K.B. Div. (Wright, J.) 1903. Oct. 26.

IN RE MORGAN—EX PARTE THE BOARD OF TRADE.*

County Court — Execution — Fees — Possession money — Separate executions—Same man in possession—Treasury Order, February 22, 1901, sched. B, rule 35—County Courts Act, 1888 (51 and 52 Vict., c. 43), s. 146.

Where separate warrants of execution are issued out of a County Court in respect of separate judgment debts due to separate judgment creditors, and the high bailiff seizes different goods of the judgment debtor on the same premises in respect of the several warrants and places the same man in possession of all the goods, the high bailiff is entitled to possession money under each of the warrants.

This was an application to review the taxing master's decision and raised an interesting and important question as to the possession fees chargeable by high bailiffs of County Courts when levying under warrants of execution issued by County Courts. The facts were these :—On the 17th of March, 1903, the high bailiff of the County Court of Glamorganshire levied on the goods of the debtor under a warrant of execution issued by a judgment creditor for £24 4s. 6d., and on the same day he levied on other goods of the debtor on the same premises under another warrant issued by a judgment creditor for £11 3s. 8d. ; and on March 19 the high bailiff levied on other goods of the debtor on the same premises under another warrant issued by a judgment creditor for £22 1s. 6d. Only one man was put in possession under the three warrants. On March 24 the high bailiff sold under the three warrants, and subsequently carried in his bill of costs for taxation and claimed possession money under each of the three warrants, although only the same man had been in possession under them all. The taxing master allowed the charge. The Board of Trade objected that under the circumstances only one fee, the *maximum* fee of 10s. a day, ought to be allowed in respect of all three executions. The taxing master overruled the objection, and the Board of Trade appealed. The question turned on section 146 of the County Courts Act, 1888, and rule 35 of schedule B of the Treasury Order of February 22, 1901. Section 146 of the Act enacts that whenever the Court shall have given or made a judgment or order for the payment of money, the amount may be recovered on default or failure of payment " by execution against the goods and chattels of the party against whom such judgment or order shall be given or made ; and the registrar . . . shall issue under the seal of the Court a warrant of execution in the nature of a writ of *fieri facias* to the high bailiff of the Court, who, by such warrant, shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels . . . such sum of money as shall be so ordered and also the costs of the execution." The Treasury Order, schedule B, regulates (*inter alia*) the fees of high bailiffs, and by rule 35 directs that their poundage or possession money shall be as follows :— " For keeping possession of goods till sale on any process of execution, per day . . . not exceeding seven days, sixpence in the pound on the value of the goods seized . . . so that the total fee does not exceed 10s. per day."

Mr. MUIR MACKENZIE, who appeared for the Board of Trade, contended that in the circumstances there was but one possession, and that under rule 35 above stated only the *maximum* fee of 10s. a day could be allowed. The same principle applied that was applicable in cases where the sheriff under several writs of the High Court levied on goods of a debtor and but one man was put in possession under all the writs. " *In re* Wells " ([1893] 10 Morrell, 69).

Mr. FRANK MELLOR, who appeared for the high bailiff, argued *contra*, that the fees of high bailiffs stood on a different footing to those of the sheriff, and that on the wording of rule 35 the high bailiff was entitled to the poundage he claimed.

MR. JUSTICE WRIGHT said it was a point of some importance, and that in the circumstances the question really turned on the true construction of rule 35 of the Treasury Order. Here the high bailiff had not under the three warrants seized the same goods of the debtor, but had appropriated different goods of the debtor to each warrant, although all the goods happened to be on the same premises, and the same man was put in possession of them all. It might be that the rule was badly framed and would have to be altered, but on its construction as it stood he felt bound to uphold the decision of the taxing master.

[Solicitors—Solicitor to the Board of Trade ; E. F. Turner and Son.]

*Reported by H. L. FRASER, Esq., Barrister-at-Law.

Court of Appeal (Earl of Halsbury, L.C., and Lord Alverstone, C.J.) 1903. Oct. 27.

CAREY V. METROPOLITAN BOROUGH OF BERMONDSEY.*

Public Authorities Protection Act, 1893—Limitation of time—" Continuance of injury or damage "—56 and 57 Vict., c. 61, s. 1.

The plaintiff received personal injuries owing to the negligence of a local authority in repairing a road. More than six months after the accident the plaintiff brought an action against the local authority to recover damages for the injuries. At the date of the issue of the writ the plaintiff was still suffering from the effects of the accident.

Held, that the action, not having been commenced within six months of the accident, was barred by s. 1 of the Public Authorities Protection Act, 1893.

This was an application by the plaintiff for a new trial in an action tried before Mr. Justice Channell and a common jury. The appeal was, with the consent of the parties, heard by a Court composed of two judges. The action was brought by the plaintiff, a nurse, to recover damages for an injury received by her in consequence of the alleged negligence of the defendants in repairing a road. It appeared that the plaintiff met with the injury complained of on June 17, 1901, but did not issue her writ in this action until October 8, 1902. The jury returned a verdict for the plaintiff and awarded her £400 damages. The defendants submitted that as the plaintiff had not brought her action within six months of the accident, the action was barred by section 1 of the Public Authorities Protection Act, 1893. On behalf of the plaintiff it was contended that as the plaintiff had proved that she was at the time of the issue of the writ still suffering from the effects of the accident, there was a continuance of the injury or damage and the action was maintainable. Mr. Justice Channell was of opinion that there had been no continuance of the injury or damage within the meaning of the section, and that the plaintiff's action was barred. The plaintiff appealed.

Mr. CYRIL DODD, K.C., and Mr. MOYSES (Mr. Cairns with them) on behalf of the appellant submitted that on the facts proved there had been a continuance of the injury

*Reported by R. M. COMBE, Esq., Barrister-at-Law.

or damage. The section provided that in the case of the continuance of the injury or damage an action could be brought within six months next after the ceasing thereof. The plaintiff was still suffering from the consequence of the negligent act; and so long as she was so suffering there was a continuance of the injury or damage and her action was maintainable. The words injury or damage must be construed according to their usual or popular meaning, and must therefore mean the injury arising in consequence of the negligent act, and not the continuance of the act which caused the damage. They referred to "Markey v. Tolworth Joint Hospital Board" ([1900] 2 Q.B., 454).

Mr. Avory, K.C., and Mr. Biron, for the respondent, were not called on.

The LORD CHANCELLOR said that in his opinion the judgment of Mr. Justice Channell was right. The language of the section was reasonably plain, and it was manifest that the continuance of the injury or damage meant the continuance of the act which caused the damage. It was not unreasonable to say that, if there was a continuance of an act causing damage, the injured person should have an action at any time within six months of the ceasing of the act complained of. But that was wholly inapplicable to such cases as the one before them, where there was no continuance of the act complained of, and where the only suggestion was that in consequence of the negligent act the victim was not such a good man as he was before. Words had to receive a reasonable interpretation, and he was of opinion that the appeal must fail.

The LORD CHIEF JUSTICE said that he was entirely of the same opinion.

The appeal was dismissed with costs.

[Solicitors—Lovett and Liddle, for the appellant; F. Ryall, for the respondents.]

Court of Appeal (Collins, M.R., Mathew and Cozens-Hardy, L.JJ.) 1903. Oct. 27.

IN RE CHAPMAN.*

Solicitor — Costs—Taxation—Payment by third party to solicitor of sum for costs—Right of client to have sum so paid taxed.

This was an appeal from the dismissal by Mr. Justice Darling of an application by a client for delivery of a solicitor's bill of costs. Down to June, 1902, the solicitor, Mr. R. Chapman, acted professionally in various matters for the applicant, Mr. S. F. F. Kemp, and having recovered a large sum of money for him retained thereout a sum to satisfy his charges. In the month of June, 1902, the applicant consulted Mr. Chapman with reference to an action which had been brought by a Mr. Watson, who had been in partnership with Mr. Kemp, for a dissolution of the partnership. Proceedings were thereupon commenced on behalf of Mr. Kemp against Mr. Watson for the return of certain moneys, and a police-court summons was also issued at the instance of Mr. Kemp against Mr. Watson. Subsequently an agreement was come to between the parties by which the summons was to be withdrawn and Mr. Watson was to pay Mr. Kemp the sum of £140 and was also to pay Mr. Kemp's costs. The costs were fixed by Mr. Chapman at £105, and Mr. Watson paid £140 to Mr. Kemp and £105 to Mr. Chapman. Mr. Kemp then demanded delivery of Mr. Chapman's bill of costs, and, on his demand being refused, made this application, alleging with regard to the earlier costs that he had never agreed to them, and with regard to the bill for £105 that if the items thereof were delivered the sum of £105 would appear to be a great overcharge. Mr. Justice Darling, affirming a decision of a Master, held that Mr. Kemp was not entitled to have a bill of costs delivered to him.

Mr. J. Eldon Bankes, K.C., and Mr. A. J. David appeared for the applicant in support of the appeal; Mr. Montague Lush, K.C., and Mr. Rose-Innes for the solicitor.

The MASTER of the ROLLS said this seemed to be a simple case. The application was by a client that a bill of costs might be delivered by a solicitor. The learned Judge, affirming the decision of the Master, had dismissed the application. The Master had come to the conclusion that as to the costs incurred before June, 1902, the applicant and the solicitor had come to an agreement, and that that agreement was fair. It was now argued in support of the appeal that the point whether the agreement was fair could not be ascertained without delivery of the bill. But an answer to that contention was to be found in the case of "*In re* West, King, and Adams" ([1892] 2 Q.B., 102), where Mr. Justice Cave, referring to certain cases in which retainer by a solicitor had been treated as payment, said that those were cases in which there was a valid agreement, which dispensed with delivery of a bill, accompanied by a settlement of account between the solicitor and the client. With regard to the costs incurred in June, 1902, they were paid by a third party, and the question whether the sum of £105 was or was not more than the solicitor might rightly charge that third party did not concern the applicant. The applicant therefore had no *locus standi* in the matter. He did not think it was necessary to say anything as to how far the Court would be disposed in any case to aid one person in an attempt to get back from another a part of the hush-money paid for the purpose of stifling a criminal prosecution.

The LORDS JUSTICES delivered judgment to the same effect.

[Solicitors—Emanuel, Round, and Nathan; R. Chapman.]

K.B. Div. (Channell, J.) 1903. Oct. 27.

WILKINS V. GILL—MAJOR V. GILL.*

Advertisement—Property stolen or lost—No questions asked—Advertisement in "newspaper"—*Fiat* of Attorney-General—Larceny Act, 1861 (24 and 25 Vict., c. 96), s. 102—Larceny (Advertisements) Act, 1870 (33 and 34 Vict., c. 65), ss. 2, 3—Post Office Act, 1870 (33 and 34 Vict., c. 79), s. 6.

The *Bazaar, Exchange and Mart, and Journal of the Household*, is a "newspaper" within the definition in s. 2 of the Larceny (Advertisements) Act, 1870, and s. 6 of the Post Office Act, 1870, so that the *fiat* of the Attorney-General is necessary before an action can be brought against the printer or publisher thereof to recover a penalty under s. 102 of the Larceny Act, 1861, for having published an advertisement offering a reward for the return of lost property and stating that no questions would be asked.

WILKINS V. GILL.

This was an action to recover three penalties of £50 each under section 102 of the Larceny Act, 1861, in respect of the publication of the following advertisement in the *Bazaar, Exchange and Mart, and Journal of the*

*Reported by F. G. RÜCKER, Esq., Barrister-at-Law.

*Reported by W. F. BARRY, Esq., Barrister-at-Law.