HEM RAJ DAYA *v.* SUVA CITY COUNCIL

[FIJI COURT OF APPEAL AT SUVA (Lowe, C.J., President, Sir George Finlay and C. C. Marsack, JJ/A), November 6, 1959]

CIVIL APPEAL NO. 4 OF 1959

(Appeal from H.M. Supreme Court of Fiji—Hammett, J.)

Education Rating (Suva) Ordinance (Cap. 82)—Education rate levied on property subsequently sold to person belonging to a race, the members of which are not admitted to the Government Grammar Schools—whether purchaser of such rateable property is liable for payment of the second instalment of the rate which became due after his purchase—meaning of the word "levy".

Held.—(1) "levy" in section 2 (1) of the Ordinance means to strike or make, to recover or to collect ;

(2) S. 105 of the Local Government Towns Ordinance shows that the rate is made for one year with an exception which does not apply in this case ;

(3) S. 124 of that Ordinance imposes absolute liability on the owner of the rateable property on which the rate is assessed ;

(4) That section with section 125 creates the liability of the owner, whether present or future, in connexion with the rate struck ;

(5) When s. 2 (3) directs that an education rate is not to be levied on any person who belongs to a race, members of which are not admitted to the Government Grammar Schools, it prescribes a primary exemption to which effect has to be given when the rate is struck or made.

Note—This was an appeal against the judgment reported in 1958–59 *Fiji Law Reports,* 101.

R. I. Kapadia and M. V. Pillai for the appellant.

K. C. Gajadhar for the respondent.

REASONS FOR DISMISSAL OF APPEAL

This appeal was dismissed orally on the 29th May but we deem it desirable to put on record our reasons for the dismissal.

The facts are simple and the legal question involved uncomplicated. Prior to the 1st January, 1957, the Suva City Council struck an education rate on all rateable property within the city including a property then owned by the executors of the late Sir Henry Scott. The rate was struck for a period of one year commencing on the 1st January, 1957, and was made payable in two instalments. The first instalment was paid by the executors of the deceased owner. They, however, sold the property on the 30th April, 1957, to the appellant ; the change of ownership was noted by the Council on the 15th June, 1957. The second instalment became due and payable on the 1st July, 1957, that is after the sale and after the change of ownership were noted by the Council.

After the suit was brought the appellant paid into Court the amount of the second instalment of rates, except the education rate amounting to £12 6s. 7d. This he declined to pay, claiming that he was not liable, he being a person who belongs to a race, members of which are not admitted to the Government Grammar Schools in Suva.

In the Court below, Counsel for the City Council contended that the appellant was liable for the second instalment of the rate because the property, being rateable and the owners liable when the rate was struck, it remained rateable for the year for which it was rated and the appellant as owner became liable for the second instalment of the rate by reason of his ownership despite the fact that he belongs to a race, the members of which are not admitted to the Government Grammar Schools.

Counsel for the appellant contended that, having regard to his race, the appellant was relieved of the responsibility for the second instalment by subsection 3 of section 2 of the Education Rating (Suva) Ordinance (Cap. 82). Briefly phrased, his argument was that the word " levy " used in the future tense in that subsection had the meaning of the verb " collect ". He drew some distinction between making a rate and levying a rate.

The learned Judge in the Court below in substance accepted the argument of Counsel for the respondent ; hence this appeal.

A perusal of subsection (1) of section 2 of the Ordinance (Cap. 82) indicates with some clarity that the word " levy " as used in that subsection means " to strike or make " as well as to recover or to use the appellant's language, to collect. In other words, the whole process of making and recovery is comprehended in the one phrase " shall levy ". This meaning is confirmed in later language of the subsection where the Council is vested with the same powers of levying and recovering the education rate as it enjoys under the Local Government Towns Ordinance, in respect of other rates. That being so, reference can properly be made to the provisions of the latter Ordinance. Section 105 of that Ordinance prescribes with clarity the exact period for which a rate is made. In terms of the section it is made, with what for present purposes is an immaterial exception, for a definite period of one year, commencing on the nearest 1st January to the date upon which the rate is approved by resolution of the Council. Then, as to rateability, section 106 makes all land within the city rateable with exceptions which have no application here.

Section 124 of the same Ordinance imposes absolute liability on the owner of the rateable property upon which the rate is assessed. To that absolute liability no qualification is expressed nor is there any indication of discrimination between types or classes of owners. Nor is there any indication of the point of time at which the character of the owner is to be determined. The section merely speaks of the owner and so may well extend to the owner from time to time. That such is its meaning is shown by subsection (2) of section 125 which makes an unpaid rate a charge upon the property and confers upon the Council the right to recover the rates together with interest from any owner of the property. That, of course, means any future owner of the property, for the word " owner " in the subsection is associated with the expression " at any future time ".

On the face of the Local Government Towns Ordinance, therefore, it is clear that the liability imposed by a rate is imposed and fixed once and for all when the rate is made. The fact that payment is required by instalments is immaterial ; it is a case of a finally crystallized liability merely made payable by instalments.

Subsection (3) of section 2 of the Education Rating (Suva) Ordinance (Cap. 82) does not detract from this conception. When it directs that an education rate is not to be levied on any person who belongs to a race members of which are not admitted to the Government Grammar Schools it is prescribing a primary exemption, that is an exemption to which effect has to be given when the rate is made or struck. It does not exonerate from responsibility any person who merely becomes owner after the liability has been established and fixed. Any contrary view to this would be productive of uncertainty in relation to financial affairs, which of their nature can admit of no uncertainty. The Education Rating Ordinance, section 2, makes that quite clear in that it is a direction to the City Council to levy a special rate to produce a definite and specific sum which the Council is required to pay. It is productive of no uncertainty if the rate is not struck in respect of properties or persons exempt at the date of the striking of the rate. But insufficiency would be the result if, the rate having been properly struck on all properly rateable property at the date of the striking, any part of it became subsequently uncollectable because some persons became owners who for some personal reason were entitled to exemption. The view we express as to the crystallization of the liability as at the date of the striking of the rate and the liability of a subsequent owner to pay who would not have been liable had he been the owner when the rate was struck, conforms to the judgment of the Higher Tribunals in other jurisdictions, for instance in New Zealand and New South Wales. We do not refer to those authorities because they only conform in effect to the view we express. All have been decided on an interpretation of local legislation which may or may not coincide in detail with the Fiji Ordinances. Any comparison of the relative legislation is, in the view we hold of the effect of the Fiji Ordinances, unnecessary. Upon our interpretation of those Ordinances we were satisfied that there was no substance in the appeal and, for the reasons we have now given, it was dismissed orally.