the vendor, apparently has nothing to say against it, and defendant No. 1, the original purchaser, is apparently prepared to take half rather than get nothing. If he had said: "Oh! very well if I can only buy half the property I would not buy any at all, I cancel my purchase;" then the affairs would have to be differently viewed. I do not wish to express any opinion as to what in that event my decision would be.

KAJIJI, J.:—I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

ANNA LATICIA DESILVA (ORIGINAL PLAINTIFF), APPELLANT *v.* GOVIND BALVANT PARASHARE, RECEIVER UNDER THE PROVINCIAL INSOLVENCY ACT, THANA FIRST CLASS SUBORDINATE JUDGE'S COURT (ORIGINAL DEFENDANT), RESPONDENTS.*

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Civil Procedure Code (Act V of 1908), section 2, sub-section (17) and section 80—Receiver—Suit against a receiver—Receiver, public officer—Notice necessary—Provincial Insolvency Act (III of 1907) sections 19–20.

The plaintiff brought a suit against the defendant who had been appointed a receiver in an insolvency application to get it declared that the property in suit belonged to her. The suit was dismissed by the lower appellate Court on the ground that no notice under section 80, Civil Procedure Code, was given. On appeal to the High Court,

Held, confirming the decision, that as soon as the receiver was appointed under the Provincial Insolvency Act, he became a public officer within the meaning of section 2, sub-section 17, Civil Procedure Code, 1908, and he was protected by section 80 of the Civil Procedure Code against any plaintiff who filed a suit against him with regard to any act done by him as such receiver without giving the requisite notice.

* Second Appeal No. 962 of 1918.

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SECOND appeal against the decision of P. J. Taleyarkhan, District Judge of Thana, reversing the decree passed by D. A. Idgunji, First Class Subordinate Judge at Thana.

Suit for a declaration of title.

The facts were as follows :—

On the 19th February 1915 an insolvency petition was presented by a creditor under section 5, Provincial Insolvency Act, 1907, to have the plaintiff's husband adjudged an insolvent. In these proceedings an *interim* receiver under section 13 (2) was appointed on 25th February 1915. The creditor pointed out the furniture in suit as the property of debtor and the receiver took possession of it on the 27th February 1915. The plaintiff appealed under section 22 to the Court claiming the property as her own and not that of the insolvent on the 9th March 1915. On the 30th October 1915 the plaintiff's petition was rejected and the order of the receiver was confirmed. The creditor failed to prove his right and his petition was dismissed on the 9th November 1915. The Court ordered the receiver on the same day to hand over the property to the plaintiff's husband.

In the meantime, on the 13th March 1915, another creditor presented a similar petition under section 5 and on the 22nd January 1916 the plaintiff's husband was adjudged an insolvent and a receiver was appointed under section 18 (1) on the same day. The property in suit had however been attached under a precept issued by the High Court. On the 16th March 1916 the attachment was raised and the receiver took possession of the property.

On the 5th April 1916 the plaintiff applied for leave to sue the receiver for a declaration of her title to the

property. Leave was granted on the 7th April 1916 and the plaint was presented on the next day.

The defendant receiver contended, *inter alia*, that the suit was bad for want of notice under section 80 of the Civil Procedure Code 1908 and that the plaintiff could not maintain the suit because she did not appeal from the order rejecting her claim to the property.

The Subordinate Judge decreed the plaintiff's claim holding that the notice under section 80 of the Civil Procedure Code, 1908, was not necessary as receiver was not a public officer within the meaning of section 2 (17) (*d*) of the Code.

On appeal, the District Judge reversed the decree and dismissed the plaintiff's suit as in his opinion receiver was a public officer as defined in section 2 (17) (*d*) of the Civil Procedure Code, 1908, and therefore the case came within the terms of section 80 of the Code.

His reasons were as follows :—

In my opinion, the receiver was a public officer as defined in section 2 (17) (*d*) of the Civil Procedure Code as he was a " person especially authorised by a Court of Justice " to take charge and " dispose of " certain property (*cf.* 4 Bom. L. R. 929). If, therefore, this suit is held to be a suit against him " in respect of any act purporting to be done by him in his official capacity ", it must fail for want of notice under section 80, Civil Procedure Code. It is urged for the plaintiff that according to decided cases the section applies only to suits founded on tort and claiming damages. I am not concerned to dispute the proposition that the section applies only to actions in tort, though I may as well mention that according to Chandavarkar J. in I. L. R. 35 Bom. 42 the decisions of the Bombay High Court lay down no more than that actions *ex contractu* are excluded from the operation of the section. I do not think, however, that it is correct to say that the decided cases lay down that the section applies only to suits for damages. An action in tort would no doubt generally be one to recover damages but not always ; for instance, in I. L. R. 29 All. 567, the suit was against a Sub-Inspector of Police to recover from him certain account books which he had seized in a search, and it was held that it was not maintainable in the absence of the notice prescribed by section 424 of the old Code. The

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plaintiff's case is that the property in suit belongs to her and was wrongfully seized by the receiver as being property of the insolvent. The suit is thus founded on tort, being "for a return of the plaintiff's property in an ordinary action against a trespasser" (39 All. 626, at page 628) so that even taking it that the section applies only to actions in tort, it must be held to apply to the present case. The proper thing, however, to do in determining whether in a particular case notice is necessary is to apply the test laid down by Chandavarkar J. in the case cited above, viz., "whether the wrong complained of as having been done by the public officer sued amounts, first to a distinct act on his part, and secondly, whether that act purported to have been done by him in his official capacity." Here the wrong complained of was a distinct act on the part of the receiver, viz., wrongful seizure of plaintiff's property and the act was done by him in his capacity of receiver. The case, therefore, clearly falls in my opinion within the terms of section 80, and I accordingly hold that the suit was bad for want of notice under the section."

The plaintiff appealed to the High Court.

Rangnekar with *W. B. Pradhan*, for the appellant.

No appearance for the respondent.

MACLEOD, C. J.:—The plaintiff brought this suit against the defendant who had been appointed a receiver in an insolvency application No. 13 of 1915 in the Thana District Court to get it declared that the property in suit belonged to her. The suit was decreed in the trial Court, but was dismissed on appeal on the ground that notice under section 80 of the Civil Procedure Code had not been given. Instead of giving notice, and then filing a fresh suit if her demand was not complied with, the plaintiff filed a second appeal, and the question now before us is whether a receiver under the Provincial Insolvency Act is a public officer within the meaning of section 2, sub-section (17), of the the Civil Procedure Code. The defendant is not an Official Receiver under section 19 of the Act, and so an officer of the Court whose duty it is to take action on every adjudication. He is merely a person specially authorised in this particular insolvency to act as

receiver. Section 20 of the Provincial Insolvency Act states what are the duties and powers of a receiver:

"Subject to the provisions of this Act, the receiver shall, with all convenient speed, realize the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—(*a*) sell all or any part of the property of the insolvent; (*b*) give receipts for any money received by him; and may, by leave of the Court, do all or any of the...things" defined in the remaining part of the section.

It has been argued that because such a receiver is merely appointed receiver by the Court, he is not specially authorised by the Court to take charge or dispose of any property, and that his powers to do so arise, not from the order of the Court, but from section 20 of the Act. But it appears to me that the powers under section 20 given to a receiver are in effect given by the order of the Court which appoints him receiver. It is a necessary consequence of the order. Therefore it may well be said that the Court especially authorised him to take charge or dispose of the particular insolvent's property. It is only on account of the provisions of section 20 that the general powers need not be entered in the order appointing a receiver. When special powers are asked for then special leave of the Court is required. General powers arise by the mere appointment by the Court. It seems to me, then, as soon as a receiver is appointed under the Provincial Insolvency Act, he becomes a public officer, and he is protected by section 80 of the Civil Procedure Code against any plaintiff who files a suit against him with regard to any act done by him as such receiver without giving the requisite notice. The decision, therefore, in my opinion of the lower appellate Court was correct, and the appeal must be dismissed. No order as to costs.

HEATON, J.:—I think that must be the order in this case. As the result of argument the thing has filtered down to this: that if the receiver is a public officer

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within the meaning of section 80 of the Code of Civil Procedure, then a notice as provided by that section must be served on him, or the suit must be dismissed. Whether he is a public officer or not depends upon the definition of that term in clause (17) of section 2 of the Code of Civil Procedure, and he is undoubtedly a public officer if he is a person especially authorised by a Court of Justice to take charge or dispose of any property. Now there is no doubt that a receiver, at any rate that this particular receiver we are concerned with, was appointed by a Court of Justice as receiver, that is to say, he was authorised by a Court of Justice. And as receiver he was authorised by the Court to do those things which a receiver may do under the provisions of the Provincial Insolvency Act, for otherwise he would not have been appointed a receiver. The argument urged by the appellant comes to this: that although all this may be so, the receiver was not *especially* authorised by the Court. It is urged that the especial authorisation is not contained in the order of the Court, but follows only from the provisions of the Provincial Insolvency Act. As a matter of fact we do not know what the order of the Court was. It is not on the record, and we have been spending our time over an ingenious argument as to the meaning of a document which nobody in Court has ever seen. It frequently happens, but of course it is not very enlightening. I will, however, assume that the Court did not say in its order that it appointed a receiver to take charge of or to dispose of the property of the insolvent. If it had said either of those things, it would undoubtedly have especially authorised the receiver to take charge of the property or to dispose of it. I will assume that the Court said nothing more than this "I appoint so and so to be the receiver," leaving everything else, even the name of the insolvent, to be inferred.

Of course the latter would appear in the title of the proceedings. So it would very properly be inferred that the receiver was to deal with the property of that particular person. The powers conferred by the Provincial Insolvency Act would be inferred also, and so it comes to this ; if the Judge adopts the brief method of expressing his order, that I have assumed, then the receiver is not especially authorized by the Court. If he makes a longer order, writes another dozen or two dozen words saying specifically that the receiver was to take charge of the property and to dispose of it ; then the receiver is specially authorized. Now for the purposes of the Provincial Insolvency Act it is really superfluous to add these extra dozen or so words. In either event the position and powers of the receiver are the same ; there is not a hair's breadth of difference. I cannot suppose that the Legislature, curious as its vagaries are sometimes supposed to be, really intended that if a Judge made a brief order of the kind I have described, a notice under section 80 would not be necessary ; whereas if he made his order a little longer in words, but in no way different in effect, such notice would be necessary. Undoubtedly it would be necessary in the case of the longer order, as the order would in terms especially authorize the receiver to take charge of the property. I cannot suppose that the necessity for the notice is got rid of because the Judge happens to adopt a somewhat briefer form of expressing himself.

MACLEOD, C. J. :—The appeal having been dismissed, I will add this. The plaintiff on the findings of both the lower Courts ought to succeed on the merits. We are told that another person has been appointed now as receiver of the insolvent's property, and we think that he ought to seriously consider the findings of fact against him, and seek for directions from the District Judge, or the Judge who appointed him as

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receiver in charge of the insolvency, as to whether he should not return the plaint property to the plaintiff, and so avoid the filing of another suit. No order as to costs.

HEATON, J. :—I concur.

Decree confirmed.

J. G. R.