

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nanabhai Haridas.*

MUDVIRAPA KULKARNI (ORIGINAL DEFENDANT), APPELLANT, v. FAKIR-  
APA KENARDI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

1883  
July 11.

*False complaint to Magistrate—Attachment and detention of goods—Action for damages—Limitation Act XV of 1877, Sch. II, Arts. 23 and 36.*

On the 26th of July, 1878, A. complained to the Magistrate that B. committed theft of his grain. The Magistrate, of his own motion, attached the grain on the 10th of August, 1878, pending inquiry into the complaint, then proceeded with the inquiry, and dismissed the complaint, but continued the attachment pending the decision of the Civil Court to which he referred the parties. A. in 1879 brought a suit against B. to establish his title to the grain, which was finally rejected on the 21st of June, 1880, and B. recovered his grain on the 30th of September, 1880, but in a damaged condition. B. on the 13th of November, 1881, sued A. for damages for wrongful detention of his grain, and its consequent deterioration in quality and value.

*Held* that the date of the complaint was the date of the wrong, and limitation ran from that date, or, at the latest, from the date of the attachment, and that B.'s suit was, therefore, barred, whether the period applicable was one year under article 23, or two years under article 36 of schedule II of Act XV of 1877.

THIS was a second appeal from the decision of A. C. Watt, Judge of Dharwar, confirming the decree of Rav Saheb V. R. Inamdar, Subordinate Judge of Gadag.

The plaintiffs brought this action on the 13th of January, 1881, alleging that on the 26th of July, 1878, the defendant wrongfully and maliciously charged them with having broken into their grain pit and committed theft of a quantity of grain stored therein; that the plaintiffs denied the charge, and asserted that the grain pit and the grain belonged to themselves; that the Second Class Magistrate of Navalgund on the 10th of August, 1878, placed the grain under attachment pending inquiry, and on the 30th of December following dismissed the charge, referring the parties to a suit in the Civil Court to establish their right, but continuing the attachment. The plaintiffs further alleged that the defendant in 1879 brought the suggested suit against them, but that it was finally rejected by the District Appellate Court at Dharwar on the 21st of June, 1880, and the grain restored to them in a damaged state on the 30th of September, 1880,

\* Second Appeal, No. 317 of 1882.

1883.

MUDVIRAPA  
KULKARNIFAKIRAPA  
KENARDI.

The plaintiffs, therefore, sued the defendant for damages sustained by reason of the wrongful detention of their grain, and the consequent deterioration in its quality and value.

The defendant, among other things, contended that the attachment was an act of the Magistrate for which he was not liable, and that, even if he were, the suit was barred by limitation. The lower Courts held the claim not barred, and awarded to the plaintiffs Rs. 375 as damages. The District Judge considered that the determination of the ownership of the grain was a condition precedent to the institution of the present claim; that this condition was fulfilled on the 21st of June, 1880, when the District Court of Appeal adjudicated in the plaintiff's favour; and that that was the time from which the limitation began, since a suit brought at an earlier stage would have been premature, and must have been rejected. The District Judge and the Subordinate Judge both held that the injury the plaintiffs suffered was owing to the act of the defendant, which led to the attachment by the Magistrate. The defendant appealed to the High Court.

*Narayan Ganesh Chandavarkar* for the appellant.—There are two points for decision. The first is, whether the appellant is liable, and the second is, if he is, is the suit barred? The Magistrate's order attaching the grain in the first instance, as well as his order continuing the attachment, were his own voluntary acts, and not on the application of the defendant. The orders, moreover, were not for our exclusive benefit. When the Magistrate found the offence not proved, he was bound to restore the grain to the respondents, if he acted, as he seems to have done, under the Code of Criminal Procedure, 1872: see sections 416, 417 and 418; *In re Annapurnabai* (1); *Parimi Bapirazu v. Bellan Konda* (2). A party is not liable to damages in respect of an attachment made under a warrant issued by a Court—*Rajbullab Gope v. Issan Chunder Hujrah* (3). In *Lock v. Ashton* (4) the Magistrate remanded a person who had been wrongfully taken into custody and charged with felony, and it was held that, in an action for trespass for an assault and false imprisonment, damages could not

(1) I. L. R., 1 Bom., 630.

(3) 7 Cal. W. R., 355.

(2) 3 Mad. H. C. Rep., 238.

(4) 12 Q. B., 871

be given for the remand. In *Leigh v. Webb*(1) Lord Eldon said :  
 “If the highest criminal Judge of the land was, by mistake of judgment, to conceive that to be felony which did not amount to that offence, and to commit the party complained against, would that subject the party complaining to an action of this sort? I am of opinion it ought not.” The action there was one for malicious prosecution. The suit in the present case, if it could be maintained, is barred by limitation. Article 36 of Act XV of 1877, schedule II, applies, and the limitation of two years runs from the time the malfeasance took place,—that is, the complaint to the Magistrate on the 26th of July, 1878. In *Huree Narain Mytee v. Ojoodhya Ram Sein* (2) it was held that, in a suit for damages on account of a false and malicious prosecution, the limitation ran from the date of the alleged statement, the prosecution being in that case the act of the Magistrate. The period occupied by the previous civil litigation between the parties could not be taken into account, for it is not the kind of civil proceeding contemplated by section 14 of the Limitation Act. The District Judge was wrong in saying that the plaintiffs could not have sued before the determination of their ownership to the grain by the Civil Court. The Magistrate’s order was not in the nature of an injunction, and, therefore, section 15 did not apply.

The Court also referred to *Goma Mahad Patil v. Gokaldas Khimji* (3).

*Manekshah Jehangirshah* for the respondents.—This case falls within article 49 of Act XV of 1877, schedule II, which gives a period of three years. If a case falls within more than one provision of the law of limitation, the rule which gives the longest period ought to apply. [WEST, J.—Article 49 is intended to apply to cases of detinue.] The case of *Huree Narain Mytee v. Ojoodhya Ram Sein* (2) must be considered to have been superseded by article 23 of the Limitation Act. The period, therefore, runs from the termination of the criminal proceedings.

The Court having on the point of limitation expressed an adverse opinion, Mr. Manekshah was not heard on the merits.

1888

MUDVIRAPA  
KULKARNI  
v.  
FAKIRAPA  
KENARDE.

(1) 3 Esq. at p. 165.

(2) 10 Cal. W. R., 308.

(3) I. L. R., 3 Bom., 74.

1883

MUDVIRAPA  
KULKAENI  
v.  
FAKIRAPA  
KENARDI.

WEST, J.—The action of the defendant, on which the present suit is grounded, began and ended with his complaint to the Magistrate. The subsequent proceedings were those of the Magistrate himself. The defendant could not escape all responsibility for them as a basis on which damages were to be estimated, since, even in a case originating in negligence, “the person guilty of it is equally liable for its consequences, whether he could have foreseen them or not” (*Smith v. L. & S. W. Ry. Co.* (1)), much more than for the consequences, at least the natural consequences, of a wilful wrong. But these would be taken into computation by way of better enabling the Court to estimate the proper compensation for an act, which in itself could not be changed as to time by the longer or shorter series of results traceable to it. In the case of a prosecution the conduct of the prosecutor is look on as a continuous act prolonged until the close of the case, and limitation is to be computed from that point (Act XV of 1877, sch. II, art. 23); but when the complaint made is the only act done, the date of the complaint is that of the wrong—see *Huree Narain Mytee v. Ojoodhya Ram Sein* (2). And the Limitation Act does not prescribe or allow (see *Goma Mahad Patil v. Gokaldas Khimji* (3)) any deduction on account of irregular proceedings of a Magistrate not moved by the defendant in the suit.

Here the complaint was made on 26th July, 1878. The property was attached on 10th August, 1878, and then at latest—see *Goma Mahad Patil v Gokaldas Khimji* (3)—the injury to the plaintiff by the defendant was done. The present suit was instituted on 13th November, 1881; and whether we apply article 23 or article 36 of schedule II of the Limitation Act, XV of 1877, it was then barred. We must, therefore, reverse the decrees of Courts below, and reject the claim. The parties respectively are to pay their own costs throughout.

*Decree reversed.*

(1) L. R., 6 C. P. at p. 21.

(2) 10 Cal. W. R., 308.

(3) I. L. R., 3 Bom., p. 74.