

cannot, like the defendants' title, be reconciled with the lawfulness of Ettakkammal's possession. Her holding of the zamindar was adverse to the plaintiff's ancestor, and from the date of its commencement when his cause of action arose, time began to run, and it has continued to run without intermission. The appeal is dismissed with costs.

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v.  
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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Shephard.*

RANGANAYAKULU AND OTHERS (PLAINTIFFS Nos. 1 and 4  
and REPRESENTATIVE OF PLAINTIFF No. 3), APPELLANTS,

v.

PRENDERGAST (DEFENDANT), RESPONDENT.\*

1893.  
Aug. 10, 11.  
Sept. 19.

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*Police Act (Madras)—Act XXIV of 1859, ss. 21, 49—Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession.*

A procession of Hindus carried certain banners and the Superintendent of Police was of opinion that a breach of the peace would be occasioned if these banners continued to be displayed, and in good faith, for the purpose of preventing such breach of the peace, he took away the banners from certain persons in the procession :

*Held*, that the action of the Superintendent of Police was not justified by Madras Police Act, 1859, ss. 21, 49, and that he was accordingly liable for the trespass.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 1167 of 1892, modifying the decree of O. V. Nanjundayyar, District Munsif of Masulipatam, in original suit No. 19 of 1890.

The facts of the case were stated in paragraphs 2 and 3 of the District Judge's judgment as follows :—

“This is a suit by four Hindu residents of Masulipatam town against the Superintendent of Police of the Kistna district, who interfered with a procession in the streets of Masulipatam on October 3rd, 1889. Plaintiffs ask for a declaration that they may pass in procession through the streets ‘with dress, music, symbols and other accompaniments,’ and they claim Rs. 100 as damages

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\* Second Appeal No. 1679 of 1892.

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“for the interference. The District Munsif gave plaintiffs a declaratory decree, but refused to give any damages. The District Munsif, at the same time, ordered the Superintendent of Police to bear all the costs of the suit. Against this decision the defendant appeals, and an objection memorandum is lodged on behalf of respondents claiming the damages that were asked for in the suit and asking that the declaratory decree be made more definite.

“The facts in this case are few and simple. Certain Muhammadans of Masulipatam informed the Superintendent of Police that there was a bad feeling among some Muhammadans in the town, because of an idea that the Hindus in the procession at the Hindu festival caricatured Muhammadan emblems: an anonymous petition to the same effect was sent to the District Magistrate, and he sent this petition to the Superintendent of Police with the following note:— ‘I suppose you are keeping your eye on the Dasara performances to prevent any differences with the Muhammadans, *vide* the enclosed.’ On this paper the Superintendent wrote an order to the Town Inspector, directing him to give notice by beat of tom-tom that persons were not to imitate Muhammadan disguises without a license from the Superintendent. On the same day a Hindu procession was stopped in the streets by the Town Inspector and Station Officer. They sent word to the Superintendent, and he at once came to the spot. The Town Magistrate, a Brahman, was also present. The Superintendent inspected the *Sivamandiram* and decided that it did not resemble a Muhammadan taboot and, therefore, let it pass. He caused a flag to be unrolled on its staff, so that it should no longer resemble a Muhammadan ‘pir.’ He took possession of two banners which bore on one side the device of the crescent and the star. He turned out of the procession some singers who were clad in tinsel caps and robes. He then permitted the procession to proceed. On the following day he refused to reconsider his decision and to grant licenses to plaintiff except on conditions.”

The District Judge held that the defendant had acted *bond fide*.

The District Munsif passed a decree as follows:—

“It is decreed that the plaintiffs’ right to celebrate in the public streets of Bandar town the festivals with jundas (flags) and Ramabajana as it was done in the year 1889 is established,

“that the said festival be allowed to be celebrated on proper occasions and in a proper manner without causing obstruction either to the worship of people of other religions or to the festivals relating to them *and that the defendant or his subordinates do refrain from causing obstruction at any time except when there may be breach of peace.*”

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The District Judge modified this decree by striking out the words which are printed above in italics.

The plaintiffs preferred this second appeal.

*Pattabhirama Ayyar* and *Sriramulu Sastrri* for appellants.

The *Acting Government Pleader* (*Subramanya Ayyar*) for respondent.

COLLINS, C.J.—This was a suit brought by four Hindus against a Police Superintendent of the Kistna district, asking for a declaration that they have a right to celebrate a festival in the public streets of Masulipatam with such music, garments, ensigns, &c., as the plaintiffs may like, for an injunction restraining defendant and his subordinates from interfering with such procession and for damages for taking possession of certain banners and removing certain caps, &c., from some of the processionists. Both the Lower Courts agreed in granting the plaintiffs a declaration that they had a right to celebrate in the public streets a certain festival, but an injunction was refused and no damages awarded for taking possession of the banners.

The only point that was argued in second appeal was that the plaintiffs were entitled in all events to nominal damages for the wrongful act of the Police Superintendent in taking away the plaintiffs' banners. It was not disputed that the banners were taken away by the orders of the defendant, but it was contended that the defendant acted in good faith, that he was justified in so doing, as he believed these particular banners were obnoxious to the Muhammadans, and if carried, would produce a breach of the peace.

It is not disputed by the Government Pleader that the plaintiffs had a right to pass in procession through the streets of Masulipatam, and the only question that arises is, was the defendant justified in taking possession of the banners which undoubtedly he removed from the procession. I carefully guard myself in this judgment by stating that it is the powers of the police in this district alone that I am dealing with, and both Mr. Patta-

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bhirama Ayyar, the Vakil for the appellants, and the Government Pleader admit that the powers of the police over processions are defined by the Madras Police Act XXIV of 1859. Section 49 of that Act defines the powers of the police—they may *direct the conduct* of all assemblies and processions in the public streets, prescribe the routes by which and the time at which such processions may pass, keep order in the public streets and prevent obstructions; they may also regulate the use of music in the streets on the occasion of native festivals and may direct crowds of twelve or more persons to disperse when they have reason to apprehend any breach of the peace. The powers thus given to the police are large and set out with particularity, but I fail to see that the Superintendent of Police has any power to remove from the procession any banners belonging to the processionists and to order those banners to be taken to the police station. I am of opinion, therefore, that the respondent in taking possession of the banners committed in law a tortious act, but under the circumstances I give only nominal damages, viz., one rupee: in fact only nominal damages has been asked for. The decree must be modified accordingly, and in other respects I would dismiss the appeal.

It is also alleged that the defendant turned out of the procession certain persons wearing tinsel caps and robes. Whatever right of action these persons may have against the defendant, it is impossible to say that the plaintiffs are entitled to damages. The action was really brought for a declaration and also an injunction against the defendant. The plaintiffs have succeeded in obtaining a declaration against the Superintendent of Police, and no question was raised before us whether such a declaration was a proper one or whether the four plaintiffs could jointly bring such an action. The District Munsif has found that the plaintiffs preferred a seriously false allegation that their procession was entirely stopped, and taking into consideration all the circumstances of the case, I would direct that each party bear his and their own costs throughout.

SHEPARD, J.—As is observed by the District Judge, this case is really a simple one. It has been unnecessarily complicated by the nature of the relief asked for and by the defence set up by the defendant. The simple question is whether the plaintiffs have suffered any wrong at the hands of the defendant, and, if so, to

what damages they are entitled. That is the only question that ought to have been tried, for the case is not one in which a declaration or injunction is either necessary or proper. On the contrary, such relief is obviously futile, for it could bind only the defendant personally. There is, however, no appeal filed on his behalf, and it is only necessary to mention it as a reason for dismissing the appeal so far as it seeks to obtain any relief of that character for the plaintiffs.

We must take the finding of fact as recorded by the District Judge in paragraph 3 of his judgment. There it is found that the defendant took possession of two banners, and that he turned out of the procession some singers, and then permitted the procession to proceed. It is of these acts that the plaintiffs complained in the 9th paragraph of the plaint. It is not explained how the plaintiffs come to treat these acts of the defendant as torts for which they have a joint right of action. No objection, however, was taken on that ground. The District Judge holds that the defendant was justified in doing what he did, because there was danger of breach of the peace and the action was taken in good faith to prevent it. It is this ruling which is questioned in the appeal before us.

*Prima facie* the act of the defendant in taking away banners from the hands of the plaintiffs and keeping them is wrongful. That is the only act of which the plaintiffs personally complain. Such an act constitutes a trespass, and however laudable the motive may have been, the injured person is entitled to damages. The defendant can only be excused from liability if it is shown that, as a Superintendent of Police, he was by law justified in doing what otherwise would have been wrongful.

The 49th section of the Madras Police Act gives the Superintendent power, as occasion requires, to direct the conduct of all assemblies and processions and prescribe the routes by which they may pass. It also gives him power to regulate the use of music in the streets on the occasion of festivals and ceremonies, and lastly to direct all crowds of twelve or more persons to disperse when he has reason to apprehend any breach of the peace.

Section 21 of the same Act declares the general duties of police officers including that of using their best endeavours to preserve the peace. It is argued on behalf of the respondent that these provisions of the Act justified him in taking away the banners

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from the plaintiffs, and that, although an express power to do such acts is not given by the Act, it must be taken to be included in the larger powers which are conferred. It may not unreasonably be said that on occasions serious inconvenience and risk of disturbance is likely to occur if the police does not possess the power of depriving persons of banners, emblems or other objects which are calculated to provoke a breach of the peace on the part of persons to whom they are obnoxious. We must, however, see whether such a power is conferred by the legislature. With regard to processions express provisions are made of a particular character, and under certain conditions power is given to disperse crowds. The latter provision does not, in my opinion, relate to processions. With regard to processions the Superintendent may, as occasion requires, do certain things, but the Act does not say he may take away flags or obnoxious devices carried by members of the procession, and I do not see on what principle it can be said that the legislature intended to give this power by implication. On the contrary, the mention of specific things which may be done is unfavourable to any inference in favour of measures which are not mentioned.

In my opinion the respondent has failed to show that his acts are rendered legal by the provision of the Police Act, and it is not said that there is any other statute under which he can claim immunity. Chapter XIII of the Criminal Procedure Code gives the police certain powers in the way of preventive action, but the present case cannot be brought within its provisions. It follows that the District Judge was wrong in refusing to give damages, but having regard to the other findings of the District Judge and the finding of the District Munsif on the question of damages, I think that nominal damages only should be awarded.

I would modify the decree of the District Judge by giving the plaintiffs one rupee damages. In other respects I would dismiss the appeal, and I would direct each party to bear his own cost, throughout.

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