

1875.
March 19.
S. A. No. 611
of 1874.

person. Unless he who sets the officers of the Court in motion does so fraudulently or improperly, of which there is not the slightest evidence in this case he is not liable for such arrest. I would reverse the decree of the Civil Judge on the ground that the appellant is not liable for simply putting the Court in motion.

HOLLOWAY, J.:—I entirely agree. There are several ways whereby a person may become liable for arresting the wrong man. If he take an active part in such arrest, then he is a trespasser, whatever his motive may have been. He is also liable when he sets the process of the Court in motion, but there he is only responsible if he obtain such process fraudulently or improperly. There is no evidence here that such was the case. It does not appear that the appellant induced the Court to commit, but even if he had done so, that fact alone would not render him responsible. The decree of the Civil Judge must, therefore, be reversed, with costs.

*Appeal allowed, and Lower Court's decree
reversed with costs.*

Appellate Jurisdiction.(a)

Civil Miscellaneous Special Appeal No. 358 of 1874.

THE COLLECTOR OF SOUTH ARCOT. (*Petitioner*) Appellant.

THATHA CHARRY.....(*Counter-Petr.*) Respondent.

Five years after the dismissal of a pauper suit, from the decree in which no appeal had been preferred, Government sought recovery of the stamp duty by attachment and sale of the pauper plaintiff's property; *Held* that, the claim was not barred.

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THIS was a Special Appeal against the order of Mr. O. B. Irvine, the District Judge of South Arcot, dated the 25th September 1874, passed on Civil Miscellaneous Petition No. 151 of 1874, reversing the order of the Court of the District Munsif of Villupuram, dated 18th April 1874.

Suit No. 443 of 1866 on the file of the Villupuram District Munsif's Court, brought by the plaintiff Thatha Charry

(a) Present :—Sir W. Morgan, C.J., and Kindersley, J.

in formâ pauperis, was dismissed on the 25th February 1868, and from that decree no appeal was preferred.

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In 1873 an application was made, on behalf of Government, to the Villupuram District Munsif's Court for the recovery of the stamp duty by attachment and sale of the pauper plaintiff's property. By Miscellaneous Petition No. 947, the said plaintiff contended that execution could not issue as the claim was barred under Article 167, of Schedule 2, of Act IX of 1871, more than three years having elapsed since the decree was passed. A counter-petition, Miscellaneous Petition No. 1017, was presented to the said District Munsif's Court on behalf of the Collector of South Arcot, wherein it was contended that by Circular Order No. 7 of 1873 of the Board of Revenue, Stamp duty, &c. due to Government could be collected at any time after the passing of the decrees in pauper suits. The District Munsif held that "under the Standing Circular Order No. 234 of the Board of Revenue, there is no bar by lapse of time," and ordered warrant of attachment to issue. From this order the petitioner in Miscellaneous Petition No. 947, the pauper plaintiff in the Original Suit No. 443 of 1866, appealed to the District Court of South Arcot, by Civil Miscellaneous Petition No. 151 of 1874. In reversing the District Munsif's decree, the District Judge observed :—

"The Government Vakil on the part of the Collector draws the attention of the Court to an order of the High Court, dated 22nd November 1872, directing that copies of all decrees in pauper suits should be furnished to Collectors, a practice which it appears had not previously obtained, and Collectors are consequently often kept in the dark as to suits in which they should recover the stamp duty on behalf of Government.

"In the present instance the Vakil argues that the Collector did not become aware of the decree until the end of 1872, and that hence his application should not be held to be barred.

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“The Munsif should be aware that the Board of Revenue have not the power to prescribe within what period a Court’s decree should be executed. This is the province of the Legislature, who have declared 3 years to be the limitation.

“The recovery of stamp duty on behalf of the Government is a proceeding taken in execution of the decree.

“Under Section 17 of the old Limitation Act (Act XIV of 1859), (a) such claims were regarded as “public claims,” and were expressly exempted from the ordinary rules of limitation, but this Act having been repealed by the present Act (IX of 1871), and there being no similar provision under this recent enactment, applications on behalf of Government for recovery of stamp duty must be treated like ordinary applications in execution of a decree.

“The Munsif’s order will be, and hereby is, reversed and annulled, and the land will be released from attachment.

“The Collector’s motion must be also rejected, but, under the circumstances, without costs.”

From this decision the Collector of South Arcot appealed to the High Court on the ground that the application for execution was not barred by any Act of Limitation.

The Acting Government Pleader, for the appellant:—Limitation Act No. XIV of 1859, Section 17 (a) applies, whereas the Lower Court has decided the case upon the present Limitation Act IX of 1871 which did not come into force until April 1873, long after the filing of this suit.

[CHIEF JUSTICE.—According to one reading of Act XIV of 1859, Section 17, that Limitation Act would not touch this case. Would the application by Government for recovery of stamp duty be considered “a public claim?”]

I submit that it would be so considered; but in any view of the case the application is not barred by Act XIV of

(a) Act XIV of 1859, Section 17 is as follows:—“This Act shall not extend to any public property or right nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.”

1859, for the application was made within six years after the making of the decree in the pauper suit.

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The Court delivered the following

JUDGMENT:—The suit having been instituted before the 1st of April 1873, the Limitation Act of 1871 does not govern this application for execution. (a) And the previous Act XIV of 1859 contained a Section (17), cited by the Judge, excluding from its operation a claim like the present one, which is in respect of costs recoverable by the Government in a pauper suit under the provisions of the Code of Civil Procedure. Suit for the recovery of public claims continued by the terms of that Act “to be governed by the laws or rules of limitation now in force.” But the Regulation (b) contained no special provision applicable to a Government claim like the one before us. Assuming in the respondent’s favor that it would fall within the general provisions of the old limitation rules, then the application is not barred. The order will be rescinded.

Order rescinded.

(a) See however, *Naranappa Aiyar v. Nanna Ammal*, page 97 *post*.

(b) Regulation II of 1805, the only provision in which as to the claims of Government is contained in Section 2, cl. 1, whereby “all claims on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatsoever (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force) are to be heard, tried, and determined, in the Courts of civil justice, if the same be regularly and duly preferred at any time within the period of sixty years from the origin of the cause of action.”