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FARRAN, C. J.:—I concur and have nothing to add to the reasons given in the referring judgment.

PARSONS, J.:—I also concur for the reasons given in the referring judgment.

*Question answered in the affirmative.*

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

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July 23.

H. PLUNKETT, INCOME TAX COLLECTOR, POONA (ORIGINAL DEFENDANT),  
APPELLANT, v. NARAYAN PARASHIRAM TULLU (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Income Tax Act (II of 1886), Secs. 21, 22—Agent of a company not resident in India—Liability of.*

The liability for income tax of the agent of a company not resident in British India, but in receipt through such agent of income chargeable under the Income Tax Act (II of 1886), is personal, and section 22 does not make such liability conditional upon his having funds of the company in his hands.

APPEAL from the decision of Arthur H. Unwin, District Judge of Násik, in Suit No. 3 of 1895.

In April, 1893, the Chatre Circus Company was assessed for payment of income tax. The notice under section 17 of the Income Tax Act (II of 1886) was at first issued to one Nago Bhicaji, who was described as the Manager of the Chatre Circus Company. It was dated the 29th April, 1893, and it informed Nago Bhicaji that the tax charged was Rs. 51-2, which he was required to pay before the 29th May, 1893. The notice reached Nago Bhicaji on 23th June, 1893, at Gwalior, where the Circus Company was then giving performances. He wrote to the Income Tax Collector that he got the notice after the last day fixed therein, and that payment within the time fixed was thus not possible. He, however, informed the Income Tax Collector that the plaintiff Narayan was their head manager, and that he had been asked to make all proper arrangements in respect of the demand. Thereupon, the Income Tax Collector for the first time, on 4th August, 1893, required the plaintiff, who was not described as manager on this occasion, to pay the tax within eight days.

\*Appeal, No. 19 of 1896.

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The plaintiff on 9th September, 1893, describing himself as Manager of the Chatre Circus, wrote a letter in which he represented that the Circus Company had not earned any profits, and that throughout the year it was working out of British India, and it was, therefore, not liable to the tax. This letter was accompanied by a printed form of application under section 25, signed by the plaintiff, in which he identified himself with the company, stating that "we" had no property, and earned no profits in British India.

The Income Tax Collector on 13th September, 1893, made enquiries about the movements of the circus, and plaintiff sent a reply on 15th September. Later on, the Collector asked to be furnished with information about the company's accounts. Plaintiff asked for time to obtain this information from Gwalior and later on supplied information on these points, and sent extracts of the company's accounts. Finally, the Income Tax Collector confirmed the tax as first assessed on 1st December, 1893.

An appeal was then preferred by the plaintiff, in which he again described himself as Manager of the Chatre Circus. This appeal was rejected.

The tax not having been paid, on the 6th February, 1894, the Collector issued the following warrant for the recovery of the tax:—

"Whereas the Chatre Circus Company represented by their manager, Mr. Narayan Parashram Tullu, have made default in payment of the sum of Rs. 54-9 due by them on the 1st January, 1894, on account of income tax for 1893-94, I, Mr. A. H. Plunkett, Collector of Income Tax, Poona City, do hereby direct, under sub-section 1 of section 30 of Act II of 1886, that a sum of Rs. (54-9-0) fifty-four and annas nine be recovered from the said defaulter (the manager)."

In execution of this warrant, six currency notes for Rs. 10 each, the private property of the plaintiff, were attached. He was asked to take back the balance after deducting the tax, which he refused to do.

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Plaintiff brought this suit to recover these notes or their value on the ground that as he was not personally liable to pay the income tax for the company, his private property was wrongfully attached.

The District Judge of Násik awarded the claim with interest, observing (*inter alia*) as follows :—

“Now it is plain that this circus so long as it existed must have had attachable plant and property of its own, and defendant's own *yádi*. Exhibit 15, to plaintiff shows that defendant had been made duly aware that the circus and its properties were actually at Gwalior in the autumn of 1893. Defendant in that *yádi* says he has been referred by post-card from the manager of the circus at Gwalior to plaintiff residing at Násik, who, the post-card is said to have stated, ‘will make the needful arrangement.’ about the levy of income tax. When defendant had thereupon interviewed plaintiff, and after due enquiry into the circus accounts had resolved that the assessment in question must stand, why did not defendant at once seek to ascertain from plaintiff how, when, and where the circus property, or else Chatre himself, was likely to be found tangible for the realization of the tax, and upon information which it must be presumed plaintiff would have furnished, proceed direct against Chatre in person or that property for recovery of the tax? \* \* \* And supposing that plaintiff had officiated as a *paid* wakil, agent, or employe of Chatre for the circus, or again as a receiver or manager as appointed under section 22 of the Act, it would surely have been an unjustifiable step to seize and distrain his *personal* property, property like these notes, in his private house at Násik, for his principal's default.”

From this decision defendant appealed to the High Court.

Ráo Sáheb Vasudev J. Kirtikar (Government Pleader) for the appellant (defendant):—The plaintiff having held himself out as the manager of the company is now estopped from repudiating his liability to the income tax—Evidence Act (I of 1872) sections 31 and 115. As the agent of a non-resident company in British India plaintiff is liable under sections 21 and 23 of the Act (II of 1886). The duties of the principal officer of a company are laid down by sections 11, 12 and 28. Plaintiff may call upon the company to recoup him under sections 23 and 49. But his liability to pay the tax primarily cannot be extinguished.

Daji Abaji Khare for the respondent (plaintiff):—Plaintiff is not a paid manager or agent of the company. He has no share or interest in the capital, plant or profits of this circus. He has no doubt signed certain letters and applications as manager, but

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that fact alone cannot make him personally liable for the income tax payable by the company. I rely upon section 22 of the Act, which prevents the liability from resting upon the plaintiff. Plaintiff when he signed those letters and applications acted more in his capacity as a *vakil* than an agent of the company. He had no funds in his hands belonging to the company. Any such funds, if he had then, would no doubt have been liable in his hands for the income tax. To the extent of such funds, and such funds alone, he would be liable.

As regards the point of estoppel, the plaintiff's conduct has not in any way prejudiced the defendant. The Collector can call upon the proprietor of the circus whenever he comes into British India to pay the tax, and if he refuses, then to recover the same under the powers vested in him by the Act. But to hold otherwise would be illegal and *ultra vires* of the Income Tax Act (II of 1886.)

PARSONS, J.:—The facts of this case are as follows:—In April, 1893, the Chatre Circus Company was assessed for payment of income tax (Sec. 23), and the Income Tax Collector under the instructions of the company, which was then at Gwalior, called on the plaintiff to pay it as the manager of the company in British India (Sec. 15). Certain correspondence followed which need not be set out at length, in which the plaintiff sought to get the assessment remitted on the ground mainly of the company having made no profits in British India. Throughout the whole of it the plaintiff styled himself and was addressed as the manager of the company.

In December, 1893, the plaintiff as the manager of the company appealed against the assessment of income tax, but his petition was rejected. The tax not having been paid, on the 6th February, 1894, the Collector issued the following warrant for the recovery of the tax:—

“Whereas the Chatre Circus Company represented by their manager, Mr. Narayan Parashram Tullu, have made default in payment of the sum of Rs. 54-9 due by them on the 1st of January, 1894, on account of income tax for 1893-94, I, Mr. A. H. Plunkett, Collector of Income Tax, Poona City, do hereby direct under sub-section 1 of section 30 of Act II of 1886 that a sum of Rs. (54-9-0) fifty-four and annas nine be recovered from the said defaulter (the manager).”

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In execution of this warrant, six currency notes for Rs. 10 each, the private property of the plaintiff, were attached. He has now brought this suit to recover these notes or their value on the ground that as he was not personally liable to pay the income tax for the company, his private property was wrongfully attached.

The points for determination, therefore, are:—(1) Whether the plaintiff was personally liable to pay the tax? (2) If not whether a suit to recover the property attached or its value will lie in a civil Court?

We decide the first point in the affirmative. Section 21 of the Act (II of 1886) is clear on the point. It provides that a person not resident in British India, but being in receipt through an agent of income chargeable under the Act shall be chargeable in the name of the agent just as he would be chargeable if he were resident in British India. That is precisely the case here. The Chatre Company, which, as the plaintiff says in his appeal petition, "is living at Gwalior and is likely to live there permanently," was assessed in the name of its manager, the plaintiff, for income tax, and demand was made on the plaintiff for payment. He thereupon became liable to pay it. That is the clear meaning of section 21, and section 22 does not, as has been argued, take away that liability. It only provides the agent with the means of obtaining funds or recouping himself for the payment. The plaintiff could have, indeed may have, employed those means, but his omission to do so will not relieve him from liability to pay the tax any more than a plea that he had no funds would.

It is unnecessary to decide the second point. Reversing the decree of the lower Court we order plaintiff's suit to be dismissed with costs throughout.

RANADE, J.:—There is no occasion to consider the points of law based on the construction to be placed on the provisions of section 39 and section 30 (3) of the Income Tax Act, as we feel satisfied that the District Judge's decree cannot be supported on the merits.

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The respondent, original plaintiff, brought this suit against the appellant, who is the Income Tax Collector of Poona, to recover back a certain sum which was levied from him as income tax for 1893-94 on the 20th March, 1894, for the tax due from the Chatre Circus Company, of which company respondent was stated to be manager. Respondent's main contention was that he was not in any way interested in the financial management of the circus, and only helped it with his advice and services gratis, and that at any rate he was not personally responsible for a tax admittedly due from the Circus Company. The appellant, while maintaining that no suit would lie against him for the refund of the tax in a civil Court under sections 30 and 39 of the Income Tax Act, further pleaded on the merits that respondent had by his conduct held himself out to be, and in fact was, manager of the circus, and that he was, therefore, liable to pay the tax due from the Circus Company as agent for the same. The District Judge held that the respondent was not personally responsible for the payment of the tax due by the Circus Company, and accordingly ordered a refund of the sum levied without right from him.

The correspondence between the parties, however, shows clearly that, in the first instance, the Income Tax Collector did not hold the respondent responsible. The notice under section 77 was at first issued to Nago Bhicaji, who was described as the manager of the Chatre Circus Company. This notice is Exhibit 23, and bears date the 29th April, 1893. It informed Nago Bhicaji that the tax charged was Rs. 51-2, and required him to pay the same before 29th May, 1893, or to make any representation about the same that he might deem proper. It appears that the notice reached Nago Bhicaji at Gwalior, where the circus then was, on 29th June, 1893, and this Nago Bhicaji wrote to the Income Tax Collector that he got the notice after the last date fixed in it, and that payment within the time fixed was thus impossible. He, however, informed the taxing officer that the respondent-plaintiff Narayan was "our" head manager, and that he had been asked to make all proper arrangements in respect of the demand. Thereupon, the appellant for the first time, on 4th August, 1893, required the respondent, who was not

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described as manager on this occasion, to pay the tax within eight days (Exhibit 15). The respondent on 9th September, 1893, describing himself as Manager of the Chatre Circus, wrote Exhibit 16, in which letter he represented that the Circus Company had not earned any profits, and that throughout the year it was working out of British India, and it was, therefore, not liable to the charge. This letter was accompanied by a printed form of application under section 25, signed by the respondent, in which he identified himself with the company more completely by the use of the first personal pronoun in stating that "we" had no property, and earned no profits in British India.

The appellant next, on 13th September, 1893, made inquiries about the movements of the circus, and respondent sent a reply on 15th September. Later on, appellant asked to be furnished with information about the company's accounts. Respondent asked for time—Exhibits 28, 29—to obtain this information from Gwalior, and later on supplied information on these points and sent extracts of the company's accounts. Finally, the Income Tax Collector confirmed the tax as first assessed on 1st December, 1893—Exhibit 32. An appeal was then preferred by the respondent, in which he again described himself as Manager of the Chatre Circus. This appeal was rejected. Thereafter a warrant was issued for the levy of the tax from the Chatre Circus Company represented by the manager respondent, and in execution of this warrant that the notes of 60 Rs. were recovered from the respondent as manager, as stated in the warrant.

It is quite clear from this correspondence that the respondent plaintiff all along conducted himself as though he was the *bona fide* head manager of the circus. That character was given to him, not by the appellant, but by Nago Bhicaji, and respondent not only never repudiated that character, but actually identified himself with the circus in a way which left no room for doubt that he was the head manager. He did not act in his capacity as *vakil* for the Circus Company. He himself states he received a power of attorney from Mr. Chatre. His own evidence shows that the Nāsik Māmlatdar asked him to pay the tax on behalf of the Circus Company. The pātel and kulkarni also admit

made the demand on him as Manager for the Circus Company, and he was asked to take back the balance after deducting the tax he had paid for the Circus Company. There was, therefore, nothing illegal in all these proceedings. Section 21 of the Act authorizes such a levy from the agent or manager when the principal lives out of British India. The mere fact that respondent was not a paid servant of the company cannot make any difference. It appears that he had advanced moneys to defray the circus expenses. But whether he was pecuniarily interested or not, it is clear that he put himself forward as an agent of the Circus Company, and he is, therefore, estopped now from pleading that he was not liable to be dealt with as such. We at first entertained some doubts which were suggested by plaintiff's evidence as to whether the levy was made from the respondent in his private capacity or as agent. We accordingly sent for the warrant, and its terms leave no doubt that the levy was made from him as manager. He has under the Act his own remedy against the owner of the circus if he has had to pay the money for his principal without having the principal's funds in his hand. Lastly it may be noted that respondent might have applied to the Collector under section 20 (3) (d) and made a claim for the money, if he objected to the payment. Section 39 has obviously no application, as respondent did not bring this suit to set aside the assessment. On the whole, we feel satisfied that the District Judge's decision cannot be supported on the merits. We accordingly reverse his decree and dismiss the suit with costs throughout on respondent.

*Decree reversed.*

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