

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

No. 229 of 1958

Between :

SUVA CITY COUNCIL

Plaintiff

AND

HEMRAJ DAYA

Defendant

The defendant purchased property in Suva in 1957 after the rates, including an education rate, for 1957 had been assessed and levied and the first instalment thereof had been paid by his predecessor in title. The defendant refused to pay the second instalment of the education rate for 1957 on the ground that he was a person upon whom the education rate could not be levied under the provisions of section 2 (3) of the Education Rating (Suva) Ordinance, Cap. 82. He maintained that the word "levied" in that section means "collected". The Council contended that the word "levied" means "imposed"; that the education rate had been properly imposed for the year 1957 before the defendant purchased the property, and that, as it had become a charge on the property it could properly be recovered from any subsequent owner.

Held.—(1) The word "levied" in section 2 (3) of the Education Rating (Suva) Ordinance, Cap. 82, means "imposed".

(2) A person upon whom the education rate may not be levied is liable for the unpaid portion of an education rate if the rate has been properly levied prior to the date upon which he purchased a property and has become a charge on the property in accordance with section 125 (2) of the Local Government (Towns) Ordinance, Cap. 78.

(3) The defendant's remedy was to have had the unpaid balance of the education rate taken into account when making settlement in connexion with the purchase of the property.

D. M. N. McFarlane for the plaintiff.

R. I. Kapadia for the defendant.

HAMMETT, J. [6th February, 1959]—

In this action the Suva City Council claims from the defendant the sum of £273 4s od. being rates and interest thereon due for the year 1957 under Rate Assessments on a number of properties in Suva of which the defendant is the owner.

The writ was specially endorsed and at the hearing of the Summons for Judgment under Order 14 of the Rules of the Supreme Court it was made clear that the defendant did not dispute any of the facts. He only disputed liability for a small part of the claim, namely, £12 6s. 7d. being the education rate for which he maintained he was not liable.

The case was then set down for legal argument on this issue. In the meantime the defendant has paid into Court the sum of £269 2s. od. which he admits is due to the plaintiff in respect of rates and additional interest but he still disputes liability for £12 6s. 7d.—the education rate.

The dispute over the £12 6s. 7d. education rate arises in this wise. The property on which it is claimed was owned by the Executors of the Estate of the late Sir Henry Scott on 1st January, 1957. In accordance with its usual practice, the Suva City Council demanded payment of the Rates for 1957 on this property by two equal instalments. The first of these instalments was paid early in 1957 by the Estate of Sir Henry Scott (deceased). The property was then purchased by the defendant on 30th April, 1957, and the change of ownership was noted by the Council on 15th June, 1957. In the assessment for the whole of the year 1957 was included the sum of £24 13s. 2d. in respect of the education rate. One half of this was paid by the Estate of Sir Henry Scott (deceased) when it paid the first instalment of the rates for 1957. When the second instalment of rates on the property was demanded from the defendant, he, having then become the owner, maintained that he was not liable to pay the second half of the education rate, namely £12 6s. 7d., because he is a person who belongs to a race, members of which are not admitted to the Government Grammar Schools in Suva.

In this respect the defendant relies on the provisions of the Education Rating (Suva) Ordinance, Cap. 82, Section 2, the material parts of which read :

- “(1) The Suva City Council, hereinafter called the City Council, shall levy such special rate, to be described as the education rate, as may be required to meet any sum which the City Council is liable to pay under the provisions of this Ordinance together with the cost of collection thereof and for the purposes of raising such sums shall have and may exercise the same powers of levying and recovering the said rate as it has in respect of the levy and recovery of rates authorized under the Local Government (Towns) Ordinance.
- (2)
- (3) Any such education rate shall not be levied on any person (other than a company incorporated under the Companies Ordinance) who belongs to a race members of which are not admitted to the Government Grammar Schools in Suva.”

The plaintiff admits that the defendant is a person who belongs to a race, members of which are not admitted to the Government Grammar Schools in Suva. It would therefore appear, at first sight, that there is substance in the defendant's contention that on this ground he is not liable to pay the education rate on the property in question for the second half of 1957.

It is, however, contended by the plaintiff that whilst there may be sympathy for the defendant, he is in law liable to pay the education rate for the second half of 1957, and the Suva City Council is bound to enforce payment of it, because at the time it was levied the owner of the property was not a person who was exempted from payment of the rate by section 2 (3) of the Education Rating Ordinance, Cap. 82. It is the contention of the plaintiff that whilst, when the education rate for 1958 was levied, the defendant was not liable to pay it for the year 1958 because he was exempted by virtue of this section, he cannot avoid liability to pay it for the year 1957 merely because he became the owner in 1957, because the rate for 1957 had in fact been levied before the defendant became the owner.

The defendant, however, contends that the education rate is not levied when the amount of it is determined by the Council but when it is actually collected. In this respect he relies on the definition of the word "levy" given in the concise Oxford Dictionary namely :

"Collecting of assessment, tax, etc."

It is of interest to note that later in the same definition it is said to be used as a verb to mean :

"raise (contribution, taxes), and impose (rate, toll) "

It would appear that not a great deal of assistance is gained by reference to the dictionary since the words "to levy" can mean both "to impose a rate"—as the plaintiff contends and "to collect a rate" as the defendant contends.

By section 2 (1) of the Education Rating (Suva) Ordinance, Cap. 82, the Suva City Council may exercise the same powers of levying and recovering the education rate as those authorized under the Local Government (Towns) Ordinance, Cap. 78, in respect of other rates.

In neither of these Ordinances is there a definition of the word "levy". In its context in section 2 (1) of Chapter 82, however, it would appear that the construction sought to be placed upon it by the defendant, i.e. to collect, is not compatible with the wording of the section which would in that event read :

"The Suva City Council, hereinafter called the City Council shall collect such special rate, to be described as the education rate, as may be required to meet any sum which the City Council is liable to pay under the provisions of this Ordinance together with the cost of collection thereof and for the purpose of raising such sums shall have and may exercise the same powers of collecting and recovering the said rate as it has in respect of the collection and recovery of rates authorized under the Local Government (Towns) Ordinance."

If "to collect" were the proper construction of the words "to levy" in this section the Council would be granted powers to collect and recover the education rate but would not have the power to impose it, which would appear to be absurd.

If however, the meaning of the words "to levy" in section 2 (1) was "to impose" as is contended by the plaintiff the section would read as follows :—

"The Suva City Council, hereinafter called the City Council, shall impose such special rate, to be described as the education rate, as may be required to meet any sum which the City Council is liable to pay under the provisions of this Ordinance together with the cost of collection thereof and for the purpose of raising such sums shall have and may exercise the same powers of imposing and recovering the said rate as it has in respect of the imposition and recovery of rates authorized under the Local Government (Towns) Ordinance."

This construction would appear to be the only logical and reasonable one that can be placed on the words levying and levy respectively when used in this context.

I have examined the provisions of the Local Government (Towns) Ordinance, Cap. 78, and in my opinion wherever the word "levy" is used it can only properly be construed to mean "to impose a rate" and it cannot consistently and logically be construed to mean "to collect a rate."

The procedure is laid down clearly in the Local Government (Towns) Ordinance, Cap. 78, whereby a Council may make or fix or strike a rate, and may then impose or levy this rate by an assessment showing how much at the rate fixed, having regard to the valuation of the land the owner must pay in rates. It must then demand payment and it may then collect the sum due. If this is not paid alternative methods are prescribed whereby it may recover or enforce payment of the sum due.

It is quite clear that the rate is struck for the whole year and not for each half year separately and this is admitted by the defendant.

The owner of the property in this case early in 1957 was liable for the education rates for the whole of 1957. If he had not paid any of these rates before he sold this property the sum due would, by virtue of section 125 (2) of the Local Government (Towns) Ordinance, Cap. 78, have become and would remain a charge on the property and could be recovered by legal action against any future owner of the property.

The construction which the defendant seeks to place upon the term "to levy" used in section 2 (3) of the Education Rating (Suva) Cap. 82, namely "to collect" would lead to the result that once an owner liable to pay the education rate had sold the property on which it had been imposed to a person not liable to the rate, the rights expressly given the Council by section 125 (2) to recover such rates from any future owner of the property would be rendered completely nugatory. This in turn would, of course, be in complete contradiction of the powers expressly granted the Suva City Council by section 2 (1) of the Education Rating (Suva) Ordinance, Cap. 82. If this had been the intention of the Legislature it would undoubtedly have said so in express terms.

In my opinion the meaning of the word "levied" in section 2 (3) of the Education Rating (Suva) Ordinance, Cap. 82, is "imposed".

The education rate was not levied or imposed on the defendant. It was imposed or levied on the previous owner of the land and in that sense levied quite properly. It has become a charge on the land by virtue of the Local Government (Towns) Ordinance, Cap. 78, section 125 (2), and may be recovered from any subsequent owner of the property.

The defendant is the present owner of the property and he admits this rate has not yet been paid and in my opinion he is liable to pay it. His real remedy in these circumstances was to have had the matter taken into account when the completion statement was prepared at the time he purchased the property. The fact that he apparently failed to do so is one that cannot affect the rights of the Suva City Council.

In these circumstances the plaintiff is entitled to judgment for the sum of £273 6s. 8d. with interest at 7 per cent from 18th June, 1958, to the date of this judgment with costs to be taxed.

It is ordered that the sum of £269 2s. od. paid into Court by the defendant be paid out to the plaintiff.