APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

JENNINGS

1887. Sept. 20.

against

THE PRESIDENT, MUNICIPAL COMMISSION, MADRAS.*

Madras Municipal Act, 1884, *s.* 103—*Exercise of calling—Investment of funds of society—Sch. A, class* 1 (*A*), (*B*)—*Benefit society.*

The business of investing the funds of a society for interest is a calling within the meaning of s. 103 of the Madras Municipal Act, 1884.

A society established to provide by the subscriptions of its members for pensions for their widows and children is a benefit society within the meaning of sch. A class 1 (A) of the said Act.

Where the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the legislature.

CASE stated under s. 193 of the Madras Municipal Act, 1884, by the Presidency Magistrates, Black Town.

The facts and arguments appear sufficiently for the purpose of this report from the judgment of the Court (Muttusámi Ayyar and Brandt, JJ.).

The Acting Advocate-General (Mr. *Spring Branson*) for Jennings.

Mr. *Brown* for the Municipal Commissioners.

JUDGMENT.—The questions referred for our opinion have reference to the liability of the Madras Widows' and Orphans' Fund to be taxed under the Madras Municipal Act I of 1884. The fund mentioned above appears to have existed for more than half a century. It has not, however, been registered as an association, nor does it hold a certificate of association. The object with which it was instituted was to provide pensions for the widows and legitimate children of subscribers. It is divided into two branches, called the widows' and the children's branch. Each branch is divided into a specified number of classes, and payment of certain donations, premia, and subscriptions is prescribed for admission into each class. The income derived from those sources is applied first to meeting the claims on the fund, and the surplus is invested from time to time so as to constitute a funded capital. This

* Referred Case No. 1 of 1887.

JENNINGS v. THE PRESIDENT, MUNICIPAL COMMISSION, MADRAS.

fund stands in the joint names of three trustees, and it is managed by twelve directors elected at a general meeting of the subscribers. In 1885, the funded capital stood at Rs. 12,90,821, the interest derived from it amounted to Rs. 53,487, and the subscriptions and donations, &c., in that year amounted to Rs. 51,705, whilst pensions aggregating Rs. 99,068 were paid to 359 widows and 93 children.

Two questions were raised for decision before the Magistrates for the City of Madras, and the first was whether the fund was liable to be taxed under the Municipal Act, and the second was whether it was liable to be taxed under class 1 (B), sch. A, attached to that Act. The Magistrates decided both questions in the affirmative and stated a special case for our decision.

It is provided by s. 103 of Act I of 1884 that, if the Commissioners determine to levy a tax on arts, professions, trades, and callings (not being a military profession or calling) and on offices or appointments, every person, who within the city exercises any one or more of the arts, professions, trades or callings, or holds any one or more of the offices or appointments specified in sch. A, shall pay in respect thereof the sum specified in the said schedule as payable by the persons of the class in which such person is placed, subject to the provisions of s. 110, which have, however, no bearing on the special case before us. The portion of sch. A, which is material to our present purpose, is class 1 (A) to (D).

(A) Joint stock companies and other companies carrying on any trade or business having gain for its object or as benefit societies and the capital of which exceeds 20 lakhs of rupees ..	500
(B) Joint stock companies of any of the descriptions mentioned in division (A) of this class, the capital of which exceeds 10 lakhs but does not exceed 20 lakhs of rupees.	350
(C) Companies of any of the descriptions mentioned in division (A) of this class, the capital of which is more than 5 but does not exceed 10 lakhs of rupees	200
(D) Companies of any of the descriptions mentioned in division (A) of this class, of which the capital is more than 3 but does not exceed 5 lakhs of rupees	150

Again, companies of any of the descriptions mentioned in class 1, of which the capital is more than 2 lakhs but does not exceed 3 lakhs of rupees and of which the capital is more than one lakh but does not exceed 2 lakhs of rupees, are placed in the second and third classes with a yearly tax of Rs. 100 and Rs. 50 respectively. All companies not hereinbefore provided for are included in class IV as liable to a yearly tax of Rs. 35.

As to the first question whether the fund is liable to be taxed under s. 103 of Act I of 1884, we are of opinion that it must be decided in the affirmative. According to s. 103, every person who exercises any profession or calling is liable to pay the tax specified in sch. A, and the word "person" is declared by s. 3 (*c*) of the said enactment to include any company, association or body of individuals whether incorporated or not. The investment of the surplus income from time to time for interest so as to augment the funded capital constitutes in our judgment the exercise of a calling, and as the incorporation of the association is expressly declared to be immaterial, the fact that the fund is not registered cannot support a claim to be exempted from taxation, provided that the subscribers exercise a calling through the directors elected at their general meeting. Referring to the terms of sch. A in connection with s. 103, we see no sufficient reason to hold that the association now under consideration is not included therein. It may not be a joint stock company, or a company such as is contemplated either by Acts XIX of 1857 and VII of 1850, or by the Indian Companies Act X of 1865, or by 25 & 26 Vic., ch. 89, ss. 4 and 184. In these, it is declared that the object must be the acquisition of gain by the company, the association or the partnership or the individual members thereof. The expression "having gain for its object," used in cl. I of sch. A, appears to us to refer to personal gain, and, therefore, we accede to the suggestion that the subscribers to the fund cannot be said to carry on business, of which the object is pecuniary gain to themselves. We must, however, hold that they do carry on business as a benefit society, although the benefit contemplated is that of their widows and legitimate children, who have a claim upon the association on the death of the subscriber to be paid certain pensions. Further, the words "as benefit societies" are used in contradistinction to the words "having gain for its object," and we do not consider that the benefit which the society is formed to confer must always

JENNINGS v. THE PRESIDENT, MUNICIPAL COMMISSION, MADRAS.

be personal. It seems to us that the expression is used in the same sense in which the words "friendly society" are used in 38 & 39 Vic., ch. 60. A society established to provide by voluntary subscriptions of the members thereof, with or without the aid of donations, relief or maintenance, for the subscribers or for their husbands, wives, children, fathers or brothers, &c., in certain events, is therein designated a friendly society, the principle on which it is constituted being that of mutual helpfulness of a provident character and of securing certain pecuniary benefit, if not to the subscribers, to their widows and children. The terms "benefit society" distinguish it from a society of which the object is purely benevolent and charitable or the promotion of social intercourse and convivial enjoyment. The business of investment for interest resulting in gain is a calling within the meaning of s. 103 and the fact that the gain is not personal but that it redounds to the benefit of those in whom the subscribers are interested does not render it the less a calling or a business. It is important to remember that the tax payable under s. 103 is a tax on professions or callings and not on the income resulting to the individual who exercises the profession or calling. We answer the first question, therefore, in the affirmative.

As to the second question, we are of opinion that the fund was properly taxed under class I of schedule A. Reading clauses (A) to (D) and s. 103 together, we entertain no doubt whatever that the companies intended throughout are of the descriptions mentioned in clause (A), and that the expression joint stock was inaccurately inserted in (B). The clauses are framed to provide a sliding scale of taxes with reference to the amount of the capital employed in the business carried on by the companies described in I (A). That such was the intention is plain from the context, and it would be absurd to hold that a company with a funded capital of less than 10 lakhs or over 20 lakhs is liable to be taxed and that the same company is not liable to be taxed when its capital is 12 lakhs. Although, in construing fiscal enactments, we should ordinarily insist upon the subject taxed being clearly within the words of the law and decline to extend its scope when there is an ambiguity, we cannot exclude from our consideration the fact that the context discloses a manifest inaccuracy. In such a case, the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the legislature. The conclusion we

come to is that the fund was properly taxed under sch. A, class 1 (B). The result is that the decision of the Magistrates is right.

Solicitors for Jennings—*Branson & Branson.*

Solicitors for the Municipal Commissioners—*Barclay & Morgan.*

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

1887. August 9.

QUEEN-EMPRESS

against

ELLA BOYAN.*

Penal Code, s. 330—Causing hurt to constrain a person to satisfy a demand.

E.B., in order to constrain his wife to satisfy his demand that she should return to his house, voluntarily caused hurt to her. He was convicted under s. 330 of the Indian Penal Code:

Held, on appeal, that the conviction under that section was bad.

APPEAL against the sentence of C. W. W. Martin, Sessions Judge of Salem, in Calendar Case No. 19 of 1887.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Kernan and Brandt, JJ.).

The prisoner was not represented.

The Acting Public Prosecutor (Mr. *Powell*) for the Crown.

JUDGMENT.—The Judge convicted the prisoner under s. 330 of the Indian Penal Code of causing hurt in order to constrain the wife to obey a demand of the prisoner to return to his house and sentenced him to five years' rigorous imprisonment. We, however, do not think such a demand is within s. 330, which apparently refers to some demand in respect of property.

However, the prisoner cut, though slightly, his wife, with an instrument for stabbing or cutting within s. 324.

We reverse the conviction and sentence under s. 330, and convict him under s. 324 and sentence him to three years' rigorous imprisonment.

* Criminal Appeal No. 154 of 1887.