

SUBBRAMAN-
YIAN
v.
GANAPATHI.

same-amount brought on the same cause of action on the Small Cause Court side was a bar to the maintenance of the Small Cause suit.

A. Rámachandráyyar for the plaintiff

T. Ráma Ráu for the defendants.

The Court (KERNAN, J. and FORBES, J.) delivered the following

JUDGMENT :—The question is whether the suit in the Munsif's Court for Rupees 30-8-0 filed the same day as the suit in the Small Cause Court is a bar to the maintenance of the Small Cause Suit. We think it is not. But the Plaintiff must elect which suit he will proceed with, and as he elects to proceed with the Small Cause suit, he is bound to place on the record a relinquishment of the cause of action and suit therefor in the Munsif's Court.

APPELLATE CIVIL.

Before Sir W. Morgan, Kt., Chief Justice, & Mr. Justice Forbes

1878.
December 6.

MAYANDI (PLAINTIFF) APPELLANT, v. McUHAE, VICE-PRESIDENT
OF THE MADURA MUNICIPALITY (DEFENDANT) RESPONDENT.*

Municipal Commissioners—Contract—Notice—Madras Act III of 1871, sec. 168.

A suit was brought to recover from the Municipal Commissioners of Madura the balance of a sum of money due for timber supplied under a contract duly made with them. *Held* that the plaintiff was entitled to sue on the breach of contract without giving notice, such a suit not falling under the provisions of Section 168 of the Towns Improvement Act (III of 1871, Madras).

THE suit was brought against the President of the Municipality of Madura to recover the balance of a sum of money due for timber supplied by the plaintiff for use in the construction of the dispensary at Madura. For the defence it was pleaded that the plaintiff should be non-suited as he did not give the notice prescribed in Section 168 of Madras Act III of 1871.

The District Munsif held that in the present case notice was not necessary and made a decree in plaintiff's favor.

On appeal the Subordinate Judge, holding that Section 168 applied, reversed the Munsif's decree and dismissed the suit.

* Second Appeal No. 503 of 1878, against the decree of G. Muttusámi Chetti, Subordinate Judge of Madura, dated 4th April 1877, reversing the decree of the District Munsif of Madura, dated 5th September 1877.

The plaintiff preferred a second appeal to the High Court on the ground that the Subordinate Judge was wrong in holding that the plaintiff was bound to give notice of action.

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The *Advocate-General* for the appellant.

Mr. *Wedderburn* for the respondent.

The Court (MORGAN, C.J., and FORBES, J.) delivered the following

JUDGMENT.—The notice of action required by Section 168 of the (Madras) "Town Improvement Act, 1871" (1) must be given when a suit is "brought against the Commissioners or any of their officers or any person acting under their direction for any thing done under the Act."

The suit in the present case was brought to recover from the Commissioners the balance of a sum of money due for timber supplied under a contract duly made with them, and the Sub-Judge, reversing the Munsif's judgment, has held that no such suit can be maintained unless after notice of action under the section. The Subordinate Judge quotes the 12th Section of the Act (whereby the Commissioners are empowered to make certain contracts) in support of his view that the making of the contract on the part of the defendant was a *thing done* under the Act, and that the defendant was therefore entitled to notice of action. This conclusion is, in our judgment, erroneous.

The contract was, doubtless, made by the Commissioners under the powers conferred by the Act; but it does not follow from this alone that a breach of the contract by non-payment of the balance due gives rise to a suit of the kind contemplated by Section 168, that is, a suit for a *thing done* under the Act. "Actions brought" within the meaning of this section are suits in respect of acts and defaults of a different description.

Many legislative enactments contain similar provisions expressed in different phraseology; and they are primarily intended to protect public officers and other persons acting in execution of their several duties and powers. Further, such persons have been held entitled to protection not only in suits strictly for *things done* by them, but also when the object of the suit was to recover back money illegally received by them. But

(1) Act III of 1871.

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in no case has it, we believe, been held that, by force of such a provision, a suit like the one before us, to recover the price contracted to be paid for goods sold, is not maintainable without notice and compliance with the stringent requirements found in clauses of this description. It would, we think, be a forced construction of the words used in Section 168 to hold that they apply to such a case, and that a specific contract duly made for the sale of goods cannot be enforced by suit unless the suit is brought within a few months and after written notice of the cause of action and opportunity given for tender of amends. The suit must be remanded for disposal to the Sub-Judge, who will also dispose of the costs of this appeal.

APPELLATE CIVIL.

*Before Sir Walter Morgan' Knight, Chief Justice, and
Mr. Justice Muttusámi Áyyar.*

1878.
November 15.
1879.
January 21.

NÁTCHIARAMMÁL, ON BEHALF OF HERSELF AND TWO OTHERS,
MINORS (PLAINTIFFS) APPELLATS v. GOPALAKRISHNA
(2ND DEFENDANT), RESPONDENT.*

Maintenance—Family debt.

Though the maintenance of a wife and children may in certain circumstances be a charge on the husband's property as against a purchaser, it is not so in a case in which the sale took place in payment of a family debt, which it was the primary duty of the head of the family to pay.

This was a suit for maintenance brought by a Hindu wife, on behalf of herself and her minor children, against her husband, the 1st defendant, and two other persons, one of whom, the 2nd defendant, was in possession of the family lands.

The first and third defendants made no defence.

The second defendant pleaded that he purchased the lands in question at a sale held in execution of a decree against the first defendant and that the purchase had been upheld by the High Court in Special Appeal No. 362 of 1876, dated 24th June 1876, against the first defendant and his sons.

* Second Appeal No. 444 of 1878 against the decree of A. C. Burnell, District Judge of Tanjore, dated 27th March 1878, modifying the decree of the District Munsif of Negapatam, dated 13th December 1877.