[Full Bench.]

1904.
June 14.

Present: The Hon. Sir Charles Peter Layard, Chief Justice, Mr. Justice Moncreiff, and Mr. Justice Grenier.

FERNANDO *v.* THE MUNICIPAL COUNCIL OF KANDY.

C. R., Kandy, 12,713.

Property belonging to Buddhist temple—Liability for Municipal taxes—Exemption from taxation—Proclamation of 1818, *section* 21—*Ordinance No.* 7 *of* 1887, *section* 127—*Ordinance No.* 16 *of* 1900, *section* 2.

Property belonging to a Buddhist temple (except such property as is especially exempted under section 127 of Ordinance No. 7 of 1887, as amended by section 2 of Ordinance No. 16 of 1900) is liable to pay assessment tax imposed by the Municipal Council under the provisions of Ordinance No. 7 of 1887.

Section 21 of the Proclamation of 21st November, 1818, enacts as follows:—"The Governor, desirous of showing the adherence of 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," &c.

Held, that this Proclamation referred only to taxes then existing or to similar taxes substituted for them, and not to taxes imposed by statute after the Proclamation.

THE facts and arguments sufficiently appear in the judgments.

Dornhorst, K.C. (with him *Van Langenberg*), for the Municipal Council (appellant).

Walter Pereira, K.C., for the plaintiff, respondent.

Cur. adv. vult.

14th June, 1904. LAYARD C.J.—

The plaintiff is the lessee from the trustee of the Poyamallie Vihare in Kandy of a certain house and premises situated within the Municipal limits of the town of Kandy.

The question to be decided is whether the Municipal Council of Kandy can compel payment of assessment tax in respect of temple property situated within such limits. The Legislature has given the Council power to make and assess for certain purposes, specified in the Ordinance No. 7 of 1887, a separate or consolidated rate or rates on the annual value of all houses and buildings of every description and all lands and tenements whatever within the Municipal limits, excepting therefrom only all buildings exclusively appropriated to educational purposes, such as schools, school libraries, and school laboratories, and all buildings exclusively appropriated to religious worship, and all burning and burial grounds, and all buildings in charge of military sentries (section 127 of the Municipal Councils Ordinance, No. 7 of 1887, as amended by section 2 of Ordinance No. 16 of 1900).

The Council has thus power to assess a rate in respect of all houses and buildings and all lands and tenements whatsoever situated within Municipal limits, save those exempted by the proviso to section 127. If that Ordinance stood alone in our Statute Book it is clear that the house and premises occupied by the plaintiff would be liable to assessment under the Ordinance of 1887, although temple property, the house not being exclusively appropriated to religious worship. The respondent, however, contends that the property occupied by him, being temple property, has been by the Proclamation of the 21st November, 1818 (section 21), exempted from all taxation. That section runs as follows:—

"The Governor, desirous of showing the adherence of 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 whatever, but certain inhabitants of those villages are liable to perform gratuitous services also to the Crown; this obligation is to continue unaffected."

The point to be decided in this case has only once been raised in this Court since Municipal Councils were first established by the Ordinance No. 17 of 1865. The first case came before my brother Moncreiff in March, 1904, that a Municipal Council is not entitled under section 127 of the Ordinance No. 7 of 1887 to make and assess any rate on the value of any land the property of a Buddhist temple excepted from taxation by section 21 of the Proclamation of 21st November, 1818. I have his authority for stating that he arrived

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at the conclusion with great hesitation, and when the present appeal came before him, sitting alone, he felt that the point to be decided was one of considerable difficulty, and as he was doubtful as to the correctness of his first decision he thought it desirable that this appeal should be decided by a Full Court. It was argued by the appellant's counsel in appeal that the provisions of the Ordinance No. 7 of 1887 repealed by implication the exemption created by the Proclamation of 1818 in favour of temple lands. I would, however, point out that if the exemption created by the Proclamation was impliedly repealed it must have been by the provisions of section 53 of the Ordinance No. 17 of 1865, which first empowered Municipal Councils to assess rates within Municipal limits. The Ordinance No. 7 of 1887 was passed by the Legislature merely to consolidate and amend the laws relating to Municipal Councils which had been previously created twenty years earlier by the Ordinance No. 17 of 1865.

Before deciding the question of impiled repeal, which is always a very difficult one, for, as Lord Blackburn says in *Garnett v. Bradley* (1), referring to Plowden's Commentaries: "Anybody who wishes to find an argument on either side about the repeal of a statute for inconsistency with a subsequent statute will find many good and ingenious arguments which make for the side he particularly wants to support," it appears to me first necessary to decide whether the Proclamation of 1818 freeing temple lands from taxation precluded the Legislature from directing by the Ordinance No. 17 of 1865 Municipal Councils to levy an assessment tax on all lands and buildings situated within Municipal limits, including temple lands other than those lands on which stood buildings exclusively appropriated to religious worship. If the Proclamation of 1818 was limited to taxation then existing or to taxation of a similar nature to be afterwards created and did not refer to taxation by local bodies, subsequently created by statute, for the purpose of lighting and sanitation, &c., of certain local areas, then the provisions of the later legislation would not in any way be inconsistent with the exemption of the Proclamation of 1818, and the two could stand side by side and be read together, and still the Proclamation of 1818 would not have the effect of freeing temple lands from the local rates created by the later statutes.

Appellant's counsel argued that the Proclamation of 1818 only referred to taxation then in existence, but quoted no authorities and referred to no analogous cases in the English reports. I am greatly indebted, however, to my brother Moncreiff for referring me on this point to the following decisions of the English Courts:

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Williams v. Pritchard (1), *Perchard v. Heywood* (2), *King v. London Gas Light and Coke Company* (3), *Sion College v. London Corpn.* (4). Section 51 Geo. 3, c. 37, provided that certain lands in the city of London reclaimed from the Thames should be free of all taxes and assessments whatsoever. By subsequent legislation from time to time the City of London was authorized to raise rates and assessments in respect of all premises within certain areas, and the lands exempted by the above-mentioned statute were included in those areas. It was held by the English Court that the exemption created by 7 Geo. 3, c. 37 only applied to then existing taxes and assessments or others substituted for them, and that in the case where subsequent statutes created new rates, even although such rates included some purposes for which rates were made when the exemption was created by section 51 Geo. 3, c. 37, they were held to be substantially a new assessment, therefore not to fall within the exemption. After the Proclamation of 1818 the paddy tax, as pointed out by my brother Moncreiff in his judgment [*Mudiyanse v. Kandy Municipal Council* (5)], was the only tax left, and that was a tax on the annual produce of all paddy lands in the Colony and was payable to the Crown and was credited to the general revenue. At that date there does not appear to have existed any taxation for local purposes confined to local areas. There appears no reason to think that the Crown at that time contemplated creating Municipalities and Local Board towns. Ought we then to hold that this Proclamation which freed temple lands from all taxation whatever would preclude the Crown, when subsequently creating Municipal Councils and giving them power to make rates for the purpose of conserving and improving the towns for which the Councils were constituted, and for providing the lighting of the public streets of such towns and for carrying out proper sanitation within their limits and supplying water to the inhabitants thereof, from directing that such rates should be levied from all lands and buildings situated within Municipal limits including the lands exempted under the Proclamation of 1818 ? It appears to me it could not have been the intention of the Proclamation of 1818 to free temple lands from other than taxes to the Crown that then existed or other similar taxes substituted for them. Since that Proclamation, owing to the prosperity of the Colony and owing to its progress, it has been found necessary by the Crown to create a new form of taxation not contemplated at the time the Proclamation issued, and to give to certain local areas powers to raise taxes within certain local limits

(1) 4 *T. R.* 2.
(2) 8 *T. R.* 468.
(3) 8 *B. and C.* 54.
(4) (1901) 1 *Q. B.* 617.
(5) 7 *N. L. R.* 167.

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for local purposes. I think it would not be fair or just to exempt temple lands from rates or taxes which are levied for purposes not contemplated at the time the Proclamation of 1818 was issued. I believe the proper construction to be placed on the exemption contained in that Proclamation is that it refers merely to taxation by the Crown in respect of which all land in the Colony was then liable or other similar taxation substituted for it. I do not think the exemption therein contained can apply, or was intended to apply, to taxes to be levied by Municipal Councils not then existing for the purposes of an Ordinance passed forty-seven years after. Municipal Councils had not been created in 1818 and were not created until 1865, and it is impossible to credit that the draftsman of the Proclamation could have contemplated or intended to free temple lands from a new kind of taxation which was not dreamt of in 1818. In my opinion the Proclamation of 1818 cannot be pleaded as a bar to the assessing of the house and premises leased by the plaintiff, because the Proclamation of 1818 did not contemplate, nor could it have been intended for, the exemption of temple property from local rates and taxes leviable by Municipal Councils created by an Ordinance passed forty-seven years after for the purposes set out in the Ordinance of 1865. The Ordinance of 1865 created a new form of taxation which did not go to increase the general revenue of the Colony, as the paddy tax did in 1818, but was raised for particular local purposes not thought of nor in any way contemplated in 1818. As I am of opinion that the Proclamation of 1818 in no way applies to Municipal taxation for local purposes, but merely to taxation for general revenue purposes, *i.e.*, to Crown taxation, the question does not arise as to whether the Proclamation of 1818 so far as it relates to exemption from taxation of temple lands is impliedly repealed by the provisions of section 127 of the Ordinance No. 7 of 1887, and need not be adjudicated on. The judgment of the Commissioner must be set aside and the case be returned to the Court of Requests, Kandy, to be proceeded with. The appellants are entitled to the costs of this appeal.

MONCREIFF J.—

It is true that in giving my decision in *Ranawanagedere Mudiyanse v. Municipal Council, Kandy* (1), I thought the points involved might make a different impression upon the minds of other Judges and I should not readily say that a contrary opinion in this case is wrong.

I still adhere to the opinion that, if these temple lands were exempted by the Proclamation of 1818 from the rates now sought to be

(1) (1904) 7 *N. L. R.* 167.

imposed upon them, the exemption was not taken away by the Municipal legislation of 1887 and 1900 (Ordinances No. 7 of 1887 and No. 16 of 1900). Section 127 of the former Ordinance, with the proviso' added by the later Ordinance, is affirmative and not negative. It does not necessarily therefore repeal the provision creating the exemption. Again, it is a general provision in which no reference to the exemption is suggested and *generalia specialibus non derogant*. In *Garnett v. Bradley* (1) the Court quoted with approval the following passage from Maxwell's *Interpretation of Statutes*:— " A general later law is presumed to have only general cases in view and not particular cases which have been already provided for by a special or local Act ".

In any case it has never been disputed that, if the intention of the legislature is apparent effect must be given to it. There may be cases in which an exemption " from all taxes and assessments whatsoever " does, and cases in which it does not, refer to future taxes. The English Courts held that such an exemption in favour of houses built on ground embanked under 7 Geo. 4, 3, 47, freed the property from land tax or taxes of a similar nature even when imposed after the exemption was granted, but not from the incidence of other taxation. Lord Kenyon in *Williams v. Pritchard* (2) said that if it were intended that a subsequent Act should control a prior provision, it must be taken to do so; but that in spite of words in a later Act which strictly and grammatically would repeal the prior provision, the Courts had given effect to the apparent intention of the Legislature that there should be no repeal.

I was disposed to think that the intention of the Proclamation of 1818 was to free temple lands in the Kandyan Provinces from all existing and future taxation. I was greatly influenced by the fact that the Governor of Ceylon was dealing in pursuance of a stipulation with temple lands. He is represented as saying that he abolished all existing taxes and was enacting a paddy tax from which, and from which alone, temple lands would be exempt. If that were all he meant, I think his words exempting these lands from all taxation whatsoever were not well chosen. He was " desirous of showing the adherence of the Government to its stipulation in favour of the religion of the people ". The concession was apparently the fulfilment of a promise. The only stipulations I am aware of are—

(1) Article 5 of the Proclamation of 2nd March, 1815, agreed to at the Kandy convention: " The religion of Buddha professed by the chiefs and inhabitants of these provinces is

(1) 3 *App. Cas.* 966. (2) 4 *T. R.* 2.

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declared inviolable and its rites, ministers, and places of worship are to be maintained and protected "; and

(2) Article 16 of the Proclamation of 21st November, 1821: " As well the priests, as all the ceremonies and processions of the Budhoo Religion, shall receive the respect which in former times was shown them ".

The Proclamations of 18th September, 1819, and 21st May, 1822, which provide for the registration of these lands, show no confinement of the exemption; it is still exemption from all taxation whatever.

It may be that there were no strictly Municipal taxes in 1818, and that imposts for the repairing and lighting of streets were payable to the King, but in the case reported in 7 N. L. R. 167 I mentioned that in 1824 a Committee was appointed for assessing and levying a tax for the repair of roads and lighting of streets in Colombo. In that case, and in other similar cases in the beginning of the 19th century, the impost levied is impartially called a tax or an assessment. It may or may not have been a King's tax, but it was for such purposes as are contemplated in this case.

In 1866 Ordinance No. 17, being a Municipal Councils' Ordinance was passed, and by section 53 power was given to Municipal Councils to make and assess rates and taxes on buildings and lands: " Provided that all buildings appropriated to religious worship and buildings in the charge of military sentries shall be exempted from the payment of such rate ". The exemption does not extend to land; but the reason given for that by the plaintiff is that temple lands in the Kandyan Provinces had already been exempted by the Proclamation of 1818.

It seemed to me that the strongest argument in favour of the intention to exempt these lands from all taxation subsequent to 1818 was that for eighty years no attempt was made to tax them, although the Municipal Councils' Ordinances of 1866 and 1887 had given the Councils general power to tax lands. I believe it is a fact that for eighty years the land in question in the case reported in 7 *N. L. R.* 167 had not been so taxed; but it appears from inquiries made by the Court that the premises No. 6, Victoria Drive, Kandy, which are held on lease from the Poyamallie Vihare and are the subject of this case, were taxed without question from 1867 to 1904. This fact seems to alter the matter; and I cannot understand why the appellants did not bring it prominently to our attention; unless my recollection is incorrect in the former case it was assumed by both sides in argument that the Proclamation of 1818 referred to future taxation. My belief that future taxation

was in view is considerably shaken by the fact that these premises were taxed without question for thity-seven years, and I am not prepared on these materials to say that the view of the Chief Justice on that point is wrong.

GRENIER A.J.—

In this case the main question for determination is whether the property described in the 1st paragraph of the plaint is liable to be taxed by the Municipal Council of Kandy. The argument before us proceeded on the footing that the lands were temple lands, although the proof that they had been registered as such was defective in view of the provisions of section 22 of Ordinance No. 10 of 1856 in that there was not sufficient evidence that a certificate had been issued in terms of that section.

The Commissioner followed a judgment of this Court in C. R., Kandy, 12,297, which he considered was on all fours with the present case, and entered judgment for plaintiff as prayed for. The defendant Council has appealed.

It was argued for the defendant Council that by section 127 of Ordinance No. 7 of 1887 it was bound from time to time and whenever it thought necessary, subject to certain provisions, which it is needless to refer to here, to make and assess with the sanction of the Governor in Executive Council any separate consolidated rate or rates on the annual value of all houses and buildings of every description and all lands and tenements whatsoever within the Municipality. It was submitted by the appellant's counsel that no exception was made in favour of temple lands, and that the section applied to all lands situated within the limits of the Municipality. Undoubtedly the words are very large, and unless it could be shown that certain lands were exempt by special favour or bounty of the Crown from the operation of this section the section would apply. It was contended for the plaintiff that by section 21 of the Proclamation of the 21st November, 1818, all temple lands were expressly exempted from all taxation whatever. The words of the Proclamation are as follows:—

"The Governor, desirous of showing the adherence of 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 whatever, but," &c.

This Proclamation has unquestionably the force of law, but it has not, in my opinion, that far-reaching effect and operation which was claimed for it by the plaintiff. The construction I would put upon this Proclamation is the construction which occurred

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to me as soon as the words were read out, that the exemption was in respect of taxation at the direct instance of the Crown, and existent at the time of the Proclamation, and did not embrace future taxation. I am using the word in a general sense which might be called for by conditions and exigencies, such, for example, as those brought out by the establishment of Municipalities and Local Boards, and which it was impossible to contemplate; presumably there were certain taxes leviable on all lands in 1818. Although it is difficult to discover what those taxes were, and as an act of grace on the part of the Crown, the Crown declared that it would not exact those taxes from lands which belonged to temples, it may be, as suggested by the plaintiff Council, that temple lands were not subject to any taxation whatever under the Sinhalese kings. But we have no precise information on the point. This, however, seems to be clear to my mind, that the Proclamation cannot be taken to exempt all temple lands in perpetuity, but only such lands as were then the property of temples, and which were liable in respect of taxes leviable at the time just as lands other than temple lands were.

Now, Ordinance No. 10 of 1856 refers in the preamble to the Proclamation of the 21st November, 1818, and the Proclamations of 18th September, 1819, and 21st May, 1822. The object of this Ordinance was to provide for the settlement of claims to exemption from taxation of temple lands in the Kandyan Province and for the due registration of all lands belonging to such temples. The Ordinance made no provision for any exemption of a different character, nor in any way altered the original scope and object of the Proclamation of 1818, which, as I have said before, exempted temple lands from taxes than leviable on lands generally. I do not agree with the contention that the Proclamation of 1818 must be taken and read as an exception to the Municipal Council's Ordinance, No. 7 of 1887. The authorities cited seem to me to deal with a different state of facts, and I cannot extract from them any principle which I can apply to the present case. Whether we look upon the Proclamation of 1818 in the light of a general law and the Municipal Councils' Ordinance as dealing with any particular or special subject, this seems plain to me, that the one is not repugnant to the other. They can stand side by side, and effect can be given to each independently of the other. The Proclamation of 1818 dealt with a certain class of taxation quite distinct fom the rates leviable under the provisions of the Municipal Councils' Ordinance. Perhaps it is not necessary to hold that in levying these rates the defendant Council practically enters into a contract with the ratepayers, but, in my humble opinion, rates

levied by the Council for the supply of water, &c., stand on quite a different footing from taxes so-called imposed directly by the Crown, such as the paddy tax was. I am free to admit that if there are two enactments of the law which are irreconcilable, the later one must be considered as a repeal of the former. The Proclamation of 1818 and section 127 of the Municipal Councils' Ordinance cannot even be said to be inconsistent with each other, much less irreconcilable; and therefore effect can be given to the latter without in the slightest degree attenuating or rendering nugatory the provisions of the former. The Proclamation will still exempt temple lands from taxes which were leviable on other lands at the time of the passing of it, if such taxes are recoverable by the Crown at the present day.

For the reasons I have stated, I hold that the judgment of the Commissioner in favour of the plaintiff is wrong and must be set aside and the case sent back for trial on the second, third, and fourth issues framed by the Commissioner.

H. C. COTTLE, GOVERNMENT PRINTER, COLOMBO, CEYLON.