1904.
March 4.

RANAWANAGEDARA MUDIYANSE *v.* MUNICIPAL COUNCIL, KANDY.

C. R., Kandy, 12,297.

Buddhist temple lands—Municipal taxes—Ordinance No. 7 of 1887, s. 127—Proclamation of 21st November, 1818, s. 21—"Exemption from all taxation"—Contrary enactments—Repeal by implication.

Under section 127 of the Ordinance No. 7 of 1887, a Municipal Council is not entitled to make and assess any rate on the value of any land, the property of a Buddhist temple, exempted from taxation by section 21 of the Proclamation of 21st November, 1818.

IN this case the trustee of a Buddhist temple in Kandy sued the Municipal Council, Kandy, for the return of the money paid by him under compulsion as Municipal tax claimed illegally by the Council on certain lands belonging to the temple. The Commissioner held against the trustee.

The plaintiff appealed. The appeal was argued on 3rd March, 1904.

Walter Pereira, for appellant.

Van Langenberg, for respondent.

Cur. adv. vult.

4th March, 1904. MONCREIFF, J.—

The question is whether the Municipal Council of Kandy can compel payment of assessment tax and lighting rate in respect of lands which are the property of Nitteawella Vihare within the gravets of Kandy. The trustee of the vihare sues for the return of Rs. 57.56 paid under compulsion. He maintains that lands which are the property of temples are exempt from all taxation. By the Proclamation of the 21st November, 1818 (section 21) "the Governor, desirous of showing the adherence of the Government to its stipulation in favour of the religion of the people, exempts all lands which now are the property of temples from all taxation whatsoever."

The defendants reply that the Legislature has given them power to impose rates and taxes in respect of temple lands, and that the exemption given by the Proclamation of 1818 has been repealed. Section 127 of the Municipal Councils' Ordinance, No. 7 of 1887, gave the Council power to make and assess for certain purposes, *inter alia* lighting, "any separate or consolidated rate or rates on the annual value of all houses and buildings of every

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description, and all lands and tenements whatsoever, within the municipality ..... Provided further (as amended by section 2 of Ordinance No. 16 of 1900) that ..... all buildings exclusively appropriated to religious worship ..... shall be exempted from the payment of such rate or rates."

The Council has thus power to assess in respect of all houses and buildings and all lands and tenements whatsoever. Moreover there is in the proviso an exemption in favour of buildings exclusively appropriated to religious worship, but not in respect of lands. Did the Legislature mean to repeal the exemption granted by the Proclamation of 21st November, 1818 ?

Field, J. (*Dobbs v. Grand Junction Waterworks Co., 51 L. J. Q. B. 504*) said: "Repeal by implication is never to be favoured: it is no doubt the necessary consequence of inconsistent legislation wherever it occurs, but it must not be imputed to the Legislature unless absolutely necessary."

A. L. Smith, L.J., says on the same subject (*1 L. R. Q. B., 1892, 658, Churchwardens of West Ham v. Fourth City Mutual Building Society*): "The test of whether there has been a repeal by implication is this: are the provisions of the later Act so inconsistent or repugnant to the provisions of the earlier Act that the two cannot stand together? In which case *leges posteriores contrarias abrogant.*"

I do not think the alleged repeal by implication in this case satisfies these requirements.

Mr. Van Langenberg argued that, although the subject might be, the Crown is not bound by a Proclamation; and Mr. Pereira admitted that the Crown might recede from the matter in the Proclamation. But as the Crown has not necessarily, in my opinion, shown any wish to recede from its position under the Proclamation, I need not say more on the point.

Then the question arises, what was meant by the word "taxation" used in the Proclamation?

In *Brewster v. Kidgel* (*1697*), *12 Modern Reports 167*, Lord Holt said: "When taxes are generally spoken of, if the subject-matter will bear it they shall be intended Parliamentary taxes given to the Crown. There are diverse other things improperly called taxes, as rates for Church and Poor, Sewers; or any imposition that lessens a man's property, is called a tax. So in the *Stat. de Tallagio non concedendo*. But when taxes are generally spoken of they are to be understood of the highest and most eminent sort of taxes, those in aid of the Crown. That which particularly affects this case is the time when this covenant [for rent free from all taxes] was made, *anno* 1649.

when taxes of this nature had been used for four or five years before ..... If this covenant had been in the year 1640, and not 1649, it would not have reached this case, because there was no such kind of taxes in being."

We know, therefore, what might have been meant in Ceylon by a general exemption from taxation in 1818; for *primâ facie* the meaning attached to the word in England would attach here.

A reference to the full text of the Proclamation shows that the Governor therein abolished " all duties heretofore payable to the Gabadawas Arumudale Avulege, and all other duties or taxes whatsoever are abolished, save and except that now declared and enacted, being a tax on all paddy lands of the annual produce." Then the modifications and exceptions are dealt with, and amongst others the exemptions of temple lands from " all taxation whatever." This can hardly be called a general exemption, for although the Proclamation provided that there should be only one tax, the terms of the exemption have evidently reference to more than the paddy tax. The presumption is therefore that the taxation mentioned was meant to include what the word would have included in England, unless it can be shown that such could not have been the intention of the Proclamation. If it were shown, for example, that a lighting rate was only an assessment or a " duty " such as is mentioned in section 17 of the Proclamation, this appeal might be dismissed.

I find, however, that by Regulation No. 5 of 1824, for formation of a fund for repair of the roads in the Fort, Pettah, and gravets of Colombo, and for lighting the streets of the Pettah, authority was given for assessment of houses and shops and the levying of a tax. The assessment was to be made by a Committee of five persons, and the tax to be paid to the Collector of Colombo. The regulation was amended frequently, and a similar regulation made for Galle. In Regulation No. 8 of 1830 the imposition was called " assessment tax." Regulation No. 10 of 1825 refers to the Joy tax, the tax on toddy drawers, and the " assessments levied under the authority of Government at various rates ..... to provide mails in lieu of calling on each individual to carry the same gratuitously in turn," and provides that " in lieu of all the said taxes and assessments (being all of them more or less in the nature of capitation taxes) the sum of 1*s*. 6*d*. should be levied annually on all the male inhabitants of the districts affected between the ages 16 and 60 years."

I think that this appeal should be allowed and judgment as prayed for in the plaint be entered. The appellant will have his costs of appeal and in the court below.