APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT 1), APPELLANT, *v.* MAJOR J. E. HUGHES, SECRETARY OF THE WESTERN INDIA TURF CLUB (ORIGINAL PLAINTIFF), RESPONDENT.*

1913. *October* 13.

Cantonments Act (III of 1880), section 22—Limitation Act (IX of 1908), Article 62—Taxes levied by cantonment authorities—Payment under protest—Jurisdiction of Civil Courts to entertain suit for recovery of payment—Assessment on the annual letting value—Payment by cheque—Limitation runs from the date of the receipt of the money by the payee.

Civil Courts have jurisdiction to entertain a suit to recover the amount of taxes levied by the cantonment authorities and paid under protest on the ground that the assessment was illegal. This may be the case both when a serious demand requiring very attentive consideration had been made on the plaintiffs and reasonable time has not been given to the latter to take advice on the subject and when the cantonment authorities have wholly disregarded the basis on which the rate should have been assessed, by assessing the rate upon the gross income of the plaintiffs.

Kasandas v. *Ankleshvar Municipality*[1], followed.

In assessing a tax based on the annual letting value of premises it is illegal to take the annual income derived from the premises as the basis of calculation.

In case of payment by a cheque, limitation runs not from the date of the delivery of the cheque, but from the date of the receipt of the money by the payee.

FIRST appeal against the decision of C. C. Boyd, District Judge of Poona, in suit No. 3 of 1912.

The plaintiff, who was the Secretary and a member of the Western India Turf Club, sued as such to recover from the defendants, the Secretary of State for India in Council, the Cantonment Committee of Poona and the Cantonment Magistrate of Poona, Rs. 32,699-4-7 on account of the taxes levied by the Cantonment

* First Appeals Nos. 32 and 41 of 1913.

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authorities at Poona which the plaintiff paid under protest on the ground that the assessment was illegal. The plaint alleged *inter alia* as follows :—

The Western India Turf Club was the lessee from Government of the Race Course at Poona and was liable to be assessed for the property rates in respect of the said premises in accordance with the provisions of clause 1 of the Poona Cantonment Taxation Regulations, 1881[a].

By Government Notification No. 481 of the 7th September 1891, a general property rate of four per cent. per annum of the annual value of houses, buildings and lands liable to property rates was imposed on the Cantonment of Poona where the said Race Course is situate.

The Western India Turf Club was assessed for the year 1904 for the purpose of property rates at Rs. 201-8-4 and such assessment was continued down and inclusive of the year 1908.

On the 8th October 1908 the Cantonment Magistrate of Poona served on the plaintiff a notice stating that he had revised the valuation of the said Club's property at Poona and assessed the rate at Rs. 9,840 per annum based on an annual income from certain sources of Rs. 2,46,000. On the 10th October 1908 the plaintiff sent a reply to the Cantonment Magistrate protesting against the enhanced assessment.

The Cantonment Magistrate based the valuation of the property of the said Club on the sum of Rs. 2,46,000 which represented the gross income of the said Club from certain sources and treated that sum as the annual

(a) Clause 1 of the Poona Cantonment Taxation Regulations, 1881, provided that the estimated gross annual rent at which houses, buildings and lands liable to property rates may reasonably be expected to let from year to year shall for the purposes of the said rates be held and deemed to be the annual value of such houses, buildings and lands.

rent that a tenant from year to year would pay, and in doing so he did not follow the provisions of the said Taxation Regulations made in case of the assessment being increased.

The said Club appealed to the Cantonment Committee who rejected the appeal and declined to give any reasons for the rejection. The Club subsequently petitioned the Governor of Bombay in Council but were informed that the Governor had no power to interfere. The Governor in Council, however, thereafter passed a Regulation which in future permitted an appeal to Government against the decision of the Cantonment Committee.

The said Club paid under protest the sum of Rs. 4,819-3-10 in respect of the said taxation imposed as aforesaid for the latter half of the year 1908-09 in addition to a sum of Rs. 100-12-2 which they had already paid in respect of the assessment for the latter half of the year 1908-09.

The Cantonment Magistrate altered the assessment from Rs. 9,840 to 9,544-2-6 as he found that on his own basis of assessment the former figure was too much. He returned to the said Club the sum of Rs. 4,819 paid to him under protest and the Club in return paid to him under protest a sum of Rs. 4,671-6-1 in respect of the said tax as aforesaid for the latter half of the year 1908-09.

The Club was assessed at the rate of Rs. 9,544-2-6 for the years 1909-10, 1910-11, 1911-12 and they paid in all under protest amounts making the aggregate sum of Rs. 33,303-13-7. The Club was thus entitled to recover from the defendants or any one of them the said amount less the annual assessment of Rs. 201-8-4 yearly payable by the Club and interest thereon at 9 per cent. from the respective dates of payments.

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The entries in the Assessment Books for the said years were nullities and should be ignored altogether, and, if necessary, they should be erased and expunged.

The first defendant was made a party to the suit as the Cantonment Fund which was liable to pay to the Club the moneys claimed in the suit was vested in him.

The Club had brought against the Cantonment Committee a suit, No. 5 of 1909, in the District Court at Poona to recover the amounts respectively paid under protest for the latter half of the year 1908-09 and the first half of the year 1909-10. The said suit came up in appeal, No. 9 of 1910, to the High Court, which, on the 28th June 1910, dismissed the said suit on the ground that the defendants were public officers and had no notice of the suit. Therefore, the time occupied by the said suit from the 10th August 1909 to the 28th June 1910 should be deducted in computing the period of limitation.

Notices of the present claim were duly served on the defendants as required by section 80 of the Civil Procedure Code and the plaintiff craved leave to sue under Order I, Rule 8, Schedule I of the Civil Procedure Code.

The cause of action arose at Poona and the District Court had jurisdiction to try the suit.

On the said allegations the plaintiff prayed that (1) it may be declared that the Western India Turf Club was improperly assessed as aforesaid in the years 1908-09, 1909-10, 1910-11, 1911-12, (2) the assessment by the Cantonment Magistrate for the years aforesaid may be declared illegal, void and contrary to the Poona Cantonment Taxation Regulations, (3) the said assessments may be declared to be nullities and, if necessary, may be erased and expunged from the Assessment Books, (4) the defendants or some or one of them may be ordered

to repay to the plaintiff as representing the members of the Western India Turf Club all payments levied on and paid by the said Club for the latter half of the year 1908-09 and the years 1909-10, 1910-11 and 1911-12 in excess of the annual assessment of Rs. 201-8-4 yearly payable by the said Club, (5) it may be declared that until the assessment of Rs. 201-8-4 made in 1904 and continued down to 1908 had been revised and altered in accordance with the provisions of the Poona Cantonment Taxation Regulations, that assessment was the only valid and binding assessment of the Poona Race Course, (6) all necessary directions may be given, enquiries made and accounts taken, and (7) the defendants, any one or more of them may be ordered to pay to the plaintiff all the costs of and incidental to the suit.

The suit was filed on the 28th March 1912.

Defendant 1, the Secretary of State for India in Council, answered as follows :—

The plaintiffs were not entitled to the reliefs claimed or any of them.

The Civil Court had no jurisdiction to entertain the suit by virtue of the provisions of section 15 of the Poona Cantonment Taxation Regulations.

The claim was time-barred under Article 14, Schedule I of the Limitation Act. It was in any case partially time-barred under Article 62 of the same Schedule as regards the payment of assessment for the latter half of the year 1908-09.

The allegations of facts contained in the plaint were not denied.

The Cantonment Magistrate's valuation was not based on an erroneous principle, nor was it contrary to the Taxation Regulations or otherwise illegal or improper. The said entry of Rs. 9,840 was made after due inquiry and it was in every respect a valid entry.

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The assessment up to the half year ending with the 30th September 1908 was calculated on a wrong basis. It was revised on the basis of the actual gross annual rental realized by the Club in accordance with section 1 of the Taxation Regulations and due notice of such assessment was served on the plaintiff on the 8th October 1908.

The enhanced assessment of Rs. 9,840 was calculated on a valuation of Rs. 2,46,000 ; subsequently on the Club submitting its accounts it was altered to Rs. 4,772-1-3 for the half year calculating it at four per cent. on the gross annual rent of the Race Course which for the half year ending 31st March 1909 was found to have amounted to Rs. 2,38,604.

The statement in the plaint that the Cantonment Magistrate returned to the Club Rs. 4,819-3-10 and the Club in return paid a sum of Rs. 4,671-6-1 was not correct. The fact was that after the revision of the assessment as stated above the Cantonment Magistrate only returned the balance of Rs. 141-14-9 to the Club after deducting Rs. 6 as brokerage for cashing the cheque of Rs. 4,819-3-10 given by the Club on the 30th November 1908.

The alleged payments by the Club were not illegally or wrongfully recovered and the plaintiff had no right to a refund of any portion thereof or to any interest thereon. The plaintiff had no right to have any entry in the Assessment Book erased or expunged.

The suit was time-barred.

The Civil Courts' jurisdiction to entertain the present suit was barred under section 28 of the Cantonment Act, 1910. With respect to the subject-matter of the suit, defendants 2 and 3 had acted in good faith and in pursuance of the powers conferred by or under the said Act and the Cantonment Act, 1889. Defendant 1

was responsible, if at all, only on account of the actions of defendants 2 and 3 as the Regulations previous to the 1st August 1911 did not provide for any appeal or revisional application to Government and no application was made to Government in regard to any assessment subsequent to the 1st August 1911.

Defendants 2 and 3, the Cantonment Committee of Poona and the Cantonment Magistrate of Poona adopted the written statement of defendant 1 and added that they were unnecessarily made parties, that their names should be struck off and that the plaintiff be ordered to pay their costs.

The District Judge found that (1) his Court had jurisdiction to try the suit as against defendant 1 but not as against defendants 2 and 3, (2) the suit was in time, (3) the revised valuation of plaintiff's property by the Cantonment Magistrate was illegal, (4) the plaintiff had paid the amounts of the enhanced assessment under the circumstances mentioned in the plaint, (5) defendants 2 and 3 were not necessary parties and (6) the plaintiff had no cause of action against them. The Judge therefore awarded the plaintiff's claim in full with costs from defendant 1. The plaintiff's claim for interest was not allowed as the suit was not promptly filed.

The District Judge in his judgment observed:—

The plaintiffs deny that the tax has been calculated on the "annual value" of their premises. There is no dispute about any of the facts in this case. The defendants considered the annual value to be the total of a large number of fees received by plaintiffs from various licensees who were allowed to ply their trades on the Race Course. The items are to be found in plaintiffs' printed accounts. They consist mostly of fees paid by bookmakers and keepers of refreshment stalls, and by the public for admittance as spectators. Defendant 3 considered that the total of these sums, being rent, should be deemed to be the "annual value" of the premises; and he levied the tax at 4 per cent. (the lawful rate) on this sum. Now in the first place these items are not rent but license fees. And, further, defendant 3 was wrong in

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supposing that the total of these fees was a sum at which plaintiffs "might reasonably expect to let" their premises. The total of these sources of income is about 2½ lakhs. Plaintiffs' net profits average about Rs. 30,000 a year. If plaintiffs were to let the Race Course and building for more than about Rs. 30,000 a year, it is obvious *(ceteris paribus)* that their tenant would conduct the business at a loss. Therefore 2½ lakhs is not the "gross annual rent," etc., within the meaning of Regulation 1; and to deem this sum the "annual value" and so calculate the tax was a great error. It was in fact a method of taxation not authorised by the regulations.

The question then arises how the annual value should have been calculated. The following facts are admitted. The lands and buildings form a very fine Race Course. It is the only one in Poona. There is a great demand for a Race Course here. There is no other nearer than Bombay. The real value of the premises has no relation to the structural value of the buildings or general utility of the land: it depends on the peculiar suitability of the whole property for the purposes of a Race Course and Turf Club. If plaintiffs were to let to any other body, it would only be to some other Turf Club or similar institution. It is, therefore, clear that this is an "exceptional case", and that the proper method of ascertaining the rateable value is that laid down in *Reg.* v. *Verrall* (1 Q. B. D. 9). In brief, the recent average receipts and expenditure of plaintiffs ought to have been considered as an element in ascertaining the rateable value. It was not held that this must be the only element; but, in cases where no means for a comparison exists, obviously this point has great importance. The same view was taken in *Clarke* v. *Fisherton-Augar* (6 Q. B. D. 139) and *The Mersey Docks and Harbour Board* v. *The Assessment Committee of Birkenhead* (I. Q. B. (1900) 143), confirmed by Privy Council (L. R. (1901) 175).

Nothing could be said against these authorities. However, looking to the wording of the regulation itself, it is against common sense to suppose that the Race Course as a whole could be let for about eight times the average net profits.

Defendants do not say it could; and they virtually admit that the orders are quite unjust. But they say that the Law gives defendants 2 and 3 the power to fix the taxes rightly or wrongly and that the Civil Courts have no jurisdiction. The learned counsel for plaintiffs urges that defendants' orders were *ultra vires* and a nullity, defendants having exceeded the powers given by Law. The learned pleaders for defendants say that the orders would only be *ultra vires* if defendant 3 had imposed a tax which he had no authority to impose or having such authority, had imposed it on persons or property exempted by Law. In this case, they say, defendant 3 could legally impose taxes and the plaintiffs are not exempt. So, they argue, the act of defendant 3

in enhancing the tax was not illegal, although he may have acted unfairly, and cannot be said to be *ultra vires*. And reference is made to Regulations 1, 42 and 15.

The Law on the subject up to a certain point is very clear, omitting the question of good faith, for no improper motive whatever is imputed to defendants. So long as a public officer uses the powers he has, he cannot be sued, though he has made mistakes of fact or even of Law. It is when he goes beyond his powers that his deeds or omissions become actionable. Now in this case did defendant 3 go beyond his powers? The Law allowes him to impose a tax; and Regulation 1 says that the tax shall be calculated on the "annual value" of the premises. Defendant 3 did not calculate the tax on the annual value, but on some strange and novel method of his own. The Law does not justify his action at all. It was outside the Law. He used powers which the Law had not given him. I am, therefore, of opinion that the enhancement of the tax was *ultra vires*.

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The learned pleader for defendant 1 argues that when the Law appoints a special Tribunal to decide certain things the jurisdiction of the Courts is ousted. I entirely agree with this doctrine; but it clearly pre-supposes that the said Tribunal does not go beyond its powers. All the decisions cited by the defence on this point can be distinguished in this way.

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It might perhaps be urged that it is easy to refine away the principles, governing these and other cases, until one is forced to conclude that any mistake of Law must result in an act *ultra vires* and so there might be undue interference by the Courts with decisions passed by authorities specially empowered to decide certain things. But, in my humble opinion, it seems that the Courts have not strained the Law in this direction. And the general effect is that a decision not apparently *ultra vires* should be deemed to be so if it is made in an illegal way. That is the point in this case. Such a decision or act is no better than one which is *primâ facie* beyond the powers given by the legislature.

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Defendant 1 appealed.

Strangman (Advocate General) with *S. S. Patkar* (Government Pleader) for the appellant (defendant 1).

Weldon with *Craigie and Co.* for the respondent (plaintiff).

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SCOTT, C. J. :—This suit was instituted by the plaintiffs to recover payment of the amount of taxes levied by the Cantonment authorities at Poona, which the plaintiffs paid under protest on the ground that the assessment was illegal. The learned District Judge by whom the case was heard, disposed of it in favour of the plaintiffs, and this appeal has been preferred by Government on two grounds, first, that the Court had no jurisdiction to entertain the suit; and secondly, that in respect of a portion of the money claimed the suit is barred by the provisions of Article 62 of the Limitation Act.

The argument on the question of jurisdiction amounted to this. According to the assessment rules certain authorities have been constituted for the assessment of taxes, and their assessment is final, except in so far as any question may arise as to the legality of their action having regard to the jurisdiction conferred upon them by the assessment rules, and it was contended that the assessment of the tax complained of by the plaintiffs was a pure question of fact and not of law, and that, therefore, no question arose for the decision of a Court of law, on the analogy, I presume, of applications in revision to the High Court under section 115 of the Code of Civil Procedure. The contention that the assessment of the tax raises a pure question of fact was based upon a passage from the judgment of Lord Halsbury in the *Mersey Docks and Harbour Board* v. *Birkenhead Assessment Committee*[1] but if that judgment is read as a whole, it does not, as we shall have occasion to show later on, support the appellant's contention.

The rules affecting the taxation for Cantonment purposes of occupiers in Poona were framed by the Government of Bombay under the powers conferred by

[1] [1901] A. C. 175.

section 22 of the Cantonments Act of 1880, powers which have been continued substantially in the same words through various Cantonment Acts up to the present time. Under those enactments it is provided that the Local Government may, by notification in the Official Gazette, impose in any cantonment, which is not included in the Municipality, any tax which, under any enactment in force at the date of the notification, can be imposed in any Municipality within the territories administered by such Government; and that when any tax is leviable in a cantonment in pursuance of such notification the Local Government may by notification apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification in any Municipality within the territories aforesaid relating to the assessment, collection or recovery of any tax, and refund or revision of, or exemption from any such tax.

In intended execution of the powers conferred by section 22 of the Cantonments Act of 1880, Poona Cantonment Taxation Regulations were notified in the year 1881, which purported to adapt the taxation provisions of the City of Bombay Municipal Act of 1872 and 1878. According to such adaptation the Cantonment Magistrate took the place of the Municipal Commissioner, and the Cantonment Committee took the place of the Court of Petty Session, for the purpose of hearing appeals against rates. The Regulations with which we are concerned in this appeal are Regulations 1, 2, 7, 8, 10, 13, 15 and 42. Regulation 1 provides that "the estimated gross annual rent at which the houses, buildings and lands liable to property rates might reasonably be expected to let from year to year shall, for the purposes of the said rates, be held and deemed to be the annual value of such houses, buildings and lands." Regulation 2 provides that "the rates shall be leviable from the

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actual occupier if he hold the house, building or land immediately from Government."

By Government notification of the 17th of September 1891, a general property rate of 4 per cent. per annum of the annual value of houses, buildings and lands liable to property rate was imposed on the Cantonment of Poona, and the plaintiffs as occupiers of the Race Course in the Cantonment which they held immediately from Government were liable for the rate.

Until the year 1908, the plaintiffs had been called upon to pay a tax of Rs. 201, assessed upon an estimated gross letting value of the Race Course property of Rs. 5,038. On the 8th of October 1908, they received the following notice from the Cantonment Magistrate:—"Under Poona Cantonment Taxation Regulations the Cantonment Magistrate hereby gives notice to the Secretary, Western India Turf Club, with regard to the property indicated in the margin that he has revised the valuation of the said property and assessed the rates at Rs. 9,840 per annum on an annual income of Rs. 2,46,000, and that any complaints against such valuation must be made to the Cantonment Magistrate in writing and received at this office within three days from the service of this notice." This, therefore, was a case falling under Regulation 10 under which the rates might be increased; that Regulation provides that "notice of the amendment shall be given to the person interested and the date fixed for the hearing of complaints, which shall be made and heard in the manner prescribed in section 8 for complaints concerning original rates in the assessment book." Regulation 8 provides that "all complaints against valuations shall be made to the Cantonment Magistrate by application in writing left at his office three days before the day fixed in the public notice for revising the valuations and rates," the public notice being the notice provided for by Regulation 7 which

must prescribe a day, not being less than fifteen days from the publication of notice, when the Magistrate will proceed to revise the valuations and rates. It is, therefore, apparent that the Cantonment Magistrate in notifying that any complaints against the increased rate must be made within three days from the service of his notice of the 8th of October 1908 was disregarding the express provisions of the Regulations.

It is contended, however, that such disregard of the Regulations is of no importance under Regulation 42, provided the directions in the Regulations have been in substance and effect complied with, and that if that is so, the action of the Cantonment Magistrate cannot be quashed or set aside in any Court. It appears to us that the Regulations have not been in substance or effect complied with. The plaintiffs are called upon within three days to show cause why the rate imposed upon them should not be raised from Rs. 201 to Rs. 9,840. Such a serious demand was a matter requiring very attentive consideration; and reasonable time was not given to the plaintiffs to take any advice upon the subject. On that ground alone, therefore, we think that the action of the Cantonment Magistrate was not warranted by the Regulations. An appeal was preferred from his assessment to the Cantonment Committee under Regulation 13. The Cantonment Committee only have jurisdiction to hear an appeal against a rate provided it is charged under the provisions of the foregoing Regulations. The appeal to that Committee resulted in a curt resolution as follows:—"Resolved that the appeal of the Turf Club be rejected," and the request for reasons for this resolution was met by a further resolution as follows:—"Resolved that the Solicitors to the Turf Club be informed that the Committee consider that they are not bound to record their reasons for rejecting an appeal." The Turf Club then appealed to the Governor in Council,

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but they were informed that under the Regulations the Governor-in-Council had no power to interfere with the decision of the Cantonment Committee, which according to the provisions of Regulation 15 was to be final. It is not surprising under the circumstances that the plaintiffs paid their tax under protest, and have filed this suit for the recovery of the same as money had and received for their use.

Up to this point we have dealt with the objection to the action of Cantonment authorities on the ground of procedure, and, for the reasons stated, we think that the objection is well founded, that the Cantonment Magistrate did not charge a rate under the provisions of the Regulations, an appeal with reference to which could be heard and determined by the Cantonment Committee.

But there is a more serious objection than that caused by the procedure laid down in the Regulations. It is this: that the Cantonment Magistrate has wholly disregarded the basis upon which the rate is to be assessed. He has assessed a rate upon the gross income of the plaintiffs, which would not even be a basis for the levy of income-tax. Even if the plaintiffs' net profits, which average about Rs. 30,000 a year, had been taken as the basis of valuation, it is clear, for the reasons stated by the District Judge, that no hypothetical tenant could be expected to offer such a sum as rent for the property in question, for as the District Judge points out "if the plaintiffs were to let the Race Course and buildings for more than about Rs. 30,000 a year, it is obvious that their tenant would conduct business at a loss," and if they were to let it for that sum only he would make no profit. It would, therefore, not be reasonable to expect that he would offer such a rent. It appears to us that the judgment of Lord Halsbury in the *Mersey Docks and Harbour Board* v. *Birkenhead Assessment Com-*

mittee[1], already referred to, so far from being any authority in favour of the contention of the appellants is a direct authority for the proposition that where a taxing authority is called upon to assess the tax based upon annual letting value he does very wrong indeed if he rates as if he were dealing with the question for the income-tax. The Cantonment Magistrate has, as stated by the District Judge, "not calculated the tax on the annual value, but on some strange and novel method of his own. The law does not justify his action at all. It was outside the law, and he has assumed powers which the law has not given to him. The enhancement of the tax was, therefore, *ultra vires*, and not a legitimate method of arriving at a fair letting value of the house." It is, therefore, clear upon the authority of *Kasandas* v. *Ankleshvar Municipality*[2], that the case is one in which the jurisdiction of the Civil Courts is not ousted. The money has been claimed and received from the plaintiffs without the shadow of a right, and the plaintiffs having paid under protest are entitled to recover the money, unless their claim is barred by limitation. It is only contended that their claim is barred in respect of the first payment made by them for one half year, being the sum of Rs. 4,819-3-10. A cheque for that sum was given to the Cantonment Magistrate by the Turf Club on the 28th November 1908, but it was not cashed by him; and on the 5th of May 1909, he wrote saying that he had made a mistake in the figure which should be Rs. 4,671, and that the cheque drawn on the 28th November would be returned on payment of the sum of Rs. 4,671. The first cheque was, however, cashed on the 27th of May 1909. This suit was instituted on the 28th March 1912, more than three years after the delivery of the cheque, but less than three years after the cashing

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of the same. We are of opinion that limitation runs, not from the date of the delivery of the cheque, but from the date of the receipt of the money by the payee, and that, therefore, Article 62 is no bar to the plaintiffs' claim in respect of this payment. The appeal therefore must be dismissed.

We would add for the consideration of the Government an observation on a question which it has not been necessary to decide having regard to the success of the plaintiffs upon the points raised by them. It is this, whether the Cantonment Taxation Regulations can be regarded as an adaptation of the provisions of the taxation sections of the City of Bombay Municipal Act of 1872 and 1878 in respect of appeals from rates. Those sections allowed an appeal to the Court of Petty Session, that is to the Presidency Magistrate, a judicial tribunal, whereas Regulation 13 of the Poona Regulations gives the appeal to the Cantonment Committee, which is a lay body, one of the most important members of which is the Cantonment Magistrate, from whom the appeal is preferred.

The plaintiffs must have their costs of this appeal and of the next appeal which fails with the failure of this appeal.

Appeal dismissed.

G. B. R.