Appeal must be dismissed with costs, and in allowance of the Memorandum of Objections plaintiffs' suit must be dismissed with costs throughout.

N.R.

ASSAN ALLIAR MARAIKAYAR v. MASILAMANI NADAR.

PHILLIPS, J.

APPELLATE CIVIL.

Before Mr. Justice Coutts Trotter and Mr. Justice Kumaraswami Sastri.

KESAVA CHETTY (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

1918, October, 24, and November, 21

Land Encroachment Act (Madras Act III of 1905), ss. 6, 7 and 14—'Levied' in sec. 14, meaning of—Levy of penal assessment—Suit for refund of penal assessment, declaration of title to property and injunction—Limitation.

In a suit under section 14 of Madras Land Encroachment Act (III of 1905) for (*a*) refund of penal assessment levied from the plaintiff, (*b*) declaration of the plaintiff's title to the property in respect of which penal assessment was levied and (*c*) an injunction restraining Government from interfering with the plaintiff's possession, the cause of action for the refund arises not from the date of *imposition* of the penal assessment but from the date on which it was actually *collected*; and the cause of action for the declaration and injunction arises not from the date when the Collector issues his order for the eviction but from the date on which some steps are taken under section 6 of the Act to evict the plaintiff.

'Levied' in section 14 means 'collected' and not merely imposed.

The Secretary of State for India v. *Assan*, (1916) I.L.R., 39 Mad., 727, explained and distinguished.

SECOND APPEAL against the decree of T. M. FRENCH, the Temporary Subordinate Judge of Vellore, in Appeal Suit No. 36 of 1917, preferred against the decree of A. P. P. SALDANHA, the Principal District Munsif of Vellore, in Original Suit No. 51 of 1915.

The facts are stated in the judgment of KUMARASWAMI SASTRI, J.

* Second Appeal No. 2101 of 1917.

KESAVA CHETTY v. THE SECRETARY OF STATE FOR INDIA.

KUMARASWAMI SASTRI, J.

C. Madhavan Nayar and *K. Kuttikrishna Menon* for the appellant.

T. S. Narayana Ayyar for the respondent.

KUMARASWAMI SASTRI, J.—The plaintiff is the appellant. He sued the Secretary of State for India in Council (respondent) for a declaration that the property specified in the plaint belongs to him and is not liable to penal assessment, for an injunction restraining the defendant from interfering with the property and for refund of the penal assessment levied. The case for the plaintiff is that the property belongs to him absolutely and was never the property of Government, that he was served with a notice from the Revenue Divisional officer, dated 15th July 1914, purporting to be issued under Madras Act III of 1905 levying a penal assessment of Rs. 10 and that the amount was wrongly collected from him on the 21st July 1914. The defence is that the property was nattam poramboke which the plaintiff trespassed upon, that the Government is entitled to levy the assessment claimed and that the suit is barred by limitation.

Both the District Munsif and, on appeal, the Subordinate Judge held that the suit was barred by limitation as it was brought more than six months after the 15th July 1914, the date of the notice by the Divisional officer informing the plaintiff that an assessment of Rs. 10 was levied owing to his having encroached on Government property. The question raised in this Second Appeal is whether the period of six months specified in section 14 of the Madras Land Encroachment Act III of 1905 is to be computed from the date of the imposition of the assessment or the date when it is actually collected from him.

Section 14 of the Act provides that Civil Courts shall not take cognizance of any suit instituted by persons aggrieved by any proceedings under that Act unless the suit is instituted within six months from the date of the cause of action. The explanation to the section states that the cause of action in respect of any assessment or penalty shall be deemed to arise 'on the date on which such assessment or penalty was levied'. As regards eviction or forfeiture the cause of action is said to arise on the date of eviction or forfeiture.

Both the lower Courts erred in construing section 14 with reference to the marginal notes to sections 3, 5 and 7 of the

Act. It is now well settled that marginal notes to sections of an Act of the Indian Legislature cannot be referred to for the purpose of construing the Act. The view taken in *Punardeo Narain Singh* v. *Ram Sarup Roy*(1) and *Emperor* v. *Alloomiya Husan*(2) has been affirmed by their Lordships of the Privy Council in *Balraj Kunwar* v. *Jagatpal Singh*(3), where Lord MACNAGHTEN observed as follows :—

'It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and was exploded long ago. There seems to be no reason for giving to the marginal notes of an Indian Statute any greater authority than the marginal notes in an English Act of Parliament.'

The marginal notes do not throw much light on the question. It is significant that, while the marginal note to sections 3 and 9 would suggest that 'levy' was used in the sense of 'imposition,' the marginal note to section 15 uses the word in the sense of 'collection.' In the body of the Act the word 'levy' is only used in section 13 and obviously means 'collected' as the clause provides that if any penalty has been levied from any person under section 5 no similar penalty shall be levied under any other law.

I am of opinion that the word 'levied' in section 14 means 'collected' and that the period of limitation in section 14 runs from the date when the assessment or penalty is actually collected and not when it is merely imposed. The decision of the Revenue officer under section 3 of the Act to impose assessment need not be on notice to the party as section 7 of the Act requires notice to be given only when it is decided to impose a penalty or eviction or forfeiture of crops. As the explanation to section 14 refers to both assessment and penalty it is difficult to see how a mere decision of the Revenue officer to levy assessment can cause time to run against the person aggrieved. If 'levy' simply means 'imposition' time will begin to run before the person on whom it is imposed has any notice of the demand, and if the fact that assessment has been imposed comes to his knowledge six months afterwards he would be without any remedy.

(1) (1898) I.L.R., 25 Calc., 858.
(2) (1904) I.L.R., 28 Bom., 120, at p. 142.
(3) (1904) I.L.R., 26 All., 393 (P.C.), at p. 406.

KESAVA CHETTY v. THE SECRETARY OF STATE FOR INDIA.

KUMARASWAMI SASTRI, J.

As regards the recovery of the sum actually paid, plaintiff's cause of action can only arise after he has paid it and there is no reason why he should go to Court before he is actually damnified by the amount being recovered from him. Nor is he bound to file a suit to declare his title to the property or for an injunction until the Government take some steps to eject him and the mere imposition of assessment or fine, if unaccompanied by any steps taken to evict him under the powers conferred by section 6 of the Act, would not affect his possession. Under clause (*b*) of the explanation to section 14 a person's cause of action arises in respect of eviction or forfeiture from the date of the eviction or forfeiture and not when the Collector issues the order directing his eviction, and there seems to me no reason why in the case of assessment or penalty his cause of action should be deemed to have arisen on the mere imposition of the assessment or penalty and not on payment.

Reference has been made to *The Secretary of State for India* v. *Assan*(1), where it was held that a notice under section 7 of the Act gives rise to no cause of action. It appears from the facts of that case that the assessment was actually collected six months before the suit and all that was decided was that the suit for declaration of title would be barred if the remedy to recover the assessment paid was barred under section 14, clause (*a*) of the Act. It is no authority for the view that the starting point of limitation is the imposition and not the actual collection of the assessment or penalty. On the contrary, the fact that the right to ask for a declaration of title would be barred if his remedy in respect of the assessment or penalty is barred is in my opinion a good reason for holding that payment and not mere demand gives rise to the cause of action.

As the penal assessment was paid on the 21st July 1914, the suit is in time, having been filed within six months from that date.

I would reverse the decrees of both Courts and remand the suit for disposal to the District Munsif for trial on the other issues. Appellant will be entitled to a refund of court fees. Costs will abide and follow the result.

COUTTS TROTTER, J.

COUTTS TROTTER, J.—I agree and have nothing to add.

N.R.

(1) (1916) I.L.R., 39 Mad., 727.