1876. October 2.

ERAVANNI REVIVARMAN v. ITTA'PU REVIVARMAN.

not have satisfied us of the propriety of taking that course. The question is not merely whether a man is unworthy of his position, for that is not the ground for removing him, but whether the removal will benefit the family.

We certainly can see no case which could justify any Court in saying that his conduct has been such as to satisfy it that he cannot be retained in his position without serious risk to the interests of the family; still less can we see ground for the revolutionary remedy of the District Judge.

Compelled to choose between introducing a stranger and leaving the management in the hands of him to whom law and custom assign it, there can be no doubt on the facts of this case that we ought to choose the latter course. The state of families and property in Malabar will always create difficulties. Their solution will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the káranavan.

In all these cases the order of this Court will be to dismiss the original suits. There will be no costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Holloway and Mr. Justice Innes.

1876. October 9.

G. D. LEMAN, PRESIDENT OF THE MUNICIPAL COMMISSION FOR THE TOWN OF GUNTU'R, (DEFENDANT) APPELLANT *v.* V. DAMODARÁYA (PLAINTIFF) RESPONDENT (1).

Tax on profession illegally levied—Madras Act III of 1871*—Construction of Statutes.*

Section 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so-called tax had no legal existence.

There is no provision in that Act for levying any tax described in section 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in sections 58—61. If that machinery is not applied, no liability to pay such tax can arise.

Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such

(1) Regular Appeal No. 53 of 1876 from the decree of the Acting District Judge of Kistna, dated the 23rd March 1876.

tax was imposed, and the list of persons to be taxed for that year was not completed till 14th July of the same year, and notice to A of his assessment under such tax was not given him till 8th October in that year, *Held* that the tax had no legal existence, and that A was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax.

Bates v. *The Municipal Commissioners for the Town of Bellary* (1) followed.

A statute not only enacts its substantive provisions, but, as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments. In the present case the legislature has imposed certain duties both upon the tax-payer and upon the Commissioners. Those duties,—as to the tax-payer, enforceable by penalties,—are to be performed at a particular time. There is here implied a 'latent proposition of law,' which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally sanctioned tax at the period at which the duties are to be performed.

The respondent, a Pleader in the District Court of Kistna, brought the suit out of which this appeal arose to recover from the appellant the sum of Rupees 25 (with interest thereon). There was no dispute about the facts, which were as follows:—During the official year 1874-75 the profession-tax was, by order of Government, not levied in the Municipality of Guntúr. On the 22nd April 1875 the Commissioners of that Municipality received a communication from the Madras Government suggesting that the tax should be levied from the first five classes described in Schedule B to Madras Act III of 1871; and at a meeting of the Commission held on the 28th April 1875 a resolution was passed that the Commissioners desired to have the profession-tax imposed on the first five classes. In consequence of this resolution a list of the persons to be taxed, such as is prescribed to be drawn up by section 61 of Act III of 1871, was framed, but was not completed till the 14th July 1875. The respondent's name was not included in the list as it then stood, but was afterwards added on revision. He did not reside in the town (Guntúr) or practise his profession there until 26th July in the official year in question. On the 8th October 1875 the Commissioners gave notice in writing to the respondent that he was liable for a profession-tax of Rupees 25 for his practice as a Vakil during the year beginning on the 1st April 1875 and ending on the 31st March 1876. Respondent paid this tax of 25 Rupees on the 9th December 1875 to avoid criminal prosecution. The Commissioners having declined to refund him this sum, respondent brought this suit against the appellant as

(1) 7. Mad. H. C. R. 249.

1876. October 9.

LEMAN v. DAMODARA'YA.

President of the Municipal Commission of Guntúr on the ground that, as he alleged, the tax had been irregularly and illegally levied from him.

The suit was tried by the Acting District Judge (1) of Kistna, Mr. H. J. Stokes, on the following issues :—

1*st*.—Whether the levy of the professional-tax in the Guntúr Municipality was sanctioned by Government for the official year beginning on 1st April 1875.

2*nd*.—Whether it was lawful for the Municipal Commissioners, not having determined until after the beginning of the official year to levy professional-tax, to levy said tax in 1875-76.

3*rd*.—Whether if the sanction of Government to the levy of the professional-tax was given on the 22nd April 1875, such sanction renders the levy of said tax in said Municipality legal, having been accorded after the beginning of the official year.

4*th*.—Whether the Municipal Commissioners have power under section 61 of Act III of 1871 (Madras) to add names not included in the list published at the beginning of the year, when they revise the list.

5*th*.—Whether this Court's jurisdiction is excluded by section 85, Act III of 1871 (Madras).

On the 1st issue the Judge found that it did "not appear that the Governor in Council ever accorded his sanction after receiving an expression of the wish of the Municipality to have the tax imposed," but that the Municipality "had abundant reason to believe that Government would approve of the levy of the profession tax and to conclude that it had approved of it; for it did not signify its disapproval, when it must have known that the tax was being levied, for petitions were received by it against the tax and referred to the President for disposal. Hence" (said the Judge) "I decide that, though the approval of Government has not been proved to have been given, it may fairly be implied."

On the 2nd issue the Judge's conclusion was "that it was not lawful for the Municipal Commissioners, not having determined

(1) The suit was instituted in the Court of the District Munsiff of Guntúr (on the Small Cause side) but was transferred to the District Court of Kistna by request of the said District Munsiff, because the plaintiff was his brother.

until after the beginning of the official year to levy profession tax, to levy it in 1875-76."

"The next issue," said the Judge (*i.e.*, the 3rd issue), "follows the conclusion on the one just decided" (the 2nd).

On the 4th issue the Judge decided "that the Municipal Commission have not power to add names not included in the list published at the beginning of the year when they revise the list."

On the 5th issue the Judge held that the Court had jurisdiction, because the plaintiff did "not contest an assessment, but an illegal levy of a tax."

The Judge, therefore, decreed for plaintiff (respondent) for the amount sued for, with interest till payment, and costs.

The Advocate-General for the appellant:—The directions in section 58 relating to registration thirty days before expiry of the official year and payment of the first half-yearly instalment of the tax on or before the first day of the official year, and the directions in section 61 relating to the preparation of a list "on or about the first day of each official year," &c., are merely intended to prescribe the procedure to be adopted in order to the due collection of the taxes. The validity of the tax does not depend on those directions being complied with. In this case they could not be strictly complied with, because the Commissioners had not determined on levying the tax till after the beginning of the official year. The Act does not, in section 57 or anywhere else, direct that the determination of the Commissioners to levy the tax must be made before the beginning of the official year for which the tax is imposed, or prescribe any particular time within which such determination must be made. The resolution of the Commissioners in this case to impose the tax in question was made on the 22nd April, *i.e.*, only about three weeks after the first day of the official year for which the tax was imposed. The imposition of the tax must therefore be held valid and binding.

Mr. *Miller*, with whom was Mr. *Grant*, for the respondent, was not called on.

The Judgments of the High Court were as follows:—

HOLLOWAY, J.—That section 85 does not bar the action has been frequently decided. The distinction is clear between contesting the incidence of a tax lawfully imposed and suing for sums wrongfully collected because the so-called tax has no legal existence.

1876. October 9.

LEMAN v. DAMODARA'YA.

The mode of conducting business in this Municipality renders it difficult to say whether the tax was ever imposed at all, but it is unnecessary to say much upon this point, for it is conceded that at any rate it was not imposed until April of the year in which it is sought to exact it.

In a case from Bellary (VII Mad. H. C. 249) it was decided that, to render a person liable, a tax must be legally in existence at the beginning of the year for which it is demanded. That view of the subject settles upon authority this case, which is equally clear upon principle.

There is in this Act no general section rendering liable to taxation all persons within certain categories after a particular date. If there were, a debt would be created which a person within the category would be bound to pay, and the sections which prescribe the mode in which the debt is to be levied might be held to be a mere machinery for its collection, unless it clearly appeared that the statute had rendered them essential to the arising of the debt. The presumption would be against it, because by the general words the debt would be an existent debt.

In this Act the general section (38) merely empowers the Commissioners to do something in future. Of its own force it creates neither debt nor debtors, but it says that, if the proper measures are taken, both may hereafter arise. Implicitly, therefore, it refers us to some other place for ascertainment of the mode in which they may arise. Sections 40 to 56 prescribe that mode as to one class of cases, sections 63 to 76 as to another, and 57 to 62 as to the class with which we are at present concerned. At present there is no tax in existence, and section 57 says that, if it is determined to levy one with the necessary sanction, this shall be done as sections 58 to 61 prescribe. Section 58 provides that a man shall register before the close of the previous official year and 61 provides for the making of a list on or about the first day of the year.

There is no provision for taxing at all otherwise than by the prescribing of the machinery. If it did not exist, there could be no tax at all. The result is clear that, unless it is applied, there can be no debt. It was argued, however, that in this case the compliance was impossible, because the sanction had not been given until long after the period prescribed for the acts to be done. The

1876. October 9.

LEMAN v. DAMODARA'YA.

proper inference from this is not that the subject should be taxed because fulfilment of the conditions on which the tax is to fall upon him is impossible, but that in such circumstances the imposition of the tax is illegal. A statute not only enacts its substantive provisions, but, as a necessary result of legal logic, it also enacts, as a legal proposition, everything essential to the existence of the specific enactments. In this case the legislature has imposed certain duties both upon the tax-payer and upon the Commissioners. Those duties, as to the tax-payer enforceable by penalties, are to be performed at a particular time. There is here what a great living lawyer calls a latent proposition of law. That proposition is that there shall be a legally sanctioned tax at the period at which the duties are to be performed; and this proposition so implicitly contained is, as a result of legal logic, as clear and binding as if it had been explicitly declared. There clearly was no such legally sanctioned tax, and this appeal must be dismissed with costs.

INNES, J.—I concur. *Appeal dismissed.*

JURISDICTION AS COURT OF REVISION.

Before Mr. Justice Holloway and Mr. Justice Innes.

PROCEEDINGS, 16TH OCTOBER 1876.

REG: v. AMBIGARA HULAGU AND ANOTHER.

1876. October 16.

Evidence—Confession of co-prisoner—Act I of 1872, *Section* 30.

A conviction based solely on the evidence of a co-prisoner is bad in law.

UPON a reference, by the Magistrate of Bellary, of the Proceedings of the 2nd-class Magistrate of Kumply in Cases Nos. 158 and 159 of 1876, as contrary to law, the High Court passed the following

RULING.—IN these cases two prisoners have been convicted of theft and have each been sentenced to be rigorously imprisoned for four months in the first case and for two months in the second.

The only evidence against the second prisoner was a confession made by the first prisoner. Evidence was also given of a statement made by the second prisoner to a police constable: this statement, however, should not have been admitted in evidence.