

or umpire on a reference made otherwise than by an order of the Court in the course of a suit. See art. 10, Sched. I of the Stamp Act. In this case the reference was made by the parties to four arbitrators, whose decision with regard to the division of their common property is embodied in the document under notice. Of course under the General Clauses Act, 1868, words in the singular also include the plural. As, however, I am not free from doubt in the opinion I have formed regarding the stamping of the document in question, I deem it advisable to refer the question to the High Court."

There was no appearance in the High Court.

WEST, J.—As the instrument in question is signed by the parties interested by way of assent to the award it thus becomes an instrument of partition and should be stamped accordingly.

Order accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

THE MUNICIPALITY OF THE CITY OF POONA (ORIGINAL DEFENDANTS),
 APPLICANTS, v. MOHANLAL LILACHAND AND OTHERS, MANAGERS OF
 THE FIRM OF VITHALDA'S MANCHAND (ORIGINAL PLAINTIFFS), RES-
 PONDENTS. *

September 2.

*Municipality—Bombay Act VI of 1873, Sec. 21—Octroi duties—Imposition of
 tax—Inhabitants' objections—Consideration by Municipality and opinion.*

The requirements of clause 2, section 21 of Bombay District Municipality Act VI of 1873, which enacts that "any inhabitant of the Municipal District objecting to such tax, toll, or impost, may within a fortnight from the date of the said notice, send his objection in writing to the Municipality and the Municipality shall take such objection into consideration and report their opinion thereon to the Governor in Council," is not satisfied by the Chairman of the Managing Committee considering the objections of the inhabitants and reporting his opinion to the Governor in Council or his representative the Commissioner of a Division. The provision for forwarding the opinion of the Municipality on the objections is an essential part of the machinery provided by that section for the legal imposition of a tax.

THIS was an appeal from the decision of Ráo Bahádur Gopal Govind Phatak, First Class Subordinate Judge of Poona, partially awarding the claims.

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The plaintiffs stated that the City Municipality of Poona introduced from the 21st of May, 1881, a new tariff of rates of octroi duties on imports into the town of Poona; that those rates were heavier than the previous rates; that they were introduced without going through the procedure prescribed by the Bombay Municipal Act VI of 1873, sec. 21; that the Municipality had thus no legal power to introduce the new rates and to levy duties at the increased rates; that the plaintiffs imported 42 maunds of brass plates which were unlawfully detained by the defendants who levied the illegal impost; and that they suffered a loss in consequence. The plaintiffs, therefore, prayed that the octroi duties at enhanced rates be declared illegal; that the Municipality be ordered to pay to the plaintiffs Rs. 7-13-0 illegally levied; Rs. 40 as damages to compensate the plaintiffs for the unlawful detention of their goods; and that an injunction be issued restraining the Municipality from further levying the octroi duties at the enhanced rates.

The defendants contended amongst other things that their action was legal and that they were not liable.

The Subordinate Judge on this point found as follows:—

“The decision of the Court depends upon the interpretation to be put on section 21, clauses 1, 2 and 3 of the District Municipal Act. Notice of the intended introduction of the revised schedule of octroi duties was given by the defendants on 29th March, 1881, under clause 1 of section 21. Under the provisions of clause 2 of the said section the inhabitants of Poona within a fortnight of the date of the publication of the said notice sent their objections in writing to the Municipality. Under clause 2, the Municipality ought to have inquired into the notice of the objections revised, and to have submitted a report thereon to the Governor in Council, but it is admitted that this was not done. The objections were considered by the Chairman of the Managing Committee alone, who reported his opinion thereon, and the revised schedule of octroi duties was sanctioned by the Commissioner, C. D., to whom the powers vested in the Governor in Council under the Municipal Act have been delegated under

section 99 of the Act, and was brought into force from 21st May 1881. It is admitted on behalf of the defendant that the word 'Municipality' used in clause 2 of section 21 means the general body of Commissioners and not the Chairman or members of the Managing Committee only. In undertaking therefore to inquire into the objections filed by the inhabitants of Poona and to report his opinion thereon, the Chairman evidently exceeded his powers, and the consideration given to the objections and the report thereon by him alone, cannot be treated as satisfying the requirements of clause 2. The inhabitants of Poona were entitled under the said clause to the benefit of a consideration of their objections at the hands of the general body of Municipal Commissioners, instead of at the hands of the Chairman alone, and could not be deprived of the right thus secured to them by the Legislature. * * * I cannot look upon the said provision as a mere formal one having no important significance in the determination of the question as to whether a certain impost levied under the Municipal Act was or was not legally introduced. As the Commissioner, C. D., had not before him the report of the general body of the Commissioners on the objections of the inhabitants of Poona, he was, I hold, not authorized to act under clause 3 and sanction the new schedule of octroi duties. * * * It appears that the question as to the legality of the introduction of the revised schedule was raised soon afterwards and at a general meeting of the City Municipal Commissioners the objections above referred to were considered by a majority of the Commissioners (15 against 13) as insufficient on the 5th of July, 1881. The resolution was communicated to the Commissioner, C. D., and his sanction was requested to the levy of the new schedule rates from the date of their introduction on 21st May, 1881; but the Commissioner, C. D., refused to grant any retrospective sanction, considering that the sanction originally granted was good and valid in law."

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The Subordinate Judge after deciding the other points which arose found that the plaintiffs were entitled to the repayment of Rs. 7-12-0, the amount of extra duty levied from them, and to Rs. 5 as damages, and made a decree accordingly.

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The Municipality appealed to the High Court.

Ganesh Rámchandra Kirtoskar for the appellants.—The lower Court erred in holding that the tax was illegal and could not be levied. The consideration of the objections of the inhabitants of Poona was a formal act, the omission of which did not invalidate the tax—*Reg. v. Godolphin*⁽¹⁾. The provisions of section 21 of the District Municipal Act are not imperative but merely directory—*Reg. v. Tugall*⁽²⁾. Any formal defect which existed at the initial stage was remedied by the subsequent sanction of the whole body of the City Commissioners.

Shámrao Vithal Vaideya for the respondents.—The provisions of section 21 are not merely directory but obligatory, and any omission to comply strictly with any of their requirements is a substantial defect rendering the imposition of the tax invalid. They stand on the same footing as the provisions of section 11 which were held to be obligatory—*Joshi Kálidás Sevabráam v. The Dákor Town Municipality*⁽³⁾, in which it was held that a notice to all the Commissioners of a meeting was a material part of the machinery provided by the Act and was a condition precedent to the validity of the tax imposed at that meeting. When the Legislature imposes duties upon the Commissioners they must perform them just as the tax-payers must perform duties imposed upon them.—*G. D. Leman v. Dámodaraya*⁽⁴⁾, though the machinery for the imposition of a tax may be independent of the obligation of the tax-payer—*Vice-President of Municipal Commission Cuddalore v. J. H. Nelson*⁽⁵⁾. The duties cast on public bodies in England are rigorously enforced—*Howes v. Turner*⁽⁶⁾; *Howard v. Bodington*⁽⁷⁾; *The King v. Newcomb*⁽⁸⁾. The subsequent proceedings of the Poona Municipal Commissioners do not affect the point at all.

SARGENT, C.J.—The Subordinate Judge was right in our opinion in holding that the provision contained in clause 2 of section 21 of the Municipal Act for forwarding the opinion of the Municipality on the objections of the inhabitants to the Governor in Council is

(1) 1 D. & L. 830.

(2) L. R. 2 Q. B. D. 199.

(3) J. L. R. 7 Bom. 399.

(4) I. L. R. 1 Mad. 158.

(5) I. L. R. 3 Mad. 129.

(6) L. R. 1 C. P. D. 670.

(7) L. R. 2 P. D. 203.

(8) 4 Term Rep. 368.

an essential part of the machinery provided by that section for the legal imposition of a tax. Had the object been solely to give the Municipality an opportunity of answering those objections, we should expect to find a simple direction to forward the objections with such comments on them as the Municipality might think proper. Clause 2 however expressly requires the Municipality to take the objections into consideration and to report their opinion thereon; and it is plain that such an opinion might, either by the weakness of the arguments advanced in its support or by the disclosure of the fact that there was considerable divergence of opinion in the Municipality itself, lead the Governor in Council to the conclusion that the objections of the inhabitants to the proposed tax were not "insufficient".

In the present case it is perhaps not too much to assume from what subsequently occurred on the 5th July, when there were 15 members of the Municipality against the objections and 13 in their support, that the possibility of such divergence of opinion in the Municipality, had they considered the objections before they were forwarded to the Commissioner to whom the powers of the Governor in Council had been delegated by section 99, would have been realized.

As to what was done by the Municipality and the Commissioner subsequently to the levying the octroi duty in question from the plaintiffs, it might have the effect of giving validity to the tax in the future, but it could not cure the defect in the duty as it existed at the time when it was levied from the plaintiffs.

We must, therefore, confirm the decree of the Subordinate Judge, with costs on defendants.

Decree confirmed.

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