

*Referred Case.*1868.
July 17.SHIVSHANKAR GOVINDRA'M *Plaintiff.*

THE JUSTICES OF THE PEACE FOR THE CITY

OF BOMBAY..... *Defendants.**Justices of the Peace—Municipal Commissioner—Act (Bombay) II.
of 1865, Secs. 4 and 11—Act (Bombay) IV. of 1867.*

No suit can be maintained against the Justices of the Peace of the City of Bombay in respect of an alleged wrongful distress for unpaid rates levied by the Municipal Commissioner of that City, either under the provisions of Act II. of 1865 (Bombay) or Act IV. of 1867 (Bombay) In such a suit the Municipal Commissioner himself or the actual tortfeasor is the proper defendant.

CASE stated for the opinion of the High Court, under Sec. 55 of Act IX. of 1850 and Sec. 7 of Act XXVI. of 1864, by John O'Leary, First Judge of the Bombay Court of Small Causes :—

“This was an action to recover the sum of Rs. 525 as damages for a wrongful distress levied by the defendants of the goods and chattels of the plaintiff, in respect of moneys alleged to be due to the defendants for house-rate for the two quarters ending 30th June and 30th September 1867, in respect of the house of the plaintiff, No. 28, Narron Dhurn Street. * * *

“ In July 1867 a bill was presented to the plaintiff for house-rate at six per cent. on the assessed value of the said house, and, the rate remaining unpaid, a notice of distress was served on the plaintiff in August 1867.

“ On the 21st of August 1867, the plaintiff wrote to the Municipal Commissioner, tendering Rs. 15-12-0, being the amount of house-rate claimable for the period mentioned above, calculated at five per cent. on the assessed value of the said house. * * *

“ On the 27th of August 1867 a distress warrant was issued from the office of the Municipal Commissioner, ordering Bábáji Sundar to distrain and sell the goods of Bhaváni Govindrám to satisfy the amount claimed by the bill.

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“Under this warrant certain goods of the plaintiff were seized, and a portion thereof was sold to satisfy the claim for house-rate. * * *

“I was of opinion that the defendants were not the persons properly liable to be sued in the present action, and, being requested to state a case for the opinion of the High Court, I found a verdict for the defendants subject to the opinion of the High Court upon the following question:—

“Whether any such case can be maintained against the defendants in respect of the alleged causes of action, in accordance with Secs. 4 and 11 of Bombay Act No. II. of 1865, or either of them, or under any other provisions of the said Act, or of Bombay Act No. IV. of 1867.”

Farran and Macpherson for the plaintiff.

Pigot for the defendants.

COUCH, C. J. :—In this case it does not appear that the Justices in point of fact did anything at all. It was stated in the argument, and no doubt rightly so, that they made the rate; but the rate, when made, is to be levied by the Municipal Commissioner. Sec. 11 says that the entire executive power and responsibility for the purposes of the Act shall be vested in the Commissioner. And the act complained of was accordingly done by virtue of a warrant signed by H. B. Vikáji on behalf of the Commissioner. I cannot conceive how, with such a provision as that contained in Sec. 11, it can be contended that the Justices are to be made liable for a tort committed by the Commissioner. They have no control over the Commissioner. If he levies a rate, they cannot prevent him from doing so. Then with regard to the contention that because ultimately the money to be paid is to be paid out of a fund over which the Justices have control, therefore the Justices are liable to be sued. It cannot be supported for a moment. It would create immense confusion if we were to look to the fund out of which persons were to be compensated, in order to fix parties, other than those who have actually done the wrong, with liability. We must say that the action is not maintainable.

SARGENT, J.:—It is just possible that the Justices might render themselves liable for a tort committed by the Commissioner by interfering personally in the collection of the rate; but there is nothing in this case to show that they did so, and the Commissioner is clearly not their agent so as to fix them with liability for torts committed by him in the general course of his business. The plaintiff must pay the costs of reserving this question.

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Sept. 1.

MEHERVA'NJI MANCHARJI *Plaintiff.*
PUNJA' VELJI *Defendant.*

Jurisdiction—Small Cause Court—Liquidated Damages—Earnest-money.

Where a contract for the sale and delivery of two thousand *barás* of stone contained a provision that in case of breach by the purchaser, damages (liquidated) were to be paid by him at the rate of one rupee per *barás*, and the purchaser paid Rs. 1,000 earnest-money, but made default in accepting the stone :—

Held that, though in default of acceptance, the earnest-money, Rs. 1,000, was forfeited, the vendor could not retain the earnest-money and sue for the whole amount of the liquidated damages (Rs. 2,000), but that his proper course was to sue the purchaser for the difference only, and, such difference amounting to Rs. 1,000, that the suit was properly brought in the Small Cause Court.

CASE stated for the opinion of the High Court, under Sec. 55 of Act IX. of 1850 and Sec. 7 of Act XXVI. of 1864, by John O'Leary, First Judge of the Bombay Court of Small Causes :—

“In this action, which was tried before me on the 6th day of May 1868, the plaintiffs sought to recover from the defendant the sum of Rs. 1,000, being the balance of a sum of Rs. 2,000 alleged to be due by the defendant to the plaintiff as liquidated damages for breach of a certain agreement (translated copy of agreement marked A annexed), after giving credit to the defendant for the sum of Rs. 1,000, deposited with the plaintiff by the defendant on account of the said agreement.