

MOGERA  
NANDI  
v.  
PARA-  
MESWARA  
UDPA.

based on this title, and the article applicable is, in our own opinion, article 144—see the decision of the Privy Council in *Rani Meera Kuwar v. Rani Hula Kuwar* (1).

We therefore set aside the decrees of the Courts below based on these findings on this preliminary question, and remand the suit to the District Munsif for decision in accordance with law. Costs in this and in the lower Appellate Court will abide the result.

## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice.*

1906.  
July 19, 20,  
24.

THE PRESIDENT OF THE TALUK BOARD, KUNDAPUR  
(PLAINTIFF), PETITIONER,

v.

1907.  
October 14.

BURDE LAKSHMINARAYANA KAMPTHI (DEPENDENT)  
RESPONDENT.\*

*Contract Act, Act IX of 1872, s. 74—Bond given for the performance of public duty, but not under the provisions of any law not within exception. to s. 74 of Contract Act—Right of suit—Civil suit maintainable in respect of act amounting to criminal offence—Limitation Act, Act XV of 1877, sch. II, arts. 6, 115—Local Board's Act (Madras), ss. 162-C and 162-D do not bar a civil suit on contract.*

\*An agreement between a contractor and a Local Board contained the following terms:—

As I have taken over under contract for Rs. 106 the right to collect the fees on the articles brought for sale in Udipi market from 1st April 1902 to 31st March 1903, I am bound to act according to the following conditions:—

I am not entitled to collect more than the undermentioned rate of fees from the persons seated and trading on the site of the fair.

			Rate of fees.			
				Rs.	A.	P.
Each head-load	...	...	...	0	0	2
„ cart-load	...	...	...	0	2	0

I am bound to put up a board with the rates of fees to be collected by me and my name in English and Canarese in a public place in the market.

If I, my agent, or servant were to act contrary to the above regulations, I shall be liable to pay a fine not exceeding Rs. 50 imposed by the President of

(1) 13 B.L.R., 312 at p. 322.

\* Civil Revision Petition No. 412 of 1905, presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of the District Munsif of Udipi, dated 31st March 1905, in Small Cause Suit No. 170 of 1904.

the Taluk Board, or I am not entitled to object if my gutta is put up for auction again subject to the loss that may be sustained by the Taluk Board.

Under the terms of the above contract, the President of the Taluk Board imposed on the defendant a fine of Rs. 20 on 4th November 1902 in respect of illegal excessive collections made by his agent. The defendant not having paid the fine, the President instituted a civil suit for the amount of the fine on 4th January 1904.

*Held*, that the suit was maintainable although the acts of the defendant's agent amounted to a criminal offence and no criminal proceedings were taken against the agent.

It is doubtful whether the doctrine that a person is injured by a felonious act cannot seek civil redress without prosecuting the felon in the criminal courts, applies in India; and the doctrine does not apply where a principal is sued in the civil courts in respect of the wrongful acts of his agent.

*Held also*, that the agreement in question was not a bail bond, or recognisance, within the meaning of the exception to section 74 of the Contract Act, and though given for the performance of a public duty, it was not given under the provisions of any law. The exception to section 74 did not apply and the plaintiff was entitled to reasonable damages under the section.

*Held also*, that the suit was based on contract; and for purposes of limitation fell within article 68 or 115 of schedule II of the Limitation Act and not under article 6 of the schedule.

*Held further*, that the penal clauses of sections 162-C and 162-D of the Local Board's Act did not preclude the plaintiff from suing the defendant on his contract.

THE facts necessary for the report are those stated in the judgement of the Lower Court which was as follows:—

“In these suits the President of the Taluk Board sues to recover certain fines imposed on the farmers (contractors) of the right of collecting fees (from 1st April 1902 to 31st March 1903) from vendors of goods, and from cartmen, in certain markets and cart-stands. The fines appear to have been imposed for the collection of fees, in excess of the prescribed rates, from the vendors, and for not putting up boards with rates of fees and name of the farmer for the information of the vendors, etc.

\* \* \* \* \*

Defendants in these suits state that they are the farmers and contractors of the markets and cart-stands for the year 1902-03, and urge that the fines were imposed behind their back on the strength of an enquiry conducted behind their back without a notice to them. They urge that the Madras Local Board's Act does not authorize the institution of a suit and that as such, the suit is liable to be dismissed.

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*Issues.*

I. Whether plaintiff's suit is sustainable under the Local Board's Act V of 1884?

(1) Whether the President, Local Board, is entitled under the Local Board's Act to levy the fine?

(2) Whether the President, Local Board, can levy such fine through Court by recourse to a civil suit?

II. Whether there was any breach of contract as alleged by plaintiff?

III. To what relief, if any, is plaintiff entitled?

\* \* \* \*

In addition to the points on which the parties have proceeded to trial, it is urged for defendants that the question of limitation should also be tried as it is a point which, under the Limitation Act, a Court is bound to consider, even though the parties have not pleaded it."

The lower Court held that the suit fell within article 68 of the Limitation Act and was not barred. But it dismissed the suit on the ground that the act in respect of which the suit was brought, was a criminal offence and no civil action was maintainable until the offender was criminally prosecuted. He accordingly dismissed the suit.

Plaintiff filed a revision petition under section 25 of Act IX of 1887 and counter-petitioner filed a memorandum of objection in respect of the points decided against him.

The Government Pleader for petitioner.

*K. P. Madhava Rau* and *K. S. Ramaswami Sastri* for respondent.

JUDGMENT.—Mr. K. S. Ramaswami Sastri, who appeared for the respondent in this case conceded, that the judgment of the Munsif could not be supported upon the ground which was taken by him and upon which he dismissed this suit. Even if it be an established principle of the law of England that, the policy of the law will not allow a person injured by a felonious act to seek civil redress if he has failed in his duty of bringing or endeavouring to bring the felon to justice, as to which there seems to be some doubt (see the judgment in *ex-parte Ball In re Shepherd*(1), the principle does not apply to a case like the present. The defendant in this case is not criminally liable for the offences alleged to have been

(1) L. R., 10 Ch. D. 667

committed by his agent, and the suit is not brought against the party who is alleged to have been guilty of offences under section 165 of the Local Boards Act (V of 1884). The view taken by the Munsif, as it seems to me, so far from furthering what is said to be the policy of the law, would tend rather to defeat it. If the conviction of the offending agent were a condition precedent to the plaintiff's right to sue on his contract with the defendant, it would be the interest, at any rate, of the defendant not to prosecute the offender. On the other hand, if the plaintiff's right to sue is independent of the question whether or not the offender has been convicted, a decree against the defendant would naturally make him desirous of obtaining some satisfaction by securing the conviction of the offender. Further, it would seem very doubtful, whether the principle referred to above is applicable under Indian Law. See the judgment in *Adamson v. Arumugam*(1).

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The main ground upon which it was sought to uphold the decision of the Munsif was that the provision for the payment of Rs. 50 was a provision by way of penalty and could not be enforced. The material parts of the agreement are as follows:—

“As I have taken over under contract for Rs. 406 the right to collect the fees on the articles brought for sale in Udipi market from 1st April 1902 to 31st March 1903, I am bound to set according to the following conditions” :—

\* \* \* \* \*

2. “I am not entitled to collect more than the undermentioned rate of fees from the persons seated and trading on the site of the fair.”

*Rates of fees.*

	RS.	A.	P.
Each head-load ... ..	0	0	2
„ cart-load ... ..	0	2	0

3. “I am bound to put up a board with the rates of fees to be collected by me and my name in English and Canarese in a public place in the market.”

\* \* \* \* \*

7. “If I, my agent, or servant were to act contrary to the above regulations, I shall be liable to pay a fine not exceeding Rs. 50 imposed by the President of the Taluk Board, or I am

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not entitled to object if my *gutta* is put up for auction again subject to the loss that may be sustained by the Taluk Board."

I am not prepared to hold that the agreement in question is an instrument of the same nature as a bail bond or recognizance within the meaning of the exception to section 74 of the Contract Act, although it seems to me to partake more of the nature of a bail bond or recognizance than the instrument in question in *Krishnamma v. Suranna*(1). I think it is a bond given for the performance of a public duty, or act, in which the public are interested. As to whether the bond is given "under the provisions of any law" there is no section in the Act which authorizes or requires the giving of such a bond, and there is no evidence before me that a bond of this nature is authorized or required by any bye-law made under the Act. Under section 74 of the Contract Act it is open to the Court to award to the party complaining of the breach reasonable compensation not exceeding the amount named in the bond. By his contract the defendant made himself civilly liable for any offence which it might be proved his agent had committed under section 165 of the Local Board's Act. In a case like this it is, of course, impossible to assess the damages with reference to any actual loss sustained by the plaintiff. The section expressly provides that it is not necessary to prove any actual damage or loss. The extortion of unauthorized tolls from the class of persons who make use of the market is a serious offence, and the amount of the penalty specified in the bond (Rs. 50) certainly cannot be said to be exorbitant. I think both these matters may be taken into consideration in determining whether Rs. 50 is more than the reasonable compensation which the plaintiff is entitled to recover from the defendant. The assessment of damages, however, is a matter for the Munsif. In *Srinivasa v. Rathanasabapathi*(2) no question arose as to the amount of compensation to which the plaintiff was entitled, and no assistance is to be derived from that case in connection with this point.

As regards the question of limitation, I am of opinion that the article applicable is not article 6 as the *vakil* for the respondent contended, but article 68 or article 115 of schedule II to the Limitation Act.

(1) I.L.R., 16 Mad., 175.

(2) I.L.R., 16 Mad., 475.

I am also of opinion that the penal clauses of the Local Boards Act, sections 162-C and 162-D do not preclude the plaintiff from recovering against the defendant under his contract with him.

As regards the construction of paragraph 7 of the agreement I am of opinion that the provision authorising the plaintiff to put the defendants "*gutta*" up to action, does not preclude the plaintiff from recovering under his contract.

The point that the suit ought to have been brought in the name of the Local Board was not taken in the Court below and I decline to go into it on revision.

The case must go back to the Munsif for (1) a distinct finding as to whether the defendant's agent collected fees at higher rates than those specified in paragraph 2 of the agreement between the plaintiff and the defendant, (2) if his finding as to this is in the affirmative, for a finding as to whether the contract is made under any by-law made under the Local Boards Act, (3) if his finding as to (1) is in the affirmative, and as to this is in the negative, for a finding as to the amount of compensation due to the plaintiff.

Finding should be submitted within 6 (six) weeks from this date, and 7 (seven) days will be allowed for filing objections.

[On the finding submitted by the Munsif, the petition was dismissed.]

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