

ABRAHAM  
PILLAI  
v.  
DONALD  
SMITH.

In *Sankaralinga Mudali v. Ratnasabhapati Mudali*(1), it was not known where the defendant was; nor whether his absence was only temporary and it was accordingly held that there was no prospect of serving him personally within a reasonable time. That case does not therefore apply.

The Judge has therefore acted with material irregularity in holding the affixing of the summons to be proper service [*Jagannath Brahhbhai v. J. E. Sassoon* (2)], and his order is therefore reversed, the *ex parte* decree set aside and he is directed to restore the suit to his file and proceed with it in accordance with law.

The costs in this Court will be provided for in the final decree.

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## APPELLATE CIVIL.

*Before Mr. Justice Subrahmania Ayyar.*

THE MUNICIPAL COUNCIL OF CUDDALORE (DEFENDANT),  
PETITIONER,

v.

SUBRAHMANIA AYYAR (PLAINTIFF), RESPONDENT.\*

1905  
December 4,  
15.

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*District Municipalities Act (Madras) Act IV of 1884, s. 55—'Day,' what is—  
Circumstances which determine whether particular days are to be reckoned  
or omitted.*

The word 'day' in section 55 of the Madras District Municipalities Act means a duration of 24 hours and the period of 60 days for which the person must have 'held office within the limits' must be held to be 60 entire and unbroken periods, in law, of 24 hours each. It will depend upon the circumstances whether fractions of a day are to be omitted or to be counted as whole days and the cause and character and duration of absence from Municipal limits will determine whether particular days are to be reckoned or omitted.

SUIT by the plaintiff for recovery of profession tax alleged to have been illegally collected by the Municipal Council of Chidambaram.

(1) I.L.R., 21 Mad., 325.

(2) I.L.R., 18 Bom., 606.

\* Civil Revision Petition No. 201 of 1905, presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of M. R. Ry. S. Swaminatha Sastru, District Munsif of Cuddalore, in Small Cause Suit No. 1065 of 1904.

The District Munsif passed a decree in favour of the plaintiff. The material portion of his judgment is as follows :—

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J.  
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"The plaintiff is the Divisional officer of the Chidambaram Division, South Arcot district, with his head quarters, within the municipal limits of Cuddalore. His case is that he has resided and carried on business within the municipal limits for 59 days only during the half year for which tax has been levied from him. The plaintiff at the same time adds that the 59 days are irrespective of those days on which he left this town on circuit before 5 A. M. or he came back to this town after 7 P.M. He goes into the witness box and asserts that during such days he did no business connected with his duty as Divisional officer. He further adds that he never does any office work in lamp light. There is no evidence *contra* that he did any office work before 5 A.M. or after 7 P.M. The question for consideration is whether such days could count for the days to make up the period requisite for assessment purposes. The ruling in *Chairman, Ongole Municipality v. Mounsey*(1) is directly in favour of plaintiff's contention. Sir Muttusami Ayyar says that the material words 'hold office or appointment within the municipality' mean carrying on business there as the holder of the particular office. Towards the close of his judgment the same Judge further adds that it is an essential condition of liability *that the profession should be exercised within the municipal limits.*

The said ruling was quoted as conclusive authority in the more recent case in *Hammick v. President, Madras Municipal Commission*(2). No doubt, this latter case arose under the City of Madras Municipal Act, section 193. I come to the conclusion that the assessment was illegal and that the plaintiff is entitled to a refund of the same.

My decree is that plaintiff do recover from the defendant Rs. 6 with costs of suit."

Defendant presented this petition to the High Court under section 25 of Act IX of 1887.

The Hon. Mr. P. S. Sivaswami Ayyar for petitioner.

T. Subrahmania Ayyar for respondent.

(1) I.L.R., 17 Mad., 458.

(2) I.L.R., 22 Mad., 145.

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JUDGMENT—The question in this case is whether Mr. Subrahmaniam Ayyar, the Deputy Collector in charge of the Chidambaram Division, South Arcot district, was liable to be assessed for professional tax for the half year ending the 30th September 1903 by the Municipality of Cuddalore which is his head-quarter station. That during such time as Mr. Subrahmaniam Ayyar stayed in Cuddalore during the half year, he was holding the office of Deputy Collector, is indisputable. The only question is whether he so held office for the prescribed length of time. If he held the office within limits of the said municipality for 60 (sixty) days reckoned consecutively or from time to time" within the half year he was under section 55 of the District Municipalities Act liable to pay the tax. Now the term 'day' is no doubt in one sense understood to cover the time from sunrise to sunset. The more general meaning of the word is, however, from sunrise to sunrise (a natural day) or from midnight to midnight (a calendar day); and the word "days" in the section referred to above must, in the absence of anything to the contrary in the context, be taken to mean a duration of 24 hours and not 12 hours. If this is correct, to charge the tax, the municipality had to show that Mr. Subrahmaniam Ayyar spent within its limits not merely fractions of days sufficient when added up to constitute 1,440 hours but 60 entire and unbroken periods, in point of law, of 24 hours each. In saying this I do not of course wish to be understood as suggesting that mere absence from the municipal limits on the part of Mr. Subrahmaniam Ayyar for any part of a particular day or even for a whole day will necessarily prevent that day being counted as one of the sixty. No hard and fast rule can be laid down on such a question. It has to be remembered that fractions of a day are either omitted from calculation or are counted as whole days according to circumstances [Lindley's 'Jurisprudence,' appendix page lxiv citing *Clayton v. Presenham*(1) and *Reg. v. St. Mary Warwick*(2)]. The cause and character and the duration of the absence from the municipal limits of the office-holder on the particular occasion are matters to be borne in mind in determining whether particular days are to be reckoned or omitted in cases like the present. The decision must be given with reference to these considerations, a view on the whole

(1) Part 5, Coke 1 (a).

(2) 1.E. & B., 816.

reasonable being what has to be adopted. By way of explanation two obvious illustrations may be given. Suppose the officer was away for an hour or two or even for a whole day for recreation or other personal purposes that will clearly not reckon against the municipality and he would still be taken in point of law to have "held office within the limits" for the day. On the other hand if he had been obliged to stay outside the municipal limits in the discharge of his official duties from, as it has been proved in this case, morning till evening, his spending the night within the limits would not warrant its being held that he held office that day within the limits. Though it may be easy to suggest a case almost on the border line it is scarcely necessary to say that no practical difficulty can occur in the application of the above view to cases arising under the enactment in question.

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Upon the facts found by the District Munsif his decision is right. The petition is dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Moore.*

SUBBAROYADU (PLAINTIFF), PETITIONER,

1906  
January 4,

v.

GANGAYYA (DEFENDANT), COUNTER-PETITIONER.\*

*Provincial Small Cause Court Act IX of 1887, s.23-Exercise of power under section 23 gives Court jurisdiction to try suit as an original suit.*

Where a question of title which a Court of Small Causes cannot finally determine is involved in a small cause suit, the Court has discretionary power under section 23 of Act IX of 1887 to return the plaint to be presented to a Court having such jurisdiction. The latter Court thereupon acquires jurisdiction to try the suit as an original suit and is bound to receive the plaint and try it as such.

*Mahamaya Dasya v. Nitya Hari Das Bairagi*, (I.L.R., 23 Calo., 425), followed.

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\* Referred Case No. 17 of 1905, stated under section 646 B of Act XIV of 1882 by C. G. Spencer, Esq., Acting District Judge of Godavari, in the matter of the plaint filed as Original Suit No. 116 of 1905 on the file of the District Munsif of Ellore.