

1921.

ground that he has not performed the condition of the pardon in that he gave false evidence under section 512 Criminal Procedure Code.

BAPU,  
*In re.*

Or on the other hand, if the prosecution do not desire to proceed further with the case against the principal offender, Dhondoo, the Magistrate has power to discharge the approver from custody. Sub-section 3 of section 337, Criminal Procedure Code, implies that there is a trial in progress and its object is to secure the evidence of the approver for such trial. If there is no such trial and no likelihood of such a trial, then *cessante racione lex ipsa cessat*.

*Rule discharged.*

R. R.

---

### APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

BABAN HEMRAJ AND ANOTHER, HEIRS OF THE DECEASED HEMRAJ GANU CHAPARBUND (ORIGINAL PLAINTIFF), APPELLANTS *v.* THE CITY MUNICIPALITY, POONA (ORIGINAL DEFENDANT), RESPONDENT\*.

1921.

*June 15.*

*Bombay District Municipal Act (Bombay Act III of 1901), section 167†—Contract with Municipality—Breach of contract—Levying of fines and penalties for the breach—Suit to recover the amount of fines and penalties so levied.*

---

\* Second Appeal No. 689 of 1920.

† The section runs thus :—

No suit shall be commenced against any Municipality, or against any officer or servant of a Municipality, or any person acting under the orders of a Municipality, for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Municipality, officer, servant or person one month's previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of ;

and in the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.

1921.

BABAN  
HEMRAJ  
v.  
THE CITY  
MUNICI-  
PALITY,  
POONA.

The plaintiff entered into a contract with the defendant Municipality to carry soil water for one year. The Municipality levied from time to time fines and penalties from the plaintiff for breaches of contract, as provided for in the contract. The contract came to an end on the 31st March 1916. The plaintiff filed the present suit on the 22nd June 1917 to recover the amount of fines and penalties so levied :—

*Held*, that the suit was governed by section 167 of the Bombay District Municipal Act, 1901, and not having been brought within a period of six months from the acts complained of was time-barred.

SECOND Appeal from the decision of J. N. Bhatt, Assistant Judge at Poona, confirming the decree passed by T. S. Taskar, First Class Subordinate Judge at Poona.

Suit to recover a sum of money.

The plaintiff entered into a contract with the Poona City Municipality to carry soil water for a period of one year commencing from the 1st April 1915 and deposited a sum for due performance of the contract.

There were breaches of contract by the plaintiff, for which the defendant Municipality levied fines and penalties from the bills and deposit.

On the 31st March 1916, the contract came to an end, and on the 22nd June 1917 the present suit was filed to recover the amount of fines and penalties so levied.

The trial Court dismissed the suit on the ground that it was governed by section 167 of the Bombay District Municipal Act, 1901 and had not been brought within six months from the date of the act or acts complained of.

On appeal to the Assistant Judge this was confirmed, and the plaintiff therefore appealed to the High Court.

*Manohar* for *K. V. Joshi*, for the appellants.

*H. G. Kulkarni*, for the respondent.

1921

---

 BABAN  
 HENRAJ  
 v.  
 THE CITY  
 MUNICIPALITY,  
 POONA.

MACLEOD, C. J.:—Disputes between the plaintiff and the defendant Municipality arose under a contract between the parties. The Municipality had entered into that contract under the powers granted to it under section 40 of the Bombay District Municipal Act. The Municipality claimed according to the terms of that contract to deduct a certain amount from the plaintiff's deposit for non-performance of his contract. As the Municipality obtained their powers to enter into this contract from the Act, it follows that their powers to enforce the contract, according to the construction they put upon it, must also be in pursuance of the Act. Therefore, any suit which the plaintiff might wish to bring under the contract would come within the provisions of section 167 of the Bombay District Municipal Act. I think the decision of the lower appellate Court was right and the appeal must be dismissed with costs.

*Appeal dismissed.*

R. R.

---

### CIVIL REFERENCE.

---

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

ISOOB SAHIBA VALAD ABDUL RAHIM (ORIGINAL PLAINTIFF), DECREE-HOLDER v. HAIDAR SAHIBA VALAD IMAM SAHIBA (ORIGINAL DEFENDANT), OPPONENT \*.

1921.

---

 June 16.

*Bombay Pleaders Act (Bombay Act XVII of 1920), section 10 (1)—Pleader appearing in a suit need not file fresh Vakalatnama in execution proceedings.*

Applications for execution of decrees are proceedings in suits and do not require separate Vakalatnamas under section 10 (1) of the Bombay Pleaders Act, 1920.

\* Civil Reference No. 4 of 1921.