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had realized by summary process instituted under section 583, Civil Procedure Code. There is no article in the schedule attached to the Act of Limitations which expressly prescribes a period of limitation for such suits. We consider that the Judge was right in holding that article 120 applied. The surety was not in a position to claim a refund until the decree was superseded and neither article 61 or 62 applies as time runs under it from the date on which the money was paid or received. There was a subsisting decree when the money was paid to the appellant, and its receipt cannot be regarded as a wrongful seizure of moveable property as mentioned in article 29. Article 97 refers to contracts in which the consideration has failed. None of the specific provisions suggested by the appellant's pleader appear to us to contemplate a suit like the one before us.

We are therefore of opinion that this appeal cannot be supported, and we dismiss it.

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## APPELLATE CIVIL.

*Before Mr. Justice Shephard and Mr. Justice Handley.*

ANNAJI (PLAINTIFF), APPELLANT,

v.

SUBRAMANYA AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Local Boards Act—Act V of 1884 (Madras), ss. 128, 156—Suit for malicious prosecution against officers of panchayat union—Notice of suit.*

A suit was brought against the chairman and accountant of a panchayat union for damages for malicious prosecution more than six months after the close of the criminal proceedings:

*Held*, (1) that the defendants were liable for torts committed by them, and notwithstanding Local Boards Act, s. 128, the plaintiff was not confined to his remedy against the Taluk Board;

(2) that Local Boards Act, s. 156, was not applicable unless it were proved that the act complained of was done by servants of the Taluk Board within the scope of their authority as such, acting or purporting to act under the Act.

SECOND APPEAL against the decree of C. W. W. Martin, District Judge of Salem, in appeal suit No. 144 of 1888, confirming the

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\* Second Appeal No. 1024 of 1889.

decree of T. T. Rangachariar, District Munsif of Tripatore, in original suit No. 97 of 1888.

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Suit for damages for malicious prosecution against the *ex-officio* chairman [and the accountant of the union panchayat of Dharampuri. The criminal proceedings had terminated more than six months before suit. The defendants pleaded, *inter alia*, that the suit was precluded by Local Boards Act, section 128, and also by want of notice to the President of the Taluk Board under section 156 of the same Act.

The District Munsif held that both these pleas were well founded and dismissed the suit: his decree was affirmed on appeal by the District Judge who held that the want of notice pleaded was a bar to the suit.

The provisions of the sections 128 and 156 above referred to are as follows:

Section 128.—(1) “Every panchayat shall, subject to the provisions of this Act, [be the agent and under the control of the Taluk Board;

(2) “and the Taluk Board, and not the panchayat, may sue and be sued in respect of any act or omission of the panchayat giving rise to a cause of action.

Section 156.—“No action shall be brought against any Local Board, or any of their officers, or any person acting under their direction, for anything done or purporting to be done under this Act until the expiration of one month next after notice in writing shall have been delivered or left at the office of the Local Board, or at the place of abode of such person, explicitly stating the cause of action and the name and place of abode of the intended plaintiff; and unless such notice be proved, the Court shall find for the defendant; and every such action shall be commenced within six months next after the accrual of the cause of action, and not afterwards: and if any person to whom any such notice of action is given shall, before action brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.”

The plaintiff preferred this second appeal.

*Seshagiri Ayyar* for appellant contended that two months' notice of the institution of the suit which was given under section 424 of the Civil Procedure Code was sufficient notice, that the suit

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was not one brought under the Local Boards Act, that the suit was for a tort committed by the defendants, and that accordingly compliance with the preliminaries prescribed by the Local Boards Act was not necessary.

*Pattabhirama Ayyar* for respondents. Under section 128 of the Local Boards Act the Taluk Board and not the panchayat must be sued. No notice was given under section 156 of the Local Boards Act.

JUDGMENT.—The plaintiff's suit has been dismissed on the ground that it should have been instituted against the Taluk Board and not against the defendants, and on the ground that notice ought to have been given under the provisions of section 156 of Act V of 1884. It is also urged in this Court that the suit was not brought within six months of the date of accrual of the cause of action as required in the same section.

It is stated that two months' notice was given with reference to section 424 of the Code of Civil Procedure, and unless this is incorrect, the objection founded on the want of notice which is apparently the ground of the District Judge's judgment fails. The other and more important contention is that by force of section 128, the defendants who are the chairman and the gumasta or accountant of the panchayat are not personally liable for any act done by them as members of the panchayat. The object of section 128 seems to have been to make it clear that the relation of the panchayat to the Taluk Board was to be that of agent and principal. The Taluk Board is incorporated, whereas the panchayat is not, and it would have been unreasonable that members of the latter should be personally liable on their contracts or otherwise whereas the Taluk Board could only be liable in its corporate capacity. The special provision contained in section 128 must be construed with reference to the general principle of law and cannot be extended in the manner contended for by the respondents. It would be absurd to hold that the Taluk Board could be sued for the tortious acts of the panchayat which the Board had never authorized and may even have prohibited. Either this must be so according to the respondents' contention, or a person aggrieved in such cases has no remedy. We cannot construe the section in such a manner as to bring about such unreasonable results.

It remains to mention the argument that the latter part of section 156 applies and that the suit is brought too late, being instituted more than six months after the date of the accrual of the cause of action. In order to make that provision apply it would be necessary to show that the act complained of was done within the scope of their authority as servants of the Board and also that the act was done or purported to be done under the Act. We cannot at present deal decisively with these questions, the facts not being fully before us, but we may observe that it appears to us extremely doubtful whether such a prosecution as that which is the subject of the suit can be said to be an act done under the Act.

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We must reverse the decrees of both Courts and remand the suit to the Court of First Instance.

The appellant is entitled to costs of this appeal: costs in the Courts below to be provided for in the revised decree.

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## APPELLATE CIVIL.

*Before Mr. Justice Handley and Mr. Justice Weir.*

KANAKASABAI AND ANOTHER (PLAINTIFFS NOS. 1 AND 2),  
APPELLANTS,

1890.  
July 21.

v.

MUTTU AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Limitation Act—Act XV of 1877, sch. II, art. 120—Suit for perpetual injunction—Claim of possession.*

In a suit for a perpetual injunction to restrain the defendant from preventing the plaintiff from entering a certain house it was alleged that the defendant had been in exclusive possession for more than six years before suit:

*Held*, that Limitation Act, sch. II, art. 120, applied to the suit which was therefore barred by limitation.

*Per cur*: It was open to the plaintiff to sue for such possession other than exclusive possession (the right to which had already been negatived by suit) as he might be entitled to.

SECOND APPEAL against the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in appeal suit No. 769 of 1888, reversing the decree of A. Kuppusami Ayyangar, District Munsif of Kumbakonam, in original suit No. 100 of 1888.

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\* Second Appeal No. 969 of 1889.