30 C. 872 (=30 I. A. 154=7 C. W. N. 729=5 Bom. L. R. 490=8 Sar. 503.)

1903
APRIL 28.
MAY 15.

PRIVY COUNCIL.

MAHAMMAD YUSUFUDDIN v. SECRETARY OF STATE FOR INDIA.*

[28th April and 15th May, 1903.]

30 C. 872=
30 I.A. 154=
7 C. W. N.
729=5 Bom.
L. R. 490=
8 Sar. 503.

[*On appeal from the Court of the Judicial Commissioner, Hyderabad Assigned Districts.*]

False imprisonment, suit for—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 19—"Imprisonment"—Release on Bail—Period from which limitation runs.

To support an action for false imprisonment nothing short of actual detention and complete loss of freedom is sufficient.

Bird v. *Jones* (1) followed.

A person is not under imprisonment after his release on bail. Limitation therefore runs from the date of such release, and a suit for false imprisonment is barred (under Art. 19 of sch. II of the Limitation Act) unless brought within one year from that date.

APPEAL from a decree (26th April 1900) of the Judicial Commissioner of the Hyderabad Assigned Districts, affirming a decree (12th April 1899) of the District Judge of Secunderabad, which decree had dismissed the appellant's suit with costs.

The plaintiff appealed to His Majesty in Council.

The suit was brought under the following circumstances:—In July 1895 one Gopal Chunder was convicted by the District Magistrate of Simla of having abetted an offence under s. 161 of the Penal Code by attempting at Simla to bribe the Record-keeper of the Indian Foreign Office to disclose to him certain official information. On 18th September 1895 the Officiating Resident at Hyderabad, through the Thagi and Dakaiti Department at Simla, applied to the District Magistrate of Simla for a warrant for the arrest of the present appellant on a charge of abetting Gopal Chunder in committing the above-mentioned offience. The appellant was then in Hyderabad. The application was granted and a warrant for the arrest of the appellant was [873] issued addressed to the Officiating Resident at Hyderabad. On 2nd October 1895 the warrant was, under the orders of the Resident at Hyderabad, forwarded for execution to the Superintendent of Railway Police of H. H. the Nizam's Guaranteed State Railway, who was also a Magistrate of the first class. The Superintendent endorsed the warrant for execution to a chief constable, who on 28th November 1895 arrested the appellant at Shankarpalli, one of the stations on the said Railway.

After his arrest the appellant was taken to the Court of the District Magistrate for the said Railway, and on 30th November 1895 was released on bail, he undertaking to appear in the Court of the District Magistrate of Simla on 8th December 1895, which date was subsequently altered to the 11th December 1895. On the latter date the appellant appeared in Court and the trial was adjourned. At the desire of the appellant the Cheif Court of the Punjab, by an order dated 13th January 1896, transferred the case for trial from the District Magistrate of Simla to the District Magistrate of Umballa. On 22nd January 1896 the appellant applied to the Chief Court of the Punjab to set aside the warrant of arrest and the proceedings taken in pursuance of it, on the

* *Present*: Lord Macnaghten, Lord Lindley and Sir Andrew Scoble.

(1) (1845) 7 Q. B. 742.

1903
APRIL 28.
MAY 15.

PRIVY COUNCIL.

30 C. 872=30 I. A. 154=7 C. W. N. 729=5 Bom. L. R. 490=8 Sar. 503.

ground (*inter alia*) that the arrest of the appellant, a native of Hyderabad, in the territories of H. H. the Nizam was illegal. On the 17th February 1896 the Chief Court rejected this application. On 6th April 1896 the trial of the appellant was continued in the Court of the District Magistrate of Umballa; the evidence for the prosecution was concluded; the accused was examined and charges framed against him. The appellant then applied for a commission to examine witnesses for the defence at Hyderabad; and an adjournment was made to the 8th June 1896.

In the meantime, on 14th May 1896, the appellant had applied for and obtained special leave to appeal to Her late Majesty in Council against the order of the Chief Court of the Punjab passed on 17th February 1896. All further proceedings in India were then stayed pending the final order in Council on the appeal.

Their Lordships of the Judicial Committee of the Privy Council gave their judgment on 7th July 1897, and were of opinion that the arrest of the appellant was not lawful, inasmuch as he had been arrested in the territories of the Nizam of **[874]** Hyderabad for an offence not committed on the railway or in any way connected with the administration of the railway, in regard to which classes of offences alone criminal jurisdiction had been ceded to the British Government by the Nizam. In the result, by order of Her late Majesty in Council dated 3rd August 1897, it was ordered "that the said order of the Chief Court of the Punjab of 17th February 1896 be and the same is hereby reversed, and that the said warrant of 18th September 1895 be and the same is hereby cancelled, and that the proceedings thereon be and the same are hereby set aside."

The judgment of their Lordships will be found reported in *Muhammad Yusufuddin* v. *The Queen-Empress*, I. L. R. 25 Cal. at page 20.

Having obtained the order in Council of 3rd August 1897, the appellant sent a notice to the "Secretary to the Government of the Punjab" on behalf of the "Secretary of State in Council." This notice purported to be sent under the provisions of s. 424 of the Code of Civil Procedure, and claimed the sum of Rs. 3,81,500 "for loss and damages sustained and expenses incurred in consequence of the illegal arrest made on 28th November 1895 at a station called Shankarpalli of H. H. the Nizam's Guaranteed State Railway Company. The notice being disregarded, the appellant instituted the present suit.

The plaint was filed on 6th July 1898 in the Court of the Superintendent of Residency Bazars, Hyderabad. On 11th July 1898 it was returned to the appellant for presentation to the proper Court, as the said Court had no jurisdiction to entertain the suit. On the same date the plaint was filed in the District Court of Secunderabad, but was on 19th July 1898 returned to the appellant's pleader to be properly stamped and re-presented within two weeks from that date. It was re-presented on 20th August 1898.

The plaint recited the conviction of Gopal Chunder, the issue of the warrant of 18th September 1895, as to which it was alleged that it was issued without jurisdiction and that the charge against the plaintiff was unfounded. The endorsements in the warrant leading to the arrest of the plaintiff and his confinement for 42 hours from the 28th to 30th November 1898 were referred to; and **[875]** the proceedings before the Magistrate, the Chief Court of the Punjab and their Lordships of the Privy Council resulting in the order

1903
APRIL 28.
MAY 15.

PRIVY COUNCIL.

30 C. 872=30 I A. 154=7 C. W. N. 729=5 Bom. L. R. 490=8 Sar. 503.

of 3rd August 1897 were set out. The cause of action was alleged to have arisen on the last-named date.

On behalf of the defendant a written statement was filed in which it was denied that the plaintiff had suffered any loss or damage for which the defendant was liable, and pleaded (i) that no suit would lie against the defendant for the acts alleged to be wrongful; (ii) that the suit was barred by limitation; and (iii) that the notice given on 6th May 1898 was not good in law under the provisions of s. 424 of the Civil Procedure Code (Act XIV of 1882).

Before settlement of issue the plaintiff's pleader stated that "the suit is not for malicious prosecution or for wrongful arrest, but for the continued loss sustained by the plaintiff by the illegal arrest and the consequent proceedings held thereafter."

The District Judge was of opinion that the complaint of the Resident and the arrest of the plaintiff were not acts of state; that although the arrest was made in excess of authority given, yet the Government having defended the action of its officers had adopted their acts and was liable in damages to the plaintiff. On the question of limitations the Judge held that as the plaintiff had expressly disclaimed that the suit was one for malicious prosecution or for wrongful arrest, it could only be regarded as one for compensation for malfeasance, misfeasance, or nonfeasance independent of contract and not specially provided for by a particular Article of Schedule II, Act XV of 1867. He therefore applied Article 36 of that Schedule as fixing the period of limitation, and held that under that Article the suit was barred and dismissed it with cost. On appeal the Judicial Commissioner confirmed the finding of the District Judge that the suit was barred by limitation. He declined to hear the arguments against the Judge's finding as to the liability of the defendant, on the ground that the defendant had filed no objections under s. 561, Civil Procedure Code. In the result he dismissed the appeal with costs.

On this appeal,

Asquith, K. C. and *A. Phillips* for the appellant contended that the Courts below had wrongly held the suit to be barred [876] by limitation. The wrong for which the appellant claimed damages was, it was submitted, a continuing wrong. The arrest of the appellant had been held in *Muhammad Yusufuddin* v. *Queen-Empress* (1) to be absolutely illegal: but until that was the case and the proceedings in the criminal case were declared to be without jurisdiction there was no date from which limitation would run to bar a suit. The wrong that was done to him in the course of those proceedings, continued until the proceedings terminated in his favour, when they were set aside by the order of the Privy Council of 3rd August 1897. The appellant's cause of action consequently only arose on that date, and the suit instituted on 6th July 1898 was in time whatever article of the Limitation Act was held applicable. The Limitation Act (XV of 1877), s. 23, and Schedule I, Articles 19, 22 and 36, were referred to. The suit was one for damages for illegal arrest, or false imprisonment, a condition of restraint and loss of freedom which continued down to the time when it was finally decided that the arrest which commenced the restraint was unlawful. Previous to that time the liability he was under to be again arrested at any time was a condition of restraint—a want of entire freedom. The order of the Privy Council was the appellant's release from the actual condition of restraint in which

(1) (1897) I. L. R. 25 Cal. 29; L. R. 24 I. A. 137.

1903
APRIL 28
MAY 15.

PRIVY COUNCIL.

30 C. 872=
30 I. A. 154=
7 C. W. N.
729=5 Bom.
L. R. 490=8
Sar. 503.

he had been, as the Privy Council held unlawfully placed. His cause of action for the illegal restraint arose from that date, and the suit was not barred by any Article of the Limitation Act, as under any Article which might govern the suit the period was not less than one year. If no Article were specially applicable, the suit would be governed by Article 120, which gave a period of six years within which the suit could be brought. It was therefore not barred.

Cohen, K. C. and *De Gruyther* for the respondent contended that the suit was barred by lapse of time. In the case of illegal arrest or false imprisonment the wrong only continues whilst the plaintiff is under actual physical restraint, and ceases when he is released: *Lock* v. *Ashton* (1). Here the appellant was released on bail 42 hours after his arrest. From that time he was no longer under restraint: he could have brought his suit at once. **[877]** His cause of action arose on his release on bail, and the suit not having been brought within one year from that date—that being the period of limitation for a suit for false imprisonment by Article 19, Schedule II of the Limitation Act—is barred. *The Queen* v. *Hughes* (2) was referred to. Had the suit been one for malicious prosecution, it would have been necessary to allege and prove malice and want of reasonable and probable cause. The distinction between an action for malicious prosecution and that for false imprisonment is laid down in *Austin* v. *Dowling* (3).

Asquith, K. C. replied.

The judgment of their Lordships was delivered by

LORD MACNAGHTEN. The question in this case is a very short one. It really comes to this: Is a prisoner, who has been released on bail, under imprisonment still so long as he is out on bail?

There are no facts in dispute at this stage of the proceedings.

In July 1895 one Gopal Chunder was convicted by the District Magistrate at Simla of having attempted to obtain official information by bribery. On the 18th of September 1895 the Officiating Resident at Hyderabad applied to the District Magistrate at Simla for a warrant to arrest the appellant on the charge of having abetted Gopal Chunder in the commission of that offence. Now the appellant was and is a subject of the Nizam of Hyderabad. He was a native of that State and in the Nizam's service. The Magistrate granted the application and issued a warrant for the appellant's arrest addressed to the Officiating Resident at Hyderabad. In issuing the warrant the Magistrate recorded a note to the effect that it could only be executed out of British India through a Political Agent, and that the Resident at Hyderabad, as such Political Agent, must decide whether the accused, if in a foreign territory, could be handed over to the British Courts under the Extradition Law.

At Hyderabad the warrant was endorsed to the Superintendent of Railway Police there. He endorsed it over to a chief constable who arrested the appellant at one of the stations on the Nizam's State Railway on the 28th of November 1895. The **[878]** Railway itself is part of the Nizam's territories. But the Government of India by arrangement with the Nizam exercises jurisdiction upon the Railway by a British Magistrate in respect of a certain class of offences which may be termed railway-offences.

The appellant was taken to the Court of the District Magistrate for

(1) (1848) 12 Q. B. 871.
(2) (1879) L. R. 4 Q. B. D. 614.
(3) (1870) L. R. 5 C. P. 534.

1903
APRIL 28.
MAY 15.

PRIVY COUNCIL.

30 C. 872=30 I. A. 184=7 C.W.N. 729= 5 Bom. L. R. 490=8 Sar. 503.

the Railway. On the 30th of November 1895 he was released on bail, undertaking to appear on a day named at the Court of the District Magistrate at Simla. At the appellant's request the case was afterwards transferred to Umballa. There were various proceedings and adjournments. Ultimately the appellant applied to the Chief Court of the Punjab to set aside the warrant. That application was unsuccessful, but on appeal to Her late Majesty the Order of the Chief Court of the Punjab was reversed, the warrant of the 18th of September 1895 was cancelled, and the proceedings thereon were set aside by an Order in Council dated the 3rd of August 1897.

In July 1898 the appellant filed his plaint in the present suit against the Secretary of State for India, alleging that the warrant of September 1895 was issued without jurisdiction, and that the charge against him was unfounded. As compensation for the injury inflicted upon him, and the suffering, expense, and loss which he had sustained in consequence, he claimed damages to the amount of Rs. 3,81,500. The plaint stated that the cause of action arose on the 3rd of August 1897, the day of the date of Her late Majesty's order in Council.

Various defences were raised on behalf of the Secretary of State. The only one which calls for decision on the present occasion is the question of limitation.

In the Court of First Instance the cause of action was not defined with anything like precision. The pleader for the plaintiff asserted that it was neither false imprisonment nor malicious prosecution. The case as presented to the Court appears, however, to have partaken of both. In the result the Court dismissed the suit, holding it barred by limitation. An appeal to the Judicial Commissioner met with the same fate, on the ground apparently that the appellant had not satisfied the Court that "his imprisonment or restraint on bail, with surety or without surety, extended to within one year prior to the date of institution of suit.

[879] Before this Board the learned Counsel for the appellant raised a clear and simple issue. They admitted that no question of malicious prosecution was involved. All or almost all the elements required to found a case of malicious prosecution were wanting. It was false imprisonment or nothing. Again, they admitted that if the imprisonment ended on the 30th of November 1895, the suit was time-barred, for the period of limitation in a suit for false imprisonment is one year from the termination of the imprisonment. But their contention was that the imprisonment continued until the warrant was set aside. So long as the restraint of bail lasted—and it may be taken that it lasted until the warrant was set aside—the appellant, they said, was not a free man ; he was even liable to be actually imprisoned through the action of his surety, or possibly by reason of the intervention of the Government. All this may be very true. But the learned Counsel for the appellant did not cite any case in support of their contention. The whole weight of authority is the other way. Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment. The leading case on the subject is the case of *Bird* v. *Jones* (1) in which Coleridge, Williams and Patteson, JJ., differed from Denman, C. J. "Some confusion," said Coleridge, J., "seems to me to arise from confounding imprisonment of the body with mere loss of freedom : it is one part of the definition of freedom to be able to go

(1) (1845) 7 Q. B. 742.

1903
APRIL 28.
MAY 15.

PRIVY COUNCIL.

30 C. 872=30 I. A. 154=7 C. W. N. 729=5 Bom. L. R. 490=8 Sar. 503.

whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own." Williams, J., speaks of imprisonment as being "entire restraint," and Patteson, J. adds, "imprisonment is, as I apprehend, a total restraint of the liberty of the person for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him." The old authorities cited in that case are to the same effect.

In their Lordships' opinion it is perfectly clear that the appellant's imprisonment did not last one moment after he was liberated on bail. The very object of granting bail was to relieve him from imprisonment. Immediately after his liberation he **[880]** might have brought a suit for false imprisonment—and possibly he might have succeeded in obtaining some damages. Having failed to bring his suit within one year from the date of his liberation, he is now barred by the law of limitation.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed.

The appellant will bear the costs of the appeal.

Appeal dismissed.

Solicitor for the appellant: *L. P. E. Pugh.*

Solicitor for the respondent: *The Solicitor, India Office.*

---

30 C. 880.

APPELLATE CIVIL.

DEOKI SINGH *v.* LAKSHMAN ROY.* [12th June, 1903.]

Land Registration—Land Registration Act (VII B.C. of 1876) ss. 42, 44, 78—Registration of share in an estate—Share in specific mouzas in an estate.

The Land Registration Act (Bengal Act VII of 1876) provides for the registration by proprietors or mortgagees of their shares in an estate, but does not make it incumbent upon them to register their shares in specific mouzas or other portions of land within the estate.

Parashmoni Dassi v. *Nabokishore Lahiri* (1) followed.

[**Ref.** 38 Cal. 512=13 C. L. J. 693.]

SECOND APPEAL by the plaintiffs, Deoki Singh and another.

The mortgagors of the plaintiffs and of their co-sharer defendants had their names registered as the proprietors of a three-anna **[881]** **[881]**share in three mouzas—Bausapali, Karant and Dhatura—comprised in a single revenue-paying estate. Then by an amicable arrangement between all the proprietors, the said mortgagors took a ten-anna share in one of the mouzas and a five-anna share in another in lieu of the said three-anna share in all the three mouzas. Thereafter they gave a *zarpeshgi* lease in respect of a moiety of their share to the plaintiffs and the other moiety to the co-sharer defendants. The plaintiffs had their names registered as mortgagees under the provisions of s. 44 of the Land Registration Act with respect to the said three-anna share in the

* Appeal from Appellate Decree No. 475 of 1901, against the decree of B. C. Mitter, Subordinate Judge, Saran, dated Dec. 15, 1900, reversing the decree of Pankaj Kumar Chatterjee, Munsif of Saran, dated July 27, 1900.

(1) *Ante*, p. 773.