declaration that he is entitled as of right to possession of the whole of this estate and to collect the rents thereon. It is true that registration of his capacity as a landholder is a thing provided for by a special statute and it is true that a Bench of this Court has held that technically the suit does not fall under section 42 of the Specific Relief Act so as to make it necessary to pray for a consequential relief. At the same time I can see nothing in the nature of the suit to give it any peculiar character so as to take it out of the general terms of article 17-A of the Court Fees Act and I therefore dismiss the civil revision petition with costs.

Time for payment is one month.

G.R.

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice K. S. Menon.

T. D. KARUPPANNA PILLAI (PLAINTIFF), APPELLANT,

1936, February 6.

v.

F. W. HAUGHTON (DEFENDANT), RESPONDENT.*

Madras District Municipalities Act (V of 1920), sec. 350—"Act done in pursuance or execution or intended execution of Act"—Act done with knowledge that it is not authorized by Act, if—Prosecution not authorized by Act—Institution of, with knowledge that it is not so authorized—Suit for damages for—Notice under sec. 350 of Act—Necessity—Prosecution malicious, if—Test of.

The respondent, the chairman of a municipal council, prosecuted the appellant under Schedule IV, Rule 30 (2), read

* Second Appeal No. 1583 of 1931.

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with section 344 of the Madras District Municipalities Act, for non-payment of cart-stand fees. The right to collect those fees had been farmed out by the council to a contractor to whom, and not to the council, those fees were therefore due and the appellant was acquitted on that ground. In a suit thereupon filed by the appellant against the respondent for damages for malicious prosecution, the respondent admitted in his own evidence that he knew that section 344 did not authorize him to prosecute the appellant.

Held that, as the respondent was definitely aware that in filing the complaint against the appellant he was doing something which the District Municipalities Act did not permit him to do, section 350 of that Act had no application and the suit could not be dismissed on the ground that the notice required by that section had not been given.

G. Scammell & Nephew, Ld. v. *Hurley*, [1929] 1 K.B. 419, followed. *Koti Reddi* v. *Subbiah*, (1918) I.L.R. 41 Mad. 792 (F.B.), distinguished.

Held further that the prosecution of the appellant must in law be deemed to be malicious.

Although the motive of the respondent for prosecuting the appellant might not have been to gratify a personal spite, the fact remained that he prosecuted a person who, he knew, was not guilty of any offence.

APPEAL against the decree of the Court of the District Judge of Coimbatore in Appeal Suit No. 412 of 1929 preferred against the decree of the Court of the Subordinate Judge of the Nilgiris, Ootacamund, in Original Suit No. 34 of 1929.

The second appeal came on for hearing before PANDRANG ROW J. when his Lordship made the following

ORDER:—

I find after hearing the arguments on both sides that this appeal raises a question of general importance on which there is no clear decision by any Indian High Court. The question arises out of section 350 of the Madras District Municipalities

Act which provides that notice should be given before a suit for damages or compensation is instituted against any municipal officer or servant "*in respect of any act done in pursuance or execution or intended execution of this Act or any rule or by-law made under it*". The question put briefly is: whether, when an act is done with the knowledge that it is not authorized by a statute, it can be said to be an act done in pursuance or execution or intended execution of the statute.

In this case, it is admitted by the defendant who was the Chairman of the Municipal Council, Coonoor, that he knew at the time he prosecuted the plaintiff, who was a Councillor of the same Municipal Council, for non-payment of cart-stand fees that these cart-stand fees were not payable to the municipality. The dues were really payable to the contractor to whom the right of collecting cart-stand fees had been granted by the Municipal Council, viz., one Fakeer Muhammad, and neither the Council nor the Chairman was legally bound in any way to assist the contractor in the collection of amounts due to him. In any case the amounts due to the contractor cannot be said to be amounts due to the Municipality, and it was on this ground that the prosecution which was launched against the plaintiff by the defendant in 1927 proved a failure, the bench which heard the case being of opinion that the Municipal Council had no right to prosecute the plaintiff in respect of amounts due to its contractor.

The Full Bench decision in *Koti Reddi* v. *Subbiah*(1) lays down that a public officer even when he has acted *mala fide* in the discharge of his duties is entitled to notice under section 80 of the Code of Civil Procedure. The words used in that section are "any act purporting to be done by such public officer in his official capacity". These words have, however, been described as being somewhat wider in significance than the words found in section 350 of the Madras District Municipalities Act. On the other hand, the same words as are found in section 350 of the Madras District Municipalities Act are found in the English Act of 1893 and it has been held in more than one English case that they would not include acts done without authority and with the knowledge that they were without authority; vide *G. Scammell & Nephew, Ld.* v. *Hurley*(2) and the cases quoted therein.

(1) (1918) I.L.R. 41 Mad. 792 (F.B.). (2) [1929] 1 K.B. 419.

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It therefore appears to me that this question is one of some difficulty, and, as it is of general importance and likely to arise in future also, I am of opinion that it is desirable that it should be decided by a Bench. The appeal should therefore be posted before a Bench.

ON THE REFERENCE:

S. Panchapagesa Sastri for appellant.

K. S. Champakesa Ayyangar for *T. M. Kasturi* for respondent.

KING J.

The JUDGMENT of the Court was delivered by KING J.—The appellant in this second appeal was a member of the Municipal Council, Coonoor. The Council had farmed out the right to collect fees on cart-stands in Coonoor to one Fakeer Muhammad, and it appears that the appellant refused to pay Fakeer Muhammad certain fees which were demanded by him. Fakeer Muhammad took the matter to the respondent who was then the Chairman of the Coonoor Municipality and, after exhausting every attempt to induce the appellant to pay the fees to Fakeer Muhammad, the respondent finally prosecuted him before the Bench Magistrate of Coonoor under Schedule IV, Rule 30, sub-rule 2, read with section 344 of the Madras District Municipalities Act. The Bench Court acquitted the appellant on the ground that the fees were due not to the Council but to the contractor and therefore section 344 of the Act did not apply. The appellant thereupon filed a suit against the Chairman (respondent) for damages for malicious prosecution in the Court of the Subordinate Judge, Nilgiris. The Subordinate Judge held that the prosecution was malicious and overruled the objection raised by the Chairman that under section 350 of the Act

he had not been given the requisite notice before the institution of the suit. Damages were awarded to the extent of Rs. 200. Upon appeal the learned District Judge of Coimbatore reversed both these findings and he held that the prosecution was not malicious and was not instituted without reasonable or probable cause and also that under section 350 the suit would not lie as no notice was given to the Chairman. The appellant has again brought up these two issues in this second appeal.

Section 350, which lays down the conditions under which notice is requisite, runs as follows, omitting all the unnecessary words :

"No suit for damages shall be instituted against any Municipal Officer in respect of any act done in pursuance or execution or intended execution of this Act or any rule, by-law, regulation or order made under it.'

In support of the appeal, we have been referred to an English decision reported as *G. Scammell & Nephew, Ld.* v. *Hurley*(1). That is a decision in which there came for consideration a clause in the Public Authorities Protection Act which is drafted in exactly the same way as the material clause in section 350 of the District Municipalities Act and in discussing that clause quotation was made from a judgment of BLACKBURN J. delivered in *Selmes* v. *Judge*(2) in which that learned Judge says :

"I agree that if a person knows that he has not under a statute authority to do a certain thing, and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intent to carry out that statute."

Now, the respondent in his own evidence in the suit now in question has admitted that he

(1) [1929] I. K. B. 419. (2) (1871) L.R. 6 Q.B. 724.

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KING J.

knew that section 344 did not authorize him to prosecute the appellant. It is found no doubt by the learned District Judge that in the ordinary sense of the word there was no malice and that the motives of the respondent were good. But it is perfectly clear from his own evidence, and it cannot be challenged, that the respondent was definitely aware that in filing this complaint he was doing something which the Act did not permit him to do. It seems to us then that the dictum of BLACKBURN J. must be taken to apply to the facts of this case, and that it is impossible for the respondent to argue with any hope of success that, in authorizing a prosecution which he knew he was not permitted to authorize, he was intending to execute any portion of the District Municipalities Act. It is impossible that any one can intend to do a thing which he knows he is not doing. As against this, however, we have been referred on behalf of the respondent to a ruling reported as *Koti Reddi* v. *Subbiah*(1). In that case, a public officer was held to be entitled to notice of a suit under section 80 of the Civil Procedure Code even though in the discharge of his duties he had acted *mala fide*. This is no doubt a good authority for section 80 of the Civil Procedure Code. But the words "purporting to be done" in section 80 of the Civil Procedure Code are not the same words as are found in section 350 of the District Municipalities Act. Of the two learned Judges who decided *Koti Reddi* v. *Subbiah*(1), WALLIS C.J. definitely says that the words "done or intended to be done under the provisions of this Act", which are practically the

(1) (1918) I.L.R. 41 Mad. 792 (F.B.).

same as "done in pursuance or execution or intended execution of this Act", are narrower than the words "purporting to be done". SADASIVA AYYAR J. definitely stated that it confuses the mind to attempt to interpret the meaning of the words "purporting to be done" by reference to the English decisions which deal with such a phrase as "done in execution or intended execution of his office". As the two learned Judges who decided *Koti Reddi* v. *Subbiah*(1) have been at pains to point out the distinction between the words they were interpreting and words identical with or similar to the words which we have now to interpret, it is obvious that *Koti Reddi* v. *Subbiah*(1) can be no authority against the ruling to which we have been referred, in which BLACKBURN J. says that it is impossible for anyone to intend that which he knows he is not doing. The result is that in our opinion section 350 cannot apply to the facts of the present case. No notice was therefore necessary and the suit cannot be dismissed on this ground.

The next point is whether this prosecution is malicious. The facts which we have already discussed, we think, prove that the prosecution must in law be deemed to be malicious. What is the situation here? The situation reduced to its simplest terms is this, that the Chairman knew that the appellant had committed no offence and that in spite of that knowledge he decided to prosecute him. His motive for doing so may have been not to gratify a personal spite but to promote what he thought the best interests of the Municipality. But the fact remains that he prosecuted

(1) (1918) I.L.R. 41 Mad. 792 (F.B.).

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a person who, he knew, was not guilty of any offence. That being the case, it seems to us clear that there cannot have been any reasonable or probable cause for the prosecution, and whatever his motive may have been, to have embarked upon a prosecution of this kind without reasonable or probable cause must amount to malice in law.

We therefore hold that on both the grounds the decree of the learned District Judge must be set aside and that the suit is competent and must succeed.

A final argument was addressed to us with regard to the quantum of damages. Rs. 200, as already stated, has been awarded as damages to the appellant. There is a finding that the actual expenses which he has incurred in defending himself from this prosecution amount to Rs. 100 and the learned Subordinate Judge has also given details to show what standing in life the appellant occupies. We think that in the circumstances the sum of Rs. 200 is the appropriate sum to be fixed for damages and we see no sufficient reason to interfere with it.

In the result this appeal is allowed with costs throughout and the decree of the learned Subordinate Judge is restored.

A.S.V.