

APPELLATE CIVIL.

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

1916.
February
23.

ABDULLABHAI LALLJEE AND ANOTHER (ORIGINAL PLAINTIFFS), v. THE EXECUTIVE COMMITTEE, ADEN. °

Aden Settlement Regulation (VII of 1900), section 13†—Municipal affairs at Aden—Executive Committee—Rating of property for purposes of taxation.—Rating value fixed by the Resident at Aden in a rating appeal—Finality of the decision of the Resident as to value—Jurisdiction of Civil Courts to examine the value in a civil suit—Rule made under the Regulation to give finality to the Resident's decision in rating appeal is ultra vires.

The Aden Settlement Regulation (VII of 1900) provided for the establishment of an Executive Committee for the Municipal Government of Aden; and its clause 13 authorised the Resident, subject to the previous sanction of the Local Government, to make rules to provide for "the assessment and collection of any toll, cess, tax or other impost imposed under the Regulation." The rules so made provided *inter alia* for the preparation of an assessment list containing "the annual letting value or other valuation on which the property is assessed," for complaints to the Executive Committee where any property was for the time being entered in the list or in which the entered rateable value had been increased, and for appeals against any rateable value to the Judge of the Resident's Court. Rule 12 provided that after appeals, if any, were decided and the results noted in the assessment list all rateable values so entered in the list were final. The lower Courts held on a construction of the above rule that it made the decision of the Judge of the Resident's Court in a rating appeal conclusive, and that the aggrieved party could not question it by a civil suit.

° Civil Reference No. 9 of 1915.

† The section, so far as material, runs as follows:—

The Resident, with the previous sanction of the Local Government, shall, as soon as may be after the commencement of this Regulation, and from time to time, make rules to provide for all or any of the following matters, namely:—

(6) the assessment and collection of any toll, cess, tax or other impost imposed under this Regulation.

Held, that the rule 12, read as it had been by the lower Courts, was *ultra vires*, inasmuch as a distinct unequivocal enactment was required for the purpose of either adding to or taking away the jurisdiction of a Court.

THIS was a reference made under section 8 of the Aden Courts Act (II of 1864) by Brigadier-General C. H. U. Price, Political Resident at Aden.

Suit for a declaration that a certain tax was illegally assessed, and to recover the amount of the tax levied.

The facts were that the plaintiffs trading under the name and style of Abdullabhai and Jumabhai Lalljee at Aden, took a lease for thirty of certain lands in the Shaikh Othman Division of the Aden District from the Secretary of State for India in Council, for construction of salt works. The lease provided for the payment of Rs. 7,000 every year by the plaintiffs to the Secretary of State by way of rent for the demised lands and it further provided for the payment by the plaintiffs of a royalty of eight annas per every ton of salt exported by them.

The Political Resident of Aden, in exercise of the powers conferred upon him by the Aden Settlement Regulation (VII of 1900), published two notifications on the 26th March 1909, levying certain taxes and laying down rules for the assessment and collection thereof. The taxes levied were, a Property tax to be assessed at 6 per cent. on the rateable value of the property taxed; and a general Sanitary tax to be assessed at 3 per cent. on such rateable value. The said taxes were to be levied at only half the aforementioned rates in the village of Shaikh Othman. The second notification laid down rules governing assessment and collection of taxes. The material of those rules ran as follows:—

I. When a rate on buildings or lands or both is imposed, the Executive Committee shall cause an assessment list of all buildings or lands or buildings

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and lands as the case may be in the Settlement District to be prepared, containing :—

- (a) The name of district or division in which the property is situated ;
- (b) The designation of the property, either by name or by number, sufficient for identification ;
- (c) The names of the owner and occupier, if known ;
- (d) The annual letting value or other valuation on which the property is assessed ; and
- (e) The amount of tax assessed thereon.

3. On the requisition of the Executive Committee or of such person, the owner or occupier of any such building or land shall within such reasonable period as shall be specified in the requisition, be bound to furnish a true return to the best of his knowledge or belief and subscribed with his signature :—

- (a) As to the name and place of abode of the owner or occupier or of both ;
- (b) As to the dimensions of such building or land and the annual letting value or other valuation thereof.

4. When the assessment list has been completed the Executive Committee shall give public notice thereof, and of the place where the list or a copy thereof may be inspected ; and every person claiming to be either owner or occupier of property included in the list, and any agent of such person, shall be at liberty to inspect the list and to make an extract therefrom without charge. The Committee shall, at the same time, give public notice of a day, not being less than fifteen days from the publication of such notice on or before which complaints against the amount of any rateable value entered in the assessment list will be received in their office.

5. In every case in which any property has for the first time been entered in the assessment list or in which the entered rateable value of any property has been increased, the Executive Committee shall, as soon as conveniently may be, give a special written notice to the owner or occupier of the said property specifying the nature of such entry and informing him that any complaint against the same will be received in their office at any time within fifteen days from the service of the special notice.

6. Every complaint against the amount of any rateable value entered in the assessment list must be made by written application to the Executive Committee on or before the day or the latest day fixed in the public or a special notice aforesaid stating the grounds on which the value is disputed.

7. The Executive Committee shall cause all complaints so received to be registered in a book to be kept for this purpose and shall give notice, in writing, to each complainant of the day, time and place when and where his complaint will be investigated.

8. The Executive Committee shall appoint an officer or officers to investigate and dispose of the complaint in the presence of the complainant, if he shall appear and if not, in his absence. Such officer or officers may, for reasonable cause, adjourn investigation from time to time.

9. When the complaint is disposed of and the result noted in the register any amendment necessary in accordance with such result shall be made in the assessment list.

10. When all such complaints, if any, have been disposed of and all amendments in accordance with such complaints have been made in the assessment list the said list shall be authenticated by the chairman of the Executive Committee who shall certify that except in the cases (if any) in which amendments have been made, no valid objection has been made to the rateable value entered in the said list.

11. Appeal against any rateable value shall be heard and determined by the Judge of the Court of the Resident, but no such appeal shall be heard by the said Judge unless it is brought within fifteen days from the date on which a complaint previously made to the Executive Committee as aforesaid has been disposed of.

12. After appeals, if any, as aforesaid are decided and the results noted in the assessment list, all rateable values so entered in the list shall be final, subject to such action as may be necessary under rules 17 and 18 following.

17. (1) The Executive Committee may at any time alter the said list by inserting the name of any person whose name ought to have been inserted, or by inserting any property which ought to have been inserted, or by altering the valuation of or assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, after giving notice to any person inserted in the alteration of a time not less than one month from the date of service of such notice, at which the alteration is to be made.

(2) Every objection made by any persons inserted in any such alteration, before the time fixed in the notice and in the manner provided by rules 6 and 7 shall be dealt with in all respects as if it were an application under the said rules.

(3) Every alteration made under this rule shall, subject to the result of an appeal under rule 11 have the same effect as if it had been made on the earliest

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day in the current official year in which the circumstances justifying the alteration existed

18. (1) It shall be not necessary to prepare a new assessment list, every year. Subject to the condition that every part of the assessment list shall be completely revised not less than once in every four years, the Executive Committee may adopt the valuation and assessment contained in the list for any year, with such alteration as may be deemed necessary, for the year immediately following.

(2) But the provisions of rules 4, 5, 6, 7, 8, 9, 10 and 17 shall be applicable every year as if a new assessment list has been completed at the commencement of the official year.

In 1909, the value of the plaintiffs' leasehold lands was assessed at Rs. 7,000 for rating purposes; and the taxes were levied at Rs. 283-8-0. The same amount was levied in the year following.

The construction of plaintiffs' salt-works was completed in 1911; and the plaintiffs began to manufacture salt. In that year, the defendants, the Executive Committee of Aden, abandoned the old method of assessing the taxes, and fixed the assessment value at Rs. 2,795, being half the value of the salt exported by the plaintiffs during the year less 10 per cent. The taxes so levied came to Rs. 125-12-0. The plaintiffs appealed against the taxation; but the Political Resident at Aden confirmed the same. In the two following years, that is, in 1912 and 1913, the plaintiffs were assessed at Rs. 2,240-3-8 and Rs. 4,497-4-9, respectively, on the same principle of valuation. The plaintiffs appealed against both assessments to the Political Resident at Aden, but were unsuccessful.

Finally, the plaintiffs filed a suit against the Executive Committee of Aden, for a declaration that the new method of assessment adopted by the defendants in assessing the taxes for the years 1911, 1912 and 1913 was wrong, illegal and unauthorised, and that the

correct method of assessing the taxes was to take the fixed rental of Rs. 7,000 or at the most such sum and the royalty payable by the plaintiffs. They also prayed to recover back the amount of Rs. 6,012-8-9, the amount of the taxes recovered in excess.

The defendants contended *inter alia* that the decision of the Political Resident in the rating* appeals was final ; that the plaintiffs had no cause of action ; and that the Court had no jurisdiction to entertain or try the suit.

At the trial, the Assistant Resident and Judge raised a preliminary issue as follows :—

“ Whether this Court has jurisdiction to interfere with the assessment fixed by the defendants, and confirmed by the appellate authority ? ”

The learned Judge decided the issue in the negative and dismissed the suit on the following grounds :—

Defendants cite certain rulings which they interpret in their favour. The most important of these is the High Court decision in *Morar v. Borsad Town Municipality* (1910 I. L. R. 24 Bom. 607).

This decision is authoritative, and conclusive. The only question is how far its effects may be modified by the force of two arguments advanced by plaintiffs. The first of these has reference to the words “ by law ” which I have emphasised in the last sentence of the above quotation. The plaintiffs contend that the rules under which the assessment is made and which provide for appeals against over-assessment were not passed by the Legislative Council, and therefore have not, for the purposes of the present case, the force of *law*. That the rules were made by the Resident, who cannot have had the intention, and certainly had not the power, to prevent a civil Court from hearing a regular civil suit to recover a tax illegally levied.

I am unable to accept this view. As pointed out by defendants the Aden Settlement Regulation (VII of 1900) is a Legislative enactment of the Governor-General of India in Council. Section 13 of that Regulation lays down that the Resident, with the previous sanction of the local Government, shall make rules to provide for various matters, including assessment of taxes, &c. The rules now in question were so made, with the previous sanction of the Government of Bombay, and duly published by Notification of that

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Government. These rules have, therefore, full Legislative sanction and unquestionably constitute the law on the subject under consideration.

Moreover the ruling in the *Borsad case* refers to the rule providing a remedy against over-valuation. I can imagine no reason for supposing that the rule referred to was made in such a manner as to give it the force of law to a greater extent than, as I conceive, obtains in respect of the Aden rules. And it is an important point in favour of the defendants' argument that the Aden rules require an appeal to be made to the Judge of the Court of the Resident distinctly a more authoritative tribunal than the General Committee of the Municipality.

I, therefore, hold that the valuation of the property was made and confirmed by the authorities in whom the powers of so doing had been placed by law.

There remains a further argument of the plaintiffs which has to be considered. They maintain, in effect, that the ruling in the *Borsad case* does not apply to oust the jurisdiction of a civil Court, in a case where the valuation of the property has been made in an unauthorised manner, not in accordance with the rules laid down, and this they contend is the fact in the present case. They cite the cases of *K. Raghunathdas v. Ankleshvar Municipality* (1901 I. L. R. 26 Bom. 294) and *Secretary of State for India v. Major Hughes* (1913 I. L. R. 38 Bom. 293).

The first of these two cases differed from the *Borsad case* in that the complaint was of an illegal assessment rather than an over-valuation, it being alleged that "the mode of estimating the assessment was illegal and not in accordance with the rules framed by the Municipality." The High Court held that if this allegation had been established the case could have been distinguished from the *Borsad case*. The same principle was laid down in *Secretary of State v. Major Hughes*, where it was held that the taxing authority had gone beyond the powers assigned to him by law, and that, therefore, his action being illegal, the case was one in which the jurisdiction of the civil Court was not ousted. I am bound to take the same view, and to hold that this Court has jurisdiction to interfere in the present case if, and only if, the mode of assessment adopted by the defendants can be shown to be illegal.

I hold that the defendants have calculated the letting value of the property in order to arrive at its rateable value, and in so doing have in no way exceeded the powers given to them under the rules.

For the reasons which I have given I hold that the action of the defendants has been neither unauthorised nor illegal in any respect, and therefore, it is not within the jurisdiction of this Court to interfere with the assessment fixed by the defendants on plaintiffs' property. It is perhaps not altogether to be

regretted that, in order to arrive at a decision upon the point of law, it has been necessary, to some extent, to enter into the merits of the case. The result in any case is that the previous decisions of the Court of the Resident in appeal are final, that this Court has no right to interfere, and the suit is, therefore, dismissed, with all costs against the defendants.

On appeal by the plaintiffs, the Political Resident of Aden came to the same conclusion and dismissed the appeal ; but submitted, under section 8 of the Aden Courts Act (II of 1864), the following questions for determination by the High Court of Bombay :—

1. Whether the lower Court did not act irregularly and illegally in declining to hear the case as a whole and raising the preliminary issue and deciding the same without taking any evidence as to the merits of the case ?
2. Whether the decision of the lower Court on the said issue was not erroneous ?
3. Whether the lower Court was not wrong in dismissing the plaintiffs' suit ?

The reference was heard by Scott C. J. and Heaton J., on the 9th and the 16th of February 1916.

Inverarity, Setalvad and Mulla, with *Ratanlal Ran-chhoddas*, instructed by *Edgelow, Gulabchand, Wadia & Co.*, for the plaintiffs.

Jardine (Advocate General) and *Strangman*, instructed by *Nicholson* (Government Solicitor), for the defendants.

Inverarity.—The provisions of Rule 12 making the decision of the Political Resident at Aden in a rating appeal 'final,' do not make it final in the sense of ousting the jurisdiction of the Court : for, any expression making the decision of any authority final, in fiscal Statutes, cannot oust the jurisdiction of the Court, if it can be shown that the assessing authorities have not proceeded in accordance with the provisions of the fiscal Statutes : see *Armytage v. Wilkinson* ⁽¹⁾ and

(1) (1878) 3 App. Cas. 355 at p. 365.

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Holland Bombay Trading Co. v. The Secretary of State. ⁽¹⁾ I distinguish *Morar v. Borsad Town Municipality* ⁽²⁾ on the ground on which it was distinguished in *Kasandas v. Ankleshwar Municipality* : ⁽³⁾ see also *Secretary of State for India v. Major Hughes*. ⁽⁴⁾ We had no opportunity to prove this, for the lower Court did not permit us to adduce evidence.

The defendants can justify the valuation made by them, only if they have fixed the valuation on any of the accepted methods. Even the rules themselves provide that the assessment must primarily proceed upon the annual letting value of the property : *The Queen v. Westbrook*. ⁽⁵⁾ That value in the present case clearly is the rent plus the royalty. The other mode or modes can be requisitioned only where the annual letting value cannot be ascertained.

Jardine :—The appeal provided by the rules is to a judicial officer ; it is, therefore, on the same basis as an appeal against valuation under section 217 of the City of Bombay Municipal Act, 1888, the decision of the Chief Judge in which is made 'final' under section 219 (I) of the Act.

The jurisdiction of the Court can be taken away only by an Act of the Legislature : *Jacobs v. Brett*. ⁽⁶⁾ In the present case, no jurisdiction has been ousted ; but it has not come into existence at all : see *The Collector of Thana v. Bhaskar Mahadev Sheth* ; ⁽⁷⁾ *Mahadaji Govind v. Sonu bin Davlata* ⁽⁸⁾ and *Premshankar Raghunathji v. The Government of Bombay*. ⁽⁹⁾

⁽¹⁾ O. C. J. Appeal No. 892 : Suit No. 180 of 1895 (Un-Rep.).

⁽²⁾ (1900) 24 Bom. 607.

⁽⁵⁾ (1847) 10 Q. B. 178 at p. 203.

⁽³⁾ (1901) 26 Bom. 294.

⁽⁶⁾ (1875) L. R. 20 Eq. I at p. 6.

⁽⁴⁾ (1913) 38 Bom. 293.

⁽⁷⁾ (1884) 8 Bom. 264 at p. 266.

⁽⁸⁾ (1872) 9 Bom. H. C. R. 249.

⁽⁹⁾ (1871) 8 Bom. H. C. R. 195 (A. C. J.).

Inverarity, in reply, referred to *Secretary of State for India v. Moment*; ⁽¹⁾ *Vishnu Hari Kulkarni v. Ganu Trimbak* ⁽²⁾ and *Bhaishankar v. The Municipal Corporation of Bombay*. ⁽³⁾

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SCOTT, C. J.:—This is a reference under section 8 of the Aden Act II of 1864 for the decision by this Court of the following questions:—

1. Whether the lower Court (i.e., of the Assistant Resident) did not act irregularly and illegally in declining to hear the plaintiffs' case as a whole and raising a certain preliminary issue and deciding the same without taking any evidence as to the merits of the case.

2. Whether the decision of the lower Court on the said issue was not erroneous. And

3. Whether the lower Court was not wrong in dismissing the plaintiffs' suit.

The nature of the plaintiffs' suit and the circumstances under which the preliminary issue, the subject of the reference, was raised are stated in the judgment of the Assistant Resident as follows:—

"The plaintiffs, in 1909, obtained a lease from Government of certain lands in the Shekh Othman District of Aden for the purpose of constructing Salt Works thereon and the manufacture of salt therein. The plaintiffs pay a rent Rs. 7,000 per annum for this land, plus a royalty of 8 annas per ton on all salt exported by them. The defendants, the Executive Committee of the Aden Settlement, constitute the Municipal authority of the Aden Settlement, within the area of which is comprised the land upon which the plaintiffs' Salt Works are situated.

"As stated in the plaint, the Political Resident at Aden, in exercise of powers conferred upon him by the Aden Settlement Regulation (VII of

⁽¹⁾ (1912) 40 Cal. 391.

⁽²⁾ (1888) 12 Bom. 278.

⁽³⁾ (1907) 31 Bom. 604.

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1900), had published two Notifications dated 26th March 1909 levying certain taxes and laying down rules for the assessment and collection thereof. Included among the taxes so levied were a House and Property tax and a General Sanitary Tax, both taxes to be assessed on the *rateable value* of the property taxed.

"By these Notifications, the defendants were charged with the duty of assessing and collecting the said taxes in accordance with the Rules therein embodied.

"The defendants, acting on the powers thus conferred on them, fixed the rateable value of the aforesaid leasehold lands of the plaintiffs at Rs. 7,000, that being the amount payable by the plaintiffs as annual rent for the lands. This was done in the year 1909 when the Salt Works had only just begun to be constructed and no salt had as yet been produced. In the year 1911, when production had commenced, the defendants adopted a new mode of assessment, and fixed the rateable value of the property at one half the value of the salt exported by plaintiffs during the year, less ten per cent.

"The plaintiffs state that they protested against this new mode of assessment, but their protest was over-ruled by defendants, who continued in the following years to assess the taxes on the new basis in spite of protests from plaintiffs on each occasion. The plaintiffs urge that this new method of assessment is wrong in principle and oppressive, as well as being illegal and unauthorised, and they ask for a declaration of the Court to that effect. They ask further for a declaration that the correct method of assessing the taxes is to make the fixed rental of Rs. 7,000 or at most such sum plus the royalty payable by plaintiffs on salt exported, as the rateable value of the lands and to assess the taxes on such rateable value. They ask finally for a decree for the refund of the excess sum, over the amount legally payable, recovered by defendants during the three years 1911-1914.

"Now the first point to be noted is that in their plaint the plaintiffs make no mention whatever of the fact that in three successive years they made three appeals to the Court of the Resident, in the manner provided in the Rules, against the defendants, decisions of which they complain, and that all these appeals were rejected by the Court. This is a fact to which great importance is, not unnaturally, attached by the defendants, who maintain that these decisions in appeal are final and that this Court cannot interfere. In the circumstances it has been necessary to frame a preliminary issue:—Whether this Court has jurisdiction to interfere with the assessment fixed by the defendants, and confirmed by the Appellate Authority? If the decision on this issue be found in the negative, this Court can have no option but to dismiss the suit."

The plaintiffs *inter alia* contended that the rules providing for appeals against over-assessment were not passed by the Legislative Council and, therefore, have not for the purposes of the present case the force of law.

The Aden Settlement Regulation, 1900, made under the Government of India Act, 1870 (33 Vic. c. 3) provides for the establishment of an Executive Committee for the Municipal Government of Aden to be appointed and controlled by the Resident which shall have such authority, discharge such functions and exercise such powers within the area to which the Regulation extends as the Resident may by any rules under the Regulation direct. By clause 13 the Resident is authorised, subject to the previous sanction of the Local Government, to make rules to provide for certain specified matters which include "the assessment and collection of any toll, cess, tax or other impost imposed under the Regulation."

By clause 11 the power to impose such tolls, cesses, taxes and other imposts as are necessary for the purposes of the Regulation is vested in the Resident who may fix the taxes and modes of levying or recovering the same.

On the 26th March 1909 the Resident imposed *inter alia* a House and Property Tax and General Sanitary Tax, and on the same day issued rules purporting to be for the assessment and collection of the House and Property Tax and General Sanitary Tax.

They provided *inter alia* for the preparation of an assessment list containing "the annual letting value or other valuation on which the property is assessed," for complaints to the Executive Committee where any property was for the first time being entered in the list

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or in which the entered rateable value has been increased, and for appeals against any rateable value to the Judge of the Resident's Court.

Rule 12 provides that after appeals, if any, are decided and the results noted in the assessment list, all rateable values so entered in the list shall be final, subject to such action as may be necessary under rules 17 and 18 to amend the list from time to time.

It may be observed that the rules contain no rules for assessment but only directions for the entries to be made in the assessment book after the property has been assessed.

This point can be made clear by reference to the City of Bombay Municipal Act (Bombay Act III of 1888) which is expressly referred to by the Notification of Taxes of the 26th March 1909.

Sections 146 to 153 of the Bombay Act provide for the persons to be made liable. These sections are adopted by reference in the Notification of Taxes but sections 154 and 155, which provide for the mode of assessment, have no counterpart in either the rules or the Notification of the Resident.

The provision of rule 12 regarding the finality of the rateable value is apparently taken from the first and the last lines of section 219 (1) of the Bombay Act but there is no counterpart to the Bombay provision that the decision of the Judge in an appeal against such value shall be final.

It is, however, assumed by the Assistant Resident's judgment that the provision that the rateable value shall be final is equivalent to a provision that the decision of the Judge in the rating appeal shall be final.

If this was the intention it is curious that the Bombay Government whose previous sanction to the rules was necessary should have sanctioned the omission of the provision that the decision of the Judge in a rating appeal shall be final. It is curious for the reason that the corresponding provision in section 219 of the Bombay Municipal Act was found to require validation by an Act of the Governor-General, viz., Act XII of 1888.

It is just as probable that the provision that the decision should be final was omitted in order not to prevent suits for refund of disputed rates in the Court of the Resident in which suits a case might be stated under the Aden Act for the decision of the High Court as they can be stated by the rating appeal Court in Bombay under the Act XII of 1888, or because there was a doubt as to the legality of limiting by rules the ordinary jurisdiction of the Resident's Court.

We will, however, dispose of the reference now before us on the assumption that the rule 12 is intended to make the decision of the Judge of the Resident's Court in a rating appeal final. On this assumption we think the rule is *ultra vires*.

It is well established that a distinct unequivocal enactment is required for the purpose of either adding to or taking away the jurisdiction of a Court. The Resident's Court had already jurisdiction under the Aden Act of 1864 to hear and determine all cases of whatever nature and whatever value. The rule 12 read as it has been by the Assistant Resident amounts, to use the words of Lord Watson in *King v. Henderson*,⁽¹⁾ to "the creation of a jurisdiction which the Legislature withheld." It would, if valid, force the aggrieved rate-payer to accept a final decision by a procedure in

⁽¹⁾ [1898] A. C. 720 at p. 729.

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which appeal by way of case stated to this Court would not be open. No one disputes that such a result may be obtained by Legislative enactment by a competent authority but authority to achieve such a result by the subordinate legislation of rules cannot be implied, for the presumption is the other way.

We are, therefore, of opinion that there is no valid objection to the trial on its merits of the suit instituted by the plaintiffs.

We answer the questions put as follows :—

- (1) In the affirmative.
- (2) The decision of the lower Court was erroneous.
- (3) The lower Court was wrong in dismissing the plaintiffs' suit.

Costs consequent on the reference to be costs in the suit.

Answers accordingly.

R. R.
