

1931

NAGINDAS  
NARANDAS  
v.SOMNATH  
PREMCHAND

Rangnacker J.

before the learned Judges who decided it. I think the case has been properly distinguished by the learned trial Judge and by the learned Judge of the lower appellate Court. In the result, therefore, I agree that the appeal fails, and must be dismissed with costs.

NANAVATI, J. :—I agree.

*Appeal dismissed.*

B. G. R.

---

ORIGINAL CIVIL.

---

*Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.*

MULJI HARIDAS v. Sir IBRAHIM RAHIMTULLA.\*

*Interlocutory injunction—Principles governing grant of such injunction—Bill of Act of Legislature—Declaration that such bill is ultra vires or that its provisions are void and inoperative—Injunction to restrain President of the Indian Legislative Assembly—Jurisdiction of High Court.*

An interlocutory injunction can only be granted if the Court is satisfied that in all probability the declaration which is asked for in the suit and which is the basis on which the permanent injunction is claimed will be made when the suit comes to be tried.

The Court has no jurisdiction to restrain an act which inflicts no legal wrong upon the plaintiff.

*Per Broomfield J. dubitante* :—Whether the High Court has jurisdiction to grant an injunction against the President of the Legislative Assembly *qua* President, or to consider whether an enactment of the Central legislature is or is not *ultra vires*, merely on the ground of its being inconsistent with some other enactment of that legislature ?

NOTICE of motion for interim injunction.

Suit for a declaration and injunction.

The plaintiff, a merchant doing business in iron and steel in Bombay, filed this suit on October 26, 1931, against the defendant, who is the President of the Indian Legislative Assembly, praying for a declaration that clauses 3 and 4 of Bill No. 46 of 1931 which was introduced in the Legislative Assembly on September 29, 1931, were *ultra vires* or that

\*O. C. J. Suit No. 2013 of 1931.

the said clauses were void and inoperative. In the suit the plaintiff further prayed for an injunction restraining the defendant as President of the Legislative Assembly from allowing discussion in the Assembly on that Bill and from putting it to the vote of the members of the Assembly.

The plaintiff alleged that in 1927 the Indian Legislature passed an Act being Act III of 1927 which came into force on April 1, 1927. By the provisions of the said Act the Indian Tariff Act (VIII of 1894) was amended and for the purpose of fostering and developing the steel industry in India additional import duties were directed to be levied for a period of seven years ending March 31, 1934, on iron and steel articles.

The Act empowered the Governor General in Council to increase the import duty by a notification in the *Gazette of India* to such an extent as he thinks necessary if he is satisfied after an inquiry that iron and steel articles are being imported into British India at such a price as to render ineffective the protection granted to the Indian iron and steel industry.

On September 28, 1931, the Governor General gave his assent to an Act, viz., the Provisional Collection of Taxes Act (XVI of 1931) which was passed by the Indian Legislature. Section 3 of that Act provides that when a Bill to be introduced in the Indian Legislature by the Government provides for the imposition or increase of a customs or excise duty, the Governor General in Council may cause to be inserted in that Bill a declaration that it is expedient in the public interest that any provisions of the Bill relating to such imposition or increase shall have immediate effect under the Act. Section 4 of that Act provided that such a declaration shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced.

On September 29, 1931, Government introduced in the Legislative Assembly a Bill No. 46 of 1931 which purported

1931

MULJI  
HARIDAS  
v.SIR IBRAHIM  
RAHIMTULLA

1931  
 MULJI  
 HARIDAS  
 v.  
 SIR IBRAHIM  
 RAHMATULLA

to supplement the Indian Finance Act of 1931 and to extend the operations of its temporary provisions. Clauses 3 and 4 of that Bill provided for a levy of 25 per cent. additional customs duties *inter alia* on certain articles of iron and steel, which were mentioned in the Schedule to Act III of 1927. Clause 10 of the Bill declared that it was expedient in the public interest that clauses 3, 4 and 5 of the Bill should have immediate effect under the Provisional Collection of Taxes Act, 1931. Owing to the said provisions additional customs duties were collected by Government from October 1, 1931, and between that day and October 24, 1931, plaintiff had to pay Rs. 944-15-3 as additional duty in respect of the goods imported by him.

The plaintiff alleged that a meeting of the Legislative Assembly was summoned for November 4, 1931, for the purpose *inter alia* of considering and passing that Bill, and that the defendant as President of the Assembly "will in due course throw the Bill open to discussion and put it to the vote of the members of the Legislative Assembly at different stages".

The plaintiff submitted that the action of the defendant in allowing the introduction of Bill No. 46 of 1931 in the Legislative Assembly was wrongful inasmuch as it purported to raise the customs duties on certain iron and steel articles without the preliminary inquiry and a notification in the *Gazette of India* as provided by Act III of 1927. He further submitted that the Bill was *ultra vires* and the provisions for the collection of additional duties were void and inoperative until the aforesaid provisions as regards the inquiry and the notification were complied with.

In the suit plaintiff prayed for the following reliefs :—

(a) That it may be declared that clauses 3 and 4 of Bill No. 46 of 1931 in so far as they purport to levy additional duties on steel and iron mentioned in the Schedule to Act III of 1927 are *ultra vires* or in the alternative that the said provisions in the said clauses of the said Bill are void and inoperative.

(b) That the defendant himself and his agents Deputy President of the Assembly and the Panel of Chairmen and each one of them may be restrained by an order

and injunction of this Honourable Court from proceeding with the said clauses in the said Bill in so far as they purport to levy additional duties on steel and iron mentioned in the said Schedule to Act III of 1927 and from allowing any discussion on the said provisions or from putting the said clauses to the vote of the Assembly at any stage.

(c) That in any event the President and his agents Deputy President of the Assembly and the Panel of Chairmen be ordered to stay all proceedings on the said clauses of the said Bill until the said inquiry contemplated by Act III of 1927 has been instituted and notification under the said Act published.

(d) That an interim injunction may be granted against the defendant in terms of prayers (b) and (c).

The plaintiff took out a notice of motion for a grant of interlocutory injunction. That notice was argued on November 3, 1931.

*M. C. Setalvad* with *M. C. Chagla*, for the plaintiff.

*Sir Jamshed Kanga*, Advocate General, for the defendant.

BEAUMONT, C. J. :—This is an action of a somewhat unusual character. It appears that the plaintiff is a merchant doing business in iron and steel imported from England and the Continent, and under Act III of 1927 certain duties were made leviable on such steel imported into India for a period of seven years, and under the Act there is power for the Governor General on further inquiry to increase the amount of the duties. It is now alleged by the plaintiff that a Bill has been introduced into the Legislative Assembly at Delhi and is about to be further discussed, which will have the effect of further increasing the duties upon the plaintiff's imported steel. That Bill contains a declaration under the Provisional Collection of Taxes Act, XVI of 1931, making the increased duties immediately payable, but under such Act, if the Bill does not ultimately pass into law, there will have to be a refund of the duties paid under it.

Now, the plaintiff's contention is that inasmuch as the Governor General has not had any inquiry made as contemplated by Act III of 1927, and as this Bill does not purport in terms to repeal or amend Act III of 1927, as it clearly might do, in law the Bill if passed will be *ultra vires*,

1931  
 MULJI  
 HARIDAS  
 c.  
 SIR IBRAHIM  
 RAHMATULLA

1931

MULJI  
HARIDAS  
v.SIR IBRAHIM  
RAHIMTULLA

Beaumont C. J.

and in those circumstances the plaintiff brings this action against the Honourable Sir Ibrahim Rahimtulla, President of the Legislative Assembly at New Delhi residing at Bombay. The plaintiff asks, first of all, for a declaration that clauses 3 and 4 of this Bill in so far as they purport to levy additional duties on steel and iron mentioned in the Schedule to Act III of 1927 are *ultra vires*, or in the alternative that the said provisions in the said clauses of the said Bill are void and inoperative. And then he asks for a perpetual injunction to restrain the defendant from proceeding with the clauses in the Bill in so far as they purport to levy additional duties on steel and iron. This motion is for an interlocutory injunction.

Now the declaration asked for appears to me entirely misconceived. A Bill introduced in the Legislative Assembly may or may not pass in the form in which it is introduced. If it be necessary that the Act which may emerge from the present Bill should repeal or modify Act III of 1927, I should certainly presume that in the course of its passage through the Legislative Assembly the Bill will be modified in the necessary respects. For the Court to make a declaration that a Bill in the form in which it is introduced is *ultra vires* appears to me to be perfectly futile. A Bill has no legal effect, and if the declaration refers to a future Act which may be passed it is really dealing with a future and hypothetical question which may never arise. If the Bill is ultimately passed and becomes an Act of the Legislature, then the Court may have to deal with it. Of course we are not concerned on this motion with making a declaration, but we can only grant an interlocutory injunction if we are satisfied that in all probability the declaration, which is the foundation for the permanent injunction claimed, will be made when the suit comes to be tried, and I am quite satisfied that the declaration will not be made. There are, I think, many answers to the motion, but it is sufficient to give one. It has been held recently by this

Court, following decisions in the English Court of Appeal, that the Court has no jurisdiction to grant an injunction to restrain an act which inflicts no legal wrong upon the plaintiff. I am quite unable to see how, on the assumption that the Bill if passed into an Act will be *ultra vires*, it can possibly be said that the defendant in allowing that Bill to be introduced is inflicting any legal wrong upon the plaintiff. It seems to me obvious that the plaintiff could not sue the defendant for damages for having illegally allowed this Bill to be introduced. That being so, I think we could not restrain the introduction or the passage of the Bill even if we thought that the Bill in its present form could not be passed as a valid Act of the legislature. It is not really necessary to go further than that, but the Advocate General has pointed out to us that as a matter of fact under the Indian Legislative Rules it would appear that the President has no power to refuse to allow a Bill to be introduced and discussed.

BROOMFIELD, J. :—I agree that this notice of motion must be discharged on the preliminary ground that what the plaintiff is seeking to do is to restrain further proceedings in respect of a Bill which has not yet become an Act of the legislature and which before it does become an Act may be modified in various ways.

The plaintiff's objection to Bill No. 46 of 1931 is that it is according to him inconsistent with the provisions of Act III of 1927. But it cannot be disputed that it is open to the legislature to repeal Act III of 1927 either expressly or by necessary implication, and Mr. Setalvad for the plaintiff has to admit that it is yet possible that a provision repealing the 1927 Act may be inserted. That being so, it is not really necessary to consider any of the other questions arising in the case, and I would merely say that, speaking for myself, I consider it doubtful whether this Court could have jurisdiction in any case to make an injunction against the

1931

MULJI

HARIDAS

v.

SIR IBRAHIM

RAHMATULLA

Beaumont C. J.

1931

MULJI  
HARIDAS  
v.  
SIR IBRAHIM  
RAHMITULLA  
Broomfield J.

President of the Legislative Assembly *qua* President, or indeed to consider whether an enactment of the central legislature is or is not *ultra vires*, merely on the ground of its being inconsistent with some other enactment of that legislature. In the only case on that point to which we were referred, *Kumar Shankar v. Mr. H. E. A. Cotton*,<sup>(1)</sup> the question before the Court was whether the proceedings of a local legislature could be held to be *ultra vires* on the ground that they were inconsistent with the provisions of an Act of the Government of India, and that is a point quite distinct from the one arising in the present case.

I, therefore, agree with the learned Chief Justice in the order proposed.

Attorneys for plaintiff: Messrs. *Dayalji & Dipchand*.

Attorneys for defendant: Messrs. *Little & Co.*

*Motion discharged.*

B. K. D.

## CRIMINAL REVISION.

*Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.*

MUNI KANTIVIJAYAJI, PETITIONER (ORIGINAL OPPONENT) *v.*

BAI LILAWATI, OPPONENT (ORIGINAL PETITIONER).\*

*Criminal Procedure Code (Act V of 1898), section 488—Maintenance—Husband becoming a Sadhu—Inability to maintain wife—Meaning of word “means”.*

A man by merely becoming a Sadhu is not in law excused from maintaining his wife; but if he can prove that by reason of the vows which he has taken he is incapable of holding any property or of earning any money which will enable him to maintain his wife without incurring such serious consequences that no Court could expect him to incur them, then he cannot be said to have sufficient means to maintain his wife.

The word “means” in section 488 of the Criminal Procedure Code includes a capacity to earn money; and if a man can be shown to be capable of earning money then he has the means to maintain his wife within the meaning of the section.

\*Criminal Application for Revision No. 323 of 1931.

<sup>(1)</sup> (1924) 40 Cal. L. J. 515.

1932  
January 12.