

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

DEVALJI RAU (PLAINTIFF),

v.

PRESIDENT, MUNICIPAL COMMISSION, MADRAS,
(DEFENDANT).*

1895.
July 31.

City of Madras Municipal Act (Madras)—Act I of 1884, s. 433—Notice of action.

In a suit against the President of the Municipal Commission, Madras, to recover damages for the demolition of a house which had been built by the plaintiff without previous notice given by him under Madras Municipal Act, 1884, section 265, the plaintiff proved, by way of notice of action, the delivery of a letter signed by him and dated from his place of residence, which did not state where the house in question had stood, nor the date of its demolition, nor state positively that an action would be brought :

Held, that the letter was not a sufficient notice of action.

CASE stated for the opinion of the High Court under Civil Procedure Code, section 617, and Presidency Small Cause Court's Act, 1882, section 69, by V. P. DeRozario, Third Judge of the Madras Court of Small Causes.

The case, so far as it is pertinent to the purposes of this report, was stated as follows :—

“The plaintiff built a house within municipal limits, which the defendant, the President of the Municipal Commission, caused to be demolished. The plaintiff claims Rs. 600 as damages.

“The defendant denies liability, states that the damages claimed are excessive, and pleads that the plaintiff has not given sufficient and legal notice of the action according to the provisions of section 433 of the City of Madras Municipal Act, 1884.

“This section is as follows :—

“No action shall be brought against the Commissioners, or any of their officers, or any person acting on their behalf or under their direction, for any thing done or intended to be done under or in pursuance of the powers of this Act, until the expiration of one month next after notice in writing has been left at the Municipal office or at the place of abode of such person not

* Referred Case No. 30 of 1894.

DEVALJI RAU v. PRESIDENT, MUNICIPAL COMMISSION, MADRAS. 'later than six months from the date on which the cause of action arose. Such notice shall state explicitly the cause of action and the name and the place of abode of the intended plaintiff and of his attorney or agent, if any, and shall be signed by the intended plaintiff or his attorney or agent.'

"The notice given by the plaintiff (exhibit A) gives his name and address, states that his house has been demolished by the municipal executive, and that he has sustained a loss of Rs. 600, and that a suit will be filed if the compensation claimed is not awarded.

"The notice A is in the following terms:—

107, Chella Pillayar Kovil Street,
Pudupaukam, Triplicane,
16th June 1894.

To

THE PRESIDENT,
MUNICIPAL COMMISSION,
Madras.

SIR,

I beg to bring the following few lines to your kind consideration. My past ignorance of the municipal regulation concerning building of houses silenced me into looking sorrowfully at the work of demolition of my house by the municipal executive; but my present knowledge of the provisions of the Act incites me to claim from you compensation for my loss of Rs. 600, and also to bring a suit for damages if you don't intend to grant me a compensation.

I beg to remain,

Your most obedient servant,
DEVALJI RAU.

"Mr. Morgan, the defendant's attorney, contends that the notice is defective, as it does not state the time when and where the cause of action arose, and in support of his contention cites *Breese v. Jerlein*(1). But in *Jones v. Bird*(2) and *Smith v. West Derby Local Board*(3) it was held that it was quite sufficient if the notice affords plain and substantial information of the cause of action; that it is not necessary to describe in specific words precisely how the injury took place, nor is it in all cases material to state precisely where the

(1) 4 Q.B., 585; s.c., 12, L.J., Q.B., 234.

(2) 5 B. & Ald., 837.

(3) 3 C.P.D., 423.

cause of action arose. The object of giving notice is 'that if a public body or officer entrusted with powers happens to commit an inadvertence, irregularity, or wrong, before any one has a right to require payment in respect of that wrong, he shall have an opportunity of setting himself right, making amends, restoring what he has taken, or paying for the damages he has done.' (*Shahebzadee Shahunshah Begum v. Fergusson*(1); see also section 435 of the Municipal Act). If, therefore, the notice conveyed sufficient information to the defendant as to the wrong for which he was to be sued (it is not alleged that any other house of the plaintiff was destroyed by the municipality, or that the defendant had any doubt as to the particular wrong for which he was to be sued), it appears to me that any informality, if it has not prejudiced the defendant, will not vitiate it. In *Osborn v. Gough*(2) it was held that if the information given is sufficiently specific and sufficiently accurate to enable the defendant to avail himself of the privileges and advantages that the Act intended to confer upon him, it will be sufficient, and it is for the defendant to show that the error or misstatement or insufficient description in the notice has deprived him of the opportunity of taking advantage of the statute. In *Eales v. The Municipal Commissioners of Madras*(3) the notice was objected to by the defendants on the ground that it did not show the place of abode of the intended plaintiff and of his attorney. The High Court held the notice to be valid, and, adopting the language of Pollock, C.B., in *Jones v. Nicholls*(4), remarked 'we must import a little common sense into notices of this kind.'

DEVALJI RAU
v.
PRESIDENT,
MUNICIPAL
COMMISSION,
MADRAS.

"I am of opinion that the notice is valid."

The rest of the case as stated is immaterial for the purpose of this report. The questions submitted were the following:—

- (i) "Whether the notice given in this case is valid.
- (ii) "Whether the President of the Madras Municipality was justified in demolishing the plaintiff's house on the mere ground that it was constructed without previous notice to the municipality under section 265 of the Municipal Act."

The Judge was of opinion that both questions should be answered in favour of the plaintiff.

(1) I.L.R., 7 Calc., 499.

(3) I.L.R., 14 Mad., 386

(2) 5 B. & P., 550.

(4) 13 M. & W., 361.

DEVALJI RAU
 v.
 PRESIDENT,
 MUNICIPAL
 COMMISSION,
 MADRAS.

Ambrose for plaintiff.

Mr. *K. Brown* for defendant.

JUDGMENT.—We are of opinion that the letter of the plaintiff is not a sufficient notice within the meaning of the 433rd section of the City of Madras Municipal Act of 1884.

It is insufficient because it omits to state the place or street in which the house alleged to be demolished stood, as also the time of the alleged demolition. Further the letter does not positively state that an action will be brought. See *Breese v. Jerdein*(1) and *Mason v. Birkenhead Improvement Commissioners*(2).

It is unnecessary to answer the second question.

Barclay, Morgan & Orr, attorneys for defendant.

(1) 4 Q.B., 585; s.c., 12 L.J., Q.B., 234.

(2) 6 H. & N., 72.