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for the time being, for the seats they occupy, the theatre is none the less a place of public amusement and resort. In the present case, the services of the police were specially indented for by the appellant as secretary of the club, and the club had no power to limit their functions to the place outside the enclosure. It is true special arrangements were made by the club to provide for the services of soldiers who are called military police in the correspondence, but that circumstance did not lessen the responsibility of the civil police authorities to keep order and prevent breaches of the law. It was admitted that, if an occasion had arisen for the services of the civil police, they would have had a right to enter within the enclosure itself. If they could do so after disorder had broken out, it follows as a corollary that they had a right to remain within the enclosure to prevent such disorder or breach of law in anticipation. The fact appears to be that the stewards of the Turf Club admitted in the previous correspondence between the Secretary and the District Police Superintendent that Captain Ross had to a certain extent exceeded his authority in expelling the complainant from the enclosure in the way he did. The dispute would never have come before the Courts had Captain Ross expressed his regret more fully. There was a technical offence committed, and the Magistrate's decision of the point of law involved appears to me to be correct.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Fulton.

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BHOJABHAI ALLARAKHIA AND ANOTHER, PLAINTIFFS, *v.* HAYEM SAMUEL, DEFENDANT.*

Principal and agent—Liability of agent for rent—Honorary secretary to a school maintained by a foreign society—Contract Act (IX of 1872), *Sec.* 230—*Ejectment—Notice to quit—Service of notice—Transfer of Property Act* (*IV of* 1882), *Sec.* 106.

The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in

* Suit No. 69 of 1898.

question was occupied by the Beni-Israel school of Bombay which was maintained by the Anglo-Jewish Association of London, that he was honorary secretary of the school, and as such, and not in his personal capacity, had hired the house, and that he had never paid the rent or expenses of the school out of his own pocket. He contended that he was not liable to be sued personally.

Held, that the defendant was liable for the rent. There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant.

The notice to quit had been sent to the solicitors of the defendant. It was contended that this was not sufficient service under section 106 of the Transfer of Property Act (IV of 1882).

Held, that the service was sufficient.

SUIT for possession of a house and for rent.

The plaint stated that on the 8th November, 1897, the plaintiffs had purchased the house in question, the defendant being at the time a monthly tenant thereof. The defendant duly attorned to the plaintiffs.

On the 28th December, 1897, the plaintiffs served a notice on the defendant to vacate on or before the 1st February, 1898, but the defendant disregarded the notice and continued in occupation. The plaintiffs prayed for possession and for rent at the rate of Rs. 150 per month from the 8th November up to the 31st January, 1898, and for compensation for use and occupation subsequently to that date at the rate of Rs. 200 a month.

In his written statement the defendant stated that he was the honorary secretary of the Beni-Israel School of Bombay, which occupied the house in question, and that the said school was in charge of the Anglo-Jewish Association of London, which, out of its funds, paid the rent and all the expenses of the school; that in hiring the said premises he had acted as honorary secretary and not in his personal capacity; and that he had never paid the rent or expenses of the school out of his own pocket. He submitted that he was not liable to be sued personally for the said rent.

He also alleged that the notice to quit had not been served upon him as required by section 106 of the Transfer of Property Act (IV of 1882) and that the notice was, therefore, not a legal notice, and he brought into Court Rs. 565, being the rent due at

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Rs. 150 per month which he contended was all the plaintiff could claim.

At the hearing the following issues were raised:—

(1) Whether defendant is personally liable to the plaintiffs and whether the plaintiffs have any cause of action against him personally?

(2) Whether defendant received legal notice to quit?

(3) Whether, having regard to the payment into Court, plaintiffs are entitled to any and what relief against the defendant?

Inverarity for the plaintiffs:—The defendant, if merely an agent of the London Association, is an agent of a foreign principal, and as such liable. The plaintiffs had no notice that he was merely an agent. The notice to quit was served upon his solicitors, and that is sufficient under section 106 of the Transfer of Property Act (IV of 1882).

Lowndes for defendant:—The plaintiffs had full notice that the defendant was merely an agent. The Bombay Branch of the London Association is liable and not the defendant. As to service of notice, section 106 of the Transfer of Property Act (IV of 1882) is clear.

The following authorities were cited:—As to the liability of an agent, *Dutton* v. *Marsh*[1]; *In re New Fleming Spinning and Weaving Co.*[2]; *Farhall* v. *Farhall*[3]; *Burls* v. *Smith*[4]; Storey on Agency, Sec. 285; Daly's Law of Clubs and Voluntary Associations. As to service of notice, *Papillon* v. *Brunton*[5]; *Prior* v. *Ongley*[6]; *Jogendro Chunder* v. *Dwarknath Karmakar*[7].

FULTON, J.:—On the first issue I find in the affirmative. Assuming that the former owner when he let the premises to the defendant knew that the latter was the honorary secretary and treasurer of a school committee (which is very possibly the case) still there is nothing to show that the contract was made on the personal credit of any one except the defendant. A fluctuating body like the committee of a society or school cannot contract, though the individuals composing it may do so. Here

(1) L. R., 6 Q. B., 361.
(2) I. L. R., 4 Bom., 275.
(3) L. R., 7 Ch., 123.
(4) 7 Bing., 705.
(5) 5 H. & N., 518.
(6) 10 C. B., 25.
(7) I. L. R., 15 Cal., 681.

it is not alleged that any single individual was named as having authorized the amount, and to this day we do not know who were the members of the committee in question and in what way (if at all) they signified their assent to the tenancy accepted by the defendant. *Primâ facie*, looking to the forms of receipt which the defendant accepted, I should say he contracted in his own name, but whether he did so or not, the case seems to fall under section 230 of the Contract Act, no principal being disclosed. Mr. Lowndes argued that a decision on this issue against the defendant would render precarious the position of honorary secretaries of charitable institutions in general. I do not think that is the case. If secretaries of voluntary societies make contracts without disclosing the names of the persons under whose authority they are acting, they of course render themselves liable for the performance of the contracts they have made, but in practice no real difficulty usually occurs; for the committees of the institutions concerned would, as a rule, naturally feel bound, in honour, to indemnify their officers, and would, in so far as they had authorized the contract, be equally bound to them in law.

On the second issue it appears to me that the notice to quit sent to Messrs. Craigie, Lynch and Owen is sufficient. Either the case falls under section 106 of the Transfer of Property Act, or it does not. If there is no custom taking the case out of the section it is quite clear, from the defendant's evidence, that the notice was delivered to him more than fifteen days before the end of January. It was sent to his solicitors, who handed it over to his brother, who in turn passed it on to him within a few days. There can, I think, be no doubt that the notice was in the defendant's hands before the 15th January, and if so, the wording of section 103 was complied with. The notice was delivered to the defendant personally. I am asked to say that it was not delivered to the defendant personally, because it was not placed in his hands by the plaintiffs or their agent. But I could not so decide without adding words to the section, which does not determine by whom delivery must be made. So long as the notice is delivered by some one to the defendant, the literal terms of the section are complied with and also, I think,

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its intention, which is simply to secure due notice to the tenants, I cannot see what difference it makes whether a notice is given, in the first instance, to the solicitors and by him conveyed through a relative or servant to the tenant, or whether it is given direct to the tenant by the lessor in the first instance. In both cases it is either eventually or directly delivered to the tenant personally and that is all that the language or the spirit of the section requires. To accept the argument put forward for the defence it seems to me that I should have to alter the wording of the section, and that in doing so I should clearly be defeating its intention.

On the other hand, if, as seems very probable, the case does not fall under section 106 owing to the existence of a local custom requiring a month's notice in the case of bungalows and houses of which the rent is paid monthly, it seems equally clear that the notice of the 28th December was sufficient. It was given to Messrs. Craigie, Lynch and Owen, who did not disclaim authority to act for the defendant, and who caused it to be conveyed to the defendant. They had a few days before written to the plaintiff on the subject, and as a mattter of fact they did communicate the notice to the defendant, though possibly not till after 1st January. In these circumstances, then, there is, I think, a presumption that they had authority to receive the notice (see *Prior* v. *Ongley*)[1], and consequently the question whether they actually sent it on in time to the defendant, does not arise—*Tanham* v. *Nicholson*[2].

I pass a decree for plaintiffs in terms of paragraphs 1 and 2 of the prayer of plaint and for compensation at the rate of Rs. 150 per month for the use and occupation of premises from the 1st February to the day of receiving possession. I do not think it proved that at the present time plaintiffs could have got a higher rent than what they were receiving from defendant. Defendant to pay costs of this suit.

Attorneys for the plaintiffs :—Messrs. *Framji and Dinshaw.*

Attorneys for the defendant :—Messrs. *Ardesir, Hormasji and Dinsha.*

(1) 10 C. B., 25.

(2) L. R., 5 H. L., 661.