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we were disposed to grant the prayer, there would still be a fatal objection that the suit as against every person who might now be added, even if he were added to-day would be barred by limitation. The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Aikman.

T. E. STRACHEY (PLAINTIFF) v. THE MUNICIPAL BOARD OF CAWN-
PORE (DEFENDANT).*

*Act No. XV of 1873 (N.-W. P. and Oudh Municipalities Act), section 15
—Act No. XV of 1883 (N.-W. P. and Oudh Municipalities Act),
sections 29, 42, 44—Municipal Board—Powers of taxation—Procedure
—Consideration of objections to proposed tax—Final imposition of tax
—Special meeting—Act No. I of 1877 (Specific Relief Act), chapter
VIII—Injunction.*

The N.-W. P. and Oudh Municipalities Act, 1883, not conferring the powers given by Act No. XV of 1873 to "cancel or vary" a tax imposed, the procedure to be adopted for the enhancement of an existing tax must be the same as that prescribed for the imposition of a new tax.

In imposing a new tax the procedure laid down in section 42 of Act No. XV of 1883 must be strictly followed. Where therefore neither the special meeting of the Board at which an assessee's objections to a proposed tax were considered, nor the special meeting at which the tax was finally imposed, were properly constituted within the meaning of section 29 of Act No. XV of 1883, it was held that the imposition of the tax was invalid. *The Municipality of the City of Poona v. Mohan Lal* (1) approved.

Held also that there is nothing in Chapter VIII of the Specific Relief Act to prevent the High Court from granting an injunction against a Municipality as part of the remedy in a regular suit. *Moran v. The Chairman of Moti-hari Municipality* (2) considered. *Ganga Narain v. The Municipality of Cawnpore* (3) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Messrs. *W. K. Porter* and *W. Wallack*, for the appellant.

The Officiating Government Advocate (*Mr. E. A. Ryves*), and afterwards the Government Advocate (*Mr. E. Chamier*), for the respondent.

* First Appeal No. 192 of 1896, from a decree of *J. E. Gill, Esq.*, District Judge of Cawnpore, dated the 8th June 1896.

(1) (1884) L. L. R., 9 Bom., 51. (2) (1889) I. L. R., 17 Calc., 329.

(3) (1897) I. L. R., 19 All., 313.

BANERJI and ANKMAN, JJ.—This appeal and the connected First Appeal No. 291 of 1896 have arisen out of a suit brought by Theodore Edward Strachey, a Barrister practising in Cawnpore, against the Municipal Board of Cawnpore, in which he seeks to recover the sum of Rs. 200, which, he alleges, was illegally levied from him by the Municipal Board as license tax, with Rs. 8 interest thereon, and also prays for an injunction restraining the defendant Board from levying or recovering any assessment from him by virtue of the resolution and notice under which the tax was assessed. The learned District Judge has given the plaintiff a decree for the money claimed, but has refused the prayer for the injunction. Both parties have appealed to this Court. This is the appeal of the plaintiff against that part of the decree of the lower Court which refused the injunction. It appears that under the provisions of section 15 of Act No. XV of 1873 a tax upon trades and professions in the Cawnpore Municipality was imposed by the Municipal Committee. The rules made by the Committee for the collection of the said tax and confirmed by the Lieutenant-Governor are contained in Government Notification No. 160A, dated the 2nd May 1876, to be found at page 575 of the Government Gazette of that year. For the purpose of the tax all professions, trades and callings were arranged under three classes. Class I specifies bankers and several other professions and trades. Class II sets forth a still longer list of callings. Under Class III are included all dealers or persons practising any trade or profession not mentioned in the above classes or in a list of explanations appended. As the profession of barrister-at-law was not specified either in Class I, Class II, or the list of explanations, it is clear that barristers-at-law fell under Class III. According to the rules the highest tax which could be imposed upon persons falling under Class III was Rs. 12 per annum.

Up to the year 1887 no tax had been levied from barristers-at-law practising at Cawnpore. At a special meeting of the Municipal Board held on the 27th of June 1887, it was resolved

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that persons practising as barristers should be included under Class I, thereby rendering them liable to a maximum tax of Rs. 200 per annum. At the time this resolution was passed Act No. XV of 1883 was in force. Section 42 of that Act prescribes the procedure which has to be followed in imposing taxes for the purpose of the Act. Section 44 of the Act gives the Municipal Board the power to abolish or reduce any tax imposed under the preceding sections. It is noticeable that this section confers no power upon the Municipal Board to enhance a tax already imposed, and in this respect it differs from the former Act, No. XV of 1873, which, by section 15, gave the Committee the power to "cancel or vary" any tax which it had imposed. As the existing Act gave the Municipal Board no power to enhance an existing tax which was the object they had in view when they determined that barristers should be included in Class I, they adopted the only course which appears to have been open to them, that is, they treated the matter as if it were the imposition of a new tax.

Assuming that the procedure was under section 42 of the Act, as it purports to be, the plaintiff contends that there were in the procedure of the Board such defects as rendered the imposition of the tax upon him illegal. When a Board wishes to impose a tax for the purpose of the Act, it is required by sub-section (1) of section 42 that the resolution to impose the tax should be passed at a special meeting, the necessary quorum for which must, according to section 29, sub-section 1, be one-half of the whole Board. In order to enable us to determine the questions raised before us, we found it necessary to ask the lower Court for a finding as to the number of members constituting the whole Board between the 27th of June 1887 and the 25th of August 1887. The finding of the Court below is that between those dates the Municipal Board of Cawnpore consisted of twenty-one members, *i.e.* 18 elected and 3 appointed. We find that the meeting at which the preliminary resolution under section 42 for the inclusion of barristers in Class I was passed, was a

properly constituted special meeting. After the passing of this resolution, the next thing required of the Board is the publication of "a notice defining the persons or property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment to be adopted." It was objected on behalf of the plaintiff that the notification published on the 30th of June 1887 under this sub-section was defective, inasmuch as it failed to define the amount or rate of the tax to be imposed and the system of assessment to be adopted. This contention is not devoid of force. It is impossible to say that the notification complies with the strict letter of the law, but it may be, as contended by the learned counsel for the respondent, a mere defect in form which would be covered by the provisions contained in section 43 of the Act. To proceed: sub-section (3) provides that any inhabitant of the Municipality objecting to a proposed tax may within a time fixed submit his objection in writing to the Board, which is bound to take the objection into consideration at a special meeting. The plaintiff did submit an objection, which was taken into consideration on the 27th of July 1887, at a meeting which is described as an "adjourned special meeting." The number of members present at the meeting was 7, which was only one-third of the whole Board. It is true that under the proviso to section 29 no quorum is necessary for an adjourned special meeting, but the proviso requires that at such adjourned meeting only such business should be brought before and transacted at the adjourned meeting which would have been brought before the original meeting if there had been a quorum present.

The question we have to consider is whether the objection to the imposition of a tax on barristers could legally be considered at the adjourned meeting held on the 27th July 1887. We must answer that question in the negative. The so-called adjourned special meeting held on the 27th of July 1887, had been adjourned from the 19th of July 1887, which again had been adjourned from a meeting of the 11th of July 1887, which last

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meeting had been adjourned from the 27th of June 1887. At none of these meetings was a consideration of objections to the imposition of taxes on barristers a business to be brought forward. Consequently the adjourned special meeting of the 27th July, 1887 was not competent to consider the plaintiff's objection to the imposition of the tax. In the case of *The Municipality of the City of Poona v. Mohan Lal* (1), it was held that the consideration by the Municipality of objections to a tax was an essential part of the machinery provided by the corresponding section of the Bombay District Municipality Act for the legal imposition of the tax and a decree of the lower Court awarding to the plaintiffs whose objections had not been duly considered the amount of the tax which had been levied from them was sustained. The Court declined to accept the contention on behalf of the Municipality that the consideration of objections of the inhabitants was merely a formal act, the omission of which did not invalidate the tax. But there remains a more formidable objection to the procedure of the respondent Municipal Board. Section 42, sub-section (7), provides that when the proposals of a Municipal Board for the imposition of a tax have been sanctioned by the Local Government, the Board may at a special meeting direct the imposition of the tax in accordance with those proposals. The Cawnpore Municipal Board, in order to comply with the provisions of this sub-section, held what purports to have been a special meeting on the 25th of August 1887, at which it was formally resolved that barristers should be assessed in accordance with the proposals set forth above, which had received the sanction of Government. At this meeting only ten members were present, so that according to the finding on the issue referred by us, there was not present at that meeting the quorum required by law for a special meeting. We are constrained to hold that this defect entirely invalidates the resolution for the imposition of the tax under which the amount claimed was levied from the plaintiff. To hold otherwise would

(1) (1884) I. L. R., 9 Bom., 51.

lead to the result that one or two members of a Municipal Board (not being an adjourned special meeting) could by calling themselves a special meeting direct the imposition of a tax upon the whole of the inhabitants. The learned Judge did not decide the case on the ground of the defects to which we have referred above, but made a decree for the amount claimed on the ground that there had been a breach of rule 6 of the rules for the imposition of license tax, inasmuch as the sub-committee by which the tax on the plaintiff was assessed was not duly constituted. This is an additional ground for sustaining the decree which has been granted to the plaintiff.

As we said at the outset, this is the plaintiff's appeal against the part of the decree dismissing his prayer for an injunction. The learned District Judge, although he framed an issue as to whether he had jurisdiction to grant the injunction asked for, did not decide that issue, but contented himself by decreeing the money part of the claim. For the respondent it was contended that this Court was not competent to make a decree for an injunction, and the case of *Moran v. Chairman of Motihari Municipality* (1), was relied on. It is true that the learned Judges who decided that case were of opinion that the power to compel corporations to do their duties and to restrain them from doing that which it is not within their province to do had been reserved to the High Court in its ordinary original jurisdiction with respect to the presidency towns, but had been withheld in respect of any of the Municipalities in the mufassil. What was apparently in the minds of the learned Judges when they expressed the above opinion was Chapter VIII of the Specific Relief Act. That chapter, it is true, does by implication withhold from High Courts the power to make orders save as to corporations within the local limits of their ordinary original civil jurisdiction. But a consideration of the terms of the chapter will render it clear that the orders referred to therein are orders passed upon applications, and not decrees in suits. The order referred to in

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that chapter may be made *ex parte* on a mere application supported by an affidavit. There is nothing in that chapter to take away from Courts the power to grant injunctions in a suit when a sufficient ground is made out for doing so. Injunctions against Municipalities have been granted by this Court, *vide Ganga Narain v. The Municipality of Cawnpore* (1). We therefore overrule the respondent's plea and allow the appeal. We vary the decree of the Court below by granting an injunction restraining the defendant Board from levying or recovering any tax from the plaintiff by virtue of the resolution of the 25th August 1887. The appellant will get his costs of this appeal, and such costs as were refused him in the Court below.

Appeal decreed.

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May 8.

Before Mr. Justice Blair and Mr. Justice Burdett.

SHEO RATTAN RAI AND OTHERS (OBJECTORS) v. MOHRI (APPLICANT)*
Act No. 1 of 1894 (Land Acquisition Act), Sections 18, 19, 32 and 54—
Reference by Collector to Judge—Appeal from Judges's order—Court
fee—Decree or order.

Held, that an appeal will lie to the High Court from an order of the District Judge made upon a reference by the Collector under sections 18 and 19 of the Land Acquisition Act, 1894, as to the disposal of compensation awarded for land taken up by Government under the Act. *Balaram Bhramaratar Ray v Sham Sunder Narendra* (2) followed.

Held, also, that in an appeal from the order of the District Judge above referred to the memorandum of appeal must be stamped as an appeal from an original decree.

IN this case certain land, which was in the possession of the respondent, holding a life estate as a Hindu widow or daughter, was taken up under the provisions of the Land Acquisition Act, 1894. There appears to have been no objection to the amount of the compensation awarded, but certain reversioners to the estate came before the Collector with an objection that the whole of the compensation ought not to be made over

* First Appeal No. 104 of 1898 from an order of Kunwar Bharat Singh, District Judge of Ghazipur, dated the 5th August 1898.

(1) (1897) I. L. R., 19 All., 313.

(2) (1896) I. L. R., 23 Calc., 526.