APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1911. *February* 8.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT, *v.* GAJANAN KRISHNARAO MAVLANKAR, SON AND HEIR OF KRISHNARAO NARSINH (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), section 424—Suit for injunction—Suit against Secretary of State for India—Notice—Inam—Resumption.

The plaintiff, an Inamdar of a village, was called upon by the Collector to hand over the management of the village to Government officials, on the ground that in the events that had happened the *inam* had become resumable by Government. The plaintiff, thereupon, without giving the notice required by section 424 of the Civil Procedure Code (Act XIV of 1882), filed a suit against the Secretary of State for India in Council for a declaration that he was entitled to hold the village in *inam*, and for a permanent injunction restraining the defendant from resuming the village:—

Held, that the suit was bad in absence of notice required by section 424 of the Civil Procedure Code (Act XIV of 1882).

The term "act" used in section 424 of the Civil Procedure Code of 1882 relates only to the public officers, not to the Secretary of State.

The expression "no suit shall be instituted against the Secretary of State in Council" is wide enough to include suits for every kind, whether for injunction or otherwise.

Per HEATON, *J.*—Where there is a serious injury so imminent that it can only be prevented by an immediate injunction, a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice, if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice.

Flower v. *Local Board of Low Leyton*(1), followed.

APPEAL from the decision of R. Knight, District Judge of Ahmedabad.

This was a suit for declaration and injunction.

* First Appeal No. 115 of 1906.

(1) (1877) 5 Ch. D. 347.

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In 1841, the East India Company granted to the plaintiff's father two villages in *inam*, which was conferred on him for three lives. The grantee Narso died in 1854; his eldest son died in 1882; and the eldest son of that son died in 1904. The Collector of Ahmedabad, thereupon, was of opinion that the terms on which the *inam* was granted had been fulfilled, and the *inam* had become resumable by Government. On the 16th December 1904, he passed an order asking the Inamdar's family to hand over the management of the villages in question to Government officers. The plaintiff, who was the last surviving son of Narso (the grantee), filed, on the 17th December 1904, a suit against the Secretary of State for India in Council, praying for a declaration that under the terms of the grant he and his immediate successors were entitled to hold the villages in *inam*, and for a permanent injunction restraining the defendant from resuming the villages as long as the last of his immediate successors was living.

The defendant contended in his written statement *inter alia* that the suit could not lie in absence of notice required by section 424 of the Civil Procedure Code of 1882, and that in the events that had happened the *inam* had become resumable.

The District Judge held that the suit being one for injunction was maintainable though no notice was given under section 424 of the Civil Procedure Code of 1882. On merits, he passed a decree in plaintiff's favour granting him the declaration and injunction sought.

The defendant appealed to the High Court.

Strangman, with *R. W. Desai*, for the appellant:—The term "act done" in section 424 of the Civil Procedure Code of 1882, refers only to the public officer. It has no reference to the Secretary of State for India in Council, for there really is, in point of law, no such person or body politic whatever as the Secretary of State for India in Council. See *Kinlock* v. *Secretary of State for India in Council*[1]. The language of section 424 is general and no suit of any kind can lie against the Secretary of State without going through the preliminaries required by the

(1) (1880) 15 Ch. D. 1.

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section. See also *Hari* v. *Secretary of State for India*[1]; *Chhaganlal* v. *Collector of Kaira*[2]; *Secretary of State for India in Council* v. *Rajlucki Debi*[3]; and *Shahebzadee Shahunshah* v. *Fergusson*[4]. The suggested interpretation of section 424 is borne out by sections 428, 429 and 416 of the Code. Section 80 of the new Code of Civil Procedure (Act V of 1908) also confirms our view. See also the cases of *President of the Taluk Board, Sivaganga* v. *Narayanan*[5]; *Municipality of Faizpur* v. *Manak Dulab*[6]; and *Municipality of Parola* v. *Lakshmandas*[7]. The cases of *Attorney-General* v. *Hackney Local Board*[8] and *Flower* v. *Local Board of Low Leyton*[9] are distinguishable as they were decided under statutes, the sections of which differed in language from that of the present sections.

Lowndes, with *G. S. Rao* and *Ratanlal Ranchhoddas*, for the respondent:—The present suit does not fall within the purview of section 424 of the Civil Procedure Code of 1882. The expression "an act purporting to be done" in the section refers also to the Secretary of State. The comma after the first clause need not be looked to, for punctuation is no part of the statute. See *Duke of Devonshire* v. *O'Connor*[10]; *Claydon* v. *Green*[11]; and Maxwell on Statutes, 4th edition, page 62. Further, the present suit is not in respect of an act done, but is one to restrain an act threatened. Such a suit does not fall within section 424. The principle that in a suit for injunction no preliminary notice is required applies to this case. See *Flower* v. *Local Board of Low Leyton*[9] and *Attorney-General* v. *Hackney Local Board*[8].

CHANDAVARKAR, J.:—In my opinion, on a proper construction of section 424 of the Civil Procedure Code of 1882, notice was necessary in this case as a condition precedent to suit. The words in the section are: "No suit shall be instituted against the Secretary of State in Council, or against a public officer in

(1) (1903) 27 Bom. 424 at p. 430.
(2) (1910) 12 Bom. L. R. 825.
(3) (1897) 25 Cal. 296.
(4) (1881) 7 Cal. 499.
(5) (1892) 16 Mad. 317.
(6) (1897) 22 Bom. 637.
(7) (1900) 25 Bom. 142.
(8) (1875) L. R. 20 Eq. 626.
(9) (1877) 5 Ch. D. 347 at p. 350.
(10) (1890) 24 Q. B. D. 468 at p. 478.
(11) (1868) L. R. 3 C. P. 511 at p. 522.

respect of an act purporting to be done by him in his official capacity". From the repetition of the word "against", I think, the "act" described in the section was meant to relate only to the public officer, not to the Secretary of State. It shows that the Legislature intended to differentiate between the Secretary of State and other public officers. Further, if the words "in respect of an act," etc., had been intended by the Legislature to apply to the Secretary of State also, it would have been more appropriate to use the words "done by either" instead of the words "done by him".

The question is not quite free from difficulty. In *Secretary of State for India in Council* v. *Rajlucki Debi*[1], Ameer Ali, J., construed the section in a different way. In appeal from his decision Maclean, C. J., was inclined to differ from that construction; but the appeal was decided on other grounds and so the learned Chief Justice's opinion was a mere *obiter dictum*.

The considerations in support of the construction contended for by the learned Advocate General in support of the present appeal seem to me to be stronger than those urged for the other construction.

But it is urged by Mr. Lowndes for the respondent that, at all events, a notice is not necessary in a suit for an injunction against the Secretary of State; and in support of that the learned Counsel relies on the principle of the decision in *Flower* v. *Local Board of Low Leyton*[2] as controlling the interpretation of section 424 of the Code of Civil Procedure. No doubt in that English case it was held that in suits for an injunction no notice is necessary; but that was on the construction of the particular section of the Act there concerned. The words of the section which had to be construed there were, "an act done or intended to be done or omitted to be done" and the learned Judges held that upon a proper construction of the language of the section there, what the Legislature had in view was an act done, not an act threatened. An injunction, it was said there, is sought in respect of an act threatened; and, therefore, the words in question

(1) (1897) 25 Cal. 239. (2) (1877) 5 Ch. D. 347.

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were held not to apply to a suit for an injunction. But that is not the case before us.

If I am right in my construction of section 424, the words "no suit shall be instituted against the Secretary of State in Council" are wide enough to include suits of every kind, whether for injunction or otherwise. It may be that in any particular case the circumstances might be such as to satisfy the Court that it was practically impossible to give a notice, because the act threatened was so imminent that the plaintiff was driven to a suit by the conduct of Government. In such a case it might be that the Court would hold that no notice as a condition precedent to suit was necessary.

But that would be, not because of the law in section 424 of the Civil Procedure Code but because of the introduction into the suit of another law, *viz.*, that the defendant by his conduct had brought about a state of things which prevented the plaintiff from complying with the provisions of the section in question.

No such case arises here. On the ground, therefore, that no notice was given by the plaintiff as required by section 424, the suit must be held bad. The decree of the Court below must be reversed and the suit dismissed with costs throughout upon the respondent.

HEATON, J. :—I am of the same opinion as to the construction of section 424. I am unable to understand how *Flower's case*[1] is an authority for saying that a suit is excluded from the operation of section 424 of the Civil Procedure Code because it is a suit for an injunction. On this point the observations of the Chief Justice of Bengal reported in the case of the *Secretary of State for India in Council* v. *Rajlucki Debi*[2] are very pertinent. We cannot take *Flower's case* as an authority for the construction of a section in an entirely different Act, in different terms, and for a different purpose. We can at best only look to the principle underlying the decision there. The principle of that case is not, as I understand it, that the words of such a section as that under consideration, though in terms covering such a suit, cannot apply to any suit for an injunction. Its

(1) (1877) 5 Ch. D. 347. (2) (1897) 25 Cal. 239.

meaning so far as it is general is I think this: where there is a serious injury so imminent that it can only be prevented by an immediate injunction, a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice; if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice. The reason is that to wait until the due notice had been given would be to allow the injury which it is the object of the suit to prevent, so there would be a clear denial of justice. The principle is that in construing an Act we are to read the words in the light of the object of the Act and are to presume that a consistent purpose underlies those words. The purpose of the Code of Civil Procedure broadly put, is to regularise and facilitate the work of the Courts; so that they may be best able to do justice. That purpose would no doubt be defeated if an injunction were immediately required and absolutely necessary in order to prevent serious injury and yet the Court could not issue it. It must be presumed that this is not intended unless it is specifically expressed. To that extent, speaking for myself, I would follow the principle of *Flower's case*. But of course one would have to be very clearly satisfied that an immediate injunction was absolutely essential. There is no indication here that serious and irreparable injury would follow from failure to obtain an immediate injunction; or that any injury whatever, which could not be amply and appropriately recompensed by damages, would ensue from delay in issuing an injunction.

Decree reversed.

R. R.