised by law independent of agreement. It may have no existence in fact, but the law fastens the contractual relation. This case is one of contract, and within section 5 of Ordinance No. 14 of 1843. The judgment cited from *Rámanáthan* was one of the Roman-Dutch Law purely, and does not apply after this Ordinance.

Pereira (in reply).—Taxes are not due by reason of a contract, but by reason of the King's Fiscal prerogatives. Blackstone explains that. *Pereira's Institute*, *p. 45*. It is not a contract which the subjects can repudiate. That being so, the Ordinance only touches contracts and not prerogatives like this. As to procedure, the passage from *Thomson* is clear, and the judgments from *9 S. S. C. and 4 N. L. R.* are only based on section 352 and do not apply.

Cur. adv. vult.

12th March, 1902. MONCREIFF, A.C.J.—

In November, 1900, one Palaniappa Chetty got judgment in an action against Ismail Seidick for upwards of Rs. 9,000 due upon various promissory notes.

In that action, upon the 27th March, 1901, Messrs. George Steuart & Co. brought into Court a sum of Rs. 6,065.25, which was due from them to the debtor. Thereupon certain creditors who had obtained judgment against the same debtor put in claims for concurrence in the distribution of the sum paid into Court, and the Crown put in a claim of preferential payment for a debt due to it by the same debtor in respect of Customs duties, harbour dues, and warehouse rent. The Crown had not obtained a judgment: it had taken proceedings, but had been unable to pursue

them to judgment, because the debtor had absconded, or at all events gone to India. Of the amount due by the debtor to the Crown, a balance of Rs. 906.51 is still unpaid. It appears from section 5 of Ordinance No. 14 of 1843 that the Crown has a preference of payment over all specialties and other debts due to other persons for debts due to it upon mortgage, judgment, award, bond, or other specialty, or upon simple contract, provided that the specialties or other debts referred to have been contracted after the date upon which the debts were contracted to the Crown. Now, the contraction of the debt due to the Crown was not anterior to, but was admittedly subsequent to, the contraction of the various judgment debts upon which the claims for concurrence have been based in this case.

It was argued in opposition to the claim of the Crown that, in view of the terms of that section, the Crown could not have preference, because its claim is founded upon simple contract and is later in date than the debts of the other creditors. It was argued that a debt due to the Crown in respect of Customs duties, harbour and warehouse dues was a debt due upon an implied contract. I do not appreciate that argument. This is a revenue debt. There is an obligation to pay such debts, but because there is an obligation it does not follow that it is an obligation arising from contract. In point of fact it does not legally rest upon any contract.

Then comes the question as to whether, putting aside this section, the Crown has a preference of payment in cases of this kind. I think that undoubtedly it has. I do not propose to go into the subject, because in spite of a passage in *Vander Linden*, which has the appearance of expressing a contrary view, there is no room for doubt in the matter. The question was discussed in a case reported in *Râmanâthan*, in the year 1827, p. 158. Reference to the matter will also be found in *Pereira's Institutes, vol. I., p. 20.* I entertain no doubt that the views expressed in both of those references are correct.

There remains the last question, whether the Crown has any right to intervene without being in possession of a judgment. There appears to be no doubt that before the Civil Procedure Code became law, it was the practice for persons who sought to intervene for concurrence or preference to support their claims by means of affidavits, and the judges were in the habit of dealing with the claims in a summary way (as is set forth in volume I. of *Thomson's Institutes, p. 456.*

If there was no opposition to a claim, if it had all the appearance of being a *bonâ fide* claim, it was allowed without referring the party to a separate action. That having been the practice before

1902.
March 12.
MONCREIFF, A.C.J.

the Civil Procedure Code, a practice founded upon materials in the Roman-Dutch Law, I think that parties should not be deprived of any right to which they were entitled under that practice, unless the Legislature has taken that right away. Section 352 of the Civil Procedure Code undoubtedly requires that litigants who seek to intervene shall be in possession of judgments, but it is plain that in this case the Crown is not bound by that provision, because the Crown is not bound by provisions of this description unless it is expressly mentioned, and there is no mention of it in the section. That proposition is discussed at page 40 of *Pereira's Institutes, vol. I.*, and I entertain no doubt that the question is there correctly stated. That being so, I think that the Crown is entitled to be treated in these proceedings as it would have been treated before the passing of the Civil Procedure Code. If its claim is not opposed, if there is no reason to doubt it, it should be preferentially admitted.

In my opinion the learned judge was wrong. The claim of the Crown should be admitted in preference to the claims of the other creditors who have obtained judgment.

MIDDLETON, J.—Agreed.