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APPEL-
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Before Mr. Justice Jardine and Mr. Justice Candy.

THE CANTONMENT COMMITTEE, POONA (*Original Defendants*), *Appellants v.* BARJORJI BAMANJI (*Original Plaintiff*), *Respondent.** [10th October, 1889.]

Corporation—Bombay Act III of 1867, *s.* 11—*Cantonment committee—Contracts entered into in a corporate character—Liability to be sued on such contracts as a corporation.*

The plaintiffs sued the Poona Cantonment Committee to recover damages for breach of a conservancy contract. The committee was created by rules made by the Local Government under s. 11 of Bombay Act III of 1867. The committee ordinarily consisted of certain officials acting *ex officio*. It was part of their duty to provide for the management and regulation of public roads, of conservancy, and drainage within the cantonment. They defrayed the expenses of such management out of the cantonment fund placed at the disposal. The defendants contended that the suit was not properly framed, and that all the members of the committee should be made parties.

Held, that the suit was properly constituted. The rules by which the committee was created, did by implication, though not by express words, create the committee a corporation for the purposes of the conservancy of the cantonment. It could, therefore, sue and be sued in its own name on contracts entered into in its corporate character.

[R., 33 M. 226=4 Ind. Cas. 209=20 M.L.J. 359=7 M.L.T. 26; D., 34 B. 583=12 Bom. L.R. 615=7 Ind. Cas. 679.]

APPEAL from the decree of W. H. Crowe, District Judge of Poona, in suit No. 1 of 1887.

The plaintiff sued the Cantonment Committee of Poona to recover Rs. 14,000 as damages for breach of contract, alleging that he took two contracts from the defendants—one from the 1st April, 1883, to 31st March, 1884, and the other from 1st April, 1884, to 31st March, 1885—for sweeping the streets within the Poona Cantonment, under conditions stated in the contract. He [287] alleged that he had suffered loss by reason of a certain breach of the contracts committed by the defendants.

The defendants contended (*inter alia*) that the suit would not lie, unless all the members of the Cantonment Committee were joined as parties.

The Cantonment Committee was appointed under the rules framed by the Local Government, in accordance with s. 11 of Bombay Act III of 1867. The constitution of the committee was as follows:—The Officer commanding the Cantonment was the president. The Sanitary Officer of the Cantonment, the Executive Engineer, the Magistrate of the District and the Cantonment Magistrate were *ex-officio* members, the last mentioned officer being also the secretary.

In addition to these *ex-officio* members, the Commander-in-Chief was empowered, under the rules, to appoint any other persons, not more than three in number, to be members of the committee. The committee had, among other duties, to provide for the management and regulation of the public roads, of conservancy and drainage within the cantonment, and were placed in charge of the cantonment fund, out of which they defrayed the cost of such management and regulation.

*Appeal No. 16 of 1888.

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The District Judge held that the suit was properly constituted, that it was not necessary to join all the members of the Cantonment Committee as parties, and that the plaintiff was entitled to claim Rs. 5,034 as damages. He accordingly passed a decree for the plaintiff.

Against this decree the defendants appealed to the High Court.

Shāntaram Narayan (Government Pleader), for appellants.—The suit is not maintainable unless all the members of the committee are joined as parties. The committee is not a corporation. Neither the Cantonment Act (Bombay Act III of 1867) nor the rules which created the committee declare it to be a corporation, or enable it to sue or be sued in its own name. The provisions of chap. XXIX of the Code of Civil Procedure do not, therefore, apply. The committee is a mere association of officials, like a Bench of Magistrates. It is not, therefore, liable to be sued in its own name—*The Muhammadan Association of Meerut* v. *Bakhshi* [288] *Ram* (1); *Greaves* v. *Bhagvan Tulsi* (2); *Gangadhar Shivkarn* v. *The Collector of Ahmednagar* (3); *The Ahmedabad Municipality* v. *Mahamad Jamal* (4).

Branson (with him *M. C. Apte*), for the respondent.—The Cantonment Committee is a corporation. They enter into contracts with third parties in a corporate capacity. They are, therefore, liable to be sued on such contracts as a corporation. The members are not personally liable. They have the cantonment fund out of which they defray the expenses of the conservancy of the cantonment. It is not, therefore, necessary to sue all the members of the committee.

JUDGMENT.

JARDINE, J.—In disposing of this appeal which the Government Pleader has argued for the Poona Cantonment Committee we will first deal with the technical defences raised by appellants. The defendants have taken objection to the form of the suit, on the ground that the Poona Cantonment Committee, of which they are members, are not a corporate body, and that, in the absence of any statutable rule providing for the suit being brought against their clerk or secretary or the committee, the defendants ought to be impleaded *nominatim* and individually. The Government Pleader argues that they are a mere association of officials like a Bench of Magistrates, and cites *The Muhammadan Association of Meerut* v. *Bakhshi Ram* (1), where it was held that the association had, *per se*, no status in law to sue in its own name. The cases of *Greaves* v. *Bhagvan Tulsi* (2), *Gangadhar Shivkarn* v. *The Collector of Ahmednagar* (3) and *The Ahmedhabad Municipality* v. *Mahamad Jamal* (4) were also cited. They touch on the question whether a municipality can sue and be sued as a corporation, or whether the individual members must be made parties. But they do not decide the question, and are hardly relevant to that before us, which depends on a different statute and the rules made under it.

The committee is created by rules made under s. 11 of Bombay Act III of 1867. Section 19 of that Act requires all [289] Courts to take judicial notice of these rules. We have been referred to an edition of these rules published in the Quarter Master General's Office at Poona on 1st November, 1884. At p. 18, under Chap. 2 entitled "The Cantonment Committee and Cantonment Fund," the composition and functions of the committee are described.

(1) 6 A. 284.
(2) 4 B.H.C.R.A.C.J. 93.
(3) 1 B. 628.
(4) 3 B. 146.

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The committee is ordinarily to consist of certain officials *ex officio*; but the Commander-in-Chief may, with the concurrence of the Local Government, alter its composition, and may also appoint other three members. The committee is a consultative body, but also has many executive powers, and in enforcing the other rules about conservancy, nuisances and other matters, the Cantonment Magistrate has to seek its sanction. The sanitary conservancy of the cantonment is to be defrayed out of the cantonment fund, which under various restrictions and checks is placed under the control of the committee. There is no provision, either in the statutes or the rules, declaring that the committee shall be a corporation or shall be sued as a committee or in the name of a secretary or other officer. There is no suggestion that the rules are *ultra vires*, or that in contracting with the plaintiff about conservancy the committee acted *ultra vires*. It is plain on the evidence, and the rules bear this out, that the committee did act in a *quasi* corporate manner, to say the least. We are now called upon to determine whether in the matter of this conservancy contract the committee are a corporation or ought to be treated as such in this case for the purposes of the sections about appearances of the Code of Civil Procedure.

It thus becomes necessary to consider what are the attributes of a corporation. They are most fully discussed by Coke in *The case of Sutton's Hospital* (1). This committee we find to originate in lawful authority, *i.e.*, of the Legislature. It has a name and a place and a certain quantum of designation of persons. It has statutory powers beyond those of the common law. The absence of specification of a seal or a name in which to sue or be sued is indifferent if it be a corporation, as such incidents annex *tacite*. The committee, we may assume without hesitation, is a *quasi* body corporate, like the Lords of the Admiralty in *Williams* v. **[290]** *The Lords Commissioners of the Admiralty* (2). Are we, then, to hold, as in that case, that it is not a corporation, or may we follow in preference *The Conservators of the River Tone* v. *Ash* (3). The answer is not without difficulty, as the English cases were not mentioned at the hearing, and the decision in them depend partly on particular statutes interpreted in each case. But on the whole we are inclined, following the latter decision, to hold that the rules, though not by express words, do, by implication, create the committee a corporation for the purposes of the conservancy of the cantonment. The members do not hold the cantonment funds as individuals; it belongs to the committee for the time being. They are to execute certain public purposes; they have no private purposes of their own to answer. All the purposes for which they are appointed are distinctly pointed out by the rules framed under the Act. This is the reasoning of Bayley, J., in the *River Tone Case* (3). He continues: "If they have no private purpose of their own to answer, one should rather expect, *a priori*, that they would be made a body corporate, especially if the functions which they have to execute render that necessary." The question is, what did the framers of the rules intend? So far as we can use the argument from convenience, it seems to support this view, as it avoids the inconvenience to individuals serving without remuneration in the committee, which would be caused by requiring each individual member to be a party to a suit,—an inconvenience which led to the practice of inserting clauses in Acts to enable public bodies to be sued by their clerks.

(1) 5 Coke. Rep. 285, Part X—23*a*.
(2) 11 C. B. Rep, 420.
(3) 10 B. & C. Rep. 349 (377).

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It also is more convenient for the person who sues the Board:—there being many decisions to show that a wrong has to be recompensed in damages payable out of the public fund, not by the individual personally. See *The Mersey Docks Trustees* v. *Gibbs*(1); *Furnivall* v. *Coombes*(2). For the purposes of the Civil Procedure Code, the opposite view would, we think, be highly inconvenient; the person contracting with the committee or its officer would then have to ascertain the name and circumstances of the members with whom he contracts, and to keep an eye on their retirement [291] from the Board. In the end this necessity would embarrass the work of conservancy which the rules plainly seek to make efficient. While expressing our opinion on the point for the decision of this appeal, we may remark that as it affects all cantonments it might be well that the Legislature should deal with it. Here the Poona Cantonment Committee has entered into contracts in a corporate manner, and when sued for damages for the breach, the committee denies its corporate character, even though it does not deny that the cantonment fund is liable for any damages awarded, and would probably have objected strongly to a suit charging the members with personal liability. It could never have been the intention of the authority that framed the rules which called the cantonment committee into being, to endow it with an ambiguous character, which would enable it to contract as a body corporate, and to evade suit for performance or damages, on the plea that it is not a body corporate, but a mere association of gentlemen like a club or a literary society not incorporated.

With respect to the other technical defences set up by the committee which are based on limitation, misjoinder of claims, and want of a necessary party, we see no sufficient reason for differing from the findings of the learned District Judge.

The Government Pleader has contended that the valuation of the claim is insufficient under s. 17 of the Court Fees Act. The decision on similar contentions have varied in the different High Courts. On considering the authorities—*Muhamad Malik Khan* v. *Nirhai Bibi* (3), *Kishori Lal Roy* v. *Sharut Chunder Mozumdar* (4), *Chokalinga Pillai* v. *Kumara Viruthalam* (5), we are not prepared to decide that the District Judge was wrong.

We do not think sufficient grounds have been shown for interfering with the findings on the merits, the evidence of fact having been carefully weighed and the amounts awarded as damages carefully considered by the Court below.

For these reasons, we confirm the decree of the District Court with costs.

(1) I. L. R. 1 Eng. and Ir. Ap. 118. (2) 12 L. J. C. P. (N. S.) 265.
(3) 7 A. 761. (4) 8 C. 593. (5) 4 M. H. C.R. 334.