

employed by the plaintiff to cure the skins. Again, the case is one of a string of contracts and much of the trouble has arisen by reason of their having wrongly represented to their buyers that the skins were of their "own cure". In spite of these facts, we do not feel that we ought to disturb the trial Judge's order.

In the result, the appeal fails and is dismissed with costs.

The memorandum of objections is not pressed and is likewise dismissed with costs.

Solicitors for respondents—*Messrs. King and Partridge.*

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## APPELLATE CIVIL.

*Before Mr. Justice Cornish.*

THE SALEM MUNICIPALITY BY ITS COMMISSIONER  
(DEFENDANT), PETITIONER,

1936,  
September 18.

v.

S. G. BHAKTHAVATSALU NAIDU (PLAINTIFF),  
RESPONDENT. \*

*Madras District Municipalities Act (V of 1920), sec. 350—Suit for damages for illegal distress against municipality—Cause of action in—Illegal distress, not a continuing injury from date of seizure till date of restitution—Continuing injury—What amounts to.*

On account of some arrears of tax a municipality distrained a cart belonging to a certain person on 16th April 1934 and returned the cart to him on 7th November 1934, in pursuance of certain proceedings before a Magistrate, where the distraint

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\* Civil Revision Petition No. 1275 of 1935.

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was declared illegal on 7th July 1934. That person gave notice of suit on 18th October 1934 and filed a suit for damages against the municipality on 18th January 1935 for illegal distress.

*Held* that the suit was barred by section 350 of the Madras District Municipalities Act.

*Held further* that the cause of action was the act of illegal distress and it was not a "continuing injury" from the date of seizure till the date of restitution.

*Harrington (Earl of) v. Derby Corporation*, [1905] 1 Ch. 205, followed.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the finding of the Court of the District Munsif of Salem dated 15th July 1935 and made in Small Cause Suit No. 202 of 1935.

*P. Chakrapani Ayyangar* for petitioner.

Respondent was unrepresented.

### JUDGMENT.

The petitioner is the Salem Municipality. On account of some arrears of tax the municipality distrained a cart belonging to the respondent. The distraint was made on 16th April 1934. This distraint was declared illegal in some proceedings before a Magistrate on 7th July 1934, and the cart was returned to the respondent on 7th November 1934. The respondent brought a suit to recover damages for illegal distress. He gave notice of the suit on 18th October 1934, and the plaint was filed on 18th January 1935. The question is whether the suit is or is not barred by section 350 of the Madras District Municipalities Act. The lower Court held that it was not barred, and that the respondent was entitled to damages.

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Section 350 enacts that no suit for damages shall be instituted against a municipal council in respect of any act done in pursuance of the Act until the expiration of one month after a notice has been delivered at the municipal office stating the cause of action, the relief sought, the name and the place of abode of the intending plaintiff; and the plaint shall contain a statement that such notice has been so delivered. Sub-section 2 provides that every such suit shall be commenced within six months after the date on which the cause of action arose or, in case of a continuing injury or damage, during such continuance, or within six months after the ceasing thereof. If the cause of action was the act of illegal distress, as I think it was, the suit was out of time. The plaintiff, however, has sought to get over this obstacle by alleging in his plaint that the cause of action arose when the illegal seizure was made, and on the "subsequent days when it was illegally and wrongfully distrained without being returned". In other words, he sought to make the act of illegal seizure a continuing injury until the return of the cart on 7th November 1934. Upon the meaning of the words in sub-section 2 of section 350 "in case of a continuing injury or damage", there are authorities available on the meaning of the words "in case of continuance of injury or damage" in the Public Authorities Protection Act, 1893. It is obvious that the language of sub-section 2, section 350, of the Madras Act was modelled upon the English Act, and therefore any authoritative interpretation of the words occurring in the English Act is of great assistance in the interpretation of the

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words in section 350 of the Madras Act. In *Carey v. Metropolitan Borough of Bermondsey*(1) the LORD CHANCELLOR, Lord HALSBURY, said that the words "continuing injury or damage" meant the continuance of the act which caused the damage; and in *Harrington (Earl of) v. Derby Corporation*(2) BUCKLEY J. observed :

"The words do not mean or refer to a damage inflicted once and for all which continues unrepaired, but a new damage recurring day by day in respect of an act done, it may be, once and for all at some prior time, or repeated, it may be, from day to day."

In my judgment the act which caused injury to the respondent was the municipality's illegal seizure of his cart. His cause of action was that illegal act. It was not an injury which continued from the date of the seizure till the date of restitution. It follows that the respondent's suit, not being commenced within six months after his cause of action arose, ought to have been dismissed. It is accordingly dismissed, and this civil revision petition is allowed with costs throughout.

G.R.

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(1) (1903) 67 J.P. 447.

(2) [1905] 1 Ch. 205, 227.