Privy Council Appeal No. 68 *of* 1925.

Bhagchand Dagdusa Gujrathi and others - - - - *Appellants*

v.

The Secretary of State for India in Council - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH MAY, 1927.

Present at the Hearing:

VISCOUNT SUMNER.
LORD ATKINSON.
LORD CARSON.
LORD DARLING.
SIR LANCELOT SANDERSON.

[*Delivered by* VISCOUNT SUMNER.]

In this action forty-eight plaintiffs joined in suing the Secretary of State for India and the Collector and District Magistrate of Nasik for two kinds of relief, (*a*) a declaration that certain official notices and orders were *ultra vires* and invalid, and (*b*) an injunction permanently restraining all executive action thereunder. Unless the right to the first relief was made out, the prayer for the second necessarily failed. The suit was begun less than two months after notice of the intention to bring it had been given to the respondents. It was dismissed by the District Judge on all grounds, and by the High Court of Bombay as well, but, as to one of the learned Judges, not altogether on the same grounds. The plaintiffs now appeal.

In April, 1921, serious disorder occurred at Malegaon, in the District of Nasik, Bombay, connected with the Khilafat agitation, and in the consequent unlawful assemblies and riots there was loss of life and much damage to property. The Mohammedan weavers, who formed the large majority of the male inhabitants of the place, were the chief culprits, though it is not likely that they

acted without instigation from other parties. Some persons were punished criminally, but the question remained how the injured parties were to be compensated and how order was to be maintained in the future. An inquiry was accordingly held, and amounts were fixed, by way of compensation to persons who had suffered in the riots. The Government decided to put in force the provisions of the Bombay District Police Act No. IV of 1890, and orders were duly made for the employment of additional police at the expense of the inhabitants and for payment of compensation for the injuries sustained. Under these orders the income-tax payers, a small class, and the great body of the weavers were designated as the parties to pay the sums required. No question as to the correctness of these proceedings now arises.

Under the Act it was for the Collector to get in the amount of the compensation and for the Municipality of Malegaon to enforce payment of the police rate. Both were unable to do so. Coercion of the weavers generally, who had few belongings and lived in the main from hand to mouth, proved to be impracticable. As to the ratepayers, the Municipality lacked means of enforcing a general payment, and were openly set at defiance. By the spring of the following year the position had become exceedingly unsatisfactory. Some small sums had been collected from the income-tax payers but, in spite of much patience on the part of the executive and a lapse of time sufficient to have allayed the original turbulence, the measures taken under the Police Act had practically come to nothing.

Accordingly, in March, 1922, the District Magistrate of Nasik, who was Collector as well, proposed to the Commissioner for the Central Division that, instead of seeking to recover the amounts due for compensation from the weavers directly, a tax should be imposed personally on the merchants at Malegaon, who sold to the weavers the yarn for the saris, which they made, and bought from them their finished product. The amount of the tax in each merchant's case was to be measured by the amount of his dealings with the weavers during a period indicated. These merchants constituted a small class, likely to be easy to deal with, and many of them were weavers themselves. In the ordinary course, whatever they paid they would pass on to their customers by charging more for their yarn and giving less for the saris. It was unlikely that the weavers as a body could resist this readjustment, having no capital of their own and no means of quitting Malegaon to carry on their industry elsewhere. The magistrate was careful to point out that, if his suggestion was adopted, a modification would be required in the order of the 16th August, 1921, under which payment of the compensation had been imposed in terms on the Mohammedan weavers. The Commissioner passed this proposal to the Home Department, expressing his approval, and forwarding a copy of this approval to the Collector of Nasik. In April, 1922, the Government also approved the proposal and directed that the District Magistrate should be so

informed, and, having thus dealt with the question of compensation, took up that of the expense of the extra police force. Here, too, it was decided to adopt the same plan, namely, to recover the sums outstanding from the shopkeepers, both Mohammedan and Hindu, who dealt in saris and yarn.

A notification, No. 152, dated the 6th June, 1922, was then published in the Bombay Government Gazette. This is the document which, with demand notices issued thereunder, the appellants by their prayer in this suit seek to have declared to be invalid and unlawful. It purports to be made by the Governor in Council and to direct, under Section 25, that " the cost of the additional police shall be defrayed wholly by a tax imposed on the Mohammedan income-tax payers, who are inhabitants of the said town, and by a rate, assessed on the property of such other inhabitants as are " notified in manner set forth, and under Section 25A that the above cost and the total amount of compensation awarded by the District Magistrate of Nasik should be assessed and recovered, first from payers of income-tax in certain amounts and instalments, and secondly :—

> " The balance of the combined charges, after the amount recoverable from persons of Class I has been deducted, shall be recovered on behalf of the Momin adult weavers of Malegaon from both Mohammedan and Hindu shopkeepers of Malegaon dealing in saris and yarn, who shall pay every year up to 31st May, 1923, beginning from 1st July, 1921, a rate calculated by the District Magistrate, Nasik, at a sum not exceeding six annas, multiplied by the average number of saris hitherto purchased by them from Momin weavers of Malegaon annually, or a sum not exceeding Rs. 5, multiplied by the average number of bales of yarn hitherto sold by them to Momin weavers of Malegaon annually, as the case may be.
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> " And, whereas the Municipality of Malegaon has made a default in the recovery of the charges on account of the said additional police, the Governor in Council is pleased to direct, under the proviso to Section 26 (1) of the said Act, that the recovery of the said charges shall be made by the Collector of the District along with the compensation money as an arrear of land revenue. . . . "

The employment of additional police in consequence of the rioting, which caused the damage, and the compensation for the damage thus done, are respectively dealt with in Section 25 and Section 25A of the Act. It will be seen that the Act prescribes no forms and few formalities. The District Magistrate, with the Commissioner's previous sanction, fixes the proportions in which individuals are to make payments towards the compensation, which he has ascertained, for damage done and decides whether all the inhabitants of the local area affected or only particular sections or classes, and if so which, are to pay, and he then directs and requires the Collector to recover the amounts accordingly. How the Commissioner's previous sanction is to be given and how the decision of the magistrate and his direction and requisition to the Collector are to be formulated, the section does not say. So with the additional police, though their employment in the first instance has to be directed by notification, the mode in which

the cost is to be defrayed is to be simply directed by Government in accordance with subsection 2 (A) and (B), and notification at this stage is not prescribed. Furthermore, in regard to each section, it is to be noticed that the determination of the incidence of the tax in question is an executive and not a judicial act. It is a function of the Government in the one case, and of the District Magistrate in the other, but in both cases its character is the same. Whatever may be said of the inquiry under Section 25A (1) A, into claims to be compensated for the damage sustained, the magistrate's action under 25A (1) B is not a judicial proceeding, and there is nothing in the Act which requires that his action in this matter should be taken wholly on his own initiative or without instructions or recommendations from his superiors. (Cf. *Ezra* v. *The Secretary of State*, 30 Calc. at pp. 83 to 85.) Even the Commissioner's sanction is only stated to be previous; it is not required to be given once for all. Nothing prevents it from being given from time to time or after consultation, nor is there anything about it which confines it to starting the magistrate on a course of action, which he is thereafter to pursue independently and alone.

There is furthermore nothing in either section to restrict the exercise of this taxing function to one occasion and one only. The powers which they give are not spent by a single exercise. The finality referred to in Section 25A (4) relates exclusively to the Commissioner's function of review. The directions of the District Magistrate are not capable of being challenged otherwise than is thereby provided, but it is quite a different thing to say that the giving of one direction exhausts all the magistrate's powers and leaves him thereafter incapable of any substituted or amending action. Such a provision would be appropriate only to the judgment of a Court and not to administrative action such as this. Such a construction would tend to deprive the enactment of its practical utility.

On the Government Notification, No. 152, the appellants' contentions may be summarised thus. The Notification includes in one document without distinction two separate matters—compensation for damage and the cost of additional police. In respect of the former it passes over the District Magistrate altogether, ousts his jurisdiction, and determines the incidence of the compensation tax by direct Government decree. Without discharging the orders previously made, it requires the collection of tax from Hindus and from shopkeepers, which under those prior orders had been imposed only on Mohammedans and weavers, a thing without legal warrant. Either the Government is making a new order, which is bad because it trespasses on the exclusive functions of the District Magistrate, or it is applying to his old order a new method of exacting the tax from persons, who are in terms outside the ambit of the old order as it stands. In the alternative, it constituted the shopkeepers agents for the weavers, contrary alike to fact and to law, and, under the strongest personal

penalties in case of failure it called on them to pay on behalf of principals, who had neither authorised payment nor put them in funds to make it. The obvious explanation of the real intent of the Notification, which is furnished by the previous reports and communications, is brushed aside by the appellants on the singular plea that this written instrument, unlike others, is to be looked at in isolation from the circumstances, in which it was promulgated, and as a matter of construction is so drawn as to contain on its face two plain transgressions of the very Act, in pursuance of which it is expressed to be published.

It is, of course, easy to be wise after the event. It may be admitted that the notification would have been improved (*a*) by a statement that the new mode of raising the money was directed in lieu of the old one, the orders for which were *pro tanto* discharged, and (*b*) by the complete omission of any reference to the mode in which the shopkeepers might recoup themselves by adjustments of the prices of yarn and saris respectively. Probably the draughtsman could find ample excuse in the circumstances of a harassing period of office. At any rate, although the same notification includes both the cost of the police and the payment of compensation, the two matters are clearly severable, and the exercise of the powers of the Government under Section 25 is not prejudiced by the additional notification of the course, which the District Magistrate was about to take under Section 25A.

The short answer, however, to all this is to be found in construing the document reasonably in the light of the existing circumstances, and by referring for the rest to Section 79 of the Act :—

> "No . . . order, direction . . . or notification, made or published, and no act done under any provision herein contained, or in substantial conformity to the same, shall be deemed illegal, void, invalid or insufficient for any defect of form or publication, or any irregularity of procedure."

In the circumstances the meaning of the notification is obvious. As regards the cost of the additional police, the Government direction is actually expressed to be in supersession of those previous notifications dealing with the incidence of the payments, and the substituted incidence, which is in other words a new tax, is described alike for the police and for the compensation payments. Being, in fact, a substitution for the previous tax and sufficiently so described in the case of the police charges, it is, in their Lordships' opinion, a mere defect of form not to have reiterated the words showing expressly, as to the compensation charge also, that the taxing part of the notification is new. The same consideration applies to the fact that the Notification speaks of the total amount of the compensation having been awarded by the District Magistrate under Section 25A and then goes on to speak of the mode of recovery as having been directed by the Governor-in-Council. Nothing in Section 25A prescribes this part of the Notification at all, and to this extent it may be needless to refer to Section 79. The fact was that the Commissioner's previous

sanction having been given (none the less regularly that he expressed it in two lines endorsed on the District Magistrate's letter to himself, of which he caused a copy to be sent to that official), the District Magistrate proceeded on the 12th June, 1922, to send to himself as Collector a requirement to recover payments from persons named, with particulars for calculating the amounts, which had been originally suggested by himself in principle and had now been determined by himself in detail. After this substantial conformity with the provisions of Section 25A, their Lordships think that the errors in the Notification, if errors there were, do not matter.

The appellants, however, have contended that the whole proceeding was invalid because it involved the fundamental injustice of requiring a class of persons, not shown by any evidence to have been implicated in the riots, to bear a penalty, which ought rightly to have fallen only on those who were, and because agents were taxed instead of principals, for which the Police Act affords no warrant. The expression used in the Notification—" on behalf of the Momin adult weavers of Malegaon "—is made to play a large part in this contention.

It may be readily admitted that the words were not felicitous. They lend themselves to misunderstanding. On 21st April, 1922, the subdivisional magistrate of Nasik had issued a notice to the people of Malegaon in which he stated that " the shopkeepers, who sell yarn to the Momins . . . are to be considered as agents for the purposes of recovery of these amounts." In itself this action was insignificant and it may not have been known to the Government when the Notification was issued, but the use of words which seemed to support this notice, instead of words clearly negativing it, was unfortunate. What was meant, however, was that the shopkeepers were to be substituted for the weavers, as the section of the inhabitants to be charged with payment of the levy under the Act, with an addition, well-meant but probably unnecessary, that they might and would find means of passing on the burden to the weavers. In any case, these words were outside the requirements of the Police Act. They do not contravene it, though they do not correctly describe what was being done.

As for the rest of this branch of the complaint, the Act does not require proof of the active complicity of a section of the inhabitants before such an order as the Act contemplates can be made. To imply such a requirement would defeat the objects of the Act. It is the essence of measures of this kind, which in one form or another are not uncommon, that one class has to pay for the misdeeds of another, but this in itself constitutes no objection to the course that was taken. There is no issue before their Lordships with regard to the propriety of applying these provisions of the Police Act under the circumstances which had arisen, and they express no opinion about it, but they are not to be taken as suggesting that any question could be raised as to the action of the Government and District Magistrate in itself. Those who are

called on to apply such an Act as this have not only the power but the duty of enforcing it when, in their judgment, a case has arisen which calls for its application. They are the best and the only judges in that matter.

Some minor objections were taken, which are either complete misapprehensions or are sufficiently met by Section 79. It will suffice to mention two. In writing to the Commissioner on 7th March, 1922, the District Magistrate had said:

> "To prevent any injustice being done to the Hindus, I would propose that the Deputy Collector in charge of Malegaon Subdivision should hold a summary inquiry at which the Hindu shopkeepers . . . should be called upon to be present, and that, they should be given an opportunity of furnishing proof that, before, during and after the riots, they were actively and publicly on the side of Government. . . . When, after this inquiry is finished, these lists of merchants are fixed, the Deputy Collector should estimate approximately the number of saris and the bales of yarn that actually pass through each man's hands . . . The Deputy Collector would make this assessment very much in the way in which income-tax assessments are made. . . . The assessment would be rough and ready, but . . . it would be on very liberal lines."

Subsequently, on 21st April, 1922, the District Magistrate instructed the subdivisional magistrate to take this summary inquiry in hand, adding directions which show that what was further required was an administrative measure to furnish information, on which he himself would proceed to make definitive orders, simultaneous with the expected Government notification. Founding on this, the appellants say that the Hindu shopkeepers ought to have had the opportunity of criticising and refuting the information obtained by the Deputy Collector and that, failing such opportunity, the assessment, which was made on the footing of his report, cannot be enforced against them. This argument overlooks the fact that the first proposed inquiry was to enable the shopkeepers to show that they had at some time been on the side of the Government and of law and order, which at no time have any of them attempted to show; that the inquiries actually made, as to the trade which the different merchants did, appear to have been such as would have been admissible for income-tax purposes; that in any case the District Magistrate's suggestions formed no part of the order made under Section 25A, or constituted a condition precedent to its validity; and that the Act is silent as to any such inquiry, though, when an inquiry is desired, it is named expressly, and that the implication of such an inquiry—dilatory and often inconclusive as it would be—would tend to defeat the operation of the Act itself. No substantial injustice appears to have been done, for, although the notices issued to individual merchants, dated 25th April, 1922, invited them to show cause against the proposed assessments of the amount of the tax falling severally on them, they do not appear to have adopted this remedy, but preferred to try the effect of this collective suit for an injunction as a total discomfiture of the Government.

The other contention is this. When the District Magistrate issued his requirement to the Collector on 12th June, 1922, he named dates for payment of the instalments prescribed, which appear to make the first year for the recoveries begin on 1st January, 1922. In the notice served by the Collector on shopkeepers individually under the same date, the first year of liability is stated as beginning on 1st July, 1921. It is said that this constitutes in form a retrospective imposition of tax, not warranted by the Act, which, in fact, bars the exercise of the contemplated relief by way of passing on the charge to customers, since, in 1922-1923, a shopkeeper could not make deductions or additions from or to his purchases or sales which had been made in 1921. The answer is that the discrepancy as to the date of commencement of the first year is a mere irregularity, and that there is nothing retrospective about the matter. The payment imposed is imposed *de futuro* and the dates are mere elements in a calculation of the amounts and dates of the instalments. As to passing on the burden to the weavers at all, that was purely optional and formed no part of the order.

In one matter, however, not relatively important in itself, their Lordships think that the prescriptions of the Police Act were not observed. In regard to the cost of additional police, the Act provides as follows :—

> " 25 (4) If the local area, in which any such tax is to be imposed, or any such rate is to be assessed, is a Municipal district, the amount of the charge shall be paid by the Municipality from the municipal fund, or the rate shall be assessed by the Municipality conformably to the direction given by Government."
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> " 26 (1) Every tax imposed or rate assessed under the last two preceding sections . . . by a Municipality, shall be recovered by such Municipality from each person assessable therefor in the same manner as a municipal tax due by him : Provided always that, in default of such recovery it shall be lawful for the Government to direct the Collector to recover such tax or rate. . . ."

Now on the 1st December, 1921, before the plan of direct collection from the weavers had been given up, the President of the Municipality of Malegaon had reported to the Collector of Nasik on the position as it then was. He recalled that, soon after the disturbances, when it was contemplated that the cost of the additional police should be recovered by the Municipality, he had represented to the Collector that it was totally unable to undertake the work in question. He stated that the weavers had become increasingly recalcitrant, that they flatly refused to pay and abused the officials employed. He quoted them as saying openly that the Municipality had no business to undertake the work, when the majority of ratepayers were thoroughly opposed to payment, and he added that even the income-tax payers (only 26 in number) paid nothing but passively awaited the issue of warrants of distress

under Section 183 of the District Municipal Act. His report concluded thus :—

> " Irregular recovery of Municipal taxes and large outstandings every year are due to the same reason. I may add that not a single pie of additional police charges has been recovered up to now. The situation, therefore, is very delicate, and it must be handled with great tact and circumspection. I, therefore, seek your advice as to how I should proceed in the matter. I should also be enlightened on the point, whether the work of executing warrants of distress against income-tax payers should be taken in hand."

The proviso to Section 26 (1) of the Police Act speaks of " in default of recovery " by the Municipality, not " in case of wilful default," and, if the Government read this report under the circumstances as a simple confession of failure so far, there can be no question that the interpretation was justified. The Municipality had never desired to be charged with this recovery : they had sufficient experience of the difficulty of getting any money out of the weavers to desire no more of such responsibilities, and they had come as near as they respectfully could to inviting the Government to collect its money for itself. Accordingly, the recovery of the costs of the additional police was placed in the Collector's hands.

It appears, however, to have been overlooked that the object and effect of what was done in June, 1922, was to supersede the old levy by a new one, to be made on different persons and to be measured in a different manner. It was a new exercise of the powers given to the Government by Section 25 (2), to which, therefore, the mandatory provisions of subsection (4) at once attached. The report made by the President of the Municipality dealt only with the superseded method of recovery, and could not be said to amount to a refusal to try to recover anything, old or new, or to an anticipatory declaration of default under all circumstances. The appellants, accordingly, urge that the Municipality ought to have had the opportunity of making their own assessments, pursuant to Section 25 (4), and of seeing what they could do with a body of shopkeepers, men of substance and probably men of peace, who at any rate had a good deal to lose by defying the law, for the chances of success in dealing with them were greater than those attending on a conflict with a numerous body of turbulent workmen, who had little or nothing to lose. They say that the conditions had not been fulfilled, which the Act fixes as precedent to the Collector's right to get in the police rate from them. The point is legally open to them now, little as it can be supposed that they actually desired at the time to have had any demands made by the Municipality on them.

The provision that, when Government decrees integrally a levy for the recovery of the cost of additional police, its execution must be put into and left in the hands of the Municipality, when there is one, until default is made, appears to their Lordships to be more than a form, which might be waived, or a matter, in

which irregularity is excused. It cannot be a mere irregularity to disregard an express statutory prescription, however honestly or excusably, nor is a short cut permissible because the prescribed course promises little advantage. The Police Act interposes between the punitive action of the Government and the incidence of the burden on the individual the executive action of a Municipality which may be supposed to feel a responsibility towards its rate-payers and to mitigate, from their point of view, the severity of the chastisement. It has, therefore, a constitutional importance, which must be recognised, whether the practical moment of this arrangement is really considerable or not. On this point only and on this ground alone their Lordships are of opinion that the demand made by the Collector for payments in recovery of the costs of the additional police was premature, and not in accordance with the Act.

It, accordingly, becomes necessary to consider the answer which Section 80 of the Code of Civil Procedure affords to the appellants' claim. This answer, if it is applicable at all, applies to the whole suit, but, in view of the numerous and precise attacks, which have been made throughout the proceedings on all the Government officials concerned, and of the differences of opinion which have been expressed in India upon them, it did not seem to their Lordships either right or wise not to examine them, with the object of seeing whether they had any foundation.

This section and its predecessor, Section 424 of the Code of 1882, have stood for over forty years, substantially in the same form, as a protection to officials in precise terms against personal responsibility for official action. How far-reaching such protection ought to be is a matter of policy ; how far it actually extends is a question of judicial construction.

That this suit is one to which Section 80 applies is common ground ; the contest is as to its effect when applied. The plaint avers (para. 17) that " Notice, as required under Section 80 of the Civil Procedure Code, has been given to the Collector." This was given on the 26th June, 1922, and the act, purporting to have been done by him in his official capacity which was relied on, was the issue of notices for the recovery from the plaintiffs in the suit of the tax referred to in Notification 152. It does not appear that any notice was served on the Secretary of State, though the section requires it, but no independent ground of defence has been raised on this. The plaint proceeds in the same paragraph " as the suit is for an injunction, and as the defendants are about to recover the amount demanded in the notices soon, the suit is filed before the completion of the period of two months." No particulars were given to show that the Collector intended to enforce the orders before the 15th August, 1922, nor was any satisfactory evidence given to this effect. The plaintiffs appear to have relied simply on the fact that part of the relief claimed in the suit was an injunction.

For many years there has been a marked difference of opinion between the High Court of Bombay, on the one hand, and all the other High Courts in India, on the other, as to the true application of Section 80 of the Civil Procedure Code (Act V) of 1908 and of Section 424 of the Code (Act X) of 1877, which it superseded, in the case of suits against officials for acts purporting to be done in discharge of their duties, when part or the whole of the relief claimed is a perpetual injunction. After some differences of opinion among their subordinate Courts, the High Courts of Calcutta, Madras and Allahabad have now agreed in deciding that these sections are to be strictly complied with and are applicable to all forms of action and all kinds of relief. (*See* the cases of *Rajlucki Debi* (1897), 25 Calc. 239, and *Dakshima* (1923), 50 Calc. 992 ; of *Kalskhan* (1912) 37 Mad. 113 and *Koti Reddi* (1918) 41 Mad. 792 ; of *Bachchu Singh* (1902) 25 All. 187 and *Abdul Rahim* (1924, 46 All. 882.) In Bombay, on the other hand, in the cases of *Gajanan Krishnarao* (1911) 35 Bomb. 362, *Naginlal* (1912) 37 Bomb. 243 and *Gulam Rosul* (1916) 40 Bomb. 392, which were suits to restrain by injunction the commission of some official act prejudicial to the plaintiff, it has been intimated or held that, if the immediate result of the Act would be to inflict irremediable harm, Section 80 does not compel the plaintiff to wait two months before bringing his suit, though, if nothing is to be apprehended beyond what payment of damages would compensate, the rule is otherwise and the section applies.

As the Code of Civil Procedure is applicable to all the High Courts in India, and as Section 80 is intended to afford a protection (whatever exactly it may be), to all officials, high and low, it is certainly undesirable that a difference of opinion such as this should be left unresolved. What appears to have influenced the learned Judges is, firstly, their assumption as to the practical objects with which it was framed (see *Shahabzadee's* case (7 Calc. 499) ; *Peary Mohan Das* (16 C.W.N. 145) and *Raghuban's* cases (32 Calc. 1134)) ; and, secondly, is the fact that this protection takes the form of providing for a fixed and obligatory interval of two months between the required notice and the commencement of any suit in respect of the officials' action. It is only right to observe in this connection that, under Section 80 (2) of the Bombay Police Act, at any rate, and it may be under other similar provisions, damages would not be recoverable from a public servant, who gave effect in good faith to orders issued with apparent authority. It appears, therefore, to have been due to anxiety not to expose a plaintiff to the risk of the execution of an invalid order without practical redress, that they adopted a construction, which is not in accord with that accepted generally. The point has been put in this way. Section 80 is but a part of a Procedure Code, passed to provide the regulations and machinery, by means of which the Courts may do justice between the parties. A construction which may

lead to injustice is one which ought not to be adopted, since it would be repugnant to the whole tenor and purpose of the Act, and the implication of a suitable exception or qualification is, therefore, justifiable and even necessary. In effect, however, their decisions are not altogether reconcilable with one another, either as to the extent to which they go, or as to the reasoning on which they are based. Whether the section should be read as if it ran "no suit other than a suit in which an injunction is claimed," or as if it ran "no suit shall be instituted except when serious or irreparable damage might be occasioned to the plaintiff, if not prevented by the previous grant of an injunction," does not appear to have been settled. In the one case all suits falling within the section could safely anticipate the prescribed delay by the simple device of adding a claim for an injunction at the end of the plaint. In the other it would depend on the view, which a Judge might take of the elastic and indefinite expression "serious or irreparable damage," whether the official should have or should lose the benefit of the statutory interval of two months, nor can this difficulty in the least depend on the intention, which may be speculatively attributed to the legislature in prescribing any interval at all. To some extent the Bombay decisions purport to rest on the authority of English cases, of which the principal are :—*A. G.* v. *Hackney Local Board* (20 Eq. 626) and *Flower* v. *Low Leyton Local Board* (5 Ch. D. 347). These were decided respectively upon the Metropolis Management Act, Amendment Act, 1862, and on the Public Health Act, 1875, and turned on the construction then put on the Public Authorities' protection clauses therein contained. The Public Authorities' Protection Act, 1893, has now repealed these clauses, and has adopted another form, to which the authority of *Flower's* case has not been considered applicable (*Harrop* v. *Ossett Corporation*, 1898, 1 Ch. 525 ; *Fielding* v. *Morley Corporation*, 1899, 1 Ch. 1). In the *Hackney* case Bacon V.C. held that the words "any act done or intended to be done under their Parliamentary powers" could not apply to a nuisance, to which such powers could not in any case extend. The difficulties of this construction are shown in the judgment of Bowen L.J. in *Chapman Morsons & Co.* v. *Auckland Union* (23 Q.B.D. at p. 302), where he endeavours, but without much confidence, to find a less unsatisfactory basis in the words "writ or process," within which a bill for an injunction might not fall. In *Flower's* case the Court of Appeal held that the Public Health Act, 1875, Section 264, did not extend to a bill in Chancery, but only to an action at law, a consideration inapplicable to Section 80 of the Civil Procedure Code, and assumed that the object of the delay provided by the section was to give time for a tender of amends. It is to be noted that the Public Health Act, 1875, the previous Act of 1848, and the Metropolis Management Act were cases where a subordinate statutory authority had been entrusted with specific and limited powers, and it would seem from *Davis* v. *Corporation of Swansea* (22 L.J.,

Ex. 299) that the profession had long taken Section 139 of the Act of 1848 to be applicable only to actions of tort. Similarly in *Flower's* case, counsel hardly contested that an exception of "cases of necessity," as mentioned in the Court below by Malins V.C., must be understood. A view, therefore, about a bill for an injunction "against serious and irreparable damage requiring the intervention of the Court," almost undisputed in the Court of Appeal, would not be any guide to the meaning of the Civil Procedure Code, where the clause applies to all officers of Government and to all their official acts, and where the words "in respect of," a form going beyond "for anything done or intended to be done" show it to be wider than the statutes, on which the English authorities were decided.

On the other hand, the view which has been taken in the other High Courts may be shortly summarised thus. The argument that a statutory provision as to procedure is subject to some exception of cases, where hardship or even irremediable harm might be caused, if it were strictly applied, might be used with equal cogency in connection with a code fixing the admissibility of evidence or with a limitation section, recognising rights but barring remedies. For this, however, there is no authority. The Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which *inter alia* an injunction is prayed is still "a suit" within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. Considering how long these and similar words have been read throughout most of the Courts in India in their literal sense, it is reasonable to suppose that the section has not been found to work injustice, but, if this is not so, it is a matter to be rectified by an amending Act. Their Lordships think that this reasoning is right. To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court. So, too, the contention that the "act purporting to be done by the Collector in his official capacity, in respect of which" the suit was begun, was his threatened enforcement of payment is fallacious also, since the illegality, if any, is in the order for recovery of the tax. If that was valid, there was nothing to be restrained. Hence, though the act to be restrained is something apprehended in the future, the act alone "in respect of which" the suit lies, if at all, is the order already completed and issued.

As for the suggestion that Section 80, in such a case as this, is itself *ultra vires*, it arises from a misapprehension of *Moment's* case (40 I.A., 48). The regulation for civil procedure has nothing to do with the obligations formerly vesting in the East India Company as a trading corporation, for it is incidental to the duties of the ruling power, and cannot be said to be subject to the Government of India Act, 1858, Section 65.

An attempt was made to distinguish between the effect of Section 80 in the case of the Secretary of State and in the case of the Collector, and to argue that, even if it defeated the action as against the first-named defendant, it would fail to protect the second. Their Lordships cannot accept this. Not only has the suit been throughout a joint proceeding against the officials concerned, for the purpose of getting a joint declaration that the Government Notification was bad as the foundation of everything subsequently done, but, without the presence of the Secretary of State before the Court, the Notification could not be assailed, and, if it stands as valid, the Collector's own action could not be successfully impugned.

The consequence is that the appellants' present position in regard to the taxes imposed on them is as if their action had never been brought. It was unsustainable *in limine*. They commenced their suit before the law allowed them to sue, and can get no relief in it either by declaration or otherwise. Whatever may be the case between other parties, as against the respondents, they must fail. They have taken their own course and have brought this result on themselves. The suit was begun and prosecuted as a joint suit to challenge the official action as soon and as completely as possible. The evidence did not prove risk of serious or irremediable damage to anybody, and was not directed to doing so. The sums payable were in many cases very small, and were throughout far from being oppressive. Any sums paid under the Collector's demand would be returnable if that demand was proved to have been bad, and no one of the plaintiffs was shown to have been unable to make the first payment, the only one falling due within the two months. There was no reason for not complying with the words of the section, except over-confidence in what may be called the Bombay view of it. Accordingly, their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

BHAGCHAND DAGDUSA GUJRATHI AND OTHERS

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER.

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