

APPELLATE CIVIL.

Before Mr. Justice Carr.

BALTHAZAR & SONS, LTD.

v.

COMMISSIONERS FOR THE PORT OF
RANGOON.*

1928

Feb. 27.

Rangoon Port Act (Burma Act IV of 1905), ss. 68, 101—Liability “for anything purporting to be done under the Act,” meaning of—Claim for loss of goods—Notice and suit within fixed period whether essential.

Held, that where a person claims damages from the Rangoon Port Commissioners for loss of goods, he must give a month's notice in writing and file his suit within six months in accordance with the provisions of s. 101 of the Rangoon Port Act. The Port Commissioners were required under the Act to land and ship goods, so that an omission to do something that ought to be done in order to effect the complete performance of a duty imposed upon the public body under the Act amounts to an act done or intended to be done within the meaning of s. 101 requiring notice of action, and fixing the period of limitation for a suit.

Allan v. Chairman of the District Board of Manblum, 5 Patna L.J. 359; *Wilson v. The Mayor and Corporation of Halifax*, (1868) 3 Exch. 114—referred to.

Doctor for the applicant.

Clifton for the respondents.

CARR, J.—The plaintiff-petitioner was the consignee of five cases of goods which were shipped to him at Rangoon. He received delivery from the respondents, the Commissioners for the Port of Rangoon, of only four cases. He has sued for damages for the loss of the fifth case. As against the respondent his suit has been dismissed on the ground that the provisions of section 101 of the Rangoon Port Act, 1905, have not been complied with. It is admitted that the notice required by that section has not been given and that the suit was not commenced within the period prescribed by it and that if the section applies the suit was rightly dismissed.

The contention is that the section does not apply. The section provides that no suit shall be brought against the Commissioners for the Port "for anything purporting to be done under this Act" except after due notice and within six months after the accrual of the right to sue. It is claimed that the loss or destruction of goods is not anything "purporting to be done under the Act."

Section 68 of the Act is relevant. It provides that the Commissioners "shall by their servants land and ship all goods from and in" all vessels coming into the port. It thus imposes a duty on the Commissioners and essentially the case for the petitioner is that they have failed to carry out their duty in its entirety.

In my view section 101 clearly applies in this case. In *Wilson v. The Mayor and Corporation of Halifax* (1), the Corporation was sued for damages for failure to fence a public footpath. There was a provision in the relevant Act that no suit should be brought "for anything done or intended to be done under the authority of the Act" until after one month's notice. It was held that this provision applied to the suit. In his judgment Chief Judge Baron Kelly said ". . . it is now settled by authority that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament . . . amounts to an act done or intended to be done within the meaning of these clauses, requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament."

In *Allan Mathewson v. Chairman of the District Board of Manbhum* (2), it was held that similar

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(1) (1868) 3 Exch. 114 at p. 119-20.

(2) 5 Patna Law Journal 359.

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terms in the Bengal Local Self-Government Act also include omissions.

No authority to the contrary has been cited. The interpretation adopted in these cases is in my opinion the only one reasonably possible and in my opinion the suit against the respondent was rightly dismissed.

This application is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

K. S. E. MOHAMED CASSIM AND OTHERS

v.

JAMILA BEE BEE.

1928

Feb. 28.

Limitation Act (IX of 1908), Sch. I, Art. 182, cl. 5 and Explanation 1—Decree against judgment-debtor alone is not decree passed against him and his surety jointly—Applications for execution against judgment-debtor alone does not save limitation against surety.

Held that where a surety has signed a bond for the due satisfaction, in whole or in part, of a decree passed or to be passed against a person, the decree cannot be said to be passed jointly against the judgment-debtor and his surety, so that applications for execution under cl. 5 of Art. 182 of the Limitation Act against the judgment-debtor alone, which would save limitation against the judgment-debtor, would not avail as against the surety if execution is sought against him for the first time after three years from the date of the decree.

Narayan, v. Timmaya, 31 Bom. 50—*followed*.

Leach for the appellants.

Chari for the respondent.

The 1st appellant and one Gani whose respresentatives are the rest of the appellants signed a bond in an administration suit for the sum of Rs. 15,000

* Civil First Appeal No. 231 of 1927 against the order of the District Court of Hanthawaddy in Civil Execution No. 66 of 1926.