Har Narain Singh[1]. But this view has not been adopted by the Calcutta, Madras and Bombay High Courts, which treat the matter as depending upon the circumstances of each particular case. This is not a case in which the appellant lost time in appealing against the judgment that the appeal lay to the District Court and not to the High Court, so as to fall within the view taken in *Daudbhai Musabhai* v. *Emnabai*[2]. Though no doubt there was carelessness in the matter, yet I think there is no reason to believe that the appeal in the High Court was not filed "in good faith," using those words in the sense given to them by the definition in the General Clauses Act, that is to say, honestly, though it may be negligently.

I concur, therefore, in allowing the appeal.

Appeal allowed.

R. R.

[1] (1888) 10 All. 524. [2] (1903) 28 Bom. 235.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Crump.

AMBALAL SARABHAI SHETH (ORIGINAL PLAINTIFF), APPELLANT *v.* THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), RESPONDENT*.

1920. *August* 16.

Bombay District Municipal Act (Bombay Act II of 1884), section 32, clause (h)†—*Bombay District Municipal Act (Bombay Act III of 1901),*

* Second Appeal No. 882 of 1919.

† The material portions of the section run as follows :—

32. Every municipality shall, as soon as conveniently may be after it has been constituted, make and may from time to time alter or rescind rules, consistent with this Act and with the principal Act :—

(*h*) prescribing, subject to the provisions of section 21 of the principal Act, the tolls, cesses, taxes or other imposts to be levied in the municipal district for municipal purposes, and the fees to be charged for licenses or permissions granted under section 22 of the said Act, and the times and mode of levying or recovering the same.

1920.

AMBALAL SARABHAI v. THE AHMEDABAD MUNICIPALITY.

section 2, proviso (b)*, *section 65, clause 4,—Rules for house and property tax—Rules made by a District Municipality under the Act of 1884 but kept in force under the Act of 1901—Procedure laid down by Rule 74† should be strictly followed—Assessment list—Authentication of list—Absence of authentication does not render the levy of the tax illegal.*

The Municipality of Ahmedabad framed rules for the levy of house and property tax within the municipal limits, under the powers conferred upon it by clause (*h*) of section 32 of the Bombay District Municipal Act, 1884. Those rules were kept in force by section 2 of the Bombay District Municipal Act, 1901. One of those rules, *viz.*, Rule 74, laid down certain procedure to be observed on certain fixed dates before the house and property tax could be levied or enhanced. In the year 1911-12, the Municipality sought to enhance the tax on the plaintiff's houses by observing the procedure laid down by Rule 74; but the several formalities were gone through long after the dates fixed by the rule. The Municipality levied the enhanced tax from the plaintiff.

---

* The proviso runs thus :—

(*b*) All Municipalities constituted, Municipal Commissioners appointed or elected, committees established, limits defined, appointments, rules, orders and bylaws made, notifications and notices issued, taxes and rates imposed, contracts entered into, and suits and other proceedings instituted, under the said Acts or under any enactments thereby repealed, shall, so far as may be, be deemed to have been respectively constituted, appointed, elected, established, defined, made, issued, imposed, entered into and instituted under this Act.

† The rule is as follows :—

74. The Chief Officer shall make out and place before the Managing Committee on the 1st of February in every year a return of all houses subject to the payment of the house and property tax, showing the names of house owners, and where the house owners cannot be found, of tenants, and the amount of the tax levied in the expiring year and necessary increases and decreases therein, with reasons for the same. The Managing Committee after adopting or amending the alterations proposed, shall cause the same to be notified to the house-owners or tenants concerned before the 1st of March. All objections to such alterations shall be lodged in writing in the Municipal Office before the 15th of March. The Managing Committee after due investigation shall communicate its decision in each case to the owner or tenant before the 1st of April and the payment of tax shall be considered due on that date. All the assessed amounts not paid before the 1st of May shall be regarded arrears of Municipal dues and shall be dealt with as such.

The plaintiff having sued for a refund of the enhanced tax so levied from him :—

Held, that the Ahmedabad Municipality was competent to make Rule 74 under the powers conferred upon it by clause (*h*) of section 32 of the Bombay District Municipal Act, 1884; and that it was binding both on the Municipality and the house-owners within the municipal limits.

Held, further, that the enhanced tax which was not levied in accordance with Rule 74 should be refunded to the plaintiff.

The mere fact that an officer does not authenticate an assessment list by signing it as provided in clause 4 of section 65 of the Bombay District Municipal Act (Bombay Act III of 1901) does not affect the question as to whether the levy of the tax is legal.

SECOND appeal from the decision of K. B. Wassoodew, Assistant Judge of Ahmedabad, modifying the decree passed by M. I. Kadri, Subordinate Judge at Ahmedabad.

Suit for declaration and injunction and to recover a sum of money by way of refund.

The plaintiff owned a large number of houses which were situated throughout the limits of the Ahmedabad Municipality. On those houses, the house and property tax was being levied at a certain rate.

In the municipal year 1911-12, which commenced on the 1st April 1911, the Ahmedabad Municipality levied an enhanced tax on those houses from the plaintiff.

Some of the houses, which were so subjected to the enhanced tax, were situated in a Municipal Ward, called the Khadia Ward No. 1.

It was on the 24th April 1911 that the Municipality published a revised assessment list in that ward. The list was at no time authenticated by any officer.

In the Khadia Ward the Ahmedabad Municipality served on the plaintiff notice of proposed enhancement

1920.

AMBALAL SARABHAI v. THE AHMEDABAD MUNICIPALITY.

in the house and property tax on the 20th June 1911. To this, the plaintiff filed his objections on the 12th July 1911. But, on the 18th idem, the Municipality issued a notice to the plaintiff to pay the tax. The plaintiff again objected to the levy on the 30th. On the 22nd December 1911, the plaintiff's objections to the tax were heard by the Chief Officer, who confirmed the tax. The Municipality served on the plaintiff a notice of demand on the 27th January 1912. The plaintiff paid the tax under protest.

The plaintiff then filed the present suit against the Ahmedabad Municipality to obtain a declaration that the valuation made of the plaintiff's houses for the purpose of levying the house and property tax was illegal, to prevent the Municipality from levying the tax and to obtain refund of the tax levied from him.

The trial Court allowed the plaintiff to recover a small portion of the amount levied from him, as it found that the assessment of plaintiff's houses was fixed on a wrong basis. It was further of opinion that though the Municipality had not taken the several steps on dates fixed by its Rule 74, the irregularity did not affect the legality of the levy of the tax.

On appeal, the Assistant Judge still further reduced the plaintiff's claim on grounds not material to this report. The learned Judge agreed with the trial Court as to the irregularity in not observing the dates fixed. He was also of opinion that the absence of authentication on the assessment list did not invalidate it.

The plaintiff appealed to the High Court.

Dhirajlal Thakore, with *Ratanlal Ranchhoddas* and *Bhaishankar Kanga and Girdharlal*, for the appellant.

N. K. Mehta, for the respondent.

SHAH, J.:—This appeal arises out of a suit to recover certain taxes said to have been illegally levied by the Ahmedabad Municipality. In the lower Courts the case has been disposed of on somewhat different grounds, but in the result a refund of the excess of the drainage tax claimed by the plaintiff is allowed but a refund of the house and property tax is not allowed. In the appeal before us, a refund of the excess amount levied in respect of the house and property tax for the year 1911-12 is claimed on the ground that Rule 74 of the rules and by-laws of the Ahmedabad Municipality, which were in force at the time, has not been complied with. It is stated that the assessment list with the proposed alteration for the year 1911-12 was published in April 1911, and the notice of the proposed increase in the tax was given to the plaintiff by the Municipality on the 20th of June. The plaintiff objected to the enhancement on the 12th July, but a demand was made for the enhanced amount on the 18th July. A further protest was made by the plaintiff on the 30th July and his objections were heard and disposed of in December 1911 by the officer authorised to deal with such objections. Ultimately a notice of demand was served on the 27th January, 1912, and the amount claimed by the Municipality for the year 1911-1912 was paid under protest. I mention these dates as stated on behalf of the plaintiff and not challenged on behalf of the defendant with respect to the proposed enhancement relating to one property though the whole amount levied was in respect of several properties. These dates in substance are applicable to the full demand made by the Municipality with reference to all the properties, as to which a refund is claimed.

The two grounds urged in support of this claim for refund before us are that under section 65, sub-section 4, there was no proper authentication of the list in so far

1920.

AMBALAL SARABHAI v. THE AHMEDABAD MUNICIPALITY.

as the officer required by the clause to sign the list did not do so, and, secondly, that the provisions of Rule 74 were not complied with at all. As regards the first objection I do not think that there is any substance in it. It may be that if the list is not signed it could not be accepted as conclusive evidence as provided by sub-section 6. But I do not see how the mere fact that the officer did not sign the list could affect the question as to whether the levy was legal or not particularly when the amount fixed under the list is not challenged before us.

The second objection which is based on Rule 74 seems to me to be good. The rules in question were originally framed under section 32, clause (*h*), of Bombay Act II of 1884, and under section 2 of the present District Municipal Act these rules were in force in 1911. This position is not challenged on behalf of the Municipality. If the rule is not *ultra vires* it is clear to my mind, from the provisions of this rule, that the intended increase in the house and property tax was to be notified to the house-owners concerned before the 1st of March. All objections to the proposed increase were to be lodged in writing in the municipal office before the 15th March, and the investigation was to be completed before the 1st of April and the payment of the tax for the official year was to be considered due on that date. That is, in the present case, if the provisions of this rule had been duly followed, by the 1st of April 1911, all objections should have been considered and the amount payable for the year 1911-12 determined. The effect of the rule seems to me to be that for the year 1911-12 the Municipality would be entitled to such amount as is determined by the beginning of the year and not to any increase that may be determined at any time during the year. I am unable to agree with the lower appellate Court on this point.

The question is not whether the levy of the tax is illegal apart from Rule 74, but the question to my mind is as to what was due to the Municipality by the present plaintiff by way of house and property tax according to law. The rule distinctly indicates that the amount payable for the year is the amount fixed at the commencement of the year. Unless the increased amount was determined in the manner contemplated by Rule 74 the only amount that could be said to be due by the owner for 1911-12 was the amount which was fixed for the next preceding year. I do not see any thing unreasonable in this rule, and if it is consistent with the provisions of the present Act, I am of opinion that it should be given effect to. If effect is given to it, it follows that the levy of the increased tax for the year 1911-12 was not justified. As a last resort Mr. Mehta has urged on behalf of the Municipality that this rule is *ultra vires* and inconsistent with the provisions of Act III of 1901. In support of this argument, he relies upon section 67, sub-section (2). On a careful consideration of the scheme of the sections 63, 64, 65, 66 and 67, it is clear that under sub-section (2) of section 67 it is permissible to the Municipality to deal with the matters arising under sections 64, 65, 66 after the commencement of the official year in question. But there is nothing in the Act to show that the matters intended to be dealt with under section 65 must necessarily be dealt with after the commencement of the official year. For instance section 66, sub-section 3, provides that any alteration made under that section shall have the same effect as if it had been made on the earliest day in the current official year in which the circumstance justifying the alteration existed. Though section 66 does not apply to the present case, sub-section (3) illustrates, to my mind, that when the Legislature intends that even though the alteration is

1920.

AMBALAL SARABHAI v. THE AHMEDABAD MUNICIPALITY.

made after the commencement of the year it should take effect on the earliest day in the particular official year in which the circumstance justifying the alteration exists, an express provision to that effect is made. There is no such provision with reference to matters arising under section 65; and that indicates, in my opinion, that it was open to the Municipality to have such a rule as No. 74 with reference to matters arising under section 65. In prescribing the time when the objections were to be made by the house owners and dealt with by the Municipality, there was nothing inconsistent with the provisions of the District Municipal Act of 1901. It is also clear to my mind that these provisions as to time when a house owner is to receive notice of the intended increase and his objections relating to the increase are to be decided, are within the scope of the powers of the Municipality to make rules concerning the levy of the taxes. The words of clause (1) of section 46 are wide enough to justify such a rule; and though we are not strictly concerned with the question as to whether this rule was *intra vires* under the Act of 1884 it seems to me that under clause (*h*) of section 32 of the Act of 1884 it was competent to the Municipality to have such a rule regulating the levy of the house and property tax. It is clear that this rule was binding upon the Municipality as well as upon the house owners; and the non-compliance with that rule entitles the plaintiff to recover what has been levied by way of house and property tax in excess of what was payable at the beginning of the year, which would be the amount fixed for the next preceding year. The correctness of the amount claimed by the plaintiff is not challenged on behalf of the Municipality.

The cross-objection with reference to the refund of the drainage tax has not been pressed.

I would, therefore, vary the decree of the lower appellate Court by allowing to the plaintiff the sum of Rs. 413-5-6 claimed in this second appeal. The plaintiff to have his costs throughout.

The cross-objection is dismissed with costs.

CRUMP, J.:—I agree.

Decree varied.

R. R.

APPELLATE CRIMINAL.

Before Mr. Justice Shah and Mr. Justice Crump.

EMPEROR *v.* CHANGOUDA PIRGOUDA*.

1920.
August 16.

Criminal Procedure Code (Act V of 1898), section 238—Trial with the aid of assessors—Conviction of the accused for a minor offence which is triable only by a jury—Trial regular—Practice and procedure.

The accused was tried for an offence punishable under section 302 of the Indian Penal Code, by the Sessions Judge of Belgaum with the aid of assessors. At the close of the trial and after the opinions of the assessors were recorded, the learned Judge was of opinion that though the accused was not guilty of the offence charged, he was still guilty of the minor offence punishable under section 326 of the Code. Accordingly, in the same trial, he convicted the accused of the minor offence, though it was triable in that District only by a jury. On appeal :—

Held, that the Sessions Judge was competent to convict the accused of an offence punishable under section 326 of the Indian Penal Code, even though it was triable by a jury.

PER CRUMP, J. :—Section 238 of the Criminal Procedure Code, 1898, invests the Court trying the offence (however consituted) with authority to find as an incident to such trial that certain facts only are proved in the trial which facts constitute a minor offence though such minor offence is not triable by the Court as constituted.

PER SHAH, J. :—The necessary implication of section 238 appears to be that there need be no separate trial with reference to the minor offence. According to the section even the charge is not required to be made.

Pattikadan Ummaru v. *Emperor*[1], referred to.

* Criminal Appeal No. 321 of 1920.

[1] (1902) 26 Mad. 243.