

*Appellate Jurisdiction. (a)**Referred Case No. 23 of 1872.*LIEUTENANT COLONEL C. E. BATES.....*Plaintiff.*THE MUNICIPAL COMMISSIONERS FOR }
THE TOWN OF BELLARY } ...*Defendants.*

Plaintiff sued the Municipal Commissioners for the town of Bellary for a certain sum, alleged to have been illegally levied by them from him as his trade and profession tax. The sanction of the Governor in Council, under Sec. 38 of Madras Act III of 1871, was obtained on the 4th July 1871, with authority to levy the tax from 1st May 1871. Plaintiff alleged that no notice under Sec. 61 of the Act, had been served upon him, that the levying the tax was illegal as the approval of Government was obtained three months after the commencement of the official year and that the Act could not have retrospective effect. *Held*, on a reference, that the levy from the plaintiff was illegal.

THIS was a case referred for the opinion of the High Court by Captain G. H. Oakes, the Judge of the Cantonment Court of Small Causes at Bellary.

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No Counsel were instructed. The facts sufficiently appear in the following

JUDGMENT:—The plaintiff sues the defendants, the Municipal Commissioners for the Town of Bellary, for a certain sum, alleged to have been illegally levied by the defendants from him as his trade and profession tax, with interest, &c. The sanction of the Governor in Council under Section 38 of Act III of 1871, was obtained on the 4th July 1871, with authority to levy the tax from 1st May 1871. The plaintiff states that no notice, under Section 61 of Act III of 1871, was served upon him, that the levying of the tax was illegal, as the approval of Government was obtained three months after the commencement of the official year, and that the Act cannot have retrospective effect. The questions referred are—

(1.) Can the levying of the tax have retrospective effect ?

(2.) Is it essential that notice in writing under Section 61 must be given to persons liable to the tax before the Municipal Commissioners can legally levy it ?

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The Act so far as the plaintiff was concerned imposes a new tax. The sections under which it is to be imposed and levied make it an annual tax payable in two instalments, but they manifestly provide for no case but that of the imposition of that annual tax at the commencement of the official year.

Here there was no legal authority whatever for its imposition at the commencement of the year. The sections as to notice enforce the construction that there is only one legal period of imposition of the tax, and at that period there was no tax legally in existence. We answer, therefore, that the levy from the plaintiff was illegal.

Appellate Jurisdiction. (a)

Regular Appeal No. 33 of 1869.

GO'PA'LA'YYAN.....*Appellant.*

RA'GHUPATIA'YYAN *alias* A'YYAVA'YYAN.*Respondent.*

Suit to set aside the adoption of the 1st defendant, the alleged adopted son of plaintiff's undivided brother; to declare plaintiff's title to certain lands, and for possession. 1st defendant pleaded that the question of his adoption was *res judicata* and the Civil Judge so decided. Upon appeal, the High Court reversed the decision and remanded the case for decision on the merits. After trial the Civil Judge found that the fact of the adoption was satisfactorily proved and that 1st defendant had done acts as adopted son since 1833, at least. It was also argued, on plaintiff's part, that the adoption was illegal, being that of a sister's son, and the judgment of Holloway, J. in *Special Appeal No. 139 of 1863* was cited. The Civil Judge decided that this applied only to the Andhra country, and that as the custom was common in the Dravida country the adoption was legal, or, if not legal, that it was too late to dispute it. The plaintiff appealed and the case was referred to a full Court. The Court decided that on the general principles of Hindu Law, as expounded by the writers of all schools, a Brahmin could not legally adopt his sister's son, but as the existence of a custom, derogating from the general law, was asserted, they directed an enquiry into the existence of the supposed custom.

The Civil Judge found that a rule of customary law did exist affirming the legality of the adoption of a sister's son by a Brahmin. Upon the question coming before the High Court the finding of the Civil Judge as to the existence of the custom was reversed and the following issue sent for determination.—“Has the conduct of the plaintiff and that of the members of his family been such as to render it inequitable for him to set up as against the present defendant the rule of law upon which he now insists?” The Judge found to the effect that there had been a long course of acquiescence by all the members of the family, the plaintiff

(a) Present: Holloway, Ag. C. J. and Innes, J.