

ORIGINAL CIVIL.

Before Panckridge J.

1936

June 25.

SIDDHESHWAR DATTA

v.

MANMATHA NATH RAY CHAUDHURI.*

Injunction—Temporary injunction—Discretion of the Court, if unfettered—Pecuniary interest, if applicant must have—Code of Civil Procedure (Act V of 1908), O. XXXIX, r. 2.

Relief by way of temporary injunction is in the discretion of the Court, but that discretion is not unfettered and must be exercised in accordance with generally recognised principles.

Although the powers of the Court under O. XXXIX, r. 2. of the Civil Procedure Code are wide enough to enable it to grant a temporary injunction where the personal status of the applicant is the only matter for such injunction, yet the Court will refuse it, unless the applicant has also a pecuniary interest involved in the subject matter of such injunction.

Rigby v. Connol (1) relied upon.

Aslatt v. Corporation of Southampton (2) considered.

APPLICATION on behalf of the plaintiff for a temporary injunction.

The plaintiff instituted the suit against Maharaja Sir Manmatha Nath Ray Chaudhuri, President of the Indian Football Association, H. N. Nicholls, Vice-President of the Association, A. L. Preston, Joint Hony. Secretary of the Association, Sailendra Nath Banerjee, a member of the Council of the Association and Bimal Chandra Ghose, another member of the Council—all in their individual capacities and as representing the Association, for injunction restraining them and the

*Application in Original Suit No. 1013 of 1936.

(1) (1880) 14 Ch. D. 482.

(2) (1880) 16 Ch. D. 143.

Association from interfering with plaintiff's attending the meetings of the Council, participating in the management and administration of the affairs and funds of the Association and otherwise exercising his rights as a member of the Council.

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The facts of the case material for this report and arguments of counsel appear from the judgment.

P. C. Ghose, A. C. Mitra and M. N. Banerjee for the plaintiff applicant.

S. C. Bose, S. N. Banerjee (Jr.) and S. P. Chowdhury for the defendants *Manmatha Nath Ray Chaudhuri, A. L. Preston and Sailendra Nath Banerjee*, opposed.

Page and N. C. Chatterjee for the defendant *Bimal Chandra Ghose*, opposed.

S. R. Das for the defendant *H. N. Nicholls*, opposed.

PANCRIDGE J. This is an application by the plaintiff for an interlocutory injunction restraining the defendants and all other members of the Council of the Indian Football Association, and all officers and servants of the said Association from preventing the plaintiff from attending the meetings of the Council and from participating in the management and administration of the affairs and funds of the Association and from otherwise exercising his rights as a member of the Council.

The plaintiff has been a member of the Council of the Indian Football Association since the beginning of 1935. The constitution of the Indian Football Association is as follows: The object of the Association under rule 3 is "the promotion of the game of Association Football in India by "organisation, management and control of football

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“leagues, tournaments and matches and also by exercising control over clubs and associations affiliated thereto and in every other way that the Association may think proper.” By rule 11 “the government of the Association together with all the properties thereof shall be vested in the Governing Body.” By rule 12 “the management of the Association and of its affairs and the administration and enforcement of its rules, regulations and bye-laws shall be entrusted to the Council”. Rule 13 deals with the composition of the Governing Body. Though that composition varies, the Governing Body at present consists of twenty-two clubs, eleven described as European clubs and eleven as Indian clubs. There are provisions for the appointment of a President and Vice-President and also of an Hony. Treasurer and Joint Hony. Secretaries. These gentlemen together with seven representatives of European clubs and seven representatives of the Indian clubs forming the Governing Body are the nucleus of the Council. In addition to these members of the Council, under rule 30(b) the Council is required at its first meeting to co-opt certain persons, and amongst such persons is one Indian elected from the representatives of clubs in the Calcutta Football League not on the Governing Body, at a meeting to be convened and presided over by the Joint Hony. Secretary.

It is common ground that the plaintiff was co-opted as a member of the Council, under the provisions which I have read, at the first meeting of the Council in the year 1935. The members and officials of the Council are under rule 31 to continue in office for one year or until their successors are appointed. There has been no appointment in the year 1936, and the consequence is that the members of the Council elected or co-opted in 1935 are still in office. The plaintiff complains that he has been illegally expelled from the Council under a series of resolutions dated May 18, 20, 25 and 29, 1936.

In view of the decision at which I have arrived it is not incumbent upon me to set out in detail the various steps which the Council took.

The defendants in this suit are the President, the Vice-President and one of the Hony. Secretaries and two other members of the Council; and they are sued as representing the Council as a whole.

The resolution of the Council on which the defendants rely is the resolution passed on May 29, 1936. That resolution was in the following form:—

Resolved that in the best interests of the administration of the Indian Football Association Mr. Sidhu Datta be expelled from the Council for his misconduct.

The plaint was filed on June 10. The plaintiff in his prayer seeks for a declaration that the resolutions of the Council relating to his expulsion are void and of no effect, and for a declaration that he is still a member of the Council and is entitled to all the rights and privileges incidental to his status as such. He asks for other forms of relief dependant upon the declaration he seeks. He maintains first that the Council has no power to pass a resolution expelling one of its members, and it is certainly the case that the rules do not expressly give any such power. The defendants relying on certain authorities contend that a body like the Council of the Indian Football Association has the power to expel one of its members after proper enquiry if it acts *bona fide* and not maliciously.

The plaintiff next maintains that even if the Council has the power to expel one of its members, the power was improperly exercised in his case, because the proceedings of the Council were not in accordance with natural justice, and in particular he states that he was not given sufficient notice of the facts alleged against him to enable him to deal

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satisfactorily with the charge of misconduct. I do not intend to express any opinion either on the Council's power to expel, or on the particular exercise of that power, supposing it exists, in the circumstances of the present case. My reason is that the authorities which have been cited by the defendants convince me that in the circumstances of the present case it would be contrary to accepted principles to grant an interlocutory injunction. Relief by way of temporary injunction is in the discretion of the Court, but that discretion is not unfettered, and it must be exercised in accordance with the principles generally recognised.

One of these principles in my opinion is that the Court will not grant an interlocutory injunction, except in cases where there is some pecuniary or proprietary right of the plaintiff which requires protection. It was conceded by the plaintiff in this case that as a member of the Council he has no proprietary right, either personally or in a fiduciary capacity, in the Indian Football Association. He is bound to concede this by reason of rule 11, which I have already read, whereby the property of the Association is vested in the Governing Body, and not in the Council.

The first case that has been cited is *Rigby v. Connol* (1). That was an action by a member of a Trades Union against the trustees and he claimed that he was entitled to share in the benefits of the Union, and asked that the defendants might be restrained from excluding him therefrom. Jessel M. R. observed :—

I have no doubt whatever that the foundation of the jurisdiction is the right of property vested in the member of the society, and of which he is unjustly deprived by such unlawful expulsion,

and later on :—

in such cases no Court of Justice can interfere so long as there is no property the right to which is taken away from the person complaining.

If that is the foundation of the jurisdiction, the plaintiff, if he can succeed at all, must succeed on the ground that some right of property to which he is entitled has been taken away from him. That this is the foundation of the interference of the Courts as regards clubs I think is quite clear,

and again he proceeds :—

The present plaintiff certainly does not state in his statement of claim that there is any property at all here, and I think that that is a fatal objection to the statement of claim altogether, and I might, if I thought fit, dismiss the action simply on that ground.

The same principle was recognised in *Baird v. Wells* (1). In that case the plaintiff, who was a member of a proprietary club, sought an injunction to restrain the proprietor and Secretary of the Committee from interfering with his use and enjoyment of the club as a member thereof. Stirling J. distinguishes between a members' club and a proprietary club in these words :—

In all the cases of this nature, in which up to the present time an injunction has been granted, the club has been one of the ordinary kind, *i.e.*, it has been possessed of property (such as a freehold or a leasehold house, furniture, books, pictures, and money at a bank), which was vested in trustees upon trust to permit the members for the time being to have the personal use and enjoyment of the club-house and effects in and about it. But the interest of the members is not confined to that purely personal right. The members might, if they all agreed, put an end to the club ; and in that case they would be entitled, after the debts and liabilities of the club were satisfied, to have the assets divided among them. In the present case the club, as such, has no property. The club-house and furniture belong to the defendant Wells, and by him the subscriptions are taken. He is not a trustee, but the owner, of the property. If club were dissolved at any moment there would be nothing whatever to divide among the members. Now the interference of the Court in the cases which have hitherto occurred has been based on the rights of property of which the member had been improperly deprived.

In the present case if the Association were wound up the plaintiff would have no right to participate in any assets that it possesses, because he is not a member of the Association ; and if by some alteration of the rules the Council were abolished, again there would be nothing in which

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he could participate, because the Council as such holds no property.

It has been suggested that the law is not as rigid as the passages which I have just cited would lead one to suppose, and counsel for the plaintiff has relied on *Aslatt v. Corporation of Southampton* (1). In that case, the plaintiff had entered into certain financial arrangements which it was suggested had the effect of depriving him of his office by reason of the provisions of the Municipal Corporation Act, 1835. It was proposed to hold a meeting of the defendant Corporation for the purpose of declaring the office held by the plaintiff void and of electing his successor.

The Court held that the provisions of the Municipal Corporation Act, 1835, were not applicable to the circumstances of the plaintiff's case and granted an interlocutory injunction restraining the Corporation from holding the proposed meeting, and from interfering with the plaintiff in the performance of his functions as a member. In the course of argument counsel for the Corporation made the following submissions: "this Court will not interfere by injunction when the question is, "as here, merely one of personal *status*, and not one "of property". Jessel M. R. is reported as saying:

But the plaintiff is one of a body of persons entrusted with the management of the property of the corporation: the question is therefore one of property.

The passage on which the plaintiff now relies is at p. 148. There the learned Master of the Rolls observed—

Now it has been said—and I think truly said—that, as a general rule the Court only interferes where there is some question as to property. I do not think that the interference of the Court is absolutely confined to that

(1) (1880) 16 Ch. D. 143, 148.

now; there may be cases in which the Court would interfere even when personal *status* is the only thing in question; but it is not necessary for me to decide that question at the present moment. Even if the limited rule only were to apply, it is admitted on the part of the defendants, the Corporation of Southampton, that there is property involved and of course they must have property, independent of the borough rates, they being an old corporation: and, therefore, this gentleman is in a sense a trustee as one of the governing body, and has a part in the disposal of that property.

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In a later case *Richardson v. Methley School Board* (1) Kekewich J. appears to have considered that Sir George Jessel's judgment expressly recognised the right of a plaintiff to ask for an injunction in cases where only personal *status* as contrasted with pecuniary interest was involved. In my opinion, Sir George Jessel expressly declined to decide, what, in his opinion, was in the circumstances of *Aslatt v. Corporation of Southampton* (2), an academic question, because the Corporation admitted that its property was vested in a body of persons amongst whom were the Aldermen of the Corporation.

In these circumstances although the powers of the Court under O. XXXIX, r. 2 appear to me to be wide enough to enable me to grant an interlocutory injunction I am compelled to refuse it, holding as I do, that the principle which requires the plaintiff to have pecuniary interest in the subject-matter of the injunction has been for many years well recognised and has never been expressly dissented from. Although the plaintiff may resent his expulsion, and although he may have real grievances with regard to it, I do not think that at the worst the injury done him is so serious, that he ought to be restored to the position of which he complains he has been wrongfully deprived pending the hearing of the suit. He certainly has not suffered in pocket, and the injuries, if any, to his feelings and reputation will, in my opinion, be adequately assuaged if when

(1) [1893] 3 Ch. 510.

(2) (1880) 16 Ch. D. 143.

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the suit comes on for hearing he establishes that the contention of the defendants that he has been properly and validly expelled from the Council is groundless.

In these circumstances I dismiss the application. Costs in the cause.

Application dismissed.

Attorney for applicant: *Raj Kumar Basu.*

Attorneys for different respondents: *Khaitan & Co., Basu & Co.*

P. K. D.