APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Reilly.

K. R. M. A. R. ARUNACHELAM CHETTY (PLAINTIFF), APPELLANT

1926, August 27.

v.

J. A. DAVID, OFFICIAL RECEIVER OF RAMNAD DISTRICT AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 80—Suit against public officer—Suit for injunction—Notice of suit—Future acts and past acts—Notice, whether necessary for a suit for injunction in respect of threatened acts—"Act purporting to be done" in section 80, meaning of—whether includes future as well as past act.

In respect of acts of public officers purporting to be done in their official capacity, section 80, Civil Procedure Code, requires notice of suit prescribed therein to be given only in the case of past acts completed or begun but incomplete, and not in the case of threatened acts; the expression "acts purporting to be done" in the section should be construed as meaning past acts and not future or threatened acts.

Where therefore an Official Receiver in insolvency advertised the sale of certain properties on a future date as belonging to the insolvent, a person claiming the properties can maintain a suit for a declaration and an injunction against the Official Receiver, although he did not give the two months' notice prior to the institution of the suit as prescribed by section 80 of the Civil Procedure Code. *The Superintending Engineer, II Circle, Bezwada* v. *Chituri Rama Krishna*, (1920) 39 M.L.J., 151, distinguished.

APPEAL against the decree of S. NARAYANASWAMI AYYAR, Acting Subordinate Judge of Sivaganga in O.S. No. 113 of 1924.

The material facts appear from the judgment.

* Appeal No. 15 of 1926.

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C. S. Venkatachari for appellant.

T. M. Krishnaswami Ayyar for respondent.

JUDGMENT.

RAMESAM, J. RAMESAM, J.—The plaintiff is the appellant before us. The suit was for a declaration that the suit properties belonged to him and defendants 3 and 4 and for a perpetual injunction restraining the first defendant, who was the Official Receiver of the Ramnad District, from selling them as the properties of the second defendant in I. P. No. 9 of 1917 on his file. The Official Receiver advertised the suit properties for sale on 10th November 1924. On the 5th November the plaintiff sent a notice of suit to the first defendant and the suit was filed on the 7th November 1924. The Subordinate Judge of Sivaganga dismissed the suit on the ground that two months had not elapsed before the filing of the suit and after the giving of notice. The plaintiff in appeal contends that a notice under section 80, Civil Procedure Code, is unnecessary. He concedes that the Official Receiver is a public servant, but argues that the suit is not in respect of an act purporting to be done in his official capacity. His argument is that the suit is only in respect of a threatened act and not in respect of an act which was begun, and therefore the section does not apply. This contention of the appellant is supported by the decision of the Calcutta High Court in *Ganoda Sundary Chaudhurani* v. *Nalini Ranjan Raha*(1) and other decisions of the Bombay High Court which will be referred to presently. In *Ganoda Sundary Chaudhurani* v. *Nalini Ranjan Raha*(1), WOODROFFE, J., relies on the word "done," but I am not satisfied with this line of reasoning. The phrase is not "an act

(1) (1909) I.L.R., 36 Calc., 28.

done" but "an act purporting to be done" and the words "to be done" are not inconsistent with a future act. It is possible to describe a future act by a phrase using the words "purporting to be done" by using other appropriate words such as "future" or "intended" indicating that a future act was meant or by the mere use of the future tense in the sentence. As PRATT, J., points out in *Muradally Shamji* v. *B. N. Lang*(1) one mode of indicating past acts only is by using the words "purporting to have been done." The phrase "purporting to be done" uses the present indefinite form and is grammatically wider than the phrase "purporting to have been done." While conceding all this, I am still of opinion that as a matter of an ordinary idiom the whole phrase "an act purporting to be done" would ordinarily refer to past acts only whether finished or begun but incomplete and does not refer to future acts. The use of the perfect form is not ordinarily resorted to for describing past acts though grammatically more accurate and if a future act is meant it is expressly described by appropriate words. Where no such words are used, the phrase ought in my opinion to be ordinarily limited to past acts (unless the context requires one to extend it to future acts also, there being no grammatical impediment to doing so)—as a matter of reasonable construction if not of grammatical necessity. The decision in *Secretary of State* v. *Gajanan Krishna Rao*(2) relates to a suit against the Secretary of State. In *Nagindal Chunilal* v. *The Official Assignee, Bombay*(3), where the suit was against the Official Assignee of Bombay, the Judges followed the decision of CUNNINGHAM, J., in *Shahebzadee Shahun Shah Begum* v. *Fergusson*(4). Though I come to the same conclusion, I do not wish to adopt

(1) (1920) I.L.R., 44 Bom., 555 at p. 560. (2) (1911) I.L.R., 35 Bom., 362.
(3) (1913) I.L.R., 37 Bom., 243. (4) (1881) I.L.R., 7 Calc., 499.

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that line of reasoning. The decision in *Naginlal Chunilal* v. *The Official Assignee, Bombay*(1) was followed in *Secretary of State for India* v. *Gulam Rasul*(2). In *Muradally Shamji* v. *B. N. Lang*(3) PRATT, J., while differing from the above cases was merely content to follow them sitting as a single Judge. In *Bhagchand Dagadusa* v. *The Secretary of State for India*(4) KEMP, J., observed:

> "The suit is in respect of something the second respondent is going to do, not in respect of something he has done. In my opinion, therefore, no notice is necessary so far as the suit is one for an injunction against the second defendant."

The only Madras decision which touches the question is *The Superintending Engineer, II Circle, Bezwada* v. *Chituri Rama Krishna*(5). In that case, the suit was against the Superintending Engineer of Kistna District, and both the learned Judges held that the suit was bad for want of a proper notice on the ground that the suit related to a past act, the act being the order of the Engineer directing the removal of the image and the temple. There was considerable discussion in the judgments as to whether an order which states an intention would be an act and both the learned Judges held it would be. SPENCER, J., decided the case on another ground and referred to the want of a proper notice only as an additional ground, but SADASIVA AYYAR, J., rested his judgment solely with reference to section 80, Civil Procedure Code. It does not appear that the point whether the phrase "an act purporting to be done, etc" includes a future act was raised by the vakil for the respondent. At any rate, it is not discussed in the judgment and therefore the judgment is not against

(1) (1913) I.L.R., 37 Bom., 243.
(2) (1916) I.L.R., 40 Bom., 392.
(3) (1920) I.L.R., 44 Bom., 555.
(4) (1924) I.L.R., 48 Bom., 87 at 153.
(5) (1920) 39 M.L.J., 151.

the view I am taking. The fact remains that there is no decision against the view I am taking and there are several agreeing with it on different lines of reasoning.

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The learned vakil for the respondent, besides arguing that the section is not confined to past acts only—an argument above dealt with, also argues that this suit must be considered to be in respect of a past act, the past act being the advertisement of the Official Receiver announcing the sale of the suit properties. If the suit can be regarded as one in respect of a past act, the judgment in *The Superintending Engineer, II Circle, Bezwada* v. *Chituri Ramakrishna*(1), already mentioned supports him. But I find it difficult to hold that the suit is in respect of the advertisement. The reason for the suit, or in other words, the cause of action for the suit may be furnished by the advertisement or some other similar past act of the first defendant, but it does not follow that the suit is in respect of that act. The relief sought is to restrain the sale and I think the only proper description of this suit is, " a suit to restrain the intended sale." I am therefore unable to accede to the argument of the learned vakil for the respondent on the second point.

The result is, I hold that in respect of acts of public servants done in their official capacity the section applies only in the case of past acts completed or begun but incomplete and not threatened acts, and therefore the suit is not unsustainable for want of notice. I would therefore allow the appeal and remand the case back for disposal according to law. Costs to abide the result. Court fee paid in appeal will be refunded.

REILLY, J.

REILLY, J.—Plaintiff instituted a suit for a declaration and for an injunction restraining the Official Receiver of Rāmnād from selling the property

(1) (1920) 39 M.L.J., 151.

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concerned, but did not give the Receiver notice as required by section 80, Civil Procedure Code, two months before presenting his plaint. The question is whether section 80, Civil Procedure Code, prohibits the institution of a suit for an injunction against an Official Receiver, who, it is admitted, is a public officer unless the notice mentioned in the section has been given to the Receiver two months earlier. It is contended for plaintiff that as regards a public officer the section requires the notice to be given only if the suit to be brought against him is in respect of some act already done or at least partly accomplished and that, if the suit is in respect of a future act—some threatened, intended, contemplated or apprehended act—then no such notice is required. For defendant I it is contended that, if the act in respect of which the suit is brought is the act of a public officer and purports to be done by him in his official capacity, then whether the act is past, present or future, the suit cannot be instituted unless the notice has been given two months earlier. The question which contention is correct depends on the interpretation of the words "in respect of any act purporting to be done by such public officer in his official capacity" in the section. Do those words cover only a past act or do they include also a future act? On the surface by their mere grammatical form, the words quoted appear to me capable of including a future act. But, when we probe into their meaning, can we say with propriety that an act purports to be done in any particular manner or capacity until it is actually done. We can conceive an imaginary act and conceive it as done in some particular capacity. But can we properly speak of an act not yet done as an act purporting—that is conveying to the outer world a pretence or profession—to be done in a particular capacity? No doubt we could do so hypothetically. But, if the dry

language of a statute speaks of an "act purporting so and so" without adding any word to indicate that the expression is intended to include not only acts done but also acts threatened, contemplated or intended, are we at liberty to interpret the expression as including an act not yet done? If the words in question were "in respect of any act done by a public officer in his official capacity," would there be any doubt that they did not include an act not yet done? Does the insertion of the words "purporting to be" not only widen the character of the acts included but also add future acts to past acts? On the other hand it has been argued for the Official Receiver that, if the legislature had intended to require previous notice to be given to a public officer only when a suit was to be brought in respect of a past act, it would have been a simple and easy matter to find a form of words which would have made that intention indisputably clear. There is some force in that argument. Without pursuing these questions and considerations further I think it may fairly be said that the phrase in question is susceptible of two interpretations, a wider interpretation including future acts and a narrower confined to past acts, and that at the least the narrower interpretation is as consonant with the wording of the section as the wider one. That being so, let us look at the consequences to which the wider interpretation leads. In practice almost all suits against public officers in respect of future acts will be suits for injunctions. Unless a suit for an injunction is to fail entirely of its purpose, it is often necessary that the plaintiff should obtain a temporary injunction pending the suit. Under our procedure a temporary injunction can be obtained only after a suit is instituted. If no suit can be instituted for an injunction against a public officer and no temporary injunction can be obtained against him until two months after notice of

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the suit has been given, the remedy of injunction against such an officer may often be illusory. Can we suppose that the Legislature intended to deprive a private party of a remedy against a public officer which can be enforced against another private party or to expose a private party to the risk of irreparable damage at the hands of a public officer, though means are provided for guarding against such damage at the hands of another private party? Can we suppose that the Legislature, having provided the courts with the weapon of a temporary injunction for the protection of private rights, intended to tie the hands of the courts for two months before that weapon may be used against a public officer? This last suggestion at least we cannot accept lightly. It is a well-established rule that when a provision of a statute is susceptible of two interpretations and one of them leads to a manifest absurdity or to a clear risk of injustice and the other leads to no such consequences, the second interpretation must be adopted. In my opinion that rule may properly be applied in interpreting the words now in question. I may mention here that Mr. Krishnaswami Ayyar for the Official Receiver has pointed out that section 80 clearly makes notice necessary for every suit against the Secretary of State whether in respect of past or future acts and has asked with some dialectical force whether it is reasonable so to interpret the section as to require notice with its attendant danger of irreparable damage to be given before the institution of a suit for an injunction against the Secretary of State but not before the institution of a suit for an injunction against a public officer. I see nothing really unreasonable in supposing that such a distinction was contemplated by the Legislature. Even when a suit is to be brought against the Secretary of State for an injunction, if the protection of a temporary injunction is urgently necessary, the plaintiff

can obtain the temporary injunction against the public officer whose immediate act is feared if the section allows him to institute a suit at once against that officer without notice. In practice the immediate protection of a temporary injunction need never be required against the Secretary of State. Finally in interpreting the words in question there is one other consideration of great importance. So far as it is concerned with suits against public officers, section 80, Civil Procedure Code, is a provision restricting the ordinary right of every man to come to the Civil Courts for relief. It is our duty to interpret such a provision with the utmost strictness, and we must be very sure that our interpretation does not take us one fraction of an inch, one iota, beyond the length to which the language of the provision clearly compels us to go. For these reasons, if the question were bare of authority, I should have no doubt that the correct interpretation of the words in question was the narrower one, viz., that "act" does not include here a future act.

2. If we turn to cases in which the words in question have been interpreted in this connexion, we find that the prevailing view in the Bombay High Court is as shown by *Naginlal Chunilal* v. *The Official Assignee, Bombay*(1) and *Bhagchand Dagadusa* v. *The Secretary of State for India*(2), that section 80, Civil Procedure Code, does not make previous notice essential for the institution of a suit for an injunction against a public officer in respect of some threatened act. The only cases of the Calcutta High Court to which we have been referred, viz., *Shahebzadee Shahun Shah Begum* v. *Fergusson*(3), and *Ganoda Sundary Chaudhurani* v. *Nalini Ranjan Raha*(4), which both dealt with the corresponding section of the

(1) (1913) I.L.R., 37 Bom., 243.
(2) (1914) I.L.R., 48 Bom., 87.
(3) (1881) I.L.R., 7 Calc., 499.
(4) (1909) I.L.R., 36 Calc., 28.

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Code of 1882, show that according to the view of the learned Judges concerned previous notice is not required before the institution of a suit against a public officer for an injunction. Mr. Krishnaswami Ayyar for the Official Receiver relies on *The Superintending Engineer, II Circle, Bezwada* v. *Chituri Ramakrishna*(1), the only reported case of this Court in which the question whether section 80, Civil Procedure Code, requires notice to be given before the institution of a suit against a public officer for an injunction appears to have arisen for decision. But in that case, though both the learned Judges found that the suit was bad for want of notice to the officer concerned, they did not explicitly interpret section 80 as extending to suits against public officers in respect of threatened acts, though that would obviously have been the simplest way to dispose of the case. On the contrary they appear to have based their decision on a finding that the suit was really one in respect of an act which the officer had completed already. Though with respect I do not wish to be understood to agree with the reasoning of the learned Judges in all the Bombay and Calcutta cases which I have mentioned, it will be seen that they support the view that "act" in section 80, Civil Procedure Code, does not include a future act and that the decision in *The Superintending Engineer, II Circle, Bezwada* v. *Chituri Ramakrishna*(1) is not against that view.

3. I agree that this appeal should be allowed and that the suit should be remanded with costs to abide as proposed by my learned brother.

K.R.

(1) (1920) 39 M.L.J., 161.