

Special Appeal No. 612 of 1871.

1871.
Nov. 9.

DULLABH SHIVLA'L, heir of Ghelábhái
Shivlál, deceased *Appellant.*
T. C. HOPE, President of the Súrat Muni-
cipality, BHAGVA'NDA'S LA'LBHA'I, *et al. Respondents.*

*Acts, Construction of—Taxes, Acts imposing—Ambiguous Words—
Súrat Bye-laws—Copper.*

In order to impose a tax, due, rate, or toll upon a subject, the framers of the Act or Bye-law under which such tax, &c. is imposed must use clear and unambiguous words to effect their purpose. When the words used are ambiguous, the intendment of the courts will be in favour of the subject upon whom the tax is sought to be imposed.

Thus where the framers of the Súrat Bye-laws imposed a tax of one rupee per Súrat *man* upon "copper" imported into Súrat for consumption, it was held that copper wrought up into pots did not fall within the words of the bye-law.

Semble that when a tax is imposed upon goods imported into a town for consumption, and such goods, after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time.

THIS was a special appeal from the decision of W. H. Newnham, District Judge of Súrat, reversing the decree of George Ayerst, Acting Assistant Judge at that station.

The special appeal was heard by WESTROPP, C. J., and WEST, J.

Chunilál Mániklál for the special appellant.

Dhirajlál Mathurádás, Government Pleader, for the Collector, and *Nánábhái Haridás* for the other respondents.

The facts sufficiently appear from the following judgment of the court, delivered by

WESTROPP, C.J. :—One of the Rules or Bye-Laws (Sec. 26, Appx. B) of the Municipality of Súrat, framed under Act XXVI. of 1850, entitles the municipality to levy a tax upon "copper" at one rupee per Súrat *man*, for municipal purposes. The municipality has levied from the appellant (plaintiff) Rs. 27-6-7 upon copper pots, the copper of which had originally been imported into Súrat from Bombay in the form of

1871.
 DULLABH
 SHIVLA'L
 v.
 HOPE
 et al.

copper plates, on which the municipal tax for copper was then paid. The plates afterwards were manufactured in Súrat into copper pots, which the appellant took to a neighbouring village for sale, but, not having sold them, brought them back to Súrat, and the abovementioned sum of Rs. 27-6-7 was then levied from him upon the copper pots. He brought his suit against the managing committee of the municipality to recover that amount, as illegally levied from him. The Assistant Judge, Mr. Ayerst, decreed in his favour. The District Judge, Mr. Newnham, reversed that decree. Against that reversal the plaintiff has appealed.

The three grounds of objection mentioned in the memorandum of appeal may be resolved into two, namely: (1) Are copper pots on their original importation into the city of Súrat liable to the municipal toll? (2) If so, and if taken out of the city for sale and brought back unsold, are they, on such re-entry into that city, liable to the municipal toll, notwithstanding that such toll had been paid, upon the copper of which they are made, on its being originally imported into the city in the form of copper plates?

Rule 26 of the Súrat Municipal Rules is this :—

“ Taxes at the rates specified in Appendix B, as sanctioned by Government, shall be levied on the articles therein mentioned.”

The Appendix therein referred to is, so far as it is material, as follows :—

“ APPENDIX B.

Description of Municipal Taxes to be levied in the Town of Surat.

A tax shall be levied on the following articles, according to the rates specified against each, when imported into the Town of Surat for consumption :—

Names of Articles.—Imports.	Rate of Tax.
Ghee.....	1 Rupee per Surat Maund.
Butter	8 Annas „ „
Sugar, coarse and refined	8 Annas „ „
Cocoanuts	1 Rupee per 1,000.
Silk (here follow seven kinds of Silk at various rates).	

Cotton Yarn—

Yarn, Europe	1 Rupee per Bengal Maund.
" " Dyed	1 R. 4 annas " "
Bundles of Thread	1 R. 10 annas " "
Copper	1 Rupee per Surat Maund.
Ivory	3 Annas per Bengal Seer."

&c. &c. &c.

1871.

DULLABH
SHIVLA'L
v.
HOPE
et al.

The words "for consumption" when applied to copper may be interpreted to mean for the purpose of being manufactured, and seem to be inconsistent with the supposition that copper, already manufactured into vessels or other articles, was intended. Possibly old copper vessels unfit for use, and imported into the city in such a condition and quantity as to lead to the conclusion that they were so imported merely for the purpose of being re-manufactured, might be considered within the meaning of copper imported for consumption, but this could not reasonably be presumed of copper vessels which are new, or in a serviceable condition, and fit for sale and use. But, even without the aid of the words "for consumption," the word "copper" seems to us *primâ facie* to mean copper not worked up into vessels or other articles. When the Legislature desires to include what is manufactured as well as what is unmanufactured, it usually does so in express terms—*e. g.*, Act XVIII. of 1854, Sec. 10; Stat. 1 Wm. IV., c. 68, s. 1. Putting the case in the most unfavourable point of view to the plaintiff, it must be admitted that it is at the least doubtful that copper manufactured into vessels or other goods was intended to be included. For the intention we must look to the language of the Rules and Appendix B only. The *ratio decidendi* suggested by the District Judge when he said: "But it must be borne in mind that this is not a case of laws enacted by the Legislature and enforced by executive officers, but of rules framed by the same body who execute them, and there is a certain presumption that they best know what they meant when they framed the rules," is completely inadmissible. The municipality is not to be regarded as the judge of its own cause: *Reg. v. Kâlidâs Keval (a)*; *Reg. v. Yenku Bâpuji (b)*. And even if the municipality, when framing its

(a) 5 Bom. H. C. Rep., Cr. Ca. 10. (b) 8 Bom. H. C. Rep., Cr. Ca. 39.

1871.

DULLABH
SHIVLA'L
v.
HOPE
et al.

bye-laws, supposed that the term "copper" included wrought as well as unwrought copper, it does not follow that Government, in sanctioning the rules, meant to adopt any such large construction of that word, or that the subsequent practice of the municipality, during the few years which have elapsed since the making of the rules, can be permitted to influence us in our construction of them, or in any wise to depart from the ordinary canons of interpretation applicable to legislative enactments or bye-laws relating to rates, taxes, or tolls.

It is a legal axiom that "no pecuniary burden can be imposed upon the subject, by whatever name it may be called, whether tax, due, rate, or toll, except upon clear and distinct legal authority, established in proof by those who seek to impose the burthen," [see the remarks of Wilde, C. J., in *Gosling v. Veley* (c) in the Exchequer Chamber, and afterwards as Lord Truro in the House of Lords (d), and of Martin, B., in the same case (e); and see *Holloway v. Smith* (f)]. In *Denn v. Diamond* (g) Bayley, J., said: "It is a well-settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language." That was a case in which a father conveyed lands to his son, as well in consideration of natural love and affection as also in consideration of the provision, which the son had that day made (by his bond), of £1,500 in augmentation of the fortunes of his sisters, which transaction was held not to be a "sale" of the land within the meaning of the Stamp Act 48 Geo. III., c. 149, and, therefore, that the conveyance was not liable to an *ad valorem* stamp duty. Holroyd, J., said: "It is true that the son, paying money for the estate, may in some sort be a purchaser, but that does not make the father a seller; and to bring the case within the statute, I think there must be a sale as to both." In *Phillips v. Morrison* (h) the Court of Exchequer said: "The party who seeks to bring an instru-

(c) 12 Q. B. 407. (d) 4 Ho. Lo. 781. (e) *Ibid.* 727.

(f) 2 Stra. 1171. (g) 4 B. & C. 245.

(h) 13 L. J., N. S., Exch. 212, 213; and see *Doe v. Amos*, 2 M. & R. 180. and per Heath, J., in 3 Taunton, 220.

ment within the Stamp Act must show clearly that it falls within it; he must, so to speak, hit the bird in the very eye. We can make no intendments in favour of the liability." Lord Brougham in the *Stockton and Darlington Railway Company v. Barrett* (i) said: "It must be observed that *in dubio* you are always to lean against the construction which imposes a burden on the subject. The meaning of the Legislature to tax him must be clear." And referring to *Gildart v. Gladstone* (j) he said: "The Court there said in effect, 'here is a company which gets an Act of Parliament to tax the subject; it is incumbent upon that company to do two things—to take care that the Act of Parliament is made clear and undoubtful, especially upon those clauses by which the company seeks to impose a burden upon the public; and if companies do not choose to take the trouble to do that, let them abide by the consequences: they will not be able to levy the duty.'" That remark is *a fortiori* applicable to a municipality when enacting its bye-laws, as it has, under certain restrictions, the legislative power in its own hands.

Lefroy, C. J. (k), after referring to Lord Coke's remark that "the construction of a statute is best made *ex visceribus actus* (l), said: "Besides this general rule of construction, there are two other principles which may be considered as bearing upon this case, namely, 1st, if by a statute it is intended to impose a tax upon the subject, its construction must be clear beyond all reasonable doubt: and 2ndly, the Common Law rights of the subject in respect to the enjoyment of his property are not to be trenched upon by a statute, unless the intention is shown by clear words or necessary implication." The same learned Judge and his colleagues, acting upon those principles and on the rule *noscitur a sociis*, held in *Shaw v. Ruddin* (m) that the word "cart" in the

(i) 11 Cl. & F. 607. (j) 11 East 675; 12 *Ibid.* 429; 2 Taunton, 97.

(k) 12 Ir. C. L. Rep. 40, 41; and see his observations *Ibid.* 60.

(l) Co. Lit. 381 a. And see the remarks on *Rex v. Hodnett*, 1 T. R. 101, in *Reg. v. Showdar Ghenar*, 7 Bom. H. C. Rep., Cr. Ca. 40, and again *Ibid.*, p. 49; and the observations of Lord Cairns in *Partington v. The Attorney General*, L. Rep. 4, Ho. Lo. 122.

(m) 9 Ir. C. L. Rep. 214, 221, Q. B.

1871.

DULLABH
SHIVLA'L
v.
HOPE
et al.

1871.
DULLABH
SHIVLA'L
v.
HOPE
et al.

Stat. 16 & 17 Vict., c. 112 (Dublin Carriage Act), must be limited to carts for hire, and not applied to carts for private use. If, under the special circumstances of the case, the liberal construction of an enactment would defeat its object and be wholly unreasonable, such a construction will not be adopted; *Hibernian Mine Company v. Tuke* (n). But in ordinary cases like the present there cannot be any doubt that it should be applied. We hold, accordingly, that copper pots are not liable to the municipal rate.

The conclusion to which we have come upon the first point renders it unnecessary to determine the second point, upon which, therefore, we shall only say a few words. The claim for rate made on copper pots returning unsold to the city whence they had been taken for the purpose of sale, is in the nature of what is in the old books called toll-turn (o) as distinguished from toll thorough (p) and toll traverse (q). Toll-turn is toll payable for cattle or goods on their return from a fair or market unsold: Bro. Ab. (Quo Warranto 3, and Toll 12); Cro. Eliz. 711, and 1 Siderfin (*Heshord v. Wills*) 454, where it is said "Et Toll-turn est pay sur return des avers d'un fair," &c. "Avers," *alias* "averia," include inanimate chattels, as well as cattle and beasts of burthen (r). One may be entitled to toll-turn by royal grant, or prescription, which presupposes a grant, or, no doubt, by legislative enactment, or bye-law duly made under a sufficient enactment; but it would be difficult to maintain that under a bye-law laying a toll or tax upon articles imported into a city "for consumption," goods on being brought back there, after an unsuccessful attempt to sell them in a village adjacent to the city, could properly be held liable to such toll or tax.

We are of opinion that copper pots do not come within the term "copper" in Appendix B to the Surat Municipal Rules, but we feel compelled to give way to the objection of

(n) 8 Ir. C. L. Rep. 321, Q. B.

(o) Com. Dig. Toll (B); 20 Vin. Ab. Toll (A).

(p) Com. Dig. Toll (C). (q) Com. Dig. Toll (D.a.).

(r) Spelman, Gloss., Tit. Averia, p. 51 (3rd ed.); Bracton in fine Lib. 3; 1 Ducange Gloss. 487; Wharton (4th ed.), 102.

Mr. Dhirajlál Mathurádás, founded on Sec. 27 of Act XXIII. of 1861, that this suit being of the nature cognisable in a Court of Small Causes under Act XLII. of 1860, and the demand being under Rs. 500, no special appeal lies to this court.

1871.

DULLABH
SHIVLÁ'L
v.
HOPE
et al.

We, however, permit the plaintiff to withdraw his special appeal without costs, and thus the special appeal must be considered as having never been presented; and, under Sec. 376 of Act VIII. of 1859, he may apply to the District Judge for a review of his decree, which, under all of the circumstances of the case, we think, notwithstanding the lapse of more than ninety days, ought to be granted, and that on such review the District Judge ought to affirm the decree of the Assistant Judge with costs.

Order accordingly.

Regular Appeal No. 13 of 1870.

Dec. 1.

SAKHA'RA'M VITHAL A'DHIKARI *Appellant.*

THE COLLECTOR OF RATNA'GIRI' *et al.* *Respondents.*

Sale of Land by Non-Judicial Order of Collector—Suit to recover Land so sold—Limitation—Act XIV. of 1859, Sec. 1., cl. 3.

The "order" of a Collector or other officer of revenue, as the word is used in the latter portion of cl. 3 of Sec. 1. of Act XIV. of 1859, means an order of the nature of a decree, or made by the Collector or other revenue officer in his judicial capacity.

Where a piece of land, embraced within the operations of the Revenue Survey, and subjected to a defined assessment, was put up for sale by the Collector in consequence of the occupant refusing to pay a fine to be allowed to continue in occupation of it, and was purchased by one of the defendants, and the occupant, asserting that he had been wrongly dispossessed, sued to set aside the sale, and to be declared entitled to recover the land and retain possession of it, on condition of paying the assessment as settled upon it by the revenue officers, but delayed bringing his suit until June 1869, the sale having taken place in January 1867:

It was held that, though more than one year had elapsed from the date of the sale, the suit was not barred under the provisions of cl. 3 of Sec. 1. of Act XIV. of 1859.

THIS was an appeal from the decision of A. Lyon, Acting Judge at Ratnágiri, in Original Suit No. 63 of 1869.