

**(1932) 03 CAL CK 0012**  
**In the Calcutta High Court**

Secy. of State

APPELLANT

Vs

Srigobinda Chaudhuri

RESPONDENT

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**Date of Decision :** 02-03-1932

**Acts Referred:**

Government of India Act, 1915 — Section 32

**Citation :** AIR 1932 Cal 834 : 140 Ind. Cas. 856

**Hon'ble Judges :** Rankin, C.J.;C.C. Ghose, J

**Bench :** Full Bench

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**Judgement**

Rankin, C.J.—This suit was brought on 14th August 1926. The plaint is exceedingly badly drawn and contains a good deal of extremely inartificial matter its chief character being a lack of reasonable particulars on all essential points; but an examination of the plaint and of a certain other document--a petition which the Court was asked to regard as containing further particulars of the claim reveals the following as the alleged cause of action: It appears that the plaintiff at all material times was the owner of a revenue paying estate and that some time in 1919 his estate became involved in debt; whereupon he applied to the Court of Wards to declare him to be a "disqualified proprietor," (that is to say, proprietor disqualified to manage his own property) and to take over the management of his estate with a view to extricating it from its financial difficulties. The Court made the order on 7th June 1919. It proceeded to appoint a Manager of the estate and in that way the estate came under the Court of Wards until it was released on 18th August 1923. We are not concerned with the reasons for the release. The defence of the Court of Wards states that the debts had been understated and that the estate proved to be inextricable from its financial difficulties. But it was released for one reason or another in August 1923. It further appears that as required by the Court of Wards Act the usual procedure was adopted by which an account was made out and given to the plaintiff, also that a list of papers was made out and certain papers were delivered to the plaintiff in compliance with the rules made under the Act. That narrative being presupposed, the plaintiff's cause of action is in substance that

the Manager and the staff employed under him have mismanaged the affairs of the estate. Nothing is clear in the plaint hat it does appear that the complaint is with regard to the Manager and the staff employed under the Manager appointed by the Court of Wards and the claim which the plaintiff makes, when examined, comes to this: He says that if the Manager and those under him had done their duty they could have realised a thousand rupees more than they did in connexion with mutation. The complaint is that they "realized and could realize" which appears to mean that they in fact realized more, that the Manager or his subordinates kept the money in their own pocket, but no particulars are available as to that. He further says that they did not spend on settlement operations as much as they claim to have spent but a thousand rupees less and also that they did not spend upon suits as much as they claim to have spent but a thousand rupees less; that would seem to mean that the Manager or his subordinate have got credit for a thousand rupees too much in their account: in other words, that they have got in each case a thousand rupees in their own pockets. He further says that they could have realized by instituting suits a thousand rupees more in the way of rent than they in fact did.

2. Before us Mr. Gupta who represented the plaintiff as appellant has clarified the matter very considerably and he has discussed this case stating that it is no part of the plaintiff's case that the Government itself has any property of the plaintiff in its hands and he has also disclaimed an argument which is to be found in the judgment of the lower appellate Court to the effect that the Government was managing the estate for reward as though it were conducting a sort of business of managing estates. Several issues were settled in the trial Court but the only issue tried was the question whether the suit as framed could be brought against the Secretary of State; and, as very often happens, while the decision of a preliminary issue of this character would be comparatively simple and easy on a proper plaint the chief difficulty in deciding it arises where the plaint is so drawn that it is not easy to see what the cause of action is. I will however for the purposes of this judgment, take what I have already stated as being an exposition (as best I can make it) of the plaintiff's cause of action. I should add that there is a complaint also that certain papers have not been delivered back to the plaintiff. What those papers are does not clearly appear. I do not think that this matter however requires separate discussion. Now, the leading case on this question is of course the case of the P. and O. Steam Navigation Co. v. Secy. of State [1861] 5 B.H. C.R. App.1 which was decided in 1861. That was a case where injuries were done to a horse of the plaintiffs by reason of the negligent conduct of certain workmen employed under the Government in connexion with the dockyard at Kidderpore. It was an action in tort and the matter having come before this Court on a reference from the Small Cause Court and it being contended that the Secretary of State for India in Council was not liable, this Court decided that there was a distinction between a business or mercantile concern carried on by the Bast India Company whether for its own private or for public benefit and act done in connexion with governmental power or powers

which could not be lawfully exercised save by the sovereign or an individual delegated by the sovereign to exercise such powers. Although therefore the action was in tort and of such a character that in England no petition of right could be utilized it was held that the plaintiffs had a right to sue the Secretary of State because the act done was done in carrying on an ordinary business and not in the exercise of governmental power. I will examine the cases later;, but for the moment, keeping that distinction in mind, I would refer to the position of the Court of Wards.

3. Now, the origin and history of the Court of Wards is of course, a consequence of the fact that in 1765 the East India Company obtained the Dewani from the Moghul Emperor Shah Alam. This gave the fiscal administration of that part of the country which it covered and in connexion with the fiscal administration it gave also in substance the power of civil justice. From that time down to a date which may be put at 1858 the East India Company clearly had a dual character--the character of Sovereign and character of trader--and in 1833 came what is called the Charter Act by which it ceased to be a mercantile corporation altogether and really held the Government of India in trust for the Crown. In 1858 came the Government of India Act in which statute Section 65 is to the same effect as Section 32 of the present Government of India Act; that is to say, any suit that could have been brought against the East India Company prior to the Act of 1858 can now be brought properly against the Secretary of State with the result that the public revenue will be answerable for the claim.

4. Now the first trace so far as I know, of the Court of Wards was a decision on 20th August 1790, afterwards recited in the Regulation of 1793 whereby the East India Company determined to make the Board of Revenue a Court of Wards. On 15th July 1791 there were certain rules laid down by the Governor General for controlling the Court of Wards, and the Permanent Settlement Regulation--Regulation 1 of 1793--contains reference to disqualified proprietors and to the way in which the Permanent Settlement is to effect them. Clause 5, Article 10 of the Regulation may be noticed in this regard. In the same way Regulation 8 of that year by Section 20 makes special provision as regards disqualified proprietors so far as the assessment of revenue of their estates is to be concerned; but Regulation 10 is the regulation which establishes a Court of Wards. It makes the Board of Revenue the Court of Wards. It treats all females, minors, and lunatics as persons disqualified from managing their own affairs. It lays down that their estates are to be taken over by managers appointed and that the Court of Wards is to execute the trust of managing their estates. Articles 32 and 36, to which we have been referred, are particularly important. Article 32 protects minors and other disqualified landholders under the Court of Wards from being sued except under the protection of their guardian. It gives them certain rights pending the management by the Court of Wards to apply to the Court of Wards for redress against any negligence or fraud on the part of guardians or managers. Article 36 provides that after a proprietor's " estate has been released and handed back to him the proprietor or his successor may sue the

Collector, the guardian, or the Manager in the zilla or city Court for any acts done by them whilst the estate may have been under the charge of the Court of Wards in opposition to this or any other Regulation. So that the right of suit against the individual officer for misfeasance or negligence was expressly given by the Regulation. Under this Regulation a case arose before the High Court of the North-Western Provinces, the case of Chowdhree Sheoraj Singh v. Collector of Moradabad [1870] 2 N. W. P. 379. In that case the Court of Wards had a certain sum of money in its hands as profit of the estate under its management. The Collector in whose hands the money was had placed it on deposit, in some sense, in the Government Treasury. Then came the Mutiny and the Government Treasury appears to have been looted. A suit was brought by the proprietor and the question was whether or not he could claim that the Government should make good to him the sum of money which had been deposited. It is important to notice the character of the claim. The claim was for money which had been deposited with the Collector or with the Government. If therefore the money was found to be money which had been paid over to Government and was still in Government's possession or if it was a question of a contract between the plaintiff or his representative and the Government it would no doubt have been such a claim as could, in England, have been made the subject-matter of a petition of right. It was not like a claim in tort where no such proceedings could be allowed. Now the Court said this:

In appeal, the plaintiff appellant urges that, as the whole property was held by the Court of Wards, Government must be regarded as a trustee for the plaintiff, and that, assuming the view taken by the lower Court of the period of limitation to be correct, there is an admission of the debt on the part of Government, from the date of which admission limitation should be computed. The first of these objections appears to us to be founded on an erroneous notion of the relation of the Government to the Court of Wards, and of the nature of the present suit. The Court of Wards is constituted by a Regulation which enables it to assume jurisdiction in certain matters over the persons and estates of infant proprietors of estates paying revenue to Government, and so far as he is concerned in the management of such estates, the Collector appears to us to act not in his ordinary capacity as an officer of the Executive Government, but as a ministerial officer of the Court of Wards. For misfeasance in his capacity of an officer of the Court of Wards, the Collector is made personally responsible by the Regulation constituting that Court. Had therefore the suit been brought against Government for the misfeasance of the Collector as an officer of the Court of Wards, we should have held it could not be sustained.

5. Then it went on to say that the present suit was really not for moneys in the hands of the Collector as an officer of the Court of Wards but for moneys deposited in the Government Treasury; and, finding that the claim was barred by limitation the Court did not need to decide whether the Government would otherwise have been responsible for the claim. It will be seen therefore that that decision proceeds upon the footing that the Collector would be liable for acts

done under Regn. 10 of 1793 and that no suit would lie against Government in respect of these acts.

6. Now, the position was not much altered by Bengal Act 4 of 1870 except that by that Act the Commissioner and not the Board of Revenue would be the Court of Wards. There is a provision in Section 42 that Managers are to be paid out of the estate but are to be treated as officers in the pay of the Government. Article 82 gives a right however to a proprietor to sue any person acting under the Act, for anything done in opposition to the Act, or for any breach of trust. The present Act is Bengal Act 9 of 1879. By this the Board of Revenue was again constituted the Court of Wards and if we look to the general scheme of that Act it is abundantly apparent both by its talk of jurisdiction over disqualified proprietors and by the nature of the power entrusted to the Court of Wards and the orders which it is made competent to pass that this whole scheme of dealing with females, minors, and persons of unsound mind as regards their estates is a part--and an essential---of the arrangement brought into force for collection of the land revenue and the permanent settlement of Bengal. From the beginning the jurisdiction exercised by the Court of Wards is an exercise of power essentially sovereign power--power to take over the estate of persons unable to manage their own estates in order that the estates may be properly managed and Government revenue may be rendered safe. Public-interest and the interest of the revenue are clearly the object of the powers given and some of the powers are very drastic for example under Sections 47 and 58 the Manager who does not do his duty in the way of properly accounting to the Court may be imprisoned by an order of the Court of Wards.

7. There are provisions for appeals from the Collector to the Commissioner and from the Commissioner to the Board. The old and somewhat barbarous arrangement by which persons complaining of mismanagement were invited to sue the Collector or the Manager for acts done by them in their official capacity and by which they had to defend such suits at their own expense was however modified in 1879 and an arrangement was made more in consonance with modern ideas of administration. By Section 41 of the Act every Manager is to continue liable to account to the Court, after he has ceased to be Manager; he has to pass his accounts as the Court may direct and, in particular, he is to be responsible for any loss occasioned to the property by his wilful default or gross negligence. It is contended by Mr. Gupta that it is not at all clear from the Act that it contemplates anything save making the Manager responsible by proceedings either by the Court of Wards acting suo motu or by proceedings brought before the Court of Wards itself. There is nothing to show that the Manager is to be subject to a civil suit though, on the other hand, there is nothing to exclude such liability; and Mr. Gupta has contended before us that, that being so, under the Act of 1879 there being no right to go to the civil Court with a suit against the Manager, it follows that the civil liability of Government exists under the Act of 1879 though it was inferentially excluded by the earlier regulation. It only remains to notice that when this Act was passed it applied like

its predecessors to persons incapable of managing their own estates; but in 1892 a provision was inserted under which the present plaintiff came to have his connexion with the Court of Wards--provision enabling the Court of Wards on the application of a proprietor to declare him to be disqualified to manage his own estate. Certain rule making powers were given to the Court of Wards by the Act and Rule 307 and the following rules relate to what should be done on the release of an estate.

8. The Collector is to prepare a list of the papers to be delivered and of the moveable and the immovable properties and the papers are to be given up to the proprietor upon his giving a receipt. Then there is a rule which says that the papers which the Collector decides not to be made over to the proprietor shall be dealt with in a certain way--some, it says, should be destroyed at once; others, it says, should be preserved for such period as the Collector may consider proper; and then comes the curious provision in Rule 310 to which I attach no importance whatever but which has been noticed by the lower appellate Court:

Should circumstances indicate that the proprietor may file a suit against the Court of Wards for accounts, etc., the papers which would be of use in such litigation should be retained for six years from the date of release of the estate and then destroyed.

9. I need not say that the liability of the Secretary of State for India in Council to be sued cannot possibly depend upon any rule made by the Board of Revenue as the Court of Wards. I need not also say that the provision that papers may be kept if it looks as if the proprietor was going to sue the Court of Wards does not enact that the proprietor is entitled to sue the Court of Wards, still less that he should be entitled to sue the Secretary of State for India in Council. That part of the rule appears to be somewhat ill-considered and, in any case, it can have no conceivable bearing upon the question before us.

10. Now, it being quite clear from this review that we are not dealing with the acts of Government in the conduct of a commercial undertaking of any sort, it is necessary to consider more carefully the cases which determine the liability of the Secretary of State for India in Council under the provisions of Section 32, Government of India Act. In the P. and O. case [1861] 5 B.H. C.R. App.1 already referred to, the only question was whether in the case of a tort committed in the conduct of a business the Secretary of State for India in Council could be sued. Whether he could be sued in cases not connected with the conduct of a business or commercial undertaking was not really a substantive question before the Court. But there are dicta in the judgment of Sir Barnes Peacock to the effect that where an act is done or a contract entered into in the course of the exercise of powers which cannot be lawfully exercised save by the Sovereign, no action would lie against the Secretary of State for India in Council.

11. In 1875 another case came before this Court, the case of Nobin Chunder Dey v. Secy. of State [1875] 1 Cal. 11. The plaintiff had deposited money in order to

get a license for ganja shops and he complained that he had not been given the license, that his money had not been returned to him and that he had suffered damages for want of the license. This Court on appeal held that the giving of license and taking excise duty from him was a matter done entirely in the exercise of Sovereign powers. Consequently, basing itself upon the dicta of Sir Barnes Peacock to which I have referred, it held that it was not necessary to look further and that no action would lie. In 1882 a case arose in Madras, *Secy. of State v. Hari Bhanji* [1882] 5 Mad. 273 which was really to recover salt duty overcharged. The suit failed on the facts but the learned Judge at first instance, held that the Court had jurisdiction to entertain it and for that reason the Secretary of State appealed. It was held that there was jurisdiction to entertain such a suit. It was said that the liability to be sued was not restricted altogether to claims arising out of undertakings which might be carried on by private persons, but other claims if not arising out of acts of State could be entertained by the civil Court if the acts were done under sanction of Municipal law and in the exercise of powers conferred by that law. The learned Judge contrasted the cases of *Secy. of State v. Kamachee Boye Sahaba* [1859] 7 M. I. A. 476 and the case of *Forester v. Secy. of State* [1872] 1 P.R. (1872) where property was taken possession of by Government and the question was whether Government in taking possession of the property was exercising an act of State or purporting to do something which it was entitled to do under Municipal law. In 1904 there was the Chief Constable's case which arose in Bombay, *Shivabhajan Durgaprasad v. Secy. of State* [1904] 28 Bom. 314. In that case the suit was for damages for the negligence of a Chief Constable in not properly taking care of hay which had been attached under the Criminal Procedure Code. Sir Lawrence Jenkins in that case doubted whether Sir Barnes Peacock was right in holding that a suit could be brought against the Government for tort; that is, for a grievance for which in England a petition of right would not lie.

12. He however did not act upon this doubt but acted upon other principles following such cases as *Tobin v. Queen* [1864] 33 L.J.C.P. 199 where the Crown was held not answerable for the act of the captain of a ship in taking possession of a certain ship on the footing that she was engaged in slave trade when she was not. He also held that where a duty was imposed by law the employer was not liable. This doubt as to whether Sir Barnes Peacock was right in holding that the Secretary of State for India in Council could be sued in respect of a tort even in the case of business undertaking was also put forward by Fletcher, J., in 1911 in the case of *McInerny v. Secy. of State* [1911] 38 Cal. 797. In that case the plaintiff said that he had suffered personal injuries from colliding with a post put up at the edge of the maidan in Calcutta so that when he was using the road he came against it and got injured. Fletcher, J., put his judgment upon the same footing as in the case of *Nobin Chunder Dey v. Secy. of State* [1875] 1 Cal. 11 a decision by which he was bound, and said that the only liability of the Secretary of State for India in Council to be sued was in respect of acts done in the conduct of undertakings which might be carried on by private individuals. Having asked

what private undertaking was the Government engaged in when it put the post on the maidan he held that the suit was not maintainable. This doubt as to whether the Secretary of State for India in Council can ever be sued in respect of tort was laid at rest finally in the following year 1912 by the judgment of the Judicial Committee delivered by Lord Haldane in the case of *Secy. of State v. Moment* [1913] 40 Cal. 391.

13. There the Government of Burma had an ordinary dispute with an individual about the ownership of certain landed property. It was finally decided that the property belonged to the individual, and the suit was an ordinary common law suit in tort for damages for wrongfully interfering with the plaintiff's property. The local Act had purported to say that all claims to any right over lands as against Government should be brought in the Revenue Court and not in the civil Court. The Privy Council held that was ultra vires of the legislative authority of the local legislature and they held that a suit for damages for wrongful interference with the plaintiff's property would have lain against the East India Company for the reasons explained by Sir Barnes Peacock in the *P. and O.* case [1861] 5 B.H.C.R. App.1. Therefore the *P. and O.* case was finally affirmed in so far as it held that it was possible to sue the Government for tort if it was in connexion with a private undertaking or undertaking not in the exercise of sovereign powers. This put an end to the doubt raised by Sir Lawrence Jenkins and Fletcher, J.

14. It remains however, so far as one can see, open to the consideration of the Judicial Committee whether or not a suit lies against the Secretary of State for India in Council in respect of an act of a subordinate in connexion with the exercise of sovereign or governmental power. That matter was most fully dealt with in the case of *A. M. Ross v. Secy. of State* AIR 1915 Mad. 434 which was heard in the first instance by Wallis, J., as he then was, and reported in 37 Mad. 55 and afterwards on appeal in *A. M. Boss v. Secy. of State* [1916] 39 Mad. 781. There a District Magistrate had made an order directing the closing of a certain labour depot in connexion with recruitment of coolies for the Assam tea gardens. This order directing the closing of the depot was ultra vires. On the other hand it was clearly an act done not in connexion with any private undertaking of the Government or any mercantile concern in which Government was engaged. Wallis, J., said that he did not agree that no suit would lie against the Government except in connexion with a private undertaking and he thought that the decision in the cases of *Nobin Chandra Dey v. Secy. of State* [1875] 1 Cal. 11 and *McInerny v. Secy. of State* [1911] 38 Cal. 797 in this High Court had gone too far. He pointed out that even in England a petition of right did give a remedy against the sovereign not only for breach of contract, but in cases of detention by Government of the land, chattels or money of the subject.

15. He objected therefore to the decision of *Nobin Chunder Dey's* case [1875] 1 Cal. 11 in so far as it held that the Government of India had a greater immunity than the sovereign would have in England in view of the scope of the petition of

right. He said that the question in such a case as was before him was the question of the liability of the Secretary of State for acts, not being acts of State, done by public servants in India in cases within the jurisdiction of the Courts, but he held that the plaintiff in that case had no remedy against the Government for the order of the District Magistrate. Reference had been made in some of the cases to a dictum of Dr. Lushington in the case of *Thomas Bales Rogers v. Rajendra Dutt* [1860] 8 M.I.A. 103. I am bound to say however that the dictum does not seem to me to be any authority upon the question. In that case the Superintendent of the Pilot Service was personally sued for having given an order that had damaged the plaintiff's business. All that Dr. Lushington said was this:

The question whether the order was given by the defendant in his public capacity as an officer of State need not detain us because even if it were, and even if that would itself prevent the Government of India or the Secretary of State for India in Council from being sued the whole basis of the immunity of the sovereign is that the remedy is against the individual.

16. He was not saying or assuming so far as I can see that there would have been in that case nothing to consider had the action been brought against the Secretary of State for India in Council. But Wallis, J., based his decision apparently upon the general maxim to be found in *Story on Agency* that Government itself is not responsible for the misfeasance, or wrongs, or negligences, or omissions of duty of the subordinate officers or agents engaged in the public service; for it does not undertake to guarantee to any persons the fidelity of any of the officers or agents whom it employs; since that would involve it, in all its operations in endless embarrassments and difficulties and losses which would be subversive of the public interests. He also referred to the historical case of *Viscount Canterbury v. Queen* [1842] 4 ST 767. That case came before Lord Lyndhurs on a petition of right. It was a very interesting case and, in my judgment, it is more in point upon the question we have to decide in the present case than any that I have found. Viscount Canterbury was Speaker of the House of Commons and as such he was allowed to occupy certain rooms in the Palace at Westminster. He had certain furniture and chattels in the rooms for the purpose of convenient occupation. At the time in another part of the palace a room was being cleared for a new Court and in this room had been stacked tallies or old sticks with notches that had been used in the old Court of Exchequer. The department in charge of the palace was the Commissioners of Woods and "Forests and in getting rid of this old lumber from the room of the palace they took the means of having them burnt in various stoves used in different rooms of the palace and--so it was alleged--they placed these sticks in different stoves so negligently, carelessly and improperly and in such excessive and improper quantities that the place took fire with the result that the furniture and plates and other things in the Speaker's rooms were injured by fire. Thereupon he brought a petition of right for damages for the injury occasioned by the negligence or misconduct of the persons in the service of the Crown who had occasioned the fire and in dealing with that matter the Lord Chancellor said

this:

It is admitted that, for the personal negligence of the sovereign, neither this nor any other proceedings can be maintained. Upon what ground, then, can it be supported for the acts of the agent or servant? If the master or employer is answerable upon the principle that *qui facit per alium, facit per se*, this would not apply to the sovereign, who cannot be required to answer for his own personal acts.

17. And in another passage he makes this observation:

The salaries of these Commissioners and the expenses of the establishment, and of managing the business of this department, which is placed under the control of the Treasury, are defrayed out of the revenues arising from the property so surrendered, and are consequently paid by the public. These officers are appointed by the Crown, and are removable at pleasure. The subordinate agents are appointed by the Commissioners, and removable by them. The Crown has nothing to do with their appointment or removal. It is by these agents that, according to the statement in the petition, the fire was occasioned. Now, assuming that the fire had been caused by the personal negligence of the Commissioners, would the Crown, in such case, have been liable to make good the loss? They are indeed, styled servants of the Crown; but they are, in truth, public officers appointed to perform certain duties assigned to them by the legislature, and for any negligence in the discharge of such duty, and any injury that may be thereby sustained, they alone are, I conceive, liable. Is it supposed that the Crown is responsible for the conduct of all persons holding public offices and appointments, and bound to make good any loss or injury which may be occasioned by their negligence or delinquency? At least some authority should be cited in support of such a doctrine.

18. In consonance with the ease of *A. M. Ross v. Secy. of State* AIR 1915 Mad. 434 already cited, and at about the same time, the Madras High Court decided in the case of *Secy. of State v. A. Cockcroft* [1916] 39 Mad. 351 where the plaintiff had been injured by the negligent leaving of a heap of gravel on a military road which he was using, that the *P. and O. case* (1) was an authority for the proposition in respect of acts done under sovereign powers; that Government was not liable for the negligence of the servants in the course of their employment. Holding that the military road was not a private undertaking the plaintiff's case was held not to be maintainable.

19. It seems to me therefore that the case therefore us in which it is complained that the Manager appointed by the Court of Wards has not done his duty by realising all moneys with diligence or has not accounted to the Court of Wards for certain money which he has collected is not a case in which the plaintiff can make the Secretary of State or the revenue of India liable. There is no question of a contract between the plaintiff and the Government. It is quite true that there is a foolish statement in the plaint that the Court of Wards undertook to clear his

estate in a certain time. The Court of Wards had no authority to contract on behalf of the Government in such a way and the statement apart from being incredible is of no use to the plaintiff. Moreover, no liability or prayer for relief is based upon that passage. We have therefore no question of a breach of contract by the Government. We have no question ex-concessis of the Government detaining the property of the plaintiff. What is desired is that the Manager should be made to account. Now, one way of making the Manager account is by getting the Court of Wards to call him to account. That has apparently been done. The question is whether, now that he wants to sue to get further accounts from the Manager, he can sue the Secretary of State for India in Council. I can see no principle upon which any such claim can be maintained. For this purpose it is not necessary for us to decide whether a suit in the civil Court would lie or would not lie against the Manager having regard to the particular provisions of the Act of 1879. I should be slow to hold that it would not, but whether it does or whether it does not, it appears to me that there is no ground for maintaining the present case so as to charge the taxpayer.

20. On the merits, moreover, the position is only too clear. Many zamindars get involved, very largely because of the difficulty of getting efficient and trustworthy Managers, and if when they get involved the Court of Wards takes over their estates and does its best to appoint good Managers and to see that they make true and proper accounts, it seems a little hard that the tax-payer should be responsible for complete diligence on the part of Managers and an insurer that the Managers do their duty. In my judgment, the reasoning of the learned Subordinate Judge who tried this case was in substance right and, with great respect to the learned District Judge, I think that he was wrong in taking another view. The only criticism on the judgment of the Subordinate-Judge that I have to make is that having found that this suit was entirely incompetent, he dismissed it making no order as to costs. I cannot think that the taxpayer should contribute one single penny towards the costs of the suit and, as the matter has come before us, I am of opinion that this appeal should be allowed, that the suit should be dismissed and that the plaintiff should pay the Secretary of State costs throughout in all the courts.

C.C. Ghose, J.

21. I agree.