the revenue court to the tenant who has been dispossessed. On this narrow ground, I agree that the order of the lower appellate court was right.

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Charles Kendall and Mr. Justice Rachhpal Singh

SHIAM LAL (PLAINTIFF) *v.* ABDUL RAOOF (DEFENDANT)* 1935 *February*, 18

Limitation Act (IX of 1908), article 2—"Act alleged to be in pursuance of any enactment"—Meaning and scope—Act in good faith, though in excess of powers—Suit for compensation for alleged false report by a constable out of grudge.

Article 2 of the Limitation Act is wide enough to cover the case of a person who has done an act in good faith and with a *bona fide* belief that he had power to do so in pursuance of an enactment, although as a matter of fact he had no such power or the act was in excess of his powers. But where a person acts dishonestly and in bad faith, knowing that he had no right to do that act under any enactment and merely pretending to act under an enactment, he can not bring himself within the scope of article 2.

Mr. *B. Malik*, for the appellant.

Mr. *Muhammad Ismail*, for the respondent.

SULAIMAN, C.J., KENDALL and RACHHPAL SINGH, JJ.:—This is a plaintiff's appeal arising out of a suit for damages on the ground that the defendant, a police constable, who cherished a grudge against the plaintiff, made a false report on the 28th of August, 1927, at the police station stating that the plaintiff was leading a riotous mob. It was not till the 15th of March, 1928, that this first information report was produced in court when the plaintiff became aware of its existence. The suit was filed on the 28th of August, 1928. The defendant, in addition to denying the allegation that there was any malice or bad faith on the part of the

*Second Appeal No. 1149 of 1930, from a decree of P. C. Plowden, District Judge of Bareilly, dated the 16th of April, 1930, confirming a decree of F. Rustamji, Additional Subordinate Judge of Bareilly, dated the 29th of July, 1929.

1935

SHIAM LAL v. ABDUL RAOOF

defendant and denying that the report was false, further pleaded that the claim was barred by limitation. Both the courts below have applied article 2 of the Limitation Act and dismissed the claim, without going into the question of whether the defendant had, in fact, acted in good faith or not. The case came up in second appeal before a learned Judge of this Court, who referred it to a Bench of two Judges which then referred this case to a Full Bench.

In England where the question of interpretation of a similar statute containing the words "act done in pursuance of an enactment" has arisen, the view has been invariably expressed that the defendant cannot seek the protection of the enactment unless he shows that he acted in good faith. In *Selmes* v. *Judge* (1) LORD BLACKBURN remarked: "It has long been decided that such a provision as that contained in this section is intended to protect persons from the consequences of committing illegal acts, which are intended to be done under the authority of an Act of Parliament, but which, by some mistake, are not justified by its terms, and cannot be defended by its provisions . . . 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." We may also refer to Halsbury's Laws of England, Volume 23, page 344, paragraph 695, where rulings on the interpretation of the corresponding section of the Public Authorities Protection Act (1893) are mentioned. See also *Smith* v. *Shaw* (2).

In *Spooner* v. *Juddow* (3) their Lordships of the Privy Council observed: "Our books actually swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established than that if parties *bona fide* and not absurdly believe that they are acting in pursuance of

(1) (1871) 6 Q.B.D., 724 (727). (2) (1829) 109 E.R., 453 (456).
(3) (1850) 4 Moo. I.A., 353 (379).

statutes, and according to law, they are entitled to the special protection which the legislature intended for them, although they have done an illegal act."

In the Indian Limitation Act of 1871, article 2 ran as follows: "For doing, or for omitting to do, an act in pursuance of any enactment in force for the time being in British India." Taking the article in its strict literal sense, it might well have been contended that the statute would have no application unless the act was done in strict pursuance of the enactment in force, and accordingly where the action was in excess of the power conferred by the statute the article of the Limitation Act would have no application. But the view expressed consistently was that even if the action is in excess of the powers conferred by the statute, there would be the protection, provided the action was in good faith.

For the first time in 1877, the language of the article was slightly changed and ran as follows: "For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India." The words "alleged to be" were added, which had not appeared in the previous enactment, and yet the courts did not consider that the introduction of these new words had made any substantial change in the law as it had stood before. In the case of *Ganesh Dass* v. *Elliott* (1) it was laid down that the words "alleged to be in pursuance of any enactment" must be reasonably construed, and that the person who seeks to take advantage of the shorter period of limitation must show that he had reasonable ground for justifying his action under the particular enactment on which he then relied and not arbitrarily asserted or thought so, i.e. he must, in short, have assumed to act in the honest exercise of a supposed statutory power. The same view was re-affirmed in the case of *Narpat Rai* v. *Sirdar Kirpal Singh* (2) and it was laid down that to bring a suit under the above article it is requisite for

(1) Punj. Rec. 1881, p. 305. (2) Punj. Rec. 1886, p. 138.

1935

SHIAM LAL v. ABDUL RAOOF

the defendant to show that he acted with ordinary care and intelligence and honestly believed his act to be in pursuance of an enactment for the time being in force. The same view was also assumed in the case of *Jai Ram* v. *Gurmukh Singh* (1). In the Bombay High Court also a Division Bench of that court in the case of *Ranchordas Moorarji* v. *Municipal Commissioner for Bombay* (2), relying on the English authorities already quoted, held that where the person seeking the protection of the Act cannot claim that his conduct has any relation to the "execution of the Act" as he knowingly and intentionally acts in contravention of its provisions, he would not be entitled to the protection as he did not act *bona fide*.

In the case of *Municipal Board of Mussoorie* v. *Goodall* (3) article 2 was not applied by the High Court, but article 28 was applied, because it was considered that there was a special provision applicable to illegal issue of warrant of distress whereas article 2 would be a general article only.

Our attention has not been drawn to any ruling in India between 1877 and 1908 in which it was ever held that the defendant is entitled to the protection of article 2 even if he acted dishonestly and in bad faith, knowing that he had no right to act under any enactment. In 1908 the new Limitation Act was enacted and article 2 was reproduced exactly as it was in the Act of 1877. There is accordingly a fair presumption that the legislature accepted the interpretation put by the courts on the language of article 2, as it had stood in the Act of 1877.

Even under the new Act there is plenty of authority for the view that where a person acts dishonestly, knowing that he has no right to proceed under any enactment, he cannot bring himself within the scope of article 2. See *Wali-ullah* v. *Raj Bahadur* (4), *Richard*

(1) Punj. Rec. 1886, p. 251.
(2) (1901) I.L.R., 25 Bom., 387.
(3) (1904) I.L.R., 26 All., 482.
(4) (1913) 21 Indian Cases, 426.

Watson v. *Municipal Corporation of Simla* (1) and *Dhondu Dagdu* v. *Secretary of State for India* (2).

The learned advocate for the respondent relies on the case of *Mukat Lal* v. *Gopal Sarup* (3). No doubt in that case the Bench expressed the opinion that for the purposes of article 2 it was not absolutely necessary that the defendant in doing or omitting to do the act should *bona fide* believe that he was acting correctly and in accordance with law. But the actual facts of that case were such that this general observation was not actually called for. In that case an amin, who had been ordered to sell a certain property at auction, was proceeding to sell it in accordance with the provisions of the Code of Civil Procedure. The plaintiff's case was that he tendered the amount of the decree, but the amin refused to take the money and proceeded to sell the property. The complaint, therefore, was that the defendant had omitted to perform a duty which had been imposed upon him by the Code of Civil Procedure, while he was acting in pursuance of that Code. It was in these circumstances that the Bench held that however improperly the defendant might have acted in refusing to take the money, the suit was governed by article 2 of the Limitation Act, and no question of the good faith of the defendant arose. The case, therefore, is distinguishable on the ground that there the plaintiff had admitted that the defendant was purporting to proceed under the Code of Civil Procedure, though he had omitted to comply with one of its provisions making it incumbent upon him to accept the money when tendered.

The case of *Municipal Board of Benares* v. *Bihari Lal* (4) does not directly decide this point. Article 2 of the Limitation Act was actually not applied to that suit which was held to be governed by section 326(3) of the Municipalities Act.

(1) (1900) 2 Indian Cases, 819.
(2) (1912) I.L.R., 37 Bom., 101.
(3) (1918) I.L.R., 41 All., 219.
(4) (1926) I.L.R., 48 All., 560.

1935

SHIAM LAL v. ABDUL RAOOF

In the case of *Shariful Hasan* v. *Lachmi Narain* (1) article 2 of the Limitation Act was applied to a case where the District Judge had found that the defendant had a *bona fide* belief that he had a legal right to act, and had also found that the defendant had in fact such legal authority. There the Sub-Inspector, who apparently had cherished some malice against the plaintiff, arrested him on a complaint made by a person who was present on the spot and was prepared to identify the plaintiff. Having arrested him he also handcuffed him and took him to the police station. The District Judge had come to the conclusion that the Sub-Inspector had not exceeded his powers and had authority both to arrest the plaintiff and also to handcuff him. It was in these circumstances that the Bench held that the mere fact that the Sub-Inspector had a previous malice against the plaintiff would not deprive him of the protection of article 2 of the Limitation Act, because he obviously acted under section 54 of the Criminal Procedure Code, and was justified in acting under that section. In the judgment emphasis was laid on the fact that there was a finding of the District Judge that the defendant had a *bona fide* belief that he had the legal right to act and that he had such legal authority. This case is, therefore, no authority for the proposition that even where the facts are false to the knowledge of the defendant, he can seek shelter behind the provisions of article 2.

The language of the article is no doubt very unhappy, and the use of the ambiguous words "alleged to be" causes considerable difficulty. On the one hand, the learned advocate for the plaintiff contends before us that these words are a mere superfluity and have no special significance, and accordingly much attention has not been paid to those words in the various judgments delivered by the Indian courts. He urges that these words must mean doing or omitting to do an act as alleged by the plaintiff. On the other hand, the learned

(1) [1931] A.L.J., 858.

advocate for the respondent contends that these words must mean "alleged" at the time of the commission or the omission of the act, i.e. alleged by the defendant. That the words do not mean alleged by the plaintiff in the plaint or alleged by the defendant in the written statement is clear from the decision of their Lordships of the Privy Council in the case of *Punjab Cotton Press Co.* v. *Secretary of State* (1), where the canal authorities had cut the bank of a canal to avoid accident to an adjoining railway and not to the canal itself, and in consequence thereof the plaintiffs' adjacent mills had been damaged and it was held by their Lordships of the Privy Council that article 2 was not applicable, as the act alleged was not done in pursuance of any enactment. Their Lordships pointed out that it was quite clear that, upon the plaintiffs' showing, that was an act which the defendants performed at their own hands, and which, so far as the statute was concerned, they did not seem on the statement contained in the plaint in a position to justify. Their Lordships pointed out that article 2 should not be applied as if it were proved against the averment of the plaintiffs, and that there should be an inquiry as to whether the action was done for any purpose of protecting the canal or, as alleged by the plaintiffs, only for the purpose of protecting the railway and letting the water away. The case was accordingly remanded to the Lahore High Court for a further investigation.

The question is certainly not free from difficulty, and we are alive to the danger of persons, who profess to act in the exercise of powers conferred upon them by enactments, being harassed by frivolous suits and called upon to establish their good faith in some cases. At the same time it would be unfair to concede exemption to persons who, knowing that there is no ground for any such action, invent a false story and profess to act under some enactment by abusing its provisions. It

(1) A.I.R., 1927 P.C., 72.

1935

SHIAM LAL v. ABDUL RAOOF

seems to us that although the words chosen by the legislature are not happy, their introduction was intended to obviate the difficulty of the article being interpreted too strictly. Taking it literally, it was not wide enough to cover the case of a person who in good faith had acted in pursuance of an enactment, where it was found later on that he had exceeded his powers. To protect such person it was necessary to widen the scope of the article and give him protection where, although the power was exceeded, he still acted in good faith and honestly believed that he was acting in pursuance of the enactment. But the additional words should not be interpreted as implying that the legislature has shortened the period of limitation in favour of persons who, knowing the falsity of the facts, did an act or omitted to do an act in order to harm another person As in England, the expression "in pursuance of any enactment" must be interpreted as meaning acting in conformity with an enactment and not merely pretending to act or acting under colour of such an enactment. Where a person honestly believes that he is acting under some enactment he is protected. But where a person merely pretends that he was so acting and knows that he should not act under that enactment, he cannot be said to be acting in pursuance of any such enactment. No doubt under section 44 of the Criminal Procedure Code, it is the duty of every person to make a report to the police of the commission of certain specified offences, but there is no such duty cast upon a citizen, much less on a police officer, to make such a report when no facts exist. He would certainly not be acting in pursuance of section 44 of the Criminal Procedure Code, if he concocts a purely false story and then makes a report of such a false story, knowing it to be false. It would, therefore, follow that where a defendant has done an act or omitted to do an act, knowing that he had no ground whatsoever for so acting or omitting to do an act, he does not come within the purview of article 2.

It is only defendants who have acted honestly, although they might have exceeded the actual power conferred upon them by an enactment, who would be protected. Of course, where it is established that the act done was in strict accordance with an enactment, there would be an obvious protection. But even where the power was exceeded, there would be protection in cases of good faith and *bona fide* belief. We are, therefore, of opinion that although the language of the section is unhappy, there is no good ground for departing from the view which had been expressed under the old Act and in support of which there is a preponderance of authority in India.

If the defendant were to satisfy the court that at the time when he made the report he acted honestly on some information received, he would be protected, even though the report might turn out to be absolutely false but not so to the knowledge of the defendant.

We accordingly allow this appeal and setting aside the decrees of the courts below send the case back to the trial court through the lower appellate court for disposal according to law.

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Iqbal Ahmad

ISHWAR DAYAL (PLAINTIFF) *v.* AMBA PRASAD AND OTHERS (DEFENDANTS)*

1935 *February*, 18

Court Fees Act (VII of 1870), section 7(iv)(c); schedule II, article 17(iii)—Declaratory suit—"Consequential relief"—Whether two declarations, or a declaration with a consequential relief—Suit by son for a declaration that a mortgage of family property made by the father was unenforceable ana that the property was not saleable in execution of the mortgage decree.

A suit was brought by a Hindu son for a declaration that a certain mortgage of the family property made by the father was unenforceable, on the ground of want of legal necessity,

*First Appeal No. 139 of 1933, from a decree of Kedar Nath Mehra, Subordinate Judge of Bulandshahr, dated the 14th of February, 1933.