APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. *July* 11.

THE MUNICIPALITY OF SHOLA'PUR (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* THE SHOLA'PUR SPINNING AND WEAVING COMPANY, LIMITED (ORIGINAL DEFENDANT), RESPONDENT.*

Municipality—District Municipal Act (Bom. Act VI of 1873), *Sec.* 11(1)—*Bom. Act II of* 1884, *Sec.* 57(2)—*Liability to pay taxes—Halálkhore tax—Water tax—Notice—Notice to municipal commissioners—Burden of proof—Presumption—Indian Evidence Act (I of* 1872), *Sec.* 114, *Ill.* (*e*).

A defendant who in answer to a claim for arrears of taxes by a Bombay District Municipality alleges that the taxes were illegal,

(1) because no notice had been given him under section 57 (Bombay Act II of 1884);

(2) because no notice had been issued by the Municipality to the commissioners under section 11 of Bombay Act VI of 1873;

must prove the defence and in the absence of such proof the Court will presume that the Municipality has used the regular procedure, and that the common course of business has been followed in the particular cases.

The liability to pay the halálkhore tax does not arise until after notice has been given under section 57 of the Act (Bombay Act II of 1884).

SECOND appeal from the decision of Ráo Bahádur N. G. Phadke, Joint First Class Subordinate Judge, A. P., of Sholápur, in Appeal No. 97 of 1892.

In 1891 the Municipality of Sholápur sued to recover from the Sholápur Spinning and Weaving Company, Limited, arrears

*Second Appeal, No. 862 of 1893.

(1) Section 11 of Bombay Act VI of 1873 provides as follows:—

"Every Municipality shall hold four quarterly general meetings in every year, on or about January 1st, April 10th, July 1st, and October 1st, at which the Commissioners shall meet for the transaction of general business. The President, and in Town Municipalities the Vice-President also, may, whenever he thinks fit, and shall, upon a written requisition signed by not less than one-fourth of the whole body of Commissioners, call a special general meeting.

"Seven clear days' notice of a quarterly general meeting and three days' clear notice of a special general meeting, specifying the time and place of such intended meeting, and the business to be transacted thereat, shall be circulated to the Commissioners, and posted up at the Municipal Office, or local kutchery, or other public place."

(2) Section 57, clause 1, provides:—"It shall be lawful, after notice given to the occupier or occupiers of any building or land, or to the occupiers generally within the Municipal District or any recognized division thereof, for the Municipality to perform by their agents the duties usually performed by sweepers with regard to such building, land, district, or division, and to make suitable provision accordingly.

"Clause 2.—When the Municipality shall have made such provision, the occupier, or the several occupiers of the building or land so served, or all the several occupiers of buildings or lands situated within the district or division regarding which such notice may have been given, shall become liable to pay any special cess which may be levied for such purposes under the Rules contemplated in Section 14 of this Act."

for the years 1888-89 and 1889-90 of halálkhore and water cesses imposed in the years 1878 and 1882 respectively. The defendant company pleaded (*inter alia*) that the cesses were illegal, as due notices and proclamations had not been published according to law.

The First Class Subordinate Judge at Sholápur dismissed the suit for the following reasons :—

"The defendants contend that at the meetings, where resolutions were passed to levy the bhangi and water cesses, notices were not circulated to *all* the commissioners as required by section 11. To prove this material irregularity they required the production of the circulars, and though time was granted again and again, they were not produced by the plaintiffs. The last time their secretary said that they were likely to be with the president (the Collector). Hence the defendants applied to him, but were told that they were not with him (Exhibit 41). These papers have been unaccountably kept back, for no reason has been assigned for their non-production. There was not even an allegation of their loss. Under these circumstances, I am at liberty to presume that they have been intentionally kept back, and that the defendant's contention is sound. Thus the imposition of the two cesses becomes illegal, for the Bombay High Court has ruled under section 11, that notices to *all* the commissioners are necessary (*Joshi Kálidás* v. *The Dákor Town Municipality*(1)).

* * * * *

"Next as regards the bhangi cess. It is also illegal. For it is not in dispute that the defendants have all along employed their own sweepers to remove the nightsoil from their buildings.

"If, therefore, the plaintiffs wished to levy any cess, they should under section 57 of the Act have issued to the defendants a notice intimating that the duties performed by their (defendants') sweepers would be performed by their (plaintiffs') agents, and after the service of such notice should have claimed a bhangi cess. But nothing of the kind was done. No notice was at all given. * *"

This decree was confirmed, on appeal, by the Joint Subordinate Judge, A. P. His reasons were as follows :—

"A Municipality is an institution which generally entertains a large establishment, and is bound to observe official decency.

"It is simply absurd to urge, in the case of a City Municipality like that of Sholápur, that circulars issued to the commissioners to give them intimation of the intended meetings, consist of simple chits or small pieces of paper. It is no doubt natural that these and like notices and circulars should be on the record of the Municipality. The lower Court has, under the above circumstances, very properly presumed against the plaintiffs and allowed the contention of the defendants.

"The ruling of the High Court in *Joshi Kálidás Sewakrám* v. *The Dákor Town Municipality* cited as an authority by the lower Court for finding on the point of legality or otherwise of the imposts in suit, is beyond all doubt in point and holds good in the present case."

From this decision the Municipality preferred a second appeal to the High Court.

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MUNICIPALITY OF SHOLÁPUR v. SHOLÁPUR SPINNING AND WEAVING COMPANY.

Lowndes (with Ráo Sáheb *Vásudev J. Kirtikar*) for the appellants:—From the mere fact that the notices issued by the Municipality ten or fourteen years ago could not be produced at the trial it is a wrong presumption to make that no such notices were given of the meetings at which the two cesses were imposed. In such cases the Court will act on the principle *omnia esse rite acta*. The burden lies on the defendants to prove the informality or irregularity on which they rely. Defendants have not discharged this burden. Nobody comes forward and says that notices were not circulated. In the absence of such evidence the presumption ought to be in favour of a public body like the Municipality—Evidence Act, section 114, illustration (*e*).

Even supposing that any informality did occur in convening such meetings, it would be cured by section 27, clause 17, of Bombay Act II of 1884. Section 2 of that Act provides that it should be read with the principal Act, Bombay Act VI of 1873. The amending Act is, therefore, retrospective. As to the necessity of issuing notice under section 57 of the amending Act, it is in evidence that the Municipality did give the defendants a notice as required by law (see Exhibit A). There is no statutable or prescribed form for notice.

Macpherson (with him *Nárayan Ganesh Chandávarkar*) for respondents:—The plaintiffs were to prove service of notice on defendants. Exhibit A is a general notice about levying the tax under section 21. None has been given under section 57, though the company have employed their own sweepers for a long time. Section 27, clause 17, of Act II of 1884 is not retrospective. The *onus* was on the plaintiff Municipality to prove beyond all doubt that their proceedings were regular and according to law. No question of presumption arises in this case.

JARDINE, J.:—The most important issue determined by Ráo Bahádur N. G. Phadke, Joint Subordinate Judge with appellate powers, was, whether the halálkhore tax imposed by the Municipality of Sholápur in 1878 and the water tax imposed in 1882 were illegal and invalid. He held that the decision of this Court in 1883 in *Joshi Kálidás* v. *The Dákor Town Municipality*[1] was beyond all doubt in point, and that all the commissioners

(1) I. L. R., 7 Bom., 399.

had not received notice of the meetings to consider whether these taxes should be imposed. It is unnecessary for our decision to determine whether section 27, clause 17, of Bombay Act II of 1884 is retrospective, as the contest between the present parties is not as to whether there was *mere informality* in the notices to the commissioners under section 11 of Bombay Act VI of 1873. The question at issue is, whether the two taxes were imposed without any notice at all to some of the commissioners. In the Dákor case, it was *admitted* that this irregularity had occurred in the convening of the meeting. In the present case there is no such admission; nor is there any evidence of such irregularity. The two Courts below have presumed this irregularity to exist merely because the municipal officers were unable to find and produce at the trial the circular or other record of intimation given to the persons who so long ago as 1877 and 1882 were municipal commissioners. We are of opinion that in drawing this presumption, and acting upon it, the lower Courts have fallen into error of law. If the Sholápur Spinning Company had any irregularity to allege, it should have done so by definite statement, *e. g.*, that certain commissioners named had not received notice, and the burden of proving such a statement was on the company; as in the absence of evidence or indication to the contrary the presumptions were that the Municipality had used the regular procedure, and that the common course of business had been followed in the particular cases. We must hold, therefore, that the two taxes were legally imposed.

The other question argued was, whether in the absence of the notice to the occupiers under section 57 of the Act of 1884, whereby the Municipality lets them know that it intends to perform by its agents the duties usually performed by sweepers, the company is liable to pay the halálkhore tax. The language of the section is clear that the liability does not arise until after the notice. On this point we agree with the Courts below.

We, therefore, declare that the Municipality is entitled to the sum levied as water tax and not entitled to that levied as halálkhore tax.

The decree to be in accordance. Each party to pay his own costs throughout.

Decree amended.