

1906
April 10.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.
E. C. F. GREENWAY (PLAINTIFF) v. THE MUNICIPAL BOARD OF
CAWNPORE (DEFENDANT).*

Act (Local) No. I of 1900 (North-Western Provinces and Oudh Municipalities Act), section 49—Suit against a Municipal Board—Notice of suit—Whether notice necessary in the case of a suit for an injunction against an act threatened.

Held by AIKMAN, J. (KNOX, J., *dissentiente*) that where a suit is brought against a Municipal Board to which the North-Western Provinces and Oudh Municipalities Act, 1900, is applicable to obtain an injunction prohibiting the Board from levying a tax which the Board has threatened to levy on the plaintiff, the service of such notice as is prescribed by section 49 of the said Act is a condition precedent to the maintainability of the suit. *The Municipal Committee of Moradabad v. Chatri Singh* (1), *Manni Kasauddhan v. Crooke* (2) and *Brij Mohan Singh v. The Collector of Allahabad* (3), distinguished.

KNOX, J., *contra*. Where the suit is for an injunction merely, no previous notice is necessary. *Shahabzadi Shahunshah Begum v. Fergusson* (4), referred to.

THIS was a suit brought by Mr. E. C. F. Greenway, an advocate of the High Court practising at Cawnpore, against the Municipal Board of Cawnpore to obtain an injunction perpetually restraining the Board from levying from the plaintiff a certain local tax, which the Board had demanded and the plaintiff had refused to pay, upon the ground that the particular tax had never been legally imposed, or, if it had been, had, for certain reasons set forth in the plaint, ceased to be leviable. No damages or other consequential relief was claimed. The suit was resisted, amongst others, upon the ground that the plaintiff had failed to serve upon the Board the notice prescribed by section 49 of Act No. I of 1900 previously to instituting his suit; that such notice was a necessary preliminary to the filing of any suit against a Municipal Board, and consequently the suit as brought could not be maintained. The District Judge of Cawnpore accepted the defendant's contention and under section 54(c) of the Code of Civil Procedure rejected the plaint for want of service of notice under section 49 of the Municipalities Act. Against this decree the plaintiff appealed to the High Court.

*First Appeal No. 129 of 1904, from a decree of J. Denman, Esq., District Judge of Cawnpore, dated the 14th of March, 1904.

(1) (1876) I. L. R., 1 All., 269. (3) (1882) I. L. R., 4 All., pp. 102 and 339.
(2) (1879) I. L. R., 2 All., 296. (4) (1882) I. L. R., 7 Calc., 499.

Mr. W. K. Porter, for the appellant.

Babu Lalit Mohan Banerji, for the respondent.

KNOX, J.—This appeal is from an order rejecting a plaint under section 54(c) of the Code of Civil Procedure, 1882. The plaint was a plaint presented by the present appellant against the Municipal Board of the Municipality of Cawnpore. In it the plaintiff sets out that the Municipal Board of Cawnpore were threatening to levy by distress and sale of his movable property a certain tax; that on the 22nd of October, 1902, the said Board demanded payment from the plaintiff of the said tax, and he prayed that the defendants be perpetually restrained from levying or recovering any land tax from the plaintiff.

Among other pleas in defence the Municipal Board of Cawnpore submitted that as no notice had been served upon them as required by section 49 of Act No. I. of 1900, the suit as brought must be dismissed upon this ground alone.

The learned Judge sustained this plea, and under section 54(c) of the Code of Civil Procedure directed that the plaint be rejected.

In appeal it is urged that (1) having regard to the nature of the suit the plaintiff was not required to give the notice referred to in section 49 of the Municipalities Act, 1900; and (2) if such notice be held necessary, the plaintiff has substantially complied with the requirements of section 49, and he should have been allowed to amend the plaint on his application so to amend, dated the 4th of August, 1903.

In the course of the argument the following authorities were cited:—*Poorno Chunder Roy v. Balfour* (1), *Manohar Ganesh Tambekar v. The Dakore Municipality* (2), *Shidmallappa Nurandappa v. The Gokak Municipality* (3), *Price v. Khela Chandra Ghose* (4), *Chander Sikhar Bundopadhya v. Obhoy Churn Bagchi* (5), *Municipality of Parola v. Lakshman Das Supadbbhai* (6), *Bachchu Singh v. The Secretary of State for India in Council* (7), *Bholaram Chowdhury v. The Administrator-General* (8), *Abhoya Nath Bose v. The Chairman and*

(1) (1868) 9 W. R., 435.

(2) (1888) 1 L. R., 22 Bom., 289.

(3) (1888) 1 L. R., 22 Bom., 605.

(4) (1870) 5 B. L. R., App. 50.

(5) (1881) 1 L. R., 6 Calc., 8.

(6) (1901) 1 L. R., 25 Bom., 142.

(7) (1903) 1 L. R., 25 All., 187.

(8) (1904) 8 C. W. N., 913.

1906

F. C. F.
GREENWAY
v.
THE
MUNICIPAL
BOARD
OF
CAWNPORE.

1906

E. C. F.
GREENWAY
" THE
MUNICIPAL
BOARD
OF
CAWNPORE.

Deputy Chairman of the Municipal Committee of Kishangarh (1), and *Flower v. The Local Board of Low Leyton* (2).

Among these, however, there is no case instituted after Act No. I of 1900 was placed upon the Statute Book of these Provinces. The answer of the learned vakil for the respondent to the arguments of the appellant is (1) that the language contained in section 49 of the North-Western Provinces and Oudh Municipalities Act, 1900, is clear and imperative, and (2) that it is abundantly clear from the course that legislation has taken in the matter that the notice required by this section was intended to apply not merely to cases in which the remedy sought was compensation in damages, but also to cases in which, as in this, an injunction is sought. The District Judge of Cawnpore rejected the plaint, holding that notice was a necessary precedent before a suit could be brought. He bases the view he took upon the changes introduced by the Local Act No. I of 1900. He says that "previous to Act No. I of 1900 the law on the point governing the Cawnpore Municipality was Act No. I of 1895, section 4 (amending section 40, Act No. XV of 1883); the important part of this is the proviso which permitted 'suits under section 54, Specific Relief Act, 1877,' to be instituted without any notice. The proviso ran thus:—'Provided that nothing in the section shall apply to any suit under section 54 of the Specific Relief Act, 1877.' Now in Act No. I of 1900 the provisions as to notice are in section 49, which is practically a re-enactment of section 4 of Act No. I of 1895, but without the proviso. Further, under the first schedule of Act No. I of 1900, the whole of Act No. I of 1895 is repealed. So the proviso to section 4, Act No. I of 1895 has been repealed and not re-enacted. The effect of this is, I take it, that whereas formerly people could bring suits for injunctions without notice, they cannot do so now. The present suit is one for injunction only and is of this kind, and it seems to me to be one in which notice is necessary." It seems to me that too much stress has been laid upon the course legislation has taken. What we really have to see is what is the law which governed the institution of suits at the time when the present suit was brought. That law is to be found in section 49 of the North-Western Provinces and

(1) (1867) 7 W. R., 92.

(2) (1877) L. R., 5 Ch. D., 247.

Oudh Municipalities Act, 1900. The opening words of that section are precisely the same as the opening words of section 424 of the Code of Civil Procedure, except that the words 'Board or any member or officer or servant of a Board' have been substituted for the words 'the said Secretary of State in Council or against a public officer.' Section 424 of the Code of Civil Procedure and the similar section in the Municipal Acts have been interpreted in numerous cases, and the principle laid down is that the notice required by these sections is notice for an act which has been done and does not relate to some act which is only threatened and which may or may not be done in the future. The object of giving notice is to enable an officer who has committed a wrongful act to make amends without going into Court. Thus in the case of *Shahabzadee Shahunshah Begum v. Fergusson* (1), Cunningham, J., held that "the words 'in respect of an act purporting to be done by him in his official capacity' must be read in the light of numerous English decisions which have been passed in cases where public officers, companies, &c., are entitled by statute to notice; and it appears from these that the cases in which notice is necessary are invariably cases in which a public officer is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties." It is true that the Local Act No. I of 1895, section 4, did contain a proviso to the following effect:—"Provided that nothing in the section (namely the section requiring notices in suits) shall apply to any suit instituted under section 54 of the Specific Relief Act, 1877." It appears to me that these words were imported into the Act out of an excess of superfluous caution. They were not required, and the view I take is that when the Legislature enacted Act No. I of 1900 their superfluity was discovered and the proviso was dropped out. If this be so, no inference can be drawn from their introduction into the Act of 1895 and their subsequent omission in the Act of 1900. In the suit before us the plaintiff is not instituting a suit in respect of an act purporting to be done, but a suit to prevent the Municipality from a future act concerning which he has an apprehension that it may be done. As, however, my brother holds that the decree of the Court below should be

1906

E. C. F.
GREENWAY
v.
THE
MUNICIPAL
BOARD
OF
CANNONFORD.

1908

E. C. F.
GREENWAY
v.
THE
MUNICIPAL
BOARD
OF
CAWNPORE.

sustained, it is not necessary for me to state what orders I think should be passed in this present appeal

AIKMAN, J.—The appellant, Mr. Edwin Charles Francis Greenway, brought a suit against the Municipal Board of Cawnpore. For the defendant Board a plea was taken that the suit was not maintainable inasmuch as the notice required by section 49 of Act No. I of 1900 had not been served upon the Board. The learned District Judge sustained the plea and rejected the plaint, ordering the plaintiff to pay costs. The plaintiff comes here in appeal. The case has been argued with great ability by the appellant's learned counsel; but, after hearing all he has to say and considering the authorities cited by him, I see no reason for thinking that the view taken by the lower Court is wrong. The first plea in the memorandum of appeal is, that having regard to the nature of the suit the plaintiff was not required to give the notice referred to in section 49 of the North-Western Provinces and Oudh Municipalities Act, 1900. The rulings of this Court relied on by the appellant's learned counsel were:—*The Municipal Committee of Moradabad v. Chatri Singh* (1), *Manni Kasarundhan v. Crooke, Secretary to the Municipal Committee of Gorakhpur* (2) and *Brij Mohan Singh v. The Collector of Allahabad, as President of the Municipal Committee of Allahabad* (3). All these rulings were under the Municipal Act then in force, *i.e.* Act No. XV of 1873. The provisions of that Act in regard to notice before suit are contained in section 43 of the Act and are as follows:—“No suit shall be brought against a Committee or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of the Committee, or at the place of abode of such person, stating the cause of suit, and the name and place of abode of the intending plaintiff. Unless such notice be proved, the Court shall find for the defendant. Every such suit shall be commenced within three months next after the accrual of the cause of action, and not afterwards. If any person to whom such notice is given shall, before suit is brought, tender sufficient

(1) (1876) I. L. R., 1 All., 260. (2) (1879) I. L. R., 2 All., 296.

(3) (1882) I. L. R. 4 All., 102 and 329

1906

 E. C. F.
 GREENWAY
 v.
 THE
 MUNICIPAL
 BOARD
 OF
 CAWNPORE.

amends to the plaintiff, such plaintiff shall not recover." That section was amended by Act No. I of 1895, which substituted for it the following:—"No suit shall be instituted against a committee, or against any officer or servant of a committee, in respect of any act purporting to be done in its or his official capacity, until the expiration of two months next after notice in writing has been, in the case of a committee, delivered or left at its office, and in the case of an officer or servant, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff: and the plaint must contain a statement that such notice has been so delivered or left. Provided that nothing in this section shall apply to any suit instituted under section 54 of the Specific Relief Act, 1877." It will be seen that this amended section, which is framed on the lines of section 424 of the Code of Civil Procedure, differs in two material respects from the law as contained in the Act of 1873. In the first place it omits the provision that every suit brought against a Municipal Committee shall be commenced within three months next after the accrual of the cause of suit and not afterwards, and in the second place it omits the provision that if the person to whom notice is given should, before the suit is brought, tender sufficient amends to the plaintiff, such plaintiff should not recover. In my opinion these important alterations deprive the judgments of this Court and also certain judgments of the Calcutta High Court upon which reliance has been placed of much of their force. But this is not the only alteration in the law which has been made. The law now in force is Act No. I of 1900, which repealed Act No. XV of 1873 and Act No. I of 1895. The rule as to notice previous to the institution of suits is contained in section 49 of the Act, which is substantially the same as that contained in section 43 of Act No. I of 1895, with this most important difference, namely, that it entirely omits the proviso excepting from the operation of the rule suits instituted under section 54 of the Specific Relief Act, 1877, that is, suits such as the present. I decline to believe that this was an accidental omission. I see no reason whatever to doubt that the proviso was deliberately and designedly omitted by the Legislature and that the object of the Legislature was that Municipal Boards

1906

E. C. F.
GREENWAY
v.
THE
MUNICIPAL
BOARD
OF
CAWNPORE.

should have notice of the intention to bring a suit such as the present, so that they might have the opportunity, if so advised, of withdrawing from some untenable position they had taken up, or wrongful demand they had made, and thus saving the waste of the rate-payers' money in useless litigation.

The plaint in this case alleges that the defendant Board had demanded from the plaintiff payment of a certain tax which according to the plaintiff's view it was not competent to levy. The plaint sets forth the cause of action as arising on the 22nd of October, 1902, when the defendant Board last demanded payment from the plaintiff of the tax, and the prayer is that the defendant be perpetually restrained from levying or recovering the tax. In my opinion this is a suit against a Municipal Board "in respect of an act purporting to be done by it in its official capacity," and having regard to the alteration of the law made by Act No. I of 1900, referred to above, I agree with the view of the Judge that the case was one in which previous notice was required under the Act.

This disposes of the first plea in appeal. The second plea is to the effect that, assuming that notice was necessary, the plaintiff substantially complied with the requirements of section 49 of the Act. Reference is made to a letter written by the plaintiff to the Assistant Secretary of the Municipal Board of Cawnpore on the 23rd of December, 1901. This letter, No. 28A of the record, is printed at page I of the appellant's book. I am of opinion for the reasons given by the learned District Judge that the letter referred to was not such a notice as is contemplated by section 49 of the Act. I would also add that the letter relied on was written ten months before the date of the cause of action given in the plaint, and moreover the plaint contains no reference to it. For the above reasons I would dismiss this appeal with costs.

BY THE COURT:—Under section 575 of the Code of Civil Procedure the order of the Court is that this appeal do stand dismissed with costs.

Appeal dismissed.