1940 *Present :* **Moseley S.P.J.**

ARNOLIS HAMY *v.* ATTORNEY-GENERAL.

155—C.R. Colombo, 62,089

Post Office Savings Bank—Action by depositor against Attorney-General—Question of jurisdiction by Rule 22—Validity of rule—Right of action against the trustees—Ordinance No. 13 of 1892, ss. 82 and 83 ; rule 22.

A depositor of the Post Office Savings Bank alleged that she deposited to the credit of her account a sum of Rs. 342, when she had been credited with a sum of Rs. 42 only.

She brought this action against the Attorney-General as representing the Crown to recover the sum of Rs. 300.

The Attorney-General denied that he was the proper party to be sued and objected to the jurisdiction of the Court in view of rule 22 of the rules relating to the Post Office Savings Bank made under section 83 of Ordinance No. 13 of 1892, which provided that a matter of dispute between the Postmaster-General and a depositer should be referred to the Attorney-General, whose award or determination shall be final.

[1] *19 Cr. App. R. 13.*

The relevant portion of section 83 of the Ordinance is as follows :—

> "The Governor may . . . . make rules and regulations touching the limit of deposits, the rate of interest to be allowed thereon, the sale or disposal of securities or investments, the deposits of minors and trustees and the mode of payment thereof, and for all matters relating to the general management of such Savings Banks."

Held, that Rule 22 was *ultra vires* so far it affected the settlement of a dispute of the nature involved in this action.

Held, further, that the plaintiff's cause of action was against the trustees of the Post Office Savings Bank.

APPEAL from a judgment of the Commissioner of Requests, Colombo. The facts are stated in the head-note.

E. B. Wikremanayake, for plaintiff, appellant.—The Post Office Savings Bank is a Government institution conducted and managed by officers of the Government. The Postmaster-General who is a Government servant is empowered to appoint and discontinue Savings Banks—see section 51 of Post Office Ordinance, Cap. 146. It is the Governor who makes rules for the management of the Bank—see section 50. Section 52 only provides a mode of investment of Savings Bank moneys. It should be noted that all the trustees are Government servants. Finally, the right to sue the Government is implied in section 55.

If, therefore, the depositor has the right to sue the Government, the Attorney-General is the proper party to be sued—see section 456 of the Civil Procedure Code.

Rule 22 of the rules of the Savings Bank has no application to the present case. It is not contended that the rule is *ultra vires*, but that it is not applicable to a case where there is a dispute between the depositor and the Bank as to the amount deposited. This rule 22 has been framed under section 83 of Ordinance No. 13 of 1892. The power to make rules is therefore limited to the purposes mentioned in section 83. The common law rights of depositors cannot be affected by the rules so made. If the rule stands, the Attorney-General is made judge in his own case.

The word "any" in rule 22 must be given a limited meaning. It means any dispute in regard to matters in respect of which rules may validly be framed under section 83.

T. S. Fernando, C.C., for defendant, respondent.—The Post Office Savings Bank may happen to be conducted by Government servants, but that does not make it a Government institution. The appointing and discontinuing of Post Office Savings Banks are merely statutory duties of the Postmaster-General. The fact that the Governor makes rules for the Bank does not necessarily make it a Government institution; the Governor is empowered by statutes to make rules for various bodies having little to do with the Government.

Section 52 of Cap. 146 permits the deposits of Savings Banks to be invested, *inter alia*, in securities of the Ceylon Government. Such a provision would have been unnecessary if the deposits became Government money. In section 55 the existence of the Savings Bank as an entity different from Government is recognized, the wording of the section

being "against the said bank, and its officers, or against the Government". Such a provision is not consistent with the notion that the Savings Bank is a Government institution or that it is part and parcel of the Government.

The deposits are clearly not credited to revenue, and are kept separate from the funds of the Government. If the money is not received by the Postmaster-General or his subordinates on behalf of the Government, then the Attorney-General is not the proper Party to be sued.

Rule 26 of the Post Office Savings Bank rules constitutes certain officers the trustees of all Post Office Savings Banks. The deposits are vested in them. The fact that these trustees happen to be Government servants is irrelevant.

[MOSELEY S.P.J.—Against whom do you say the depositor can bring the action for recovery ?]

If an action lies, then it is against the trustees constituted by rule 26. Looked at in the proper way, it is submitted that the Legislature did not contemplate actions in Court of Law to recover deposits. Rule 22 was intended to apply to all cases of disputes. In England, the provision regarding disputes is similar, save that the Registrar of Friendly Societies is substituted for the Attorney-General. See *Bailey v. Bailey.*[1] Our rule 22 has been taken almost verbatim from section 48 of the English Trustee Savings Bank Act.[2] This shows that the rule-making authority here did not introduce a novel procedure. The depositors in the Post Office Savings Bank are mostly people of the poorer classes, and as was stated in *Bailey v. Bailey* (*supra*), the intention was to prevent such people spending money on expensive law suits.

Although rule 22 was originally framed under section 83 of Ordinance No. 13 of 1892, by section 93 of Cap. 146, the old rules are deemed to continue in force as if made under Cap. 146, *i.e.*, under section 50 of Cap. 146. Under section 50 the power given to the Governor to make rules under sub-section (3) is without prejudice to the general power under sub-section (2) which empowers rules to be made for the management and regulation of the Bank. There is no reason to limit this power to the internal management of the Bank. If the power is so limited, then we are left in the position that rules can be framed, for instance, regulating withdrawal of moneys by minors and trustees, whereas there is no power to frame rules for withdrawal by depositors of full capacity, who constitute by far the majority of depositors.

The word "any" in rule 22 should be given an interpretation without qualification or limitation, see *Abdul Hamidu v. Perera*[3], and *Byrde v. Appuhami.*[4]

The Attorney-General cannot be said to be a judge in his own cause if the money is not the money of the Government. Even if he was, there is nothing repugnant in the Legislature excluding the Courts from having jurisdiction over certain matters and making the decision of an arbitrator final on such matters—see *1906, 2 K. B. 119 ; 1908, A. C. 101 ; 38 N. L. R. 384;* and section 43 of the Co-operative Societies Ordinance (Cap. 107).

[1] *(1926) Ch. D. p. 758.*
[2] *26 & 27 Vict. C. 87.*
[3] *26 N. L. R. at p. 436.*
[4] *5 N. L. R. 343.*

E. B. Wikremanayake, in reply.—Money of depositors is not credited to revenue because it is not money belonging to the Crown. It is held in trust for the depositor. The fact that the Crown for its own protection vests the money in trustees for the purpose of investment cannot affect the nature of the contract with the Crown. Even the trustees are Government officials and not liable in their personal capacity. An action against them would have to be an action against the Crown Rule 22 is limited in its application. The words "management of the Bank" cannot include a matter like this. The management of the Bank is its internal management. The cases cited on the meaning of the word "any" have no application. "Any" may mean "any at all" but within the scope of the rule itself. Section 83 of the Ordinance expressly lays down the objects in respect of which rules could be made. The dispute in the present case is not one that comes within the scope of section 83.

Cur. adv. vult.

November 9, 1940. MOSELEY S.P.J.—

The appellant is a depositor in the Post Office Savings Bank. She alleges that on a certain date she deposited for the credit of her account the sum of Rs. 342. She has been credited with the sum of Rs. 42 only. She brought an action against the Attorney-General, the respondent to this appeal as representing the Crown, to recover the sum of Rs. 300 being the difference between the amount alleged by her to have been deposited and the amount credited to her account. The respondent, by his answer, denied that he is the proper party to be sued, and objected to the jurisdiction of the Court in view of rule 22 of the rules relating to the Post Office Savings Bank (Subsidiary Legislation, Vol II., page 335).

On each point the Commissioner of Requests found in favour of the respondent, whereupon the appellant brought this appeal. Since, if the Commissioner's finding on the second point is correct, further consideration will be unnecessary, it is only logical to deal with it first.

Rule 22 is as follows:—

> "If any dispute shall arise between the Postmaster-General and any individual depositor, or any executor, administrator, next of kin or creditor, or assignee of a depositor who may become bankrupt or insolvent, or any person claiming to be such executor, administrator, next of kin, creditor, or assignee, or to be entitled to any money deposited in the Post Office Savings Bank, then and in every such case the matter in dispute shall be referred in writing to the Attorney-General, and whatever award, order, or determination shall be made by the Attorney-General shall be binding and conclusive on all parties, and shall be final to all intents and purposes without any appeal."

This rule is one of those made under the provisions of section 83 of Ordinance No. 13 of 1892 and remains in force by virtue of the provisions of section 93 of Cap. 146. The relevant portion of section 83 of Ordinance No. 13 of 1892 is as follows:—

> "The Governor may, with the advice and consent of the Executive Council, from time to time make rules and regulations touching the limit of deposits, the rate of interest to be allowed thereon, the sale or

disposal of securities or investments, the deposits of minors and trustees, and the mode of payment thereof, and for all matters relating to general management of such savings banks . . . .".

Power to make rules under the existing Ordinance, *i.e.*, Cap. 146, is given by section 50. There is no material difference between this section and the corresponding part of section 83 of Ordinance No. 13 of 1892.

Counsel for the appellant contends that neither of these sections provides for the making of rules relating to the rights of depositors, and that, the words "any dispute", where they occur at the beginning of rule 22, can only apply to matters in respect of which rules may properly be made under section 83.

Counsel for the respondent relied upon the power conferred by section 83 to make rules for the "general management" of the bank. It may, I think, be conceded, that the object of the rule is to provide an inexpensive method of settling disputes which concern a class of persons who are of small or moderate means. The rule follows closely the wording of section 48 of the English Trustees Savings Bank Act (*26 and 27 Vic. Cap. 87*) and Counsel for the respondent relied upon the case of *Bailey v. Bailey* [1], as authority that disputes of such a nature must be referred to the arbitrator appointed for the purpose. I have said that the wording of rule 22 and section 48 of the English Act are similar. If rule 22 were a provision of the Ordinance itself I should have no hesitation in applying the decision in *Bailey v. Bailey* (*supra*) to the present case. But since it is not a provision of the Ordinance it is necessary before applying that decision, to be satisfied that a dispute of this nature is a matter concerning which section 83 empowers the rule-making authority to legislate, that is to say, is a dispute between the bank authorities and a depositor a matter embraced by the expression "general management of the bank". It seems to me that in its context the word "management" is synonymous with "administration" or "control". I do not propose to say that, in certain circumstances, it may not be applied to the relations existing, or to exist, between the Postmaster-General and depositors. It is, however, my opinion that the legislature has not conferred upon the rule making authority, nor did it intend to do so, the right to deprive, by a stroke of the pen, a depositor of his common law right to look to the Courts for redress of grievances. It was pointed out by Counsel for the respondent that a similar provision exists in section 45 of the Co-operative Societies Ordinance (Cap. 107) and he argued therefrom that ouster of the jurisdiction of the Courts is, in certain cases, contemplated by the legislature. In that instance, however, the Legislature made this provision by its own enactment, which seems to me to be an argument in favour of the appellant. In my view rule 22 in so far as it affects the settlement of a dispute of this nature is *ultra vires.*

In view of my opinion on this point it now becomes necessary to decide who is the proper person to be sued in the circumstances.

It is true that the Savings Bank has been established by legislative act, that the Governor makes rules for its management, that the

[1] *(1926) Ch. Div. 758.*

Postmaster-General opens and closes branch offices at will and that there is a reference in section 55 of Cap. 146 to demands against the "bank and its officers or against the Government".

Counsel for the appellant contended that the Savings Bank is a Government institution and that the proper person to be sued, by virtue of the provisions of section 456 of the Civil Procedure Code is the Attorney-General. On the other hand it is clear that sums deposited in the bank are not credited to revenue and section 52 provides for the investment of such sums. Rule 27 of the above-mentioned rules appoints trustees of all Post Office Savings Banks, one of whose duties is to invest surplus funds on approved securities, to retain them or deposit in a selected bank, and to realize such funds as may be required for the purposes of the bank. It may be true that ultimately it may be necessary for a depositor to look to the Government for repayments of his deposits, as indicated by the concluding words of section 55 which I have quoted above. Be that as it may, in my opinion, the appellant's cause of action is against the trustees appointed by rule 22.

On this point the appeal fails and it must therefore be dismissed. I make no order as to costs.

Appeal dismissed.