is entirely novel and not in keeping with the ordinary ideas as to what a tenant is. The Counsel submits that this observation would be equally applicable to the case of the Patiala Ordinance in question.

After considering the arguments addressed at the Bar, in my view unless the landlord and the tenant consciously agree to enter into a fresh lease and unless the landlord clearly gives up his rights under the eviction order, the mere acceptance of an amount, whether described as rent or damages for use and occupation, to which he would clearly be entitled, so long as the tenant or ex-tenant, by whatever name the person in possession is called, remains in occupation, would not make the eviction order incapable of execution. Nothing has been said at the Bar whether the provisions of section 116 of the Transfer of Property Act are actually in force in the territory in question, but assuming that they are, in my view, these provisions would be excluded by the special provisions contained in the Patiala Ordinance.

For the reasons given above, this appeal fails and is dismissed with costs.

*B.R.T.*

REVISIONAL CRIMINAL

*Before Dua, J.*

JIT SINGH,—*Petitioner.*

*versus*

MUNICIPAL COMMITTEE, KHANNA, AND ANOTHER,—*Respondents.*

**Criminal Revision No. 801 of 1959.**

1959

Oct., 23rd

*Indian Evidence Act (I of 1872)—Section 57—"all laws in force in the territory of India"—Meaning of—Punjab*

*Municipal Act (III of 1911)—Sections 61 and 62—Notification under detailing goods liable to Octroi-tax—Whether "law in force"—Practice—Law—Whether to be pleaded—Evasion of tax—Intent to defraud—How to be inferred—Realisation of tax—Whether militates against punishing the tax-evador.*

*Held*, that the essential characteristic of 'a law' is that it lays down a policy either affecting rights or creating rights or liabilities and making it a binding rule of conduct, and is enforceable in a Court of law. Every determination binding on a subject does not necessarily possess the attributes of a law; and in judging its character, one has to take into account the nature of the function, which comes up for adjudication. This word generally cannotes a statement of circumstances in which public force is to be brought to bear on a citizen through the Courts; in other words, that, which must be obeyed and followed by citizens subject to sanctions or legal consequences is 'law'. In the present context this term may also be described as those rules which are prescribed by the sovereign law-making power or ordained and made known by the Legislature for the Government of the people in the country, which they are bound to obey. A very well known jurist has also defined law as a 'rule of action prescribed by the supreme power of a State commanding what is right and prohibiting what is wrong." According to these definitions the subject-matter of the notification in question giving the list of articles liable to the payment of octroi duty can legitimately be considered to be law in force in the territory of India of which the Courts are expected to take judicial notice. Moreover the list of facts enumerated in Section 57 of the Indian Evidence Act, of which judicial notice is permissible is not exhaustive or exclusive; and the tendency of modern practice is to enlarge the field of judicial notice. The rule of exclusion, which is not a rule of universal application should not be applied in construing statutes, when the application of this rule is calculated or likely to lead to injustice. Even from this point of view the present is a fil case, in which the Court should take judicial notice of the law, which provides for dutiable articles; as contained in the notification.

*Held*, that it is clear from the provisions of sections 61 and 62 of the Punjab Municipal Act, 1911, that well-defined procedure has been prescribed for the exercise of the

delegated power of legislation for imposing taxes mentioned in these sections, and that the notification of the imposition of the tax in question would be conclusive evidence that it had been imposed in accordance with the provisions of the Act. These provisions pertaining as they do, to the legislative function, their dominant aspect being to make binding rules for imposing octroi duty according to regulated rates, clearly show, that, the notification in question, containing the schedule of articles liable to octroi duty, embodies a provision which has the force of law, having been duly made by the prescribed authority under the power properly and lawfully delegated to it; the notification in question would thus have statutory force and validity as if the octroi duty imposed thereby had been imposed by the Punjab Municipal Act itself.

*Held,* that law is always to be applied by the Courts and parties are under no obligation to plead it. A pure question of law can even be raised in the High Court or sometimes even in the Supreme Court, without having been referred to at the earlier stages of the litigation, and indeed the Court is expected to take notice of a provision of law whether or not parties rely on it. Therefore, if the notification contains a provision of law in force in the territory of India, then Courts of justice are not only expected but may have a duty to take notice of it and apply it, if it clearly covers the case.

*Held,* that intent to defraud can only be inferred from conduct—and offences against revenue in a modern welfare or social service State should not be treated with undue leniency or indifference. Realization of a tax due is one thing; punishment for an offence committed, another. Merely because it is open to the Municipal Committee to realise the tax due, does not justify refusal to try according to law and punish an offender against loss of revenue to the State. Such a course is certainly calculated to encourage people to evade payment of tax with impunity. Besides, where the legislature has in its wisdom considered it proper, as a matter of public policy, to make fraudulent evasion of tax an offence; the Courts are expected reasonably to carry out and enforce this policy.

*Case reported by Sardar Gurdev Singh, Sessions Judge, Ludhiana with his letter No. 147; dated 16th June, 1959 for*

*revision of the order of Shri K. K. Dhir, exercising the powers of a Magistrate of the First Class in the Ludhiana District, dated 27th February, 1959. under Section 78, Punjab Municipal Act; 1911 sentencing the petitioner to pay a fine of Rs. 50 or in default of payment of fine to undergo simple imprisonment for one month.*

HAR PARSHAD & JAGAN NATH, for Petitioner.

M. R. CHHIBAR & D. S. KANG, for Respondents.

JUDGMENT

Dua, J.

DUA, J.—This case has been reported by the learned Sessions Judge, Ludhiana, with a recommendation that the conviction and sentence of the petitioner be set aside and he be acquitted. The facts as appear from the report of the learned Sessions Judge and which are not disputed by the Counsel before me are that Jit Singh, 21 years old, cycle repairer of Khanna, was seen riding on a newly fitted bicycle at about 2 p.m. on 16th of February, 1958 from the side of the godown of the Royal Cycle and Motor Company, Khanna, which is located beyond the municipal limits of Khanna and that when he passed the Municipal Octroi Post No. 3 he was stopped by the Octroi Moharrir and asked to pay the octroi leviable on the bicycle, Jit Singh petitioner refused to do so. Later Shri Ram Sarup, Manager of the Singer Cycle Company, with whom the petitioner Jit Singh is alleged to have been employed came to the spot and handed over a receipt to the petitioner to support his assertion that the bicycle had been purchased by the petitioner form the said firm on the previous day, i. e., 15th February, 1958. This allegation of the petitioner was enquired into and the Municipal Committee came to the conclusion that it was not true, and that the petitioner had committed an offence under section 78 of the Punjab Municipal Act, 1911, for introducing the bicycle in question into the octroi limits of

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the Municipal Committee, Khanna, without payment of the octroi tax leviable thereon. A complaint was thereupon filed by the Municipal Committee against Jit Singh accused-petitioner under section 78 of the Punjab Municipal Act. After considering the evidence produced both by the complainant and the accused, the learned Magistrate convicted him under section 78 of the Municipal Act and fined him Rs 50 or in default to undergo simple imprisonment for one month. The Magistrate came to the positive conclusion on the evidence that neither the Singer Cycle Company nor the Royal Cycle and Motor Company had been able to establish that any octroi duty had been paid for the cycle in question. The accused went up in revision before the learned Sessions Judge where his counsel disputed the findings of facts arrived at by the trial Magistrate and also contended that the necessary ingredients of the offence under section 78 of the Punjab Municipal Act had not been made out. In particular it was contended that there was no evidence on the record to prove that the bicycle in question, being a new bicycle, was a taxable article and that the petitioner had brought it into the octroi limits with a view o defraud the Municipal Committee. The learned Sessions Judge sitting as a Court of revision refused to interfere with the findings of facts of the trial Magistrate that the accused had brought the bicycle into the octroi limits and that he had failed to substantiate the purchase of the bicycle a day earlier or the payment of the tax on 3rd of January, 1958, in respect of the bicycle in question. The learned Sessions Judge, however, forwarded the proceedings on the ground that ingredients of the offence under section 78 of the Punjab Municipal Act were not established on the record. The learned Judge has stated that no evidence whatsoever had been produced by the

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complaintnat Municipal Committee to prove that the bicycle in respect oi which the octroi duty was demanded was an article on which octroi duty was leviable by that Committee. The relevant rules or bye-laws of the Municipal Committee or the list of the articles on which the octroi duty is levied by the Municipal Committee, Khanna, not having been placed on the record, and no municipal employee, examined in Court in support of the complainant's case, having asserted that according to the bye-laws or the rules framed by the Municipal Committee, octroi tax was leviable on bicycles, the essential ingredient, that the article sought to be brought into the octroi limits was liable to the payment of octroi. was not established on the present record. The learned Sesions Judge has further remarked that the question of fraudulent intent on the part of the accused had also been ignored by the learned Magistrate, inasmuch as he had omitted to put to the accused, in the course of his examination under section 342 of the Code of Criminal Procedure, that he had brought the bicycle into the octroi limits of the Municipal Committee with the intention to defraud the Committee. The learned Judge has, however, also observed in his report, that though the omission to put a question to the accused regarding his intention may not be enough to vitiate his trial, yet in the present case his conviction could not be recorded without a definite finding that he had imported the bicycle, which was a taxable article, with intent to defraud the Municipal Committe.

Mr. Har Parshad has appeared before me in support of the recommendation and Mr. M. R. Chhibar and Mr. Dalip Singh Kang have appeared in opposition. Mr. Chhibar has produced before me a copy of the *Punjab Government Gazette*

notification No. 57-LG(C)-52/II-247, dated 17th of January, 1952, issued in pursuance of the provisions of sub-section (10) of section 62 of the Punjab Municipal Act, with the previous sanction of the Punjab Government, containing a list of articles on which tax was imposed and published in Part 1 A, at page 40 of the Gazette, dated 25th January, 1952. He has also produced an official publication containing this notification. In the list of articles, liable to payment of tax, I find new cycles, new tricycles, new perambulators, new cycle-rickshaws and spare parts of all vehicles entered in item 87, clause (e). Mr. Chhibar has also referred me to the testimony of witnesses for the complainant who, according the the counsel, have deposed that new bicycles are liable to be taxed. In this connection the evidence of Shri Baldev Krishan P. W. 3, Octroi Superintendent of the Khanna Municipal Committee, has been specifically relied upon. This witness has stated that he actually explained to the accused that new bicycles were liable to octroi duty. The counsel has also submitted that according to the prosecution witnesses the accused only pleaded that he had purchased the bicycle a day earlier and that octroi duty had already been paid on it. Mr. Har Parshad has objected to the production of a copy of the notification at this stage, and has submitted that the Court cannot take judicial notice of such a notification which must be properly proved in accordance with the provisions of the Indian Evidence Act. He has, in this connection, placed reliance on the provisions of sections 57 and 78 of the Indian Evidence Act. He submits that such a notification does not fall within the terms of clause (1) of section 57, Indian Evidence Act, which lays down that the Court shall take judicial notice of all laws in force in the territory of India. Section 78 of the Act has been relied upon by the counsel

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in support of the contention that notifications of the State Government or of any of its departments can only be proved by the records of the departments concerned, certified by the Heads of those departments, respectively. In support of his contention reliance has been placed by the counsel for the accused on *Mathuradas* v. *The State* (1), the headnotes of which are in the following terms :—

"(a) It is not right to deduce the meaning of the term 'law' from the definition of the term 'Indian Law' in section 3(29), General Clauses Act, However, even if the definition of 'Indian Law' in the Genenral Clauses Act is accepted as the definition of 'Law' in force in the territory of India a notification cannot be said to be included within it.,

(b) In a revision application the applicant raised the contention that the retail price of yarn with regard to which the applicant was said to have committed an offence, fixed by the Textile Commissioner, Madhya Pradesh, had not been proved. It was contended on behalf of the State that this price was (specified in notification No. 745-G-STYC(M.P.), dated 4th February, 1950, published in the Madhya Pradesh Gazette dated 10th February,n 1950, and that the Court should take judicial notice of that notification.

Held that in the circumstances a Court is not, under section 57, Evidence Act, entitled to take judicial notice of notification published in the Gazette and that the fact of the publication of

(1) A.I.R. 1954 Nag, 296

the notification has to be proved in the manner provided for in section 78, Evidence Act."

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In support of this dictim reference in the reported case was made to *Collector of Cawnpore and others* v *Jugal Kishore* (1), *and Public Prosecutor* v. *Illur Thippayya and another* (2), Mr. Har Parshad has also submitted that the accused, when he was required to pay the tax, had definitely taken up the position, that new cycles were not liable to octroi duty, with the result that it was incumbent on the prosecution to prove by the best evidence that the bicycle in question was one of the articlts on which duty was payable. In this connection the learned counsel has relied upon the testimony of P.W.1 and P.W.3. It has also been contended that no finding having been given with respect to fraudulent intent of the accused to bring into the municipal limits the bicycle in question, the conviction of the accused is liable to be set aside on this ground as well. The counsel then referred to *Rahmat Elahi* v. *Emperor* (3), where Shadi Lal C.J. observed "that to constitute an offence under section 78, Punjab Municipal Act, there should be an attempt to introduce dutiable articles into octroi limits with intent to defraud the committee. This is the offence generally known as smuggling. Where there is no evidence to show that the accused did anything of the kind, he cannot be convicted under section 78 which does not apply to a refusal to pay taxes on the ground that they are not due". This decision was later followed by Din Mohammad, J. in *Benarsi Shah Charan Singh* v. *Crown* (4), *State* v. *Koli Amra and another* (5), has also been cited

(1) A.I.R. 1928 All. 355
(2) A.I.R. 1949 Mad, 459
(3) A.I.R. 1931 Lah. 752
(4) 1940 P.L.R. 444
(5) A.I.R. 1953 Sau, 164

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by the counsel in support of the contention that *bona fide* refusal to pay octroi duty is not intention to defraud municipality.

After considering the respective contentions of the counsel for the parties, I think the recommendation of the learned Sessions Judge cannot be accepted. Section 57 of the Indian Evidence Act is in the following terms:—

"57. The Court shall take judicial notice of the following facts:—

(1) All laws in force in the territory of India.

(2) All public Acts passed or thereafter to be passed by Parliament of the United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed.

(3) Articles of War for the Indian Army, Navy or Air Force:

(4) The course of proceedings of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in India.

(5) The accession and the sign manual of the sovereign for the time being of the United Kingdom of Great Britain and Ireland.

(6) All seals of which English Courts take judicial notice: the seals of

all the Courts in India, and of all Courts out of India, established by the authority of the Central Government or the Crown Representative: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in India.

(7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any official Gazette.

(8) The existence, title and national flag of every State or Sovereign recognized by the Government of India.

(9) The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the official Gazette.

(10) The territories under the dominion of the Government of India.

(11) The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons.

(12) The names of members and officers of the Court and of their deputies

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and Subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it.

(13) The rule of the road on land or at sea.

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so."

The expression "all laws in force in the territory of India" as used in clause (1) of this section has not been defined in the Evidence Act or the General Clauses Act, 1897. The expression 'Indian Law' has, however, been defined in section 3(29) of the General Clauses Act of 1897. This definition, which, as usual, is subject to repugnancy, is in the following terms:—

"3(29). 'Indian Law' shall mean any Act, Ordinance, Regulation, rule order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or

> Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any order in Council, rule or other instrument made under such Act."

For our present purposes, I would merely observe that this definition includes rule, order, bye-law or other instrument which has, after the commencement of the Constitution, the force of law in any Part A State or Part C State or part thereof. It is not disputed that Khanna Municipal Committee is a part of the Punjab State, a Part A State. In clause (51) of secion 3 the word 'rule' has been defined to mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment. It is now necessary to consider as to what precisely is the nature, scope and value of the subject-matter of the notification in question, and whether it falls within the expression 'law in force' in the territory of which it is incumbent on the Courts to take judical notice. The essential characteristic of 'a law' is that it lays down a policy either affecting rights or creating rights or liabilities and making it a binding rule of conduct, and is enforceable in a Court of law. Every determination binding on a subject does not necessarily possess the attributes of a law; and in judging its character one has to take into account the nature of the function, which comes up for adjudication. It must be borne in mind that the counsel for the petitioner has not contended, that the notification in question is otherwise invalid on the ground of being contrary to law, or not having been made in accordance with sections 61 and 62 of the Punjab Municipal Act. Nor is it his case that the delegation of the legislative power is outside the legally recognised limits. The argument before me was

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strictly limited to the question whether the trial Court was bound to take judicial notice of the law as contained in the notification or whether it was incumbent on the Municipal Committee formally to produce its records or a copy of the notification, failing which the Court was bound in law to acquit the ascused petitioner. As a subsidiary question, it will also have to be determined whether the learned Sessions Judge was justified in setting aside the conviction on the ground of non-production of the notification on the record of the case when the trial Court had not considered it necessary to require the Municipal Committee to produce the notification to enable it to take judicial notice of its contents. This brings me to the precise nature and scope of the notifiication in question. As already observed, this notification came into being by virtue of section 62(10) of the Punjab Municipal Act. To appreciate and understand its legal effect it would be helpful to reproduce section 61 and 62 of the above Act, so far as they are relevant for the purposes of this case:—

"Section 61.

Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purpose of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:—

(1) (a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(2) Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution.

(3) * * *

Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution:

Provided that a committee which immediately before the commencement of Constitution was lawfully levying any such tax under this section as then in force may continue to levy that tax until provision to the contrary is made by Parliament.

*Explanation.*—In this section 'tax' includes any duty, cess or fee."

"Section 62 (1).

A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 61.

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(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.

(4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals, along with a notice indicating that they are in modification of those previously published for objection.

(5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3)

(6) When the committee has finally settled its proposals, it shall, if the proposed tax falls under clause (b) to (f) of sub-seition (1) of section 61 direct that the tax be imposed, and shall forward a copy of its order to that

effect through the Deputy Commissioner, to the State Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection if any made in connection therewith to the Deputy Commissioner.

(7) If the proposed tax falls under clause (a) of sub-section (1) of section 61, the Deputy Commissioner, after considering the objections received under sub-sections (3) and (5) may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of sanction; and if the tax falls under sub-section (2) * * * * * * * of section 61, the Deputy Comisioner shall submit the proposals and objections with his recommendations to the State Government.

(8) The State Grvernment on receiving proposals for taxation under sub-section (2) * * * * * * * * * * * may sanction or refuse to sanction the

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same, or return them to the committee for further consideration.

(9) * * * * * *

(10) (a) When a copy of order under sub-sections (6) and (7) has been received, or

(b) when a proposal has been sanctioned under sub-seciotn (8) * * * * * the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of the notification, on which the tax shall come into force.

(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April, or on the first day of July, or on the first day of October in any year force on any other than the first day of the year by which it is in any year, and if it comes into leviable shall be leviable by the quarter till the first day of such year then next ensuing.

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act."

Before dealing with the effect of these sections it may be noted that the validity of the

octroi duty in question has not been assailed on the ground that the State Legislature could not impose it within the contemplation of section 61(2), and indeed in view *inter alia* of entries Nos. 52 and 5 of List II of Seventh Schedule of the Constitution such an attack would hardly be permissible.

Now it is clear from the above provisions of law that a well defined procedure has been prescribed for exercise of the delegated power of legislation for imposing taxes mentioned in these sections and that the notification of the imposition of the tax in question would be conclusive evidence that it had been imposed in accordance with the provisions of the Act. These provisions, pertaining as they do, to the legislative function, their dominant aspect being to make binding rules for imposing octroi duty according to regulated rates, in my view, clearly show, that the notification in question, containing the schedule of articles liable to octroi duty, embodies a provision which has the force of law, having been duly made by the prescribed authority under the power properly and lawfully delegated to it; the notification in question would thus have statutory force and validity as if the octroi duty imposed thereby had been imposed by the Punjab Municipal Act itself. I am supported in my view by the ratio of *Kailash Nath etc.*, v. *State of U.P.* etc., (1) where a notification of the State Government under the U. P. Sales Tax Act was considered as if it was a part of the parent Act itself. *Willingale* v. *Norris*, (2) is also authority for the propositioin that where a statute gives power to an authority to make regulations a breach of the regulations so made is an offence against the provisions of the statute. In this view of law, clause (1) of section 57. Indian

(1) A.I.R. 1957 S.C. 490
(2) (1909) 1 K.B. 57

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Evidence Act, would clearly be attracted in the instant case and Court is expected to take judicial notice of the schedule as if it were a law in force in the territory of India. My conclusion also finds support from a decision of a Bench of three Judges of the Madhya Bharat High Court in *State* v. *Gopal Singh*, (1).

In so far as the decision in *Mathuradas* v. *The State*, (2), is concerned, from a strictly legalistic and technical point of view, it may be correct to say, that, the expression defined in the General Clauses Act is different from the one contained in section 57 of the Indian Evidence Act, but the two expressions do appear to me, broadly speaking and as discussed above, to convey a similar or identical idea and their meanings, as intended by the Parliament, are not at great variance from each other. Considered from this point of view, the definition contained in the General Clauses Act may not be wholly unhelpful. But even otherwise a notification might well contain the provisions of a law in force in the territory of India of which it would be permissible to take judicial notice. One has in this connection to bear in mind the essential characteristics of 'law'. This word generally connotes a statement of circumstances in which public force is to be brought to bear on a citizen through the Courts; in other words, that, which must be obeyed and followed by citizens subject to sanctions or legal consequences, is 'law'. In the present context this term may also be described as those rules which are prescribed by the sovereign law-making power or ordained and made known by the Legislature for the Government of the people in the country, which they are bound to obey. A very well known juristh has also defined law as a 'rule of

(1) A.I.R. 1956 M.B. 138
(2) A.I.R. 1954 Nag. 296

action prescribed by the supreme power of a State comanding what is right and prohibting what is wrong." According to these definitions in my opinion the subject-matter of the notification in question can legitimately be considered to be a law in force in the territory of India.

Section 78 of the Indian Evidence Act, to which Mr. Har Parshad has referred, is hardly of much assistance. This section, as its marginal head suggests, is a residuary provision of law stating how the official documents mentioned therein may be proved; it appears to be the last of the series of sections beginning with section 74 headed as "Puplic Documents"; its language, context and setting would appear to me to suggest that it may not be applicable to cases where the Court is to take judicial notice of the law in force in this republic. But as this aspect was not properly and fully debated at the Bar. I would, as at present advised, refrain from expressing any considered opinion on it, and indeed I also deem it not strictly necessary for the decision of this revision. In the view that I have taken, it is equally unnecessary to refer to the definitions of the word 'law' and the expression 'law in force' as contained in article 13 of the Constitution or to the definitions of identical expressions used in articles 366 and 372, because it may be argued that it is not strictly permissible to rely on those definitions in construing section 57 of the Evidence Act, though it may equally be permissible to contend that in interpreting section 57, Indian Evidence Act, the sense in which the words and expressions mentioned above have been used in articles 13, 366 and 372 of the Constitution would not be wholly unhelpful or uninstructive.

The next question is concerned with the last portion of section 57, which lays down that the

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Court may refuse to take judicial notice of any fact, unless the person requiring such notice to be taken, produces any such book or document as may be necessary to enable the Court to do so. It has, in this connection, to be borne in mind, that the refusal as contemplated by this clause, must, from the very nature of things, be the refusal by the trial Court in which evidence by the contesting parties is led. In the instant case, the Magistrate did not consider it necessary to require actual production of the notification and indeed it seems that it was not seriously disputed that new bicycles, when brought within the limits of Khanna Municipal Committee, were in fact dutiable articles so far as payment of octroi duty was concerned. In this view of the matter, if the learned Sessions Judge thought that the relevant notification should under the provisions of section 57, have been produced, so as to enable him to know its contents and to apply the relevant law to the facts of the case before him, then in my opinion he should, in the interest of justice, have called upon the prosecution to produce it. To conclude that the accused was on this ground entitled to acquittal did not advance or promote the cause of justice. It may also be relevant in this connection to observe that law is always to be applied by the Courts and parties are under no obligation to plead it. A pure question of law can even be raised in the High Court or sometimes even in the Supreme Court, without having been referred to at the earlier stages of the litigation, and indeed the Court is expected to take notice of a provision of law whether or not parties rely on it. Therefore if the notification contains a provision of law in force in the territory of India, then Courts of justice are not only expected but may have a duty to take notice of it and apply it, if it clearly covers the case.

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The learned Sessions Judge has further observed that there is no finding by the Magistrate that the bicycle was imported with intent to defraud the Municipal Committee. He has, however, remarked that mere omission to put a question to the accused about his intent to defraud may not vitiate the trial. Now, the learned Magistrate had, on a consideration of the entire evidence, concluded that the story given by the accused to have paid the octroi duty was an afterthought, and that the receipt Exhibit D.A. had merely been prepared on the spot so as to save the accused from prosecution; it has further been observed by the Magistrate that it was evident that the two sister concerns, Singer Cycle Company and Royal Cycle and Motor Company, kept or maintained the godown in question, as a means for evading octroi tax. In the instant case no octroi has been found to have been paid on the bicycle. From the facts on the record, the learned Magistrate concluded guilty conscience on the part of the accused, which he was, in my opinion fully justified to do. In fact, according to the Court, the petitioner was a smuggler of the worst kind; and had actually been caught red-handed in the process of his smuggling activities. Intent to defraud can, as is clear, only be inferred from conduct, and the learned Sessions Judge having not reversed the finding on facts with respect to the various circumstances, was hardly justified in remarking that intent to defraud had not been established on the present record. In this connection, I may here also observe that offences against revenue in a modern welfare or social service State should not be treated with undue leniency or indifference. I would also on this ground, record my disapproval of the view expressed by the learned Sessions Judge that this case did not call for a retrial, even if his view about the desirability of the production of the

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notification were to be accepted. Realization of a tax due is one thing; punishment for an offence committed, another. Merely because it is open to the Municipal Committee to realise the tax due, does not justify refusal to try according to law and punish an offender against loss of revenue to the State. Such a course is certainly calculated to encourage people to evade payment of tax with impunity. Besides, where the legislature has in its wisdom considered it proper, as a matter of public policy, to make fraudlent evasion of tax an offence, the Courts are expected reasonably to carry out and enforce this policy; more so in this case when the two sister concerns, according to the trial Court, have been illegally smuggling dutiable articles in an organised manner. This finding I mayemphasise, has not been set aside by the learned Sessions Judge and sitting as a Court of revision, it is doubtful if it was even open to him to reverse it, in the absence of some clear illegality or gross injustice.

In any case, the notification, which has been produced before me, and about the reliabilty or legal effectiveness on the merits of which, nothing has been said by the learned counsel for the petitioner, fully shows that under the law new bicycles are dutiable articles, if imported within the Municipal limits of Khanna. But even if, for the sake of argument, clause (1) of section 57, Indian Evidence Act, were held to be inapplicable to the notification in question, in my view, the list of facts enumerated in this section, of which judicial notice is permissible, is not exhaustive or exclusive, and the tendency of modern practice is to enlarge the field of judicial notice. The rule of exclusion, which is not rule of universal application, should not be applied in construing statutes, when the application of this rule is calculated or likely to

lead to injustice. I think even from this point of view the present is a fit case in which the Court should take judicial notice of the law, which provides for dutiable articles, as contained in the notification.

After considering the case from all its aspect, I do not find it possible to accept the recommendations of the learned Sessions Judge. I would, therefore, decline to interfere, but, would, instead affirm the conviction of the petitioner and the sentence passed on him by the learned Magistrate.

*B.R.T.*

## INCOME-TAX CASE

*Before Bhandari, C.J. and Bishan Narain; J.*

COMMISSIONER OF INCOME-TAX, NEW DELHI;—*Appellant.*

*versus*

HAMDARD DAWAKHANA,—*Respondent.*

**Income-tax Case No. 1-D of 1956.**

1959

Oct., 28th

*Income-tax Act (XI of 1922)—Section 66—Period of limitation—Terminus a qou—Order pronounced in Court—Whether amounts to service of notice of refusal—Section 4(3)(i)—Construction of an instrument of trust—Object of—Invalidity of a part of the trust—Whether invalidates the whole trust—Partner—Whether con create* Waqf *of his own share.*

*Held,* that an application under sub-section (1) of Section 66 of the Indian Income-tax Act, 1922, must be presented within sixty days and that an application under sub-section (2) must be presented within six months from the date on which the assessee or the Commissioner as the case may be is served with the notice of the refusal. When a statute requires a notice to be given, it empowers the appropriate authority to give it orally or in writing as the authority may think fit, but when it requires a notice to be