1904

BHAWANI v. SHEODIHAL.

or partial loss of the debt. The words "if there should arise any cause which might be considered likely to affect the total or partial loss" of the debt must, we think, be interpreted, not as giving the mortgagee a right from mere caprice or unreasonable apprehension of loss to call in his debt, but only as giving him this right, if anything should arise which in the view of reasonably minded men might cause any such loss. The provision does not appear to us to be unreasonable or to give the mortgagee any undue advantage. The right of redemption and the right of foreclosure or sale do not appear to us to be always and under all circumstances co-extensive. The right of redemption may be postponed during a certain period just as the right of the mortgagee to call in his debt may be limited, and in the latter case the limitation may be greater than that upon the right to redeem. As we understand the law, both these rights rest upon the terms of the document itself, and in this case the mortgagee has satisfied us from the nature of the mortgage and the language of the deed that the restriction on redemption is not unfair or unduly onerous, and that the claim for redemption is premature. The continued enjoyment by him of the mortgaged property for the prescribed period formed a material part of the contract of the benefit of which it would be inequitable to deprive the mortgagee.

For the foregoing reasons we think that the view adopted by the lower appellate court was correct, and we dismiss the appeal with costs.

Appeal dismissed.

1904
March 10.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

MUNICIPAL BOARD OF MUSSOORIE (DEFENDANT) *v.* H. B. GOODALL (PLAINTIFF).*

Act No. XV of 1877 *(Indian Limitation Act), schedule II, articles* 2 *and* 28*—Suit for compensation for an illegal distress—Limitation—Principal and agent—Liability in tort of principal for acts of agent.*

Where the Secretary of a Municipal Board acting under orders from the Chairman of the Board procured the issue of a warrant of distraint for a sum exceeding what was due from the person against whom the warrant was obtained and proceeded to seize and sell the goods of such person, it was *held*

* First Appeal No. 71 of 1902, from a decree of Maulvi Muhammad Sirajud-din, District Judge of Saharanpur, dated the 13th of November 1901.

that the Municipal Board was liable for the acts of its Secretary whether or not there had been any resolution of the Board directing the Secretary to obtain a warrant of distraint for the particular sum for which the warrant was issued.

Held also that a suit to recover damages on account of the illegal issue of such warrant and the subsequent distraint was governed as to limitation by article 28 of the second schedule to the Indian Limitation Act, and not by article 2 of the same schedule.

Smith v. *Birmingham and Staffordshire Gas Light Company* (1) referred to.

THE facts of this case are as follows:—

In the year 1898 the plaintiff, Mr. Goodall, was re-assessed in respect of a house in Mussoorie owned by him. He objected to the assessment, but his objections were disallowed. On the 23rd of August the Secretary of the Municipal Board wrote to the plaintiff asking him to pay Rs. 60-12-0 as house tax for the year 1898-99, a sum admittedly in excess of what was really due from him. The plaintiff refused to pay this amount, but shortly afterwards sent a cheque for Rs. 47-8-0 in satisfaction of the claim of the Board against him in respect of the house tax. The Board did not accept the amount so paid in full satisfaction, but sent a receipt for it as in part payment. To this the plaintiff objected, informing the Board by letter that if the cheque was kept he would consider that the Board had accepted the amount in full satisfaction of the claim against him. Notwithstanding this the Board kept the plaintiff's cheque and cashed it. They did not, however, absolve the plaintiff from liability, but issued a peremptory notice to him informing him that if the balance of the bill was not paid within seven days from date a warrant of distress would be issued. To this notice the plaintiff replied pointing out to the Board the illegality of the act which they were contemplating, and intimating that, though he would offer no opposition to the distraint, he would claim heavy damages against the Board if they levied any distress against his property.

After this the plaintiff, on recalculating the amount due to the Board, sent to them a further sum of Rs. 2-8-0, and it was accepted. On March 21st, 1899, a warrant was obtained by the Secretary of the Board for a sum of Rs. 21-14-9, the excess

(1) (1884) 1 Ad. and El. 526.

1904

MUNICIPAL BOARD OF MUSSOORIE v. H. B. GOODALL.

being made up of some arrears, which, on examining the plaintiff's account, the Secretary found to be due from him to the Board. But afterwards on payment of the above-mentioned sum of Rs. 2-8-0 by the plaintiff a second warrant was obtained for Rs. 19-6-9. Under this later warrant some furniture belonging to the plaintiff was seized and sold. On the 15th of February, 1900, the plaintiff filed the present suit against the Municipal Board claiming damages to the extent of Rs. 1,000 and costs of suit. The Court of first instance (District Judge of Saharanpur) found that the re-assessment of the plaintiff's house was not made according to law; that the warrant of distress against the plaintiff was neither legally nor properly obtained, but was obtained by misrepresentation and maliciously and not under a *bonâ fide* belief that the amount was really due, and that the Board were responsible for the action of their Secretary, though there was no resolution of the Board, as there should have been, directing that a warrant should be applied for. On the question of limitation the Court found that article 2 of the second schedule to the Limitation Act, 1877, did not apply, and that the suit was not time barred. A decree was accordingly made in favour of the plaintiff for Rs. 500 with full costs. From this decree the defendants appealed to the High Court.

Mr. *A. E. Ryves*, for the appellants.

Mr. *W. Wallach*, for the respondent.

STANLEY, C. J., and BURKITT, J.—Of the grounds of appeal mentioned in the memorandum of appeal, two only have been pressed in argument before us. The others have been abandoned. The two points which have been pressed are (1) that the suit is barred by limitation, and (2) that the Municipality are not responsible for the wrongful acts of their Secretary. The suit was brought by the plaintiff for damages for an alleged illegal distress, the circumstances being shortly as follows. In July, 1898, the Municipal Board of Mussoorie, acting under rule 51 of their bye-laws, published a list of houses within the limits of the Municipality and the assessments made in respect of those houses for the purpose of calculating house tax. According to this assessment the value of the plaintiff's house was increased by a sum of Rs. 200, namely from Rs. 1,000, at which it had

been valued previously, to Rs. 1,200, the value stated in the assessment. Notice of this assessment was duly published on the 28th of July, 1898, and thereupon Mr. Goodall, the plaintiff, appealed against the assessment to the Board. That appeal was rejected. Subsequently, on the 23rd of August, 1898, Mr. Keatinge, the Secretary of the Board, applied by letter to Mr. Goodall for payment of the sum of Rs. 60-12-0, which he claimed as house tax due for the year 1898-99, in the letter inaccurately stated to be 1897-98. It is admitted by the Secretary that the sum claimed was in excess of the sum due by twelve annas. In reply to this demand for payment Mr. Goodall wrote to the Secretary and requested him to let him know by what process of calculation he had arrived at the conclusion that Rs. 60-12-0 represented the tax due by him. In reply to this letter the Secretary wrote to say that "the amount of Rs. 60-12-0 represented $\frac{1}{10}$ allowed to the tenant at 3 per cent. for furniture only and on the balance at $\frac{1}{6}$ at $4\frac{1}{2}$ per cent. to the owner." This has reference to some abatement which is allowed for furniture, but it is not altogether intelligible, and has not been fully explained to us. Nothing turns upon it. Mr. Goodall shortly afterwards sent a cheque for a sum of Rs. 47-8-0 in satisfaction of the claim of the Board against him in respect of the house tax. The Board did not accept the amount so paid in full satisfaction, but sent a receipt for it as in part payment. To this Goodall objected, expressly informing the Board by letter that if the cheque was kept, he would consider that the Board had accepted the amount in full payment of the claim against him. There were two courses open to the Board on receipt of this cheque, namely, either to accept it on the terms on which it was offered in full satisfaction of the claim against the plaintiff, or to return it. They adopted neither course. They kept the cheque and cashed it. But they did not absolve Mr. Goodall from liability in respect of the balance said to be due from him, for we find that on the 21st December, 1898, a peremptory notice was sent to Mr. Goodall informing him that unless the balance of the bill was paid within seven days from date, a warrant of distress would be issued. Mr. Goodall was surprised at the receipt of this

1904

MUNICIPAL BOARD OF MUSSOORIE v. H. B. GOODALL.

notice, and he at once replied to the Secretary of the Board and pointed out the illegality of the act which they were contemplating, and cautioned them very plainly that, whilst he would offer no opposition to the distraint, he would claim heavy damages against the Board if they levied any distress upon his property. It appears that Mr. Goodall made a re-calculation of the amount due by him, and found that the sum which he had paid was deficient by Rs. 2-8-0, and this sum he sent to the Board, and it was accepted by them. Shortly afterwards, namely, on the 21st of March, 1899, a warrant was obtained from a Magistrate according to the provisions of section 46 of Act No. XV of 1883. In granting this warrant the Magistrate acted in a purely ministerial capacity, *vide M. J. Powell* v. *The Municipal Board of Mussoorie* (1). This warrant was issued for the sum of Rs. 21-14-9, which was obviously in excess of the balance said to be due when the first demand for payment was made. The sum actually due according to the notice given to the plaintiff was only Rs. 10. But it appears that the Secretary on examining the accounts of the plaintiff found that some arrears were due, and he added those arrears to the claim in respect of the tax for 1898-99, and so the warrant for the larger sum issued. A seizure was made and some furniture of the plaintiff was sold, and the amount mentioned in the warrant was realized.

The present suit for damages for alleged illegal distress was instituted on the 15th of February, 1900. The learned District Judge came to the conclusion upon the evidence that the distress was illegal and that the Board were clearly responsible for it, and gave a decree for the sum of Rs. 500 damages. He found that the warrant had been obtained by misrepresentation and maliciously and not under a *bonâ fide* belief that the amount claimed was really due. In the course of his judgment he says that the defendants entirely failed to show that the plaintiff was indebted to them, that they had also failed to show that they had passed any resolution that a warrant should be issued, and that their Secretary took out a warrant illegally and without any justification. Upon these findings he came to the

(1) (1899) I. L. R., 22 All., 128.

conclusion that in point of law the Board were responsible for the acts of their Secretary.

Now it was admitted by the learned Government Advocate, who has presented the case on behalf of the appellants with his usual clearness and force, that the issue of the warrant of distress was unjustifiable, inasmuch as the plaintiff had paid to the Board all that he considered due to them under the circumstances which we have described, and the Board had accepted the sum so paid. This is clearly correct, and it has been properly admitted that the issue of the warrant was illegal and indefensible. He, however, rests the success of the appeal upon two points: (1) that the suit is barred by limitation, and (2) that the Municipal Board are not responsible for acts of their Secretary which were found by the Court below to have been malicious acts on his part.

We shall take the question of limitation first. The contention is that article 2 of schedule II of the Indian Limitation Act, No. XV of 1877, is the article applicable to this case. That article provides a period of limitation for a suit for compensation for the doing or omitting to do an act in pursuance of any enactment in force for the time being in British India. The period provided by that article is 90 days from the time when the act or omission takes place. There appears to be little doubt but that an act such as the issuing of the distress warrant in the present case would fall within the wide and general terms of this article. In fact it is difficult to see what act or omission done in pursuance of any enactment would not come within its terms. We find, however, that article 28 expressly provides a period of limitation for the case of illegal distress. It prescribes a period of one year for a suit "for compensation for an illegal, irregular, or excessive distress." Now if this is the article which governs the present case, the suit, having been brought on the 15th of February, 1900, was clearly within time. If, on the other hand, article 2 be applicable, the suit is barred. We have no hesitation whatever in holding that where the Statute of limitation by an express article specifically provides a period of limitation for a suit in respect of an illegal distress, that article must be accepted as the

1904

MUNICIPAL BOARD OF MUSSOORIE v. H. B. GOODALL.

governing article in such a case. The fact that another article framed in general terms, such as article 2, is wide enough to embrace a suit for compensation for illegal distress cannot, we think, be allowed to affect the operation of the article which was expressly framed to meet the case of such a suit. If a suit like the present is governed by article 2, then it follows that article 28 is not merely redundant but is also inconsistent with article 2. We think that the contention of the appellant in this case cannot be supported, and we hold with the learned District Judge that the suit was not barred.

The other ground of appeal is that the Municipality are not responsible for the distress made in this case. Reliance is placed upon the finding of the District Judge that the warrant was obtained by misrepresentation and maliciously *by the Secretary* of the Board. We have carefully read the evidence which was adduced before the lower Court, and we are unable to find anything to justify this finding. Mr. Goodall himself does not allege that there was any malice or spite on the part of the Secretary. On the contrary, he seems to think that it was the Members of the Board who acted maliciously. He says:—"the reason why I think the *defendants* acted maliciously was that they attached much more property than was necessary to satisfy their demand and they never gave me any excess which they may have collected; and there was no necessity to go into my house to attach the property as there were many things outside the house which might have been attached." Again he says, referring to a letter which he had published in the *Mofussilite* newspaper of Mussoorie:—"In consequence of my having written this letter (exhibit 13), which is a cutting from the *Mofussilite* newspaper of Mussoorie, Mr. Streatfield, late Superintendent of the Dun and Chairman of the Municipality, took offence, and I believe that that was the reason of all the malicious proceedings against me." There is nothing in the evidence of Mr. Goodall which leads one to suppose that he suspected that the Secretary was actuated by any improper motive in applying for the warrant of distress and in distraining his goods. Mr. Keatinge, the Secretary, was examined, and he says that in the proceedings against the plaintiff he acted under

the orders of Mr. Streatfield. He says:—"the order of Mr. Streatfield, dated 19th December, directed me to take out a distress warrant for the balance. The balance was Rs. 12-8-0." Then he explains how it came that he obtained a warrant for the sum of Rs. 21-14-9, showing that he examined the accounts of the plaintiff from the year 1894, and that he found that the amount due for arrears and also for the tax of 1898-99 was Rs. 21-14-9, and that accordingly he applied for a warrant for that amount. Now this evidence discloses no spite or ill-feeling on the part of the Secretary: it shows that the Secretary in the *bonâ fide* execution of his duty examined the accounts of the plaintiff carefully and applied for a warrant for the sum which, in his opinion, was justly due. There is nothing which discloses any bias on his part or any unfair or unreasonable conduct towards the plaintiff. We may observe that the warrant which was obtained for Rs. 21-14-9 was not executed, but another warrant was obtained for the sum of Rs. 19-6-9, credit being given for the sum of Rs. 2-8-0 which had been paid later on, as we have mentioned, by the plaintiff. Now it is apparent that the warrant in question was obtained by the Secretary in the ordinary course of his employment acting in the interests of the Board. It is also admitted that the Board adopted his act, and received the amount realized from the sale of the plaintiff's property. This being so, it seems to us idle to contend, as has been contended, that by reason of the fact that there was no special resolution of the Board authorizing the Secretary to obtain a warrant the Board was therefore absolved from responsibility. It is abundantly clear that everything which was done by Mr. Keatinge in this transaction was done by him in his capacity as Secretary of the Board and for the benefit of the Board. It is well settled law that every principal is civilly liable for every intentional wrong committed by an agent in the ordinary course of his employment and for the benefit of the principal, even though the principal did not authorize it and even if he had expressly forbidden it. So here we find nothing to relieve the Board of the Mussoorie Municipality from liability for the admittedly wrongful and illegal act of distraining the plaintiff's goods for a debt which had no existence. A case somewhat similar to the

1904

MUNICIPAL BOARD OF MUSSOORIE v. H. B. GOODALL.

present is that of *Smith* v. *Birmingham and Staffordshire Gas Light Company* (1). In that case a person of the name of Lumley on behalf of the defendant company seized and sold some articles belonging to one Smith for money due to the company for gas. Lumley had no authority under seal to carry out the distraint. It was held notwithstanding that the corporation was liable in tort for his tortious act, even though he had not been appointed by seal, the distress being professedly committed under a Statute for a debt due to the corporation. It was also held in that case that the jury might infer the agency from an adoption of the act of Lumley by the corporation as from their having received the proceeds of the seizure. If authority were necessary, this authority appears to support the view which we entertained throughout the hearing of the arguments of this appeal. For these reasons we hold that the appeal must fail. We therefore dismiss it with costs.

Appeal dismissed.

1904
March 10.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

KHWAJA MUHAMMAD KHAN (PLAINTIFF) *v.* MUHAMMAD IBRAHIM AND ANOTHER (DEFENDANTS).*

Act No. IV of 1882 *(Transfer of Property Act), section* 41—*Mortgage by ostensible owner.*

Where certain mortgagees took a mortgage from a person who was in possession of the property mortgaged, was recorded as owner, and held the title deeds of the property, it was *held* that there was nothing in the transaction to put the mortgagees on inquiry as to the real title to the property, but the principle of section 41 of the Transfer of Property Act, 1882, applied, and a suit to restrain the mortgagees from selling the property in execution of a decree on their mortgage was rightly dismissed. *Ram Coomar Koondoo* v. *John and Maria McQueen* (2) followed.

THE facts of this case are as follows:—

On the 30th of July, 1892, one Khwaja Muhammad Khan purchased in the name of his son, Rustam Ali, a plot of land measuring 2 bighas 12 biswas for the sum of Rs. 600. Rustam Ali was at that time of full age. Subsequently a house was

* Second Appeal No. 155 of 1902, from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 19th of December 1901, reversing a decree of Munshi Raj Nath Prasad, Subordinate Judge of Agra, dated the 10th of September, 1901.

(1) (1834) 1 Ad. and El. 526. (2) (1872) 11 B. L. R., 52.