Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Shri Kalyanraiji and another v. *The Mofussil Company, Limited, by their Manager B. Robb, and Messrs. Greaves, Cotton, & Co., by their Agent J. R. Greaves, from the High Court of Judicature at Bombay; delivered 25th April* 1890.

Present:

LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The late Appellant, who was Plaintiff in the two suits which have been consolidated, was the managing proprietor of a temple in Broach, known as the Shriji Mandir. In that capacity he claimed to be entitled to a lago, or perquisite or tax, of 2 annas per bale on all cotton bought in and exported from Broach. The present Appellants are his representatives.

It must be taken for the purposes of this case that from time immemorial, before and up to the year 1844, this lago was claimed and received as of right by the managing proprietor of the temple for the time being, and it may be assumed that the claim had a legal origin, and that, but for an Act of the Legislature passed in 1844, it would still be enforceable in a court of law.

The Act on which the question turns is Act XIX. of 1844. It is in these terms:—

"It is hereby enacted that, from the 1st day

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of October 1844, all town duties, kusab veeras, mohtarfas, ballootie taxes, and cesses of every kind on trades and professions under whatsoever name levied within the Presidency of Bombay, and not forming a part of the land revenue, shall be abolished."

There was an earlier Act, No. XX. of 1839, to which reference was made during the argument. It empowered the Governor in Council of Bombay to issue orders prohibiting the levy of hucks and fees of every description, and customs, whether by land or sea, enjoyed by holders of rent-free lands or other persons. Orders so issued were not to be questioned, and persons levying any prohibited hucks or fees were to be punishable for undue exaction as if they had been revenue officers guilty of extortion. No order, however, under this Act affecting the question raised in the present case was issued, at any rate before the passing of the Act of 1844. The Act of 1839 was referred to mainly for the purpose of showing that the abolition of hucks and fees without compensation was not inconsistent with the course of legislation in India at that time.

In dealing with the Act of 1844 it was contended by Mr. Finlay that the lago now in question does not come under the head of "town duties." In this their Lordships are disposed to agree, although it seems clear that the expression is not to be confined to duties "appropriated by law or custom to municipal purposes" (to use the words of a Government proclamation of the 7th of September 1844, which was referred to during the argument), but extends to duties or cesses on goods brought into or carried out of a town, although levied by private persons. The learned Counsel for the Appellants then proceeded to point out that the expression "kusab veera" or kasab vero, is

explained in Wilson's Glossary to be "a tax on occupations and crafts," and that, according to the same authority, "mohtarfa" seems to be a poll tax, while a "ballootie tax" or a "balute-patti" is defined to be "a cess or tax upon the shares or claims of village servants;" and he argued that the expression "cesses on trades and professions," having regard to the expressions found in the immediate context, ought to be confined to cesses in the nature of license duties for carrying on trades or professions.

Owing to its brevity the Act is not free from obscurity. But their Lordships think that there is no sufficient reason for giving the expression "cesses on trades and professions" the restricted meaning to which the Appellants desire to confine it. The Act abolishes cesses "of every kind" on trades "under whatever name levied." The Appellants would limit the abolition to one kind and one kind only. Is this lago a cess or tax on a trade? Mr. Finlay argued that though it was a tax affecting trade it could not fairly be described as a cess upon a trade. Their Lordships, however, think that it properly comes within that description. It is a cess of a mixed kind, local and indirect, upon a particular trade—the trade of a cotton buyer carried on in Broach—attaching when the article of merchandise in which the trader deals is bought in Broach and exported from Broach.

Upon the main point, therefore, their Lordships are of opinion that the appeal fails.

It was then said that, although the Act of 1844 may have done away with the lago as an impost capable of being enforced in a court of law, yet such a payment was not thereby made illegal, and it was urged that, by virtue of some thing loosely described as "an understanding,"

the buyers of cotton in Broach had come under some sort of obligation in the nature of a trust which made them liable as trustees or agents to the claim of the Plaintiff.

It seems to have been the practice for the native cultivators selling cotton in Broach to allow a walthar or rebate of one rupee for every candy or two bales. There can be no doubt that this walthar was originally intended to meet or cover certain charges or allowances, of which the Mandir's lago was one; and it was said on behalf of the Appellants that the native cultivators would naturally be disposed to take this burthen on themselves because they were interested in maintaining the worship of Shriji. From these premises it was argued that the Plaintiff was entitled to enforce his claim directly against the cotton buyers as his trustees, or as having received moneys for his use, for which they were accountable to him. The Subordinate Judge accepted this view. The District Judge of Broach and the Division Bench at Bombay rejected it, but apparently upon the ground that payment of the lago was prohibited by the Act of 1844, and therefore illegal, and that the Court would not be instrumental in carrying out a contract designed to defeat the intention of the Legislature. The Act, however, simply abolished cesses on trades. If the parties who before the Act were legally liable to the payment had chosen to continue it afterwards as a voluntary contribution, they would have been quite at liberty to do so. The real answer to this part of the argument is that there is nothing whatever in the nature of a trust to be found in the transaction or to be inferred from the course of business. There is not the slightest evidence that the Respondents accepted the position of trustees for the Plaintiff, or consented to receive

moneys for his use. The cotton sellers may or may not have a valid claim against the cotton buyers in respect of so much of the walthar as may appear to be attributable to or connected with the lago, but such claim, if valid, cannot give any right to the representatives of the Plaintiff against persons who undertook no obligation towards the Plaintiff.

Their Lordships, therefore, will humbly advise Her Majesty that these appeals ought to be dismissed.

The Appellants will pay the cost of the appeals.