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holder omits to take a written agreement his remedies *under the Act* are wanting, but his right of Suit in the Civil Court remains as it was before.

Note :—Kindersley, J., held that Sections 7 and 13 of Madras Act VIII of 1865 also preclude suits in Civil Courts for arrears of rent, when the conditions respectively laid down therein are not fulfilled.

Morgan, J. agreed with Kindersley, J., as regards Section 7, and, dissenting from him as to Section 13, was of opinion that the landholders mentioned in that section are competent to recover arrears of rent in the Civil Courts in the absence of the fulfilment of the conditions laid down in Section 13.

Innes, J. agreed with Kindersley, J. and the Chief Justice in respect of Section 7, but gave no opinion regarding Section 13.

Holloway, J., gave no opinion regarding Section 13.

The Court (Morgan, C. J., Innes, J. and Kindersley, J.) also held that where puttahs were required to be tendered, the tender must be made before the expiration of the Fasli for which the rent was claimed in the suit.—See *post* page.

In Regular Appeal No. 131 of 1872 before Holloway and Kernan, JJ. the appellant, a landholder of the kind described in Section 13, was held to be entitled to receive arrears of rent notwithstanding that there was no written agreement.

Appellate Jurisdiction. (a)

Regular Appeal No. 119 of 1873.

J. F. SNAITH..... *Appellant.*

W. MCQUHAE, President of the }
Dindigul Municipality..... } *Respondent.*

The defendant, a Judge of the Small Cause Court at Madura, visited Dindigul once a year and remained there for more than 30 days each year. The defendant took with him to Dindigul his horses and carriages which he used there and in respect of which he paid the taxes imposed by law to the Municipality of Madura where he resided.

In a suit by the Municipality of Dindigul, to recover the tax payable in respect of the same horses and carriages :—*Held*, that the defendant was not liable.

(a) Present : Morgan, C. J. and Holloway, J.

THIS was a Regular Appeal against the decision of P. P. Hutchins, the District Judge of Madura, in Original Suit No. 13 of 1873. 1874.
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The Court of First Instance delivered the following Judgment, in which the facts fully appear:—" This case depends on the construction of the Towns' Improvement Acts, and was called up by consent of both parties for disposal by this Court.

" The plaintiff represents the Municipal Commissioners of Dindigul. Defendant was Officiating Judge of the Small Cause Court of Madura, and in the course of his duties he was obliged to hold Court at Dindigul for more than 30 days in February and March 1871, and again in February and March 1872. During those periods he admits that he kept at Dindigul the horses and carriages for which the plaintiff seeks to recover the usual tax. All the facts are admitted, and I have only to dispose of the various legal objections raised.

" The plea of limitation was given up upon my pointing out that what plaintiff sought to recover was only the tax itself and not the penalty to which defendant might or might not have rendered himself liable by not paying the tax.

" It was then contended that the Municipal Commissioners had a special remedy provided in the Act, and no general right to sue for taxes as for an ordinary debt. Section 161, Act III of 1871, provides that " instead of proceeding by distress and sale, or in case of failure to realize by distress the whole or any part of any rates, taxes, &c., the Commissioners may sue." It was argued that the Commissioners could not have proceeded at all by distress without the intervention of a Magistrate, and therefore that a previous conviction by a Magistrate was a condition precedent to the right to sue. A reference to the Act of 1865 will dispose of this point. Section 161 of Act III of 1871 is merely a re-enactment of Section 141 of Act X of 1865. Act III of 1871 did not receive the assent of the Governor-General till 20th March 1871, and the first demand in this

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case seems to fall under the old Act. Under the old Act the Commissioners had the general power of distraining for any rate or tax leviable under the Act (Sections 72, 73) but were authorized to sue instead if they preferred to do so (Section 141.) Although the latter Act has modified the Commissioner's power to distrain under their own warrants, I see nothing in it to lead to the conclusion that the Legislature intended at the same time to restrict their right to proceed by a regular action. Section 158 which was referred to is merely a repetition of Section 137 in the previous Act.

“ It was next argued that defendant had paid the tax for the same half-year and on the same animals in Madura, and was not liable again. This was put more upon “ the spirit of the Act” than on its letter, whereas I have only to deal with the letter if its meaning is unambiguous. The spirit of the Act, it was said, was that no person should pay twice for the same thing, and Sections 58 and 60 (in X of 1860, Sections 46 and 48) were referred to. Section 58 contains a new clause to the proviso which seems to render the proviso itself wholly nugatory, but even taking the proviso as unattenuated by the following “ unless,” it merely amounts to this, that no person shall pay in two different Municipalities for the same profession or business. This and Section 60 show that the Legislature contemplated the possibility of such a demand being made, and the omission of any similar provisions in the Sections relating to the tax on horses rather goes to show that they thought these might be paid for in every Municipality in which they were “ kept.” But it was said this word “ kept” meant kept permanently or for an indeterminate period and not merely for the limited time of two months. I see no foundation for this interpretation, and the proviso to Section 65 seems clearly against it—no person shall be liable on an animal which shall have been in his possession for 30 days only.

“ I asked the defendant's vakil if he pressed his argument so far as to contend that no one would be liable who during a half year became possessed of a horse which had not been before kept in the Municipality, and his answer

was that such a person would undoubtedly be liable. I asked this because the words under which such a person, and the present defendant becomes liable, are very awkward, and at the first glance capable of a different interpretation. Any person *becoming possessed of a horse so kept* might be taken to imply that the horse was "so kept" before he became possessed of it, or in other words to relate to the ordinary case of a transfer of a horse to another owner within the same limits. Where however the Legislature wish to describe such a case they know how to do it. See Section 75. The words "*becoming possessed of a horse so kept*" seem to me intended to correspond with the words in Section 75 "*becoming possessed of any such cart.*" "So kept" means a horse kept within Municipal limits, and the whole expression, awkward as it is, must be taken to mean any 'person who after the half year has commenced shall become possessed of any horse and shall keep it in Municipal limits.' I have examined Act IX of 1865 from which this Section is taken and the yet older Acts of which it took the place, and I am satisfied that this must be the meaning really intended, as it is also that upon which all Municipalities have admittedly acted."

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Decree for the plaintiff for the amount sued for and costs.

The defendant appealed to the High Court on the following grounds :—

I.—Because the defendant is not liable for the taxes sued for within the meaning of Act XX of 1865 or Act III of 1871.

II.—Because the taxes sued for are not recoverable in a Civil Court within the meaning of the said Acts or either of them.

Shephard, for the appellant, the defendant.

The Court delivered the following Judgments :—

MORGAN, C. J.—The facts are not disputed and we have only to determine whether the District Court rightly construed the provisions of the Towns' Improvement Acts

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of 1873. of 1865 and 1871 to authorize the levy of taxes by the Municipal Commissioners of Dindigul on the defendant as the owner of a carriage and horses.

It was the defendant's duty, as Judge of the Madura Small Cause Court, to hold yearly a Court at Dindigul for a period of 30 days and upwards. In the months of February and March 1871 the defendant went to Dindigul and remained there in discharge of his judicial duties for upwards of 30 days, during which time he kept and used within the town the carriage and horses for which taxes are claimed. The first sum sued for is the amount of the tax for the second half year of 1870-71, which is claimed to be a due under the Act of 1865. The defendant, having duly paid the yearly tax imposed by this Act on the owners of the carriage and horses in the Town of Madura, where he resided, disputed his liability to pay also the Dindigul Municipal tax for his carriage and horses, used during his temporary stay there. The Court below has however given a decree in the plaintiff's favor, holding apparently that the 58th Section of the Act of 1865 imposed this tax upon every owner who kept within the town a carriage and horses for any period however brief.

In my judgment this decision cannot be supported. I find no clear and distinct legal authority such as should be shown for the imposition of this burden. On the contrary I find both in the language used to impose the tax, and in the mode employed for its assessment and collection, indications of an intention on the part of the Legislature to make liable settled residents only and not temporary sojourners who might chance to bring with them and keep within the town their own carriages and horses.

The charges imposed by the Act are (except the tolls on vehicles and animals coming within the local limits of the Municipality) all annual charges. The rates and taxes are annual amounts made payable at certain fixed periods. The tax on horses and carriages is described (Section 58) as a "yearly tax" payable half yearly by "the owner of every

carriage, horse, &c., kept within the Town." It is assessed by means of a statement in writing signed by the owner, containing a description of the vehicles and animals, liable to the tax, for which he desires to take out a license. This written statement he is required to send to the office of the Commissioners on or before the 1st day of May and the 1st day of November in each year: and he is bound at the same time to pay to the Municipal Commissioners half of the yearly taxes payable by him. Then follows a clause in these words:—

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" Any person becoming possessed between the 1st day of May and the 31st day of October or between the 1st day of November and the 30th day of April of a carriage or animal so kept shall, within fifteen days of becoming so possessed, send to the office of the Municipal Commissioners a similar statement, together with the full amount payable for the then current half year according to the said schedule." The clause apparently provides for the case of ownership and possession being first acquired subsequent to the times specified in the early part of the section. The new owner and possessor must within 15 days send in a written statement, and with it the full amount of tax payable for the current half year. This language is inapplicable to persons in the position of the defendant. Mr. Snaith, who came to Dindigul for a few weeks to discharge the duties of his office, bringing with him his own carriage and horses, was not a person subject to any of the obligations imposed by the section. The terms of the requirements of the first part of the section clearly could not be applied to him, nor could he during any portion of his stay at Dindigul properly be regarded as a person who had become possessed of a carriage and horses between the first day of November 1871 and the 30th of April 1872. For like reasons I think that the tax claimed under the Act of 1871 for the second half year of 1871-72 cannot be recovered. The proviso at the end of the 65th Section of this Act, exempting from liability to the tax persons possessed of horses and carriages for a period not exceeding 30 days in any half year, cannot operate to extend the tax to persons not already made liable thereto. I think the decree should be reversed and the suit dismissed,

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the Municipal Commissioners paying all the costs of this litigation.

HOLLOWAY, J.—The question turns on the construction of Section 58 of the Act of 1865. The defendant in this case does not appear to have kept a carriage or horse within the town at a time at which the only liability to register take a license and pay the tax is imposed: one month from the notified approval and on the 1st day of May and the 1st day of November. It further does not appear upon the case that the possession of these horses and carriages commenced in the defendant at any intermediate stage. A man becomes possessed of a thing when he takes a thing in the possession of no one and when he obtains possession from a previous possessor. I apprehend that, although “so kept” means merely kept within the town and not kept within the town by a person to whom the liability to register had already clung, the words “become possessed” are not appropriate to the description of the defendant’s carriages and horses. So far as it appears he did not become possessed within the period. It is clear that he did not. On the bare words of the section it seems to me that the judgment is wrong. Of course I am not at all insensible to the absurdities which may follow the only construction possible of these words. If the Legislature had intended to tax every one who kept a carriage and horses within the town for a period of one month they should have said so.

The defendant from the time at which he came to the place is exempt from the first liability which accrues at certain points of time only. He is exempt from the second which depends upon the acquisition of possession.

I agree that the decree should be reversed with costs.

Appeal allowed.
