Present: Fisher C.J. and Garvin J.

ATTORNEY-GENERAL *v.* PANA ADAPPA CHETTY.

486—D. C. Negombo, 17,125.

Crown Debtors—Tacit hypothec—Arrack renters—Ordinance No. 14 of 1843, s. 4.

The Crown has no tacit hypothec over the property of a person who has purchased the exclusive privilege of selling arrack in a specified area under the provisions of the Excise Ordinance.

Per GARVIN J.—The tacit hypothec of the State over the property of those with whom it has contracted is limited to contracts connected with the collection of revenue.

THIS was an action brought by the Attorney-General for a declaration that certain properties bought by the appellant in 1924 were bound and executable in favour of the Crown for the payment of Rs. 38,637.78. The properties in question were mortgaged by one Stephen de Croos to Ulugappa Chetty on two bonds dated April 29, 1922, and June 2, 1923. In execution of a decree on the said bonds, the properties were sold and purchased by the appellant in May, 1924. The mortgagor and two others had purchased the privilege of selling arrack by retail within certain areas from the Crown on June 28, 1921. On September 23, 1921, de Croos mortgaged certain other properties to secure payment of the money due upon the contract. Default in payment was made and the properties were sold. They did not realize the amount and there remained due to the Crown the sum of Rs. 37,635.78. The learned District Judge gave judgment for the plaintiff, declaring the property purchased by the appellant bound and executable in favour of the Crown for the sum.

H. V. Perera (with *N. K. Choksy*), for the defendant, appellant.—The arrack renters were debtors under section 5 of the Ordinance.

Section 5 only gives a preference of payment.

[Garvin J. inquired what then was the effect of sequestration. Some of the properties had been sold to the appellant after the sequestration. Would they not be subject to the sequestration ?]

No. The sequestration does not invalidate a sale under another decree. When the property is sold then questions of preference of payment of the proceeds will arise, but the sale under the other decree is good.—See, *e.g.*, section 660.

The tacit hypothec of the Crown is over the property of only those who have had dealings with the public revenue. (*Herbert's Translation of Grotius, bk. II. ch. 48, at 262.*)

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The Roman-Dutch law does not apply since the Crown Debtors Ordinance. Nevertheless it is in accordance with the Roman-Dutch law.

See *Lee's Roman-Dutch Law, 2nd ed., pp. 192-3; Van Zyl's Judicial Practice, 2nd ed., p. 581.* It is only the Fisc which had the tacit hypothec in certain cases. *(1858) 3 Searle's Rep., p. 78,* shows that the Fisc is not the Crown generally, but only that department which has to do with the revenue.

Van der Keessel's Thesis No. 420 (Lorensz's Translation, s. 15) seems to give the tacit hypothec even against those who have entered into contracts with the Crown.

There seems to be a conflict between this and the other authorities.

In this state of affairs the Ordinance declares and codifies the law.

The Ordinance is exhaustive of all classes of debtors. An examination of its provisions shows that the former rights of the Crown were replaced by its provisions.

There being only a preference of payment the action must fail as it was based on the existence of a tacit hypothec.

Stanley Obeyesekere, Acting S. G. (with *M. W. H. de Silva, C.C.* and *Mervyn Fonseka, C.C.*), for the Crown, respondent.—Under the Roman-Dutch law, immediately de Croos entered into the contract with the Crown for the rents his properties became subject to a tacit hypothec. His liability to pay the rents arose then, although he was merely given a concession to pay the full amount by instalments.

For securing payment the Crown had two concurrent securities, an express and a tacit mortgage.

The Crown is not bound by the provisions of the Code relating to mortgage actions.

Further, the proviso to section 644 shows that these sections do not apply to tacit hypothecs. The chapter is only concerned with mortgages created by deeds.

Hence the case has to be looked at in the light of the Roman-Dutch law, under which it was quite competent for a mortgagee to bring a separate action for a hypothecary decree against the owner of the land only without joining the mortgagor as a party. That is what the Crown has done in this case.

Under the Roman-Dutch law the Fisc has a general legal hypothec over all the property, movable and immovable, of every person with whom it has entered into any contract. *Voet XX. tit. 11, 8. (Berwick's Translation, 318.)*

It is allowed to the Fisc and all those with whom the Fisc has contracted (*Grotius, bk. II. ch. 48, s. 15*). This hypothec is unaffected by Ordinance No. 14 of 1843.

H. V. Perera, in reply.

June 12, 1928. FISHER C.J.—

In this case the defendant-appellant purchased certain properties under the following circumstances:—The properties in question were mortgaged by one Stephen de Croos to Ulugappa Chetty on two bonds dated April 29, 1922, and June 2, 1923. Ulugappa Chetty put the bonds in suit and recovered judgment, and in May, 1924, the properties were sold in execution of the judgment and purchased by the appellant. The mortgagor and two others had purchased " the privilege of selling arrack by retail " within certain areas from the Crown on June 28, 1921, and had agreed to pay the purchase money in twelve monthly instalments. On September 23, 1921, de Croos mortgaged certain properties other than those with which we are concerned to secure payment of the purchase money. Default in payment was made and the properties were sold. They did not realize the amount charged upon them, and there remained due to the Crown the sum of Rs. 37,635.78. The present action was brought by the Attorney-General to have it declared that the properties purchased by the appellant in May, 1924, are bound and executable for the said sum of Rs. 37,635.78. It is admitted that de Croos became a debtor to the Crown on June 28, 1921, and the properties, which are the subject-matter of this action, belonged to him on that date, and the sole question which we have to decide on this appeal is whether those properties are subject to a charge in favour of the Crown.

The position of persons who purchase the privilege of selling arrack by retail with regard to Ordinance No. 14 of 1843 was long ago considered by this Court. In the case D. C. Galle, 28,947 (1870), reported in *Vanderstraaten's Reports* at page 89, the Crown claimed a preferential right to proceeds of sale of property mortgaged to the plaintiff who had obtained judgment on the mortgage and caused the land to be sold. The defendant had purchased arrack rents from Government and had " entered into a bond for securing the purchase money dated June 26, 1867. By this bond the defendant specially mortgaged to Government for the payment of the purchase money of the rent certain lands, not including those now in question, and gave a general mortgage over all his property. The first instalment of the purchase money for the rent fell due on July 31, 1867," and the plaintiff's mortgage was dated July 29, 1867.

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For the Crown it was contended that the defendant being a renter all his property became bound to Government under section 4 of Ordinance No. 14 of 1843 from the date he became a Government renter, but the Supreme Court, approving the decision of the District Judge on this point, held that the defendant was " a debtor and not an accountant of the Crown," and that the case came under section 5 and not under section 4 of the Ordinance. The Supreme Court held also that the claim of preference accrued from the date of the contract, namely, June 26, 1867. It is to be noted that there is no reference in the report to any suggestion that the Crown had a tacit hypothec by Common law over the defendant's property, nor does the effect of his having given a " general mortgage over all his property " appear to have formed the basis of any claim by the Crown.

This decision was followed by the Supreme Court in the case of *The Queen's Advocate v. Perera.*[1] In that case the Court declined to hold that so called " arrack renters " came within the class of persons whose property is affected by section 4, and no question of a tacit hypothec was apparently raised. In giving judgment Sir Richard Cayley C.J. said:—

> " I am disposed to agree with judgment of this Court reported in *Vanderstraaten's, p. 89* that the purchaser of the privilege of selling arrack is not a Government farmer or renter or other officer employed in the collection, charge, receipt, or expenditure of the revenue, &c., or public accountant, but that if he fail in paying any part of the purchase money in terms of his agreement or bond, he is simply a Crown debtor under section 5. Such a purchaser does not collect or expend any revenue, nor has he to account to the Crown for anything that he receives. So far as the Crown is concerned, all the purchaser has to do is to pay his purchase money; and all that he receives is the price of his own arrack, &c. The purchasers of this monopoly are, I am aware, frequently called in popular language " arrack renters," but this term does not appear to me to be properly applicable to them. The point may perhaps be not free from doubt; but I am not prepared to dissent from the decision of this Court in the case reported in *Vanderstraaten* ";

and Clarence J., after expressing a doubt as to whether the case in *Vanderstraaten* was rightly decided, said—

> " I do not think it necessary, however, to discuss that question anew, because I think we are bound by that decision. The decision is now more than ten years old, and has ever

[1] *(1881) 4 S. C. C. 136.*

since remained, so far as I am aware (and no counter authority was cited to us), the ruling authority on the point. That ruling having been ever since acquiesced in by the Crown, and the public having ever since contracted with each other on this footing, I think it is too late for this Court to review the decision."

The position thus established was not really challenged by the respondent, and in my opinion it is clear that an " arrack renter " is not a person who is affected by section 44. As stated at page 91 of *Vanderstraaten's Reports* " He receives no money or goods for which he has to render account to Government "; and in the words of Sir Richard Cayley, referred to above, " so far as the Crown is concerned, all the purchaser has to do is to pay his purchase money." He is therefore an ordinary debtor so far as the Crown is concerned.

But it was contended for the respondent that the right claimed by the Crown is based on Roman-Dutch law and was never dependent for its existence upon and has not been affected by any of the Legislative Enactments in Ceylon regulating the security and recovery of debts due to the Crown. Some dicta of Judge Berwick in his judgment in D. C. Colombo, No. 2,024, were relied upon in support of that contention. In that case there was a competition as to the right to the proceeds of sale of property which had been sold in execution of a decree obtained by the Crown. The judgment-debtor was a lessee of the Crown under a lease dated December 19, 1879, and the Crown recovered judgment for the amount of three instalments of rent which became payable on March 1 and September 1, 1883, and March 1, 1884. The intervenient had a decree to recover the amount of a debt dated September 21, 1883. The learned Judge held that the tenant was " neither a Government surveyor, nor a renter, nor a public accountant, nor an officer within the meaning of section 4, but that the debt due by him falls under section 5 of Ordinance No. 14 of 1843, and that it accrued in 1879, and that therefore the Crown was entitled to preference." In his judgment the learned Judge referred to the " tacit general hypothec " of the Crown by Common law, and to the Crown's " legal tacit hypothec ". No necessity, however, arose for giving any judgment or founding any decision on that basis, and the Supreme Court on an appeal from the judgment, reported as *Attorney-General v. Rajapakse*,[1] merely endorsed the view that the Crown had a right of preference under section 5 of Ordinance No. 14 of 1843 which accrued in 1879.

In my opinion the soundness of the contention can be tested by a consideration of the question whether the existence, or continued existence, of such a right in respect of the property belonging to an ordinary debtor (if it ever existed at all and was introduced

[1] *(1886) 7 S. C. C. 139.*

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into Ceylon) is consistent with the provisions of Ordinance No. 14 of 1843 and its predecessors. Ordinance No. 14 of 1843 is the last of a series of enactments dealing with the security and recovery of debts due to the Crown.

The first of these enactments is Regulation No. 7 of 1809. It is entitled "For providing for a more 'effectual course of proceeding for the recovery of debts due to the Crown,' and after reciting that 'much fraud and evasion in secretly removing their goods hath been practised by debtors to the Crown, by reason of their previous notice of the intention and purpose of the collectors of His Majesty's revenue to proceed against them the said debtors, their goods and chattels, for the debts due and owing to His Majesty" gave powers to collectors of revenue to "seize, take, and in safe custody to keep (but without removing the same until the trial of the case by a competent jurisdiction and judgment obtained for the Crown) all and every the property of any debtor" or debtors to the Crown within the said collector's district to an amount sufficient to cover the said "debt so due and owing and the costs attending the same". The rest of the Regulation relates to procedure.

It seems to me to be clear that this Regulation having regard to the recital of the reason for its origin and to the power to seize, &c., "but without removing the same" applied solely to movable property.

Regulation 7 of 1809 was repealed by Ordinance No. 2 of 1837 which was entitled "For providing for the better security and recovery of debts due to the Crown" and after reciting that it was "expedient to repeal the Regulation No. 7 of 1809 and to make further provision 'in lieu thereof' gave power (section 2) to Government Agents to seize, take, and in safe custody to keep but without removing the same (except in those cases only where there are no adequate means for safely and securely keeping the said property at the place where it is seized and no sufficient security given for the value thereof) all and every the property of any debtor or debtors to the Crown to an amount computed to be sufficient to cover the said debt so due and owing and the costs attending the same".

Section 3 deals with proceedings subsequent to seizure. Section 4 extended to immovable property, and provided that "all lands and tenements which any Treasurer, Government Agent, Assistant Government Agent, Collector of Customs, Government Farmer or Renter, or other officer employed in the collection, charge, receipt or expenditure of the revenue, public money, stores, or other property belonging to Government or any other public accountant now hath or at any time hereafter shall have, within the time during which he shall respectively remain accountable to Government, shall be liable for the payment of all arrearages or debts and all fines,

penalties, and forfeitures due or adjudged to His Majesty, His Heirs and Successors by or from such officer or public accountant; and the said lands and tenements and all other the goods, chattels, property, and effects of the said officer or public accountant shall be seized and sold in execution for the payment of all such arrearages or debts, fines, penalties, or forfeitures as may be adjudged due and payable to His Majesty, His Heirs, and Successors by any competent Court of law in like and as large and beneficial a manner, to all intents and purposes, as if the said officer or public accountant had the day he became first an officer or accountant as aforesaid specially mortgaged the said lands and tenements to His Majesty, His Heirs and Successors ".

Ordinance No. 2 of 1837 was repealed and substantially re-enacted by Ordinance No. 1 of 1843, which was itself repealed and substantially re-enacted by Ordinance No. 8 of 1843, the Ordinance now in force.

This Ordinance bears the same title as the two preceding Ordinances, and except for some few modifications which in no way affect the question under consideration all three Ordinances are similarly worded.

The power conferred by Regulation No. 7 of 1809 has therefore descended unchanged through intervening legislation and is now embodied in section 2 of Ordinance No. 14 of 1843, in which power is given precisely as in section 2 of Ordinance No. 2 of 1837 " to seize, take, and in safe custody to keep, but without removing, the same (except in those cases where there are no adequate means for safely and securely keeping the said property in the place where it is seized and no sufficient security given for the value thereof) all and every the property of any debtor or debtors to the Crown."

That section, therefore, is founded ultimately on the declaration in Regulation No. 7 of 1809 that it came into being in order to prevent removal of goods for the purpose of defeating claims of the Crown, and the words in brackets in section 2 express with more emphasis than those in the Regulation the intention that the application of the power conferred is confined to movable property.

The case of *Attorney-General v. Croos et al.*[1] which was cited to us was decided on a question of *locus standi*. The extent of the applicability of section 2 was not discussed or called in question, and in my opinion, for the reasons set out in the preceding paragraph. Section 2 has nothing to do with immovable property, and that case throws no light on the question we have to determine.

What then is the effect as regards immovable property of this legislation in its ultimate form, Ordinance No. 14 of 1843, and does this Ordinance embody an exhaustive statement of the law relating to the special position of the Crown with regard to the

[1] *26 N. L. R. 451.*

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"security and recovery of the Crown debts"? Counsel for the respondent contended that the tacit hypothec of the Crown under Roman-Dutch law extended, not only to the property of all officers and accountants to the Crown, but also to that of all other debtors to the Crown, and that it was exactly similar to the charge created by section 4, which, he said, was unnecessary, inasmuch as it merely confirmed, as regards the persons to whom it applies, the already existing law. So far, therefore, as officers and accountants to the Crown are concerned the Roman-Dutch law right has been superseded by the statutory right. As regards all other debtors to the Crown, including persons in the position of Stephen de Croos, it is said that the tacit hypothec under the Roman-Dutch law still obtains.

If it be true that under Roman-Dutch law as applied in Ceylon the property of *all* debtors to the Crown was subject to a tacit hypothec, and that section 4 and the corresponding sections in previous Ordinances confirmed what was already the law as regards persons to whom the section applied, I think the only inference that can be drawn from the language of these Ordinances is that after the rights of the Crown were put on a statutory basis by the enactment of section 4 of Ordinance No. 2 of 1837 such a situation no longer obtained with regard to Crown debtors who do not come under the section. For ordinary debtors are not only not mentioned in section 4, but they are expressly referred to in sections 5 and 8. Their deliberate exclusion, therefore, from section 4 would in my opinion indicate that thenceforward they were to be on a different footing from the persons mentioned in that section.

But it is by no means clear that Roman-Dutch law did so provide as regards ordinary debtors. Professor Lee expresses a doubt on the subject. In a footnote to page 182 of *An Introduction to Roman-Dutch Law (2nd edition)* speaking of tacit hypothecs enjoyed by the Crown he says: "*Query.*—Whether this hypothec extends to the 'property of everyone with whom the Crown has entered into a contract'." I think, too, that the language of the Ordinances strongly endorses the view that Roman-Dutch law (as introduced into Ceylon at all events) did not extend as is contended for. For it seems inconceivable that if prior to the Ordinance No. 2 of 1837 the property of ordinary debtors was in the same position as that of the persons mentioned in section 4 the section would have been silent with regard to them, and stopped short of mentioning them, with the result that as regards such debtors the Crown would be left to continue to rely on its Common law right notwithstanding that the position of all Crown debtors was the subject-matter of the legislation, and the further result that the section would be part of a codifying scheme of legislation on this particular subject with probably the most far-reaching item left out.

The very next section—section 5—deals with debts due to the Crown by another class of debtors, namely, " by other persons than officers and public accountants mentioned in the preceding clause ", and gives the Crown certain preferential rights of payment over all debts which had been contracted by or became due from " such Crown debtors to any other person or persons whatsoever " subsequent to the date upon which the debt to the Crown accrued.

Section 6 safeguards the position of persons and bodies corporate who are the holders of duly executed mortgages of immovable property prior in date to the claim of the Crown and of persons and bodies corporate who under Roman-Dutch law have a legal lien, mortgage, or privilege which is entitled to preference over such mortgages.

Section 7 relates to movable property and protects *bona fide* purchasers, &c., for good consideration who became such prior to the execution of a judgment obtained by the Crown.

Section 8 is to my mind very significant. It provides that all alienations and dealings with their lands or goods by persons who are " debtors " to the Crown, and in my opinion the word " debtors " means persons who at the time of such dealing are already debtors to the Crown, made fraudulently with the intention of delaying or defrauding the Crown of its rights are to be deemed void and of no effect and declares that those who are parties to such transactions are guilty of an offence and liable to a penalty.

If the Crown had a tacit hypothec such as is contended for in this case it would be a paramount charge, and no dealing with the property could be effected except subject to the paramount charge. There would thus be no need so far as the Crown was concerned to be protected against subsequent dealings or to declare them void. In my opinion this section, which was I think merely intended expressly to put the Crown in the same position as private persons in respect of transfers of property made to defraud creditors, is inconsistent with the existence of a tacit hypothec.

A careful survey, therefore, of this legislation leads, in my opinion, to the conclusion that Ordinance No. 14 of 1843 is exhaustive on the subject of special privileges enjoyed by the Crown in connection with the security and recovery of debts and consequently that the tacit hypothec contended for, if it ever existed, no longer exists.

For these reasons I think that the judgment of the District Court must be set aside and judgment entered for the defendant, with costs here and in the Court below.

GARVIN J.—

The claim of the Crown in so far as it is based on the Crown Debtors Ordinance, No. 14 of 1843, depends entirely upon whether the purchaser of the exclusive privilege of selling arrack in a specified

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area under the provisions of the Excise Ordinance, No. 8 of 1912, is "Government renter or farmer" within the meaning of section 4 of the first-mentioned Ordinance. So far back as the year 1870 it was held that a purchaser of a similar privilege under the Arrack Ordinance—since repealed—was not a "renter" within the meaning of section 4 (*vide* D. C. Galle, 28,947 [1]). This ruling was followed in *Queen's Advocate v. Perera*,[2] Clarence J. observing "That ruling (D. C. Galle, 28,947) having been ever since acquiesced in by the Crown, and the public having ever since contracted with each other on this footing, I think it is too late for this Court to review this decision".

The position of a purchaser of the privilege of selling by retail under the Excise Ordinance is in this respect indistinguishable from that of a purchaser of a similar privilege under the repealed Arrack Ordinance.

Nearly fifty years more having elapsed since the judgment in *Queen's Advocate v. Perera* (*supra*), it must be taken as settled law that such a purchaser is not a person over whose property the Crown is by section 4 of the Crown Debtors Ordinance given a legal general hypothec.

The principal submissions made by the learned Solicitor-General were:—

(*a*) That under the Roman-Dutch law the Crown had a legal general hypothec over all the property, movable and immovable, of every person with whom it has entered into any contract; and

(*b*) That this Common law legal general hypothec remains wholly unaffected by Ordinance No. 14 of 1843.

The latter of these two points has been fully considered in the judgment of My Lord, and I am in complete agreement with his conclusion that the Crown Debtors Ordinance is exhaustive of the special privileges enjoyed by the Crown. This is decisive of the appeal. But in view of the importance of the first of these two points I am unwilling to leave it wholly unnoticed.

What has to be considered is whether the privilege of the Crown in such matters is as extensive as is claimed. The citations made in support of this claim are traceable to the Code, where it is said that the Fisc has the right of legal hypothec over the property of him "*quo cum contraxit*". Voet [3] when dealing with the subject of legal hypothecs states: "For, firstly, it is allowed to the Fisc, and after this exemplar to the Chief of the State, in the property of administrators (of the affairs of the Fisc and Prince); and in that of those with whom the Fisc has contracted; and also in the property of citizens for taxes and imports; . . . . ."

[1] (*1870*) *Vanderstraaten 89.* [2] (*1881*) *4 S. C. C. 136.*
[3] *Lb. XX. tit. 11, 8* (*Berwick 318*).

The tacit hypothec over the property of him with whom it has contracted is a right conceded to the Fisc. But it is a question whether this can be regarded as a sufficient authority for the broad proposition that the privilege may be claimed by the Crown in connection with any contract made by any branch of the administration. The term "Fisc" in its strict meaning is that branch of the administration which is charged with the collection of the revenue. There is, therefore, ground for the inference that the contracts referred to are those entered into in connection with the collection of the public revenue, such as contracts, by which the right to collect is farmed out. Voet in this chapter refers to the farming of the revenue, the leasing of taxes to publicans, and the transfer to them of the tacit hypothec by the Fisc, but nowhere does he state that this right of tacit hypothec arises in respect of every contract whether made by the Fisc or any other branch of the administration, or give any reason to suppose that the right was more extensive or intended for any other purpose than to secure to the State the collection of the revenue and its due management and application by its administrators.

Grotius in his *Introduction*[1] enumerates those entitled to tacit hypothecs and refers to the case of the State as follows:—"Fifthly, the State over the property of its debtor, except in the case of fines or penalties."

In his commentaries on Grotius' *Introduction* Van der Keessel, after affirming the right of the Province of Holland to a tacit hypothec over the property of those who are indebted in taxes, proceeds as follows:—

> "A similar right belongs to the State over the property of its administrators or officers, as well as over the property of those with whom it has entered into any contract, for we have adopted this legal mortgage also out of the Civil law.[2]"

The passage in Grotius is too brief a contribution to be made the basis of a decision on so important a subject. As to Van der Keessel, there is no reason to suppose that the right of tacit hypothec adopted from the Civil law was enlarged so as to embrace the case of contracts made for purposes other than those connected with the collection of the revenue. It is interesting to note that even at the time when Van der Keessel wrote there was a tendency to restrict even this privilege:—

> "This law (the law of Haarlem) places debts and personal taxes due to the State or the City under the same rule as to preference; so that, as amongst themselves, they have

[1] *Grotius' Introduction, bk. 11, ch. XLVIII., s. 15.*
[2] *Van der Keessel's Select Theses, bk. 11, ch. XLVIII., s. 15.*

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> preference according to time, but are not preferred to the price of immovable property sold to the debtor, nor to real taxes, nor to the expenses of repairs made within three years, nor to special mortgages; and they *are not any longer entitled to that privilege, which was allowed them under the general law of Holland.*[1]"

Van Leeuwen [2] when commenting on tacit mortgages following Grotius' enunciation refers to the privilege as a preference " for the debts and over the property of those who have any control of public revenue." It is evident that Van Leeuwen held the same view as Sande,[3] that the tacit hypothec of the State extended to the property of those who had control of the revenue and not to the property of any other debtor.

The balance of authority seems to favour the view that the tacit hypothec of the State over the property of those with whom it has contracted must be limited to contracts connected with the collection of the revenue—as for example the contracts of farmers or lessees of the revenue.

It is interesting to note that a similar contention was advanced on behalf of the Crown in the South African case of *Chase, N. O. v. Du Toit's Trustees.*[4] It was not necessary for the determination of the case that the point should be decided. But Cloete J. discussed the question and stated his conclusion as follows:—

> " In my opinion this right cannot be strained to apply to every contract made on behalf of the Government, say, for contracting to build or erect public works, or engagements of that nature, which do not form the source of the collection of the ordinary public revenue."

Watermeyer J. in a brief reference to the question expressed " considerable doubt whether Government is entitled to a hypothec of the nature contended for."

If I may respectfully say so, the view taken by Cloete J. is the correct one and is in accordance with the original authorities. It is evidently the view held in Ceylon at the time our Ordinance No. 14 of 1843 was framed, which by section 4 declared the right of the Crown to a tacit hypothec over " all lands and tenements which any Treasurer, Government Agent, Assistant Government Agent, Collector of Customs, Government farmer or renter or other officer employed in the collection, charge, receipt, or expenditure of the

[1] *Van der Keessel's Select Theses, bk. 11, ch. XLVIII., s. 45.*
[2] *Van Leeuwen, bk. 11, ch. XIII., s. 10.*
[3] *Sande, bk. III., tit. 12, s. 1.*
[4] *3 Searle's Reports, p. 78.*

public revenue, public money, store, or other property belonging to Government, or any other public accountant, now hath or at any time hereafter shall have . . . . ."

As to this appeal, it only remains to express my concurrence with the Chief Justice in the order he proposes.

Appeal allowed.