objection was taken at the very commencement and at the proper time.

This appeal is allowed with costs.

The act of the Official Liquidator in applying to the lower Court is *bona fide* and we, therefore, allow him to take his costs out of the estate.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sundaram Chetty.

SRISALADI NAGABUSHANAM (PLAINTIFF), APPELLANT,

v.

VARDHINIDI VENKANNA (DEFENDANT), RESPONDENT.*

1929, September 13.

Madras Elementary Education Act (VIII of 1920), *ss.* 34 *and* 36 *and rules under section* 36—*Education-cess, levied and collected from the landholder—Right of landholder to recover any portion of the cess from his tenants.*

A landholder, from whom an education-cess under the Madras Elementary Education Act (VIII of 1920) was collected by the Government, is not entitled to recover from his tenants any portion of the cess so collected.

Although the education-cess is recoverable as an addition to land-cess under the rules framed under section 36 of the Act, yet the former cess does not become land-cess for all purposes, and there is no statutory right given to the landholder to recover any portion of the education-cess from the tenant, as in the case of land-cess.

SECOND APPEAL against the decree of the District Court of West Gōdāvari in Appeal Suit No. 41 of 1927 preferred against the decree of the Court of the Sub-Collector of Narasapur in Summary Suit No. 98 of 1926.

* Second Appeal No. 1671 of 1927.

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The material facts appear from the judgment.

B. Satyanarayana for appellant.

V. Govindarajachari for respondent.

JUDGMENT.

The plaintiff is the appellant in both these appeals. The two suits filed by him are for the recovery of rent and cess from the ryots (defendants). The only question in dispute in these second appeals is whether the plaintiff is entitled to recover one-half of the education-cess which the Government has levied and recovered from him. It would appear from the judgment of the lower Appellate Court, it was conceded on behalf of the plaintiff that he is not entitled to recover land-cess from the defendants. The defendants have set up a contract or agreement by which the plaintiff's predecessor-in-title agreed not to collect land-cess from them. That agreement was no doubt prior to the passing of Act VIII of 1920 which is the Madras Elementary Education Act. Under section 34 of this Act, the education tax *can be levied* in the area which is not within a municipality, not exceeding 25 per cent of the taxation leviable in that area, under all or any of the following heads, namely, land-cess, tax on companies, professional tax, and house tax. This section does not specify from whom such a tax can be levied. In section 36, it is stated that the assessment and realization of taxes leviable under section 34 shall be in accordance with the procedure prescribed. That procedure appears to have been prescribed under a rule which was framed under section 36. The rule is to this effect, namely,

> " the tax levied by a local authority under section 34 of the Act under any head of taxation specified therein, shall be treated as an addition to the tax levied under the heads by the local authority under the law for the time being in force governing it, and shall be assessed and recovered along with the said tax as an integral part of it ".

The question at issue has to be decided upon a proper interpretation of this rule. It must be borne in mind that this rule is one framed under section 36, which only relates to the procedure prescribed for assessment and realization of the tax. The scope of this rule, therefore, is confined to the procedure to be adopted for the levy and recovery of this tax and cannot be extended further. It says that the education tax can be recovered along with the taxes already in force, for instance, land-cess. This education tax should be treated as an addition to the land-cess and is recoverable along with the said land-cess as an integral part of it. That being so, it seems to me that this rule does not declare that the education tax is *ipso facto* land-cess or shall be deemed te be land-cess for all purposes. If an amount is due to the Government under the Land Improvement Loans Act, that amount is recoverable as an arrear of revenue. It is only the procedure prescribed for the recovery of arrears of revenue that should also be adopted for the recovery of those dues. It has been held that, by reason of the identical procedure for their recovery, such dues do not become arrears of revenue for all purposes. Similarly, by reason of the aforesaid rule framed under section 36 of the Act, it cannot be urged that the education tax has been declared by Statute to be land-cess itself. In this view, it has to be seen whether the plaintiff has got any right to recover from the tenants a portion of the education tax levied from him. In the case of land-cess, there is the express provision in section 88 of the Madras Local Boards Act, XIV of 1920, second proviso, which enables a landholder to recover from his tenant one-half of the land-cess payable by him in respect of the land occupied by the tenant. But for this proviso, the landholder will have no right to recover any portion of it from the tenant, unless under a special contract entered

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into with him. With respect to land-cess, there is a statutory right given to the landholder to recover one-half of it from the tenant, but as to educational tax leviable under Act VIII of 1920, there is no statutory provision to enable the landholder to collect any portion of it from the tenant. The plaintiff's claim to recover one-half of the education tax from the defendants should be based either upon a contract or upon a statutory liability. Neither of them exists in this case. It is therefore clear, that the plaintiff's claim with respect to education-cess is unsustainable.

Even if it should be held that, by reason of the rule framed under section 36 of the Act referred to above, the education tax must be deemed to be land-cess itself or a portion of it, the plaintiff would still be prevented from recovering any portion thereof from the defendants by reason of the agreement which disentitles him to recover the land-cess from the defendants. The contract seems to be that no land-cess should be recovered from the defendants. If it be so, I must hold that there was no reservation to the effect that that contract should be confined only to the amount which was then levied as land-cess. Unless such a reservation is satisfactorily established, it must be presumed that whatever amount was levied under the head of land-cess was waived under that contract. In the view I have taken above, it is not quite necessary to deal with the contract on the basis that education-cess is land-cess itself. I have, however, dealt with this aspect, as it was also the subject of arguments before me. In any view, the plaintiff would not be entitled to recover any portion of the education tax from the defendants.

In the result, the second appeal is dismissed with costs.

K.R.