

*Brahmans* of that District follow their personal law and do not observe any custom like that of the agriculturists of the Punjab.

For the aforesaid reasons we accept the appeal and reversing the decree of the District Judge, restore that of the Court of first instance with costs throughout

C. H. O.

*Appeal accepted.*

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**CIVIL REFERENCE.**

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*Before Mr. Justice LeRossignol and Mr. Justice Broadway.*

PALA RAM (DEFENDANT) Petitioner,

*versus*

NOTIFIED AREA COMMITTEE, KOT ADDU, DISTRICT MUZAFFARGARH (PLAINTIFF) Respondent;

Civil Reference No. 9 of 1922. ]

*Punjab Municipal Act, III of 1911, section 242 (1) (a)—Government Notification imposing a professional tax in the Notified Area of Kot Addu—whether applicable to a Tahsildar.*

*Held, that a public servant like a Tahsildar is not a person "exercising a profession or carrying on a trade or calling" such as would bring him within the purview of Notification No. 320, dated 12th May 1915, promulgated under section 242 of the Punjab Municipal Act, imposing a professional tax in the Notified Area of Kot Addu.*

*The Committee of Notified Area, Una, v. Chatar Behari Narain (1), approved.*

*Case referred by Khan Bahadur Sheikh Siraj-ud-Din, Deputy Commissioner, Muzaffargarh, for orders of the High Court.*

The order of the High Court was delivered by—

**BROADWAY J.**—Acting under section 242 of the Punjab Municipal Act, the Punjab Government imposed a professional tax in the Kot Addu Notified Area

by Notification No. 320, dated 12th May 1915, which is to the following effect :—

“ Under the provisions of section 242 (1) (a) of the Punjab Municipal Act (III of 1911), the Lieutenant-Governor is pleased to impose the following profession tax within the Notified Area of Kot Addu in the Muzaffargarh District with effect from 1st July 1915:—

1923

PALA RAM

o.

NOTIFIED

AREA COMMITTEE,  
KOT ADDU.

*Description of Tax.*

Class of persons to be taxed—All persons exercising any profession or carrying on any trade or calling within the Notified Area of Kot Addu, \* \* \* \* \*

The tax was to be assessed by the Committee of the Notified Area and the assessment was subject to confirmation by the Deputy Commissioner of the Muzaffargarh District. The Committee considered that *Lala Pala Ram*, Settlement Tahsildar of Kot Addu, was liable to pay the tax and assessed him accordingly. He protested and the Deputy Commissioner of Muzaffargarh referred the question to the High Court under section 84 (2) of the Municipal Act for a decision as to whether the expression “ persons exercising any profession or carrying on any trade ” covered or included a *Naib-Tahsildar*. The matter came up before Harrison J. who has referred the question to a Division Bench.

In an unreported case printed as *The Committee of Notified Area, Una, v. Chatar Behari Narain* (1), Scott-Smith J., held that a Munsif could not be said to follow a profession, and this appears to be the only occasion when this point has come up before this Court. It seems to be clear that a *Tahsildar* or *Naib-Tahsildar* does not carry on any “ trade,” nor can he be said to practise any “ calling ” in the Notified Area. A profession is defined in Webster's Dictionary as “ the occupation if not mechanical, agricultural, or the like, to which one devotes himself ; the business which one professes to understand and to follow for subsistence ; calling ; vocation and employment. ”

A *Tahsildar* or a *Naib-Tahsildar* can scarcely be considered to carry on a profession in the above sense. It would be more appropriate to describe him as holding an “ office ” which term according to Stroud's Judicial

Dictionary is " a right to exercise a Public or Private Employment, and to take the fees and emoluments thereunto belonging 'and' has been sometimes confined to a public employment regulated by law " ; while in Wharton's Law Lexicon the term " office " is said to be " an employment, either judicial or municipal, civil, military, or ecclesiastical ". A public servant such as a *Tahsildar* or *Naib-Tahsildar* is appointed to, and holds, an office and does not, in our opinion, carry on a profession or calling, such as would bring him within the purview of the Notification in question.

Our answer to the reference is, therefore, in the negative.

C. H. O.

*Reference answered in the negative.*

### APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Harrison.*

FITZ-HOLMES (DEFENDANT) Appellant,

*versus*

BANK OF UPPER INDIA, LIMITED (PLAINTIFF)  
Respondent.

Civil Appeal No. 3138 of 1918.

*Indian Contract Act, IX of 1872, section 74—Penalty—dead fixing rate of interest to be reduced in case all the conditions in the covenant are observed—Admissibility of oral evidence varying the terms of the written contract—Evidence of subsequent conduct—Indian Evidence Act, I of 1872, section 92.*

The suit was for recovery of the mortgage money with interest due upon 2 mortgage deeds. The rate of interest, 9 per cent. was the same in both documents, there being a clause to the effect that if all the conditions in the covenant are observed and interest and insurance premia are paid on due dates, this rate of interest will be reduced to 7 per cent.

*Held*, that section 74 of the Indian Contract Act has no application to a contract in which a higher rate of interest is fixed with a condition for its reduction in case of punctual payments.

*Kutub-ud-Din Ahmad v. Bashir-ud-din* (1), followed.