

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Tyabji.

1897.
February 15.

VAMAN TATYA'JI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v.
THE MUNICIPALITY OF SHOLÁPUR (ORIGINAL DEFENDANTS),
RESPONDENTS.*

*Municipality—Municipal fund—Misapplication of fund by municipality—
Right of taxpayer to sue to restrain municipality from such misapplication
—Parties—Practice—Civil Procedure Code (Act XIV of 1882), Sec. 30—
Specific Relief Act (1 of 1877), Sec. 56, Cl. (k).*

A suit will lie at the instance of individual taxpayers for an injunction restraining a municipality from misapplying its funds.

SECOND appeal from the decision of G. Jacob, District Judge of Sholápur.

The plaintiffs, who were three in number, were taxpayers of Sholápur. They sued for an injunction to restrain the Municipality of Sholápur from expending any sum out of the municipal funds on the purchase of musical instruments for a band, which they had resolved to establish. The plaintiffs contended that this was not one of the purposes for which the municipality was authorized by law to spend municipal funds.

The municipality pleaded that the plaintiffs had no right to sue; that they had no cause of action; and that the proposed expenditure of municipal funds was not illegal.

The Joint Subordinate Judge of Sholápur, Ráo Sáheb A. G. Bhavé, held that the plaintiffs as taxpayers were interested and were entitled to see that the money contributed by them to the municipal funds was properly applied; that the plaintiffs were, therefore, competent to sue. He further held that the municipality was not authorized to expend municipal funds in the manner proposed, and he, therefore, granted the injunction sought, restraining the municipality from carrying their resolution into effect.

On appeal the District Judge held that the plaintiffs were not entitled to sue in their individual capacity without proof of special damage. He, therefore, reversed the lower Court's decree and dismissed the plaintiffs' suit.

* Second Appeal, No. 565 of 1896.

The following extract from his judgment gives his reasons:—

“I am of opinion that the plaintiffs, as mere individual voters and taxpayers, representing their own opinions and wishes alone, have no right to sue for such relief. It is not pretended that the expenditure proposed will have the effect of adding to the burdens of the taxpayer, nor is it alleged that the presence of a band will be likely to trouble or annoy the plaintiffs in any way. They merely want to force their opinions against the majority of the commissioners, who voted in favour of the resolution.

“I am of opinion that the plaintiffs are not entitled to sue as individuals without proof of special damage (see Broom's Common Law, 8th Edition, pp. 723 4). This would also, I think, be deducible from section 56 (k) of the Specific Relief Act.

“If any individual were at liberty to harass a municipality by suits to set aside resolutions which do not meet with their personal approval, the conduct of the municipal affairs would obviously become impossible.”

Against this decision the plaintiffs appealed to the High Court.

M. B. Chaubal for appellants.

Ráo Bahádur *V. J. Kirtikar*, Government Pleader, for the respondents.

TYABJI, J.:—This suit was instituted by the plaintiffs as voters and taxpayers of Sholápur for an injunction restraining the Municipality of Sholápur from expending any sum of money out of the municipal funds on the purchase of a band of music on the ground that the resolution in favour of such a purchase was *ultra vires*.

The contention of the municipality was, that the plaintiffs had no cause of action, that they were not competent to sue, and that the purchase of a band was not illegal. The Subordinate Judge decided all these points in favour of the plaintiffs and passed a decree against the defendants.

The District Judge without deciding the question whether the purchase of the band would or would not be *ultra vires* reversed the decree of the Subordinate Judge and dismissed the plaintiffs' suit with costs, on the ground that the plaintiffs, as individual voters and taxpayers, could not maintain the suit. I am, however, of opinion that the District Judge was wrong in

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the course pursued by him and that he ought to have decided the question of the legality of the proposal to purchase the band.

First, as to the question of pleading. It is no doubt true, as a general rule, that Courts of Justice will not permit individuals interested in any fund or estate to institute or maintain a suit without bringing before the Court all persons who are interested in the matter. The convenience and indeed the necessity of this rule is obvious; for, otherwise, different individuals might file different suits against the same defendants in respect of the same cause of action, and such defendants might thus be unnecessarily harrassed by a multiplicity of suits. The ordinary method of avoiding this inconvenience and difficulty is by the plaintiff suing not only on his own behalf but also on behalf of all other persons in the same situation as himself (see Daniell's Chancery Practice, 6th Ed., p. 194). This general rule has been expressly recognized by section 30 of the Civil Procedure Code and by clause (5) of section 19 which makes a decision in such a suit *res judicata* against all persons interested in the subject-matter of the suit. There can, therefore, be no doubt that the best and safest course for the plaintiffs would have been to proceed under section 30 of the Civil Procedure Code.

This general rule, however, is not without exceptions, and it is now clearly settled that any individual member of a corporation may file a suit for the purpose of restraining the corporation from doing any act which may be illegal or *ultra vires* of the corporation. In *Simpson v. Westminster Palace Hotel Co.*⁽¹⁾, Lord Campbell, Lord Chancellor, observed: "The funds of a joint stock company established for one undertaking cannot be applied to another. If an attempt to do so is made, this act is *ultra vires*, and although sanctioned by all the directors and by a large majority of the shareholders, *any single shareholder* has a right to resist it and a Court of Equity will interpose on his behalf by injunction." This doctrine is more fully explained by Jessell, M. R., in *Russell v. Wakefield Waterworks Co.*⁽²⁾, where he says: "It remains to consider what are those exceptional cases in which, for the due attainment of justice, such a suit (that is, a suit by

(1) 8 H. L. Cases, 712.

(2) L. R., 20 Equity, 471 at p. 481.

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individual members) should be allowed. We are all familiar with one class of cases which are certainly the first exception to the rule. They are cases in which an individual corporator sues the corporation to prevent the corporation either commencing or continuing the doing of something which is beyond the powers of the corporation. Such a bill, indeed, may be maintained by a single corporator *not suing on behalf of himself and of others*, as was settled in the House of Lords in the case of *Simpson v. Westminster Palace Hotel Co.*⁽¹⁾ Again in *Hoole v. The Great Western Railway Co.*⁽²⁾, Lord Cairns, L.J., said: "I have a very strong opinion that any corporator or member of a company may maintain a bill against the corporation and the executive, to restrain them from doing an act which is *ultra vires*, and therefore illegal."

I confess I can see no substantial distinction between an individual shareholder or an individual policy-holder suing a company, in the funds of which he is interested, and an individual ratepayer suing a municipal corporation, to the funds of which he contributes and in the proper application of which he is necessarily interested. His personal interest may be small, but it is not less real. The case of *Attorney-General v. Vestry of Bermondsey*⁽³⁾, which was relied on by the defendant's pleader, is not in any way inconsistent with this judgment. That suit was no doubt filed by the Attorney-General, jointly with an individual ratepayer, but there is nothing in it to show that even according to the practice in England, the individual ratepayer could not have maintained it by himself without the intervention of the Attorney-General. On the contrary, I think, it is an authority in support of our conclusion that a ratepayer has a sufficient interest in the funds of the Vestry to maintain an action, provided only it is properly framed.

Again in the case of *Mayor, &c., of Liverpool v. The Chorley Waterworks Co.*⁽⁴⁾, it was held that the plaintiffs there who sued without the intervention of the Attorney-General, were entitled to maintain that suit in so far as they had shown that they were in any way interested in the subject-matter of the suit,

(1) L. R., 3 Cl., 262 at p. 272.

(2) 23 Ch. D., 65.

(3) 2 De Gex, M. & Gor., 852.

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and that they were not entitled to maintain it in so far only as they were absolute strangers. There Lord Cranworth in delivering judgment at p. 860 observed: "Still the question arises whether the acts of the defendants ... are acts of which the plaintiffs have any right to complain, or demand the prevention in the actual circumstances: for, though we accede to the general observation, that persons, obtaining from the Legislature powers like those before us ... are bound strictly to adhere to the powers so conceded to them—to do no more than the Legislature has sanctioned ... yet it does not follow that any one of Her Majesty's subjects has a right to complain whenever Parliamentary powers of this nature are intended to be transgressed. In such cases (we of course except any proceeding at the instance of the Attorney-General) a plaintiff seeking the assistance of a Court of Equity by way of injunction is bound to show that he has an interest in preventing the defendants from doing what is in fact, or may well be called, a violation of their contract with the Legislature. He must show, not only that the defendants are committing or intend to commit a wrong, but also that the wrong, complained of, does occasion or will occasion loss or damage to him; that he has a special or private interest in confining the defendants within the limits of their Parliamentary powers. Now in this respect the corporation of Liverpool appear to us to have failed. The plaintiffs have no interest whatever in the lands, through or over which the water may be made to flow; and to them it must be matter of indifference, of no importance in any sense, whether it is carried by a longer or shorter line,—by an open channel or a culvert,—by a course convenient or inconvenient to the defendants."

From these observations it seems to me to be clear that although in England the Attorney-General may sue in every case for the purpose of preventing a corporation from exceeding its powers, yet a private individual can sue and indeed may only sue without the intervention of the Attorney-General, if, to use Lord Cranworth's words, "he has an interest in preventing the defendants from violating their contract with the Legislature." The principle on which, in England, the Attorney-General intervenes on behalf of the public for the purpose of preventing improper application of public funds, is thus stated by Sir J. L. Knight

Bruce, V. C., p. 427 : "Where property affected by a trust for public purposes is in the hands of those who hold it devoted to the trust, it is the privilege of the public that the Crown should be entitled to intervene by its officers for the purpose of asserting on behalf of the public generally that public interest and that public right which probably no individual could be found willing effectually to assert, even if the interest were such as to allow it."—*Attorney-General v. Compton*(1).

It, therefore, follows that if there are individuals sufficiently interested and sufficiently public-spirited to enter into litigation with a powerful public body, there is nothing especially in a place like Sholapur, where there is no such public officer as the Attorney-General, to prevent their doing so. This right of the individuals to sue, is also forcibly stated by Green, J., in *Shepherd v. The Trustees of the Port of Bombay*(2), in these terms : "There can, I think, be no doubt that if the Port Trustees or any other corporation or public company in Bombay were to do or attempt to do any act in excess of their powers, as contained in the charter or legislative act from which they derive their being, and such act would be injurious to the rights of property of an individual, such individual would, on general principles, have a right to the protection of this Court by injunction or other appropriate relief." These authorities seem to me to show very clearly, first that the plaintiffs can sue in their individual capacity if they are sufficiently interested in the municipal fund, and secondly, that any interest however small is sufficient to entitle them to do so.

As I have already said before, the plaintiffs in the present case, as ratepayers, are, in my opinion, not mere strangers, but are directly interested in the proper application of the municipal funds. The absence of interest could have been urged against them with great force, if they had been merely inhabitants of Sholapur and not ratepayers, and as such contributors to the fund. It would, in my opinion, have been fatal to them if they were not even residents of Sholapur and, therefore, not interested in the administration of the Sholapur Municipality at all. In

(1) 1 Y. & C. (Ch.), 417.

(2) I. L. R., 1 Bom., 132 at p. 142.

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this case, however, the observations of Lord Cranworth already quoted above, directly apply to the plaintiffs, and in my opinion sufficiently dispose of the District Judge's argument based upon section 55 of the Specific Relief Act, clause (k), as to the sufficiency of the plaintiffs' interest as individual ratepayers.

I am, therefore, of opinion that the decree must be reversed. We must remand the case to the lower Court with a direction to record a finding on the issue, whether the resolution in favour of purchasing the band is *ultra vires* or not, having regard to the provisions of section 24 of the Bombay District Municipal Act, (Bombay Act VI of 1873).

PARSONS, J. :—This suit was brought by three taxpayers against the Municipality of Sholápur to obtain an injunction restraining the latter from expending any money out of the municipal fund on the purchase of a band which they had resolved to buy, the allegation being that such expenditure was *ultra vires* and unauthorized by law. The District Judge without deciding upon this allegation dismissed the suit on the ground that the plaintiffs were not entitled to sue as individuals without proof of special damage.

I am of opinion that this decision cannot be supported. Section 18 of the Bombay District Municipal Act of 1873 creates the municipal fund, and section 17 of the same Act vests it in the municipality to be held and applied by them as trustees for the purposes of the Act, which purposes it proceeds to state in detail. An appropriation, therefore, of the fund or any part thereof to a purpose not allowed by the Act, would be a breach of trust on the part of the municipality. In the case of individuals and companies, co-trustees or beneficial owners or individual shareholders would be entitled to sue for an injunction to prevent such a breach of trust: see section 54 of the Specific Relief Act, 1877, Illustrations (b), (c), (d).

It is, however, argued before us that the plaintiffs as individual taxpayers have no personal interest in the fund or its application, and cannot, therefore, maintain the suit—see section 56 (k) of the Specific Relief Act, 1877. I am unable to accept this argument as sound. No doubt the personal interest

of an individual taxpayer in a large municipality, and in the case of a small expenditure from the fund, might be very little indeed; but it would always be something, and in the case of a small municipality and a large expenditure it might be very great; much, too, would depend upon the amount of taxes the individual had paid or was liable to pay. It is clear, therefore, that the actual amount of personal interest must be disregarded, and that it is sufficient if there is any personal interest at all. That personal interest must, I think, be held to exist in the case of every individual taxpayer, since he who is liable to contribute to the fund cannot but be interested in its proper application. It was conceded in argument by the pleader for the defendant that the suit for an injunction would lie if brought by the whole body of taxpayers, or if brought by one on behalf of all the others under the provisions of section 30 of the Civil Procedure Code. But if the whole body of taxpayers can sue, it can only be because they are interested in the proper application of the fund; and if the whole body are so interested, it can only be because they contribute and are liable to contribute to the fund. It seems, therefore, to me to follow that each individual who contributes, and is liable to contribute, to the fund, must be held to be personally interested in the due application of that fund and does not, therefore, fall within the prohibition of clause (k) of section 56 of the Specific Relief Act, 1877. My learned colleague has dealt with the case on the English law authorities. I am glad to be able to come to the same conclusion on the Indian statute law, for there is no Attorney-General in this country in whose name such suits as these could be filed, and it would, I think, be monstrous if a municipality seeking to misapply its funds were not liable to a suit to restrain them so doing at the instance of a taxpayer for whom they really hold the fund in trust. We agree to reverse the decree and remand the appeal for a decision on the real point at issue, *viz.*, the legality of the expenditure which the municipality propose to make. Costs to be costs in the cause.

Decree reversed and case remanded.

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