1895.

BHAWÁNI-SHANKAR v. THE SURAT CITY MUNICIPALITY.

builder, and no notice could be given to her requiring her to pull down the building. Here the license given by the Municipality was good. Whatever may be the object of section 33 in requiring written notice of intention to build, with such further information as may be deemed necessary so as to ensure the safety and sanitation of the building to be erected, there is nothing in our Act limiting the power of the Municipality to alter or demolish a building which has been erected without any notice at all. It is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their powers" (*Duke of Bedford* v. *Dawson* (1)). The Municipality are not bound to order the alteration or demolition of the building erected without notice. It is a matter entirely for their own discretion : and, unless it is shown that they have been manifestly abusing their powers, the Court cannot interfere. It is possible to conceive a case in which the removal of an infinitesimally small excess building would involve the demolition of a large and expensive structure. I am not prepared to say that there may not be cases in which on the facts it would be clear that the Municipality had acted *mâla fide* and without the exercise of due discretion. But the present suit has not been brought on such allegations ; and I think, therefore, that it was rightly dismissed.

Decree confirmed.

(1) L. R., 20 Eq., 353.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. October 16.

MADAR SA'HEB AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. SANNABAWA' GUJRANSHA'H (ORIGINAL PLAINTIFF), RESPONDENT.*

Landlord and tenant—Lease—Lessee's covenant not to alienate—Alienation contrary to terms of lease—Absence of any clause as to re-entry—Ejectment—Forfeiture.

A clause in a lease whereby the lessee covenanted not to alienate, unaccompanied by any clause for re-entry upon breach of the covenant, *held* to be a covenant merely and not a condition, and a suit for ejectment brought by the lessor was dismissed.

Náráyan v. *Ali Saiba*(1) followed.

* Second Appeal, No. 666 of 1894.

(1) I. L. R., 18 Bom., 603.

1895.

MADAR SA'HEB v. SANNABA'WA'.

SECOND appeal from the decision of J. L. Johnston, District Judge of Dhárwár, in Appeal No. 147 of 1893.

One Madar Sáheb (defendant No. 1) obtained from the plaintiff a certain piece of land on lease for building purposes and passed to him a rent-note agreeing not to sell or mortgage to any person the building to be erected thereon, and that such sale or mortgage, if made, should be invalid; the document, however, contained no clause giving the plaintiff the right of re-entry upon such alienation being made.

Madar Sáheb built a house on the land and sold it to three persons (defendants Nos. 2, 3 and 4) in violation of his agreement.

Plaintiff brought this suit against Madar Sáheb and his alienees to recover possession of the land, alleging that the terms of the lease had been violated.

The defendants denied that the lease contained any such agreement as was relied on by the plaintiff; they also pleaded that Madar Sáheb (defendant No. 1) was a perpetual tenant, paying an annual rent of Rs. 2 to the plaintiff; that defendants Nos. 2, 3 and 4 were willing to pay that rent; and that the condition, if it did exist, was of a penal character, and as such should be relieved against.

The Assistant Judge of Dhárwár dismissed the suit, holding on the issues as follows:—(1) that the defendant No. 1 took the ground as a permanent tenant; (2) that the condition relied upon by the plaintiff was not a penal one, but it was inoperative and, therefore, not binding on the defendant, and, therefore, he should be relieved from it; (3) that the plaintiff was not entitled to recover possession of the land. He, therefore, dismissed the suit.

In appeal the District Judge of Dhárwár reversed the decision of the Assistant Judge, holding (1) that the defendant No. 1 took the land under the agreement relied on by the plaintiff, and his tenancy was liable to determine on his breach of that agreement; (2) that the condition was not of a penal nature and should not be relieved from; (3) plaintiff was entitled to possession of the site and to the house also on valuation, if not removed by the defendants within three months' time.

Defendants preferred a second appeal to the High Court.

Náráyan Ganesh Chandávarkar, for the appellants.

Respondent in person.

The following authorities were cited during the argument: —*Náráyan* v. *Ali Saiba*(1); *Shaw* v. *Coffin*(2); *Crawley* v. *Price*(3); *Doe* v. *Watt*(4); *Mohaná* v. *Shekh Sádodin*(5); Transfer of Property Act, 1882, section 111; Woodfall's Landlord and Tenant, 325; *Náráyana Sánabhoga* v. *Náráyana Náyak*(6); *Vyankatráyá* v. *Shivrámbhat*(7); *Tamáya* v. *Timápa Ganpáya*(8).

JARDINE, J.:—The question to be decided is whether the promise made by the lessee not to alienate is a covenant merely to which the principle on which *Náráyan* v. *Ali Saiba*(1) was decided applies, or whether it is a condition which dispenses with express right of re-entry in the event of breach. We treat the clause as a covenant only, following *Shaw* v. *Coffin*(2), which was approved in *Crawley* v. *Price*(3) and distinguished from *Doe* v. *Watt*(4), where well-known words of condition are used. See Coke on Littleton, section 325.

We must, therefore, hold that a suit for ejectment does not lie, whatever other remedy there may be—*Mohaná* v. *Shekh Sádodin*(5). We, therefore, reverse the decree of the District Judge and restore the original decree; but order each party to pay his own costs in the appeals.

Decree reversed.

(1) I. L. R., 18 Bom., 603.
(2) 14 C. B., N. S., 372.
(3) L. R., 10 Q. B., 302.
(4) 8 B. & C., 308.
(5) 7 Bom. H. C. R., 69 A. C.
(6) I. L. R., 6 Mad., 327.
(7) I. L. R., 7 Bom., 256.
(8) I. L. R., 7 Bom., 262.