the first time an alteration in clause 7 which is unnecessary. We direct that in lieu thereof the following be inserted, "as the right to the palmyras and babul trees standing on the said lands belong to ourselves you have no concern with them and should not fell them;" and in lieu of clause 9 of the patta, "you should not make permanent encroachments or other works of any kind on the said land without our permission, you should not without obtaining cowle from us cultivate the land that is not included in this patta."

Before, however, we dispose of the cases finally, we must call upon the District Judge for a finding upon the evidence on record with reference to the question of implied contract to pay at the rate of Rs. 5 per acre with reference to the observations made above respecting the matter.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, and Mr. Justice Bhashyam Ayyangar.

MUNICIPAL COUNCIL OF MANGALORE (DEFENDANT), PETITIONER,

v.

THE CODIAL BAIL PRESS (PLAINTIFF), RESPONDENT.*

1903. November 23. December 3.

District Municipalities Act (Madras)—IV of 1884, ss. 53, 262—"Income."

The word "income" is used in schedule A of the District Municipalities Act (Madras) as meaning "net income" or profits derived from the business, and not the gross income or receipts.

By section 262 (2) of the Act, no suit shall be brought in any Court to recover any sum of money collected under the authority of the Act, provided that its provisions have been in substance and effect complied with. A municipality assessed a person under section 53 and schedule A, on his estimated gross income:

Held, that the word "income" meant "net income," and consequently the provisions of the Act had not been in substance and effect complied with, and that the Court could entertain a suit to recover the amount of tax paid under the assessment.

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* Civil Revision Petition No. 32 of 1903, presented under section 25 of Act IX of 1887 praying the High Court to revise the order of C. D. J. Pinto, District Munsif of Mangalore, in Small Cause Suit No. 430 of 1902.

MUNICIPAL COUNCIL OF MANGALORE v. THE CODIAL BAIL PRESS.

CLAIM for Rs. 13, being the amount of municipal tax alleged to have been illegally exacted by the defendant Municipal Council from plaintiff, as Manager of the Codial Bail Press. Plaintiff, as Manager of the Codial Bail Printing Press, had been placed by the Municipal Council of Mangalore in class IV of schedule A to the District Municipalities Act and a profession-tax of Rs. 25 had been levied from him for the year ending 31st March 1902 in two half-yearly instalments. He contended that the tax had been levied not upon his income but on the circulating capital invested in the business, and that in view of his income he ought to have been placed in class V and assessed only at Rs. 12, and sued to recover the excess alleged to have been illegally levied from him. Defendant pleaded that the suit was unsustainable in law, that the tax had been legally levied, that plaintiff had been rightly placed in class IV, that the income of the Press was considered and that the tax was not levied with reference to the invested capital. The District Munsif's predecessor framed the following issues:—I. Whether the assessment in question was illegally imposed? II. Whether the municipality imposed the assessment in question upon the gross income or the net income, and if on the gross income the assessment is opposed to law? III. Whether the suit as framed impeaching the assessment imposed by the municipality is sustainable? IV. Whether the assessment in question was imposed upon the circulating capital of plaintiff or upon the plaintiff's income?

The District Munsif said: "The first question for consideration is what ought to be the proper basis of the profession tax, the gross income or the net income. The Municipality of Mangalore seems to have adopted the gross income as the basis of the tax. Exhibit H is a printed copy of a requisition issued by the municipality calling upon persons exercising the professions specified in schedule A to the District Municipalities Act to submit true returns of their income. In this it is expressly stated that what is called for is the amount of gross income. Exhibit K is the report of the Ward Councillor in a printed form supplied by the municipality on the appeal preferred by the plaintiff to the Municipal Council against the assessment. The form contains various headings under which the Councillor is to report and one of the headings is 'probable income or profits (gross).' But nowhere in the Act is there any authority for the proposition that

the tax should be levied upon the gross income. Schedule A (referred to in section 53 of the Act) which classifies persons exercising certain professions according to their incomes is silent as to whether gross income or net income is meant."

He was of opinion that the assessment should have been made with reference to net income. He decided that the net income of the plaintiff's Press was below Rs. 500 per mensem and held that plaintiff had been illegally placed in class IV of schedule A of the Madras District Municipalities Act, and had been illegally assessed at Rs. 25. He found the first issue in the affirmative. He also held that the amount of tax had been arbitrarily assessed and found the third issue in the affirmative. He gave judgment for plaintiff with costs. The defendant Council filed this civil revision petition.

K. Narayana Rao for petitioner.

Mr. *P. C. Lobo* for respondent.

JUDGMENT.—The preliminary question arising in this case is whether the cognizance of this suit by a Civil Court is barred by section 262, sub-section (2) of the District Municipalities Act (Madras) IV of 1884; and that depends upon whether, with reference to the proviso to that sub-section, it can be held that the provisions of the Act have been in substance and effect complied with by the municipality if, as contended by the respondent (the owner of a Printing Press in Mangalore), he is liable to be taxed under the Act with reference only to the profits of his business and not the gross receipts. Under section 53 and schedule A to the Act, the class under which he is liable to be taxed depends upon his "estimated income" and if the meaning of the word "income" in schedule A be "profits" or "net income" and not gross income, it will be impossible to maintain that the provisions of the Act have been in substance and effect complied with if the municipality have, as is admitted, taken the estimated gross income and not the net income as the basis for determining the class in which the respondent is to be placed. In our opinion the word "income" which occurs throughout schedule A must be taken to mean the "net income" or profits derived from the business and not the gross income or receipts. In *Lawless* v. *Sullivan*(1) the question raised with reference to section 4

(1) L.R., 6 A.C., 373 at p. 375.

MUNICIPAL COUNCIL OF MANGALORE v. THE CODIAL BAIL PRESS.

of New Brunswick Act, 31 Vict., c. 36, was whether the tax thereby imposed upon the appellant bank was to be assessed upon the amount of income derived from its business within the city of St. John during the year in question without taking into account losses which had accrued during that period. The Privy Council, reversing the decrees of the Courts below held that "there can be no doubt that in the natural and ordinary meaning of language the income of a bank or trade for any given year would be understood to be the gain, if any, resulting from the balance of the profits and losses of the business in that year. That alone is the income which a commercial business produces and the proprietor can receive from it. The question is whether the word 'income' in the enactment to be construed is to be understood in a different and what, for the purpose of taxation, would be a more onerous sense" (pp. 378-379). After adverting at length to various provisions of the Act (then in question) and the arguments advanced in the case their Lordships came to the conclusion that "there is nothing in the enactment imposing the tax nor in the context which should induce them to construe the word 'income' when applied to the income of a commercial business for a year otherwise than in its natural and commonly accepted sense as the balance of gain over loss." The case of *Queen* v. *The Commissioner of the Port of Southampton*(1) is there distinguished on the ground that the context in which the word "income" in one of a series of special Acts (then in question) relating to the port of Southampton occurred clearly showed that the word was used to signify the total amount of dues and duties payable to the Commissioners under a former Act.

During the course of the argument in *Lawless* v. *Sullivan*(2) Sir Montague Smith observed that "the burden is on those who seek to put the most onerous meaning on words used to show clearly that that meaning was intended." We find nothing in the context in the schedule A (to the District Municipalities Act) or in any other part of the Act, which would lead to the conclusion that the word "income" is there used in the "more onerous sense" contended for on behalf of the municipality or otherwise than in its "natural and commonly accepted sense" as denoting the profits or net income derived from the business. The

(1) L.R., 4 H.L., 472. (2) L.R., 6 A.C., 373 at p. 375.

fact that the tax leviable under section 53 is not an *ad valorem* tax upon "income," but a tax upon "arts, professions, trades and callings" is not a circumstance suggesting that the word "income" occurring in schedule A is not used in its ordinary acceptation above referred to, inasmuch as the amount of tax (ranging from Rs. 100 to 1) fixed under each of the nine classes in schedule A is regulated with reference to the estimated income derived from the exercise of the various arts, professions, trades and callings therein mentioned.

We therefore hold that the jurisdiction of Civil Courts to take cognizance of the suit is not barred by sub-section 2 of section 262 of Act IV of 1884 and that the decision of the District Munsif was right. The revision petition therefore fails and is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Boddam.

[On Reference from Sir SUBRAHMANIA AYYAR, Offg. C.J., and RUSSELL, J.]

ANNAKUMARU PILLAI (COMPLAINANT), PETITIONER,

v.

MUTHUPAYAL AND OTHERS (ACCUSED), COUNTER-PETITIONERS.*

1903. November 20. December 22. 1904. January 4, 5, 12.

Penal Code—Act XLV of 1860, *s.* 379—*Theft—Charge of stealing chanks—Shell-fish taken from beds in sea—*Feræ naturæ—*"Possession" of complainant—Subject of theft.*

"Chanks" (popularly included among shell-fish, but really large molluscs) are found buried in beds of sand or in the sandy crevices of coral reefs in Palk's Bay,—a large bay landlocked by British dominions for eight-ninths of its circumference and containing numerous islands which form part of the districts to which they are adjacent on the shores of India and Ceylon. It was shown by evidence that this bay (as well as parts of the adjacent Gulf of Manaar) had been effectively occupied for centuries by the inhabitants of India and Ceylon, respectively; that the "chanks" found therein had for centuries been the monopoly of the rulers of the country, both in India and Ceylon, and that licenses to gather them had been granted by the sovereign; and that "chank royalty" was one of

* Criminal Revision Case No. 313 of 1903, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of J. R. Huggins, Head Assistant Magistrate of Ramnad, in Calendar Case No. 17 of 1903 (Criminal Revision Case No. 39 of 1903 on the file of the Sessions Court of Madura).