

case is vested in certain British officers, each superintending a group of states. As Dr. Hunter in the Imperial Gazetteer Vol. 5, p. 308, says: "The Political Agent controls the whole. As a rule, no appeal lies from the decision of a chief, but, on presumption of maladministration, his proceedings may be called for and reviewed."

We think the interpretation put upon the words "ruling chief" by the First Class Subordinate Judge was correct, and we confirm his order with costs.

Decree confirmed.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and
Mr. Justice Nanábhái Haridás.*

RANCHHOD VARAJBHAI, PLAINTIFF, *v.* THE MUNICIPALITY OF
DA'KOR, DEFENDANT.*

May 8.

*Notice—Municipality—Nature of action—Municipal Act (Bombay) VI of 1873,
Sec. 86.*

A person suing a municipality constituted by Bombay Act VI of 1873 for the refund of money illegally levied from him as house-tax is bound to serve a previous notice on the said municipality as required by section 86 of the Act.

The object of that provision would appear to be to give municipal bodies or officers, who in the *bona-fide* discharge of their public duties may have committed illegal acts not justified by their powers, an opportunity of tendering sufficient amends for such acts before being harrassed with an action.

Section 86 of the Act is not confined to an action of damages, but is applicable to every claim of a pecuniary character arising out of the acts of municipal bodies or officers, who in the *bona-fide* discharge of their public duties may have committed illegalities not justified by their powers.

THIS was a reference, under section 617 of the Code of Civil Procedure (XIV of 1882), made by Ráv Sáheb Ranehhorlál K. Desái, Subordinate Judge (Second Class) of Umreth, who stated the case as follows:—

"The question is, whether a plaintiff suing a municipality for the refund of the money levied from him as the house-tax for his house, on the ground that the said tax was illegally imposed,

* Civil Reference, No. 11 of 1884.

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is bound to serve a previous notice on the said municipality, as required by section 86 of Bombay Act VI of 1873?

"The facts of this case are:—The plaintiff, a house-holder of the town of Dákor, has brought the present suit to recover Rs. 10-8-0 from the municipality of that town, alleging that the said amount was levied from him, notwithstanding his protest, by the secretary of the said municipality as the house-tax for his house for the years 1880-81, 1881-82 and 1882-83, and that the said tax was illegally imposed and levied. He, the plaintiff, served a notice on the said municipality on the 27th December, 1883, as required by section 86 of the District Municipal Act, 1873, asking for the refund of the amount levied from him as the house-tax for his house, and intimating his intention to bring a suit for the refund of the same if it is not refunded; but without waiting for the expiration of one month since after the date of the service of the said notice, as required by section 86 of the District Municipal Act, 1873, he has brought the present suit on the 16th January, 1884; and though the summons of this suit is proved to have been duly served on the said municipality on the 26th idem, they have not appeared to put in their defence. The circumstances under which the house-tax in the town of Dákor was imposed, have been fully set forth in the report of the case of *Joshi Kálidás Sávakráam v. The Dákor Town Municipality*⁽¹⁾; and the Honourable the High Court having in that case finally decided that the said tax was illegally imposed, the illegality of the imposition and the levying of the said tax is not now open to question; but the plaintiff having hastened to this Court before the expiration of one month since after the date of the service of the notice under section 86 of the Bombay District Municipal Act, 1873, which requires a person intending to bring a suit against the municipality, or any of their officers, or any person acting under their direction, for anything done or intended to be done under the said Act, to wait till the expiration of at least one month next after the service of the said notice for bringing his suit, a question arises, whether the plaintiff's present suit can be held premature, and, as such, not maintainable? And the

(1) I. L. R., 7 Bom., 399.

solution of this question depends upon the decision of the main question, whether the plaintiff was bound to serve a notice on the municipality prior to the institution of this suit, as required by the said section 86 of the District Municipal Act, 1873?"

The Subordinate Judge referred to the following cases:—*Joshi Kálidás v. The Dákor Town Municipality*⁽¹⁾; *Joharmal v. The Municipality of Ahmednagar*⁽²⁾; *Mayandi v. McQuatae*⁽³⁾; *Manni Kasanrudhun v. Crooke*⁽⁴⁾.

There was no appearance on behalf of either party in the High Court.

The judgment of this Court was delivered by

SARGENT, C. J.—We think that the municipality were entitled to notice of plaintiff's suit, as provided by section 86 of the Municipal Act of 1873. The object of that provision would appear to be to give municipal bodies or officers, who, in the *boná-fide* discharge of their public duties, may have committed illegal acts not justified by their powers, an opportunity of tendering sufficient amends for such acts before being harrassed with an action. The word "damages" is not found in the clause, the language of which merely points to an act for which redress may be afforded in money. In *Sorábjí Nassarvánjí v. The Justices of Peace of Bombay*⁽⁵⁾ and *Joharmal v. The Municipality of Ahmednagar*⁽⁶⁾ the question was whether the section applied to an action of ejectment. It is true that in the former case the Chief Justice contrasts such an action with actions for monetary compensation, which he considers to be the class of actions contemplated by the section. But we do not understand him as intending to define the latter class of actions, although in one passage he uses the term "damages" as equivalent to "sufficient amends". In our opinion, the section is applicable to every claim of a pecuniary character arising out of such acts as those described above. In *Selmes v. Judge*⁽⁷⁾ the action was precisely of the same nature as the present one, *viz.*, to recover money paid

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(1) I. L. R., 7 Bom., 399.

(2) I. L. R., 6 Bom., 580.

(3) I. L. R., 2 Mad., 124.

(4) I. L. R., 2 All., 296.

(5) 12 Bom. H. C. Rep., 250.

(6) I. L. R., 6 Bom., 580.

7) L. R., 6 Q. B., at p. 727

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on account of a tax illegally made, and Blackburn and Lush, JJ., held that the defendant, a surveyor of highways, was entitled to the notice under section 109 of the Highway Act 5 and 6, William 4, c. 50, which only differs from the section under consideration in using the words "sufficient satisfaction" instead of "sufficient amends". The only question seriously discussed was, whether, under the circumstances, the defendant could be held to have made the rate under the Act. In the present case no such question can arise.

Answer accordingly.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and
 Mr. Justice Nánábhái Hariddás.*

April 24.

LAKSHMI, APPLICANT AND JUDGMENT-DEBTOR, v. KRISHNÁBHAT,
 OPPONENT AND PURCHASER.*

Immoveable property—Sale—Inadequacy of price—Material irregularity—Confirmation of sale—Code of Civil Procedure (XIV of 1882), Secs. 305, 311 and 314.

The sale of immoveable property to the highest bidder for a price which subsequently appears to be too low, is not a material irregularity in publishing or conducting the sale.

A decree-holder or a judgment-debtor cannot apply to set aside a sale on the ground of the price realized being too low.

Under section 314 of the Code of Civil Procedure (XIV of 1882) the Civil Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low.

THIS was a reference from Ráv Sáheb Vináyak Vithal Tilak, Subordinate Judge (Second Class) of Kumta, under section 617 of the Code of Civil Procedure.

The petitioner (judgment-debtor) sought to set aside the sale of certain lands sold in execution, on the ground of a material irregularity in publishing or conducting it; but the real object in making this application was to prove that the prices bid by the opponent were too low, and that the petitioner did not know

* Civil Reference, No. 16 of 1884.