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her general right based on the deed was found in her favour. All that went against her was the decretal order refusing to award to her the arrears due for the period to which the suit related. Her present suit is not for those arrears, but is for the arrears due for a subsequent period, and in virtue of a general right based on the deed passed by both the defendants and found valid and binding as against both in the previous suit. The plea of *res judicata*, therefore, fails.

As to the second point, the mere fact that the second defendant denied his liability as surety in the previous suit cannot be regarded as a notice putting an end to the contract under section 130 of the Contract Act. That denial was made for the purposes of pleading, and cannot have any other effect given to it than was given in the suit itself. See *Balaji Sitaram v. Bhikaji Soyare*,<sup>(1)</sup> where Westropp, C.J., held that a mere denial of liability by a party in a previous suit cannot operate as notice. Moreover, the second defendant in the previous suit denied the existence of a legal contract; such denial cannot be given the effect of a notice to the plaintiff that the second defendant wished to put an end to a legal contract which is proved. We confirm the decree with costs.

*Decree confirmed.*

(1) (1881) 8 Bom. 164.

## ORIGINAL CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.*

HARI PANDURANG AND ANOTHER, PLAINTIFFS, v. SECRETARY OF STATE FOR INDIA IN COUNCIL AND THE TRUSTEES FOR THE IMPROVEMENT OF THE CITY OF BOMBAY AND JAMES McNEILL, SPECIAL COLLECTOR UNDER THE LAND ACQUISITION ACT FOR THE ACQUISITION OF LAND FOR THE PURPOSE OF THE CITY OF BOMBAY IMPROVEMENT TRUST, DEFENDANTS.\*

*Jurisdiction—Improvement Trust Act (Bom. Act IV of 1898)—Legislative powers of Governor of Bombay in Council—Jurisdiction of High Court to consider whether ultra vires—Subordinate Legislature—Creation of new*

\* Suit No. 113 of 1903.

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March 27.  
April 4, 17.

*Courts—Land Acquisition Act (I of 1894)—Indian Councils Acts, 1861 and 1892—Questions of policy, High Court's power to discuss—Tribunal established by Improvement Trust Act not a Court—Notices—Formality, no injury caused by error in—What defects vitiate an Act—Civil Procedure Code (Act XIV of, 1882), section 424—Injunction against Secretary of State—Ex parte injunction when not to be granted—Notice of suit.*

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In the year 1898 certain improvements were projected in the City of Bombay, and an Act, called the City of Bombay Improvement Act, 1898, was passed, giving to a Board thereby constituted certain powers with a view to carry these improvements into effect.

On the 25th of September, 1902, there was published in the *Bombay Government Gazette* a declaration, purporting to be in pursuance of the Act, stating that the Governor of Bombay in Council had sanctioned a street scheme made by the Trustees for the Improvement of the City of Bombay under the provisions of the Act (that being the style of the Board thereby constituted), and that certain lands, including those in suit, were "needed to be acquired by the said Trustees for the purposes of executing the said street scheme" and were required for a public purpose.

The plaintiff received notices from the Special Collector (defendant 3) stating that certain premises therein mentioned were about to be taken up by Government under Act I of 1894 (Land Acquisition Act) and that the said properties were to be acquired under the said Act. The notice did not purport to be issued under the City of Bombay Improvement Act.

*Held*, as the Improvement Act did not prescribe that the notice should be expressed to be under that Act, there was no omission of a formality directed by the Act, and that the plaintiff had not been shown to have been in any way misled or damaged by what was, at most, a misdescription.

One of the Special Collectors, having made an award of the compensation to be allowed, gave notice to the plaintiffs to hand over possession. The plaintiffs thereupon commenced this suit against the Secretary of State for India in Council and the Trustees for the Improvement of the City of Bombay. The Special Collector was subsequently added as a party.

It was contended by the plaintiffs that the Improvement Act was *ultra vires* of the Bombay Legislature.

*Held*, that the Governor of Bombay in Council is a subordinate Legislature, so that the High Court has the right and is charged with the duty of deciding judicially whether the impugned legislation is within the scope of its authority.

*Held*, further, that the Act was not *ultra vires* in that it amended or repealed the Land Acquisition Act so far only as it affected a particular corporation in a particular locality. The reference to the "province" in section 5 of the Indian Councils Act, 1892, is merely for the purpose of defining the limits of legislative operation and in no way imposes the condition that all legislation should affect the whole of that area.

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*Query* : Whether the Land Acquisition Act is amended or repealed by the Improvement Act, having regard to the fact that the Board of Trustees is not a company within the meaning of the former Act, while the compensation is not payable out of the public revenues or out of any fund controlled or managed by a local authority.

It was further contended that the Improvement Act did not comply with the provisions of the Indian Councils Act, 1861, in that it was not in fact "for the peace and good government" of the Presidency.

*Held*, that the High Court had no jurisdiction to discuss the policy of the Act.

It was further contended that the Act was vitiated, in that it created a new Court and thereby interfered with the functions and jurisdiction of the High Court.

As to this it was *held* (1) that the tribunal created by the Act was not a Court and was therefore free from the control and supervision of the High Court except where an appeal was sanctioned by its President; (2) that the Improvement Act could not confer on the High Court jurisdiction to entertain appeals from such a tribunal; (3) that the whole Act was not vitiated merely by this defect in the prescribed machinery for ascertaining the compensation payable; (4) applying the principle of the Colonial Laws Act, 1865, to the Improvement Act, the provisions for taking possession are not void.

It was contended on behalf of the Secretary of State that, having regard to section 424 of the Civil Procedure Code, the suit was not maintainable against him as no notice of suit had been given.

*Held*, that in the circumstances of this case no injunction could be claimed against the Secretary of State, and therefore the suit was not maintainable without notice.

*Per Jenkins, C.J.*—This was not a case in which an *ex parte* injunction should have been granted. The Courts should, if possible, always require notice, however short, to be given.

SUIT to restrain the defendants by injunction from taking possession of the plaintiffs' property under colour of a certain award made by the Special Collector (defendant 3) and of the provisions of the City of Bombay Improvement Act (Bombay Act IV of 1898).

The suit was in the first instance filed against the Secretary of State and the Improvement Trust (defendants 1 and 2), but at the hearing the Special Collector was added as a party (defendant 3).

The plaint stated that on the 27th November, 1902, the plaintiffs received notices from the Special Collector (defendant 3) stating that certain premises therein mentioned were about to be

taken up by Government under Act I of 1894, and that the said premises were to be acquired under the said Act I of 1894. The said premises were the ancestral property of the plaintiffs and had been the family residence for some generations. The plaint then proceeded as follows :

5. The plaintiffs, in pursuance of the notices received by the plaintiffs as aforesaid, attended before the Special Collector, being represented by their Solicitors, and pointed out to the Special Collector that he had no jurisdiction in the matter as no declaration had been published under the Land Acquisition Act, 1894. The Special Collector, however, held that the proceedings were regular, and subsequently at the same meeting held that further proceedings would be held under the City of Bombay Improvement Act, No. IV of 1898.

6. The plaintiffs proceeded before the Special Collector under protest, and they submit that the whole of the proceedings before the Special Collector were without jurisdiction and wholly irregular and void. The said proceedings began under the Land Acquisition Act, I of 1894, and subsequently proceeded under the City of Bombay Improvement Act, IV of 1898. The plaintiffs submit that no proceedings could be held under the Land Acquisition Act, 1894, because no declaration had been published under that Act, and they further submit that no proceedings could be held under the City of Bombay Improvement Act, No. IV of 1898, because the procedure under that Act had not been followed and no notice to the plaintiffs had been issued under it. Moreover, the plaintiffs had attended under notice that the land was about to be acquired under the Land Acquisition Act of 1894. The plaintiffs further say that they are not aware of any Act of the Legislature which entitles the Special Collector to act for portion of the case before him under the Act No. I of 1894 and then for the remaining portion of the case under the City of Bombay Improvement Act, No. IV of 1898.

7. The Special Collector proceeded with the case which was described by him as case No. 74, Scheme III, and proceeded to make his award thereon, on the principles laid down by the City of Bombay Improvement Act, No. IV of 1898, and refused to award the plaintiffs 15 per cent. for compulsory acquisition provided by the Land Acquisition Act, I of 1894, and in making his award paid no regard to the provisions of the Land Acquisition Act, No. I of 1894. The Special Collector awarded the plaintiffs the very inadequate sum of Rs. 7,876 only.

8. The Special Collector is about to take possession of the plaintiffs' premises and turn the plaintiffs and their families out of their home under colour of the above proceedings.

9. The plaintiffs in addition to the reasons hereinbefore appearing object to the aforesaid proceedings of the Special Collector and contend that the same are absolutely null and void and of no effect and without jurisdiction upon the ground that the Bombay Government has no power to enact the City of

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Bombay Improvement Act, No. IV of 1898, and has no power to legislate so as to give the Bombay Government or the Trustees for the Improvement of the City of Bombay any right to acquire the said premises of the plaintiffs compulsorily in the manner laid down by the said City of Bombay Improvement Act, No. IV of 1898.

10. The plaintiffs requested the Special Collector without prejudice to their contentions hereinbefore mentioned to refer the question of the amount of compensation for the determination of this Court, but the Special Collector refused to do so.

11. The Secretary of State will acquire and take possession of the plaintiffs' said premises under colour of the said award, and under colour of the powers alleged to be given to him by the City of Bombay Improvement Act, No. IV of 1898, and will upon compliance with the provisions of section 50 of that Act transfer the same to the Trustees for the Improvement of the City of Bombay.

The plaintiffs prayed as follows :

1. That it may be declared that the said proceedings before the special Collector and all other proceedings that have been taken to compel the plaintiffs to part with their said property against their will are illegal and absolutely null and void and of no effect and without jurisdiction.

2. That the defendants and each of them may be restrained by injunction from disturbing the plaintiffs in the possession of their said property and from taking possession of the same under colour of the said award and of the provisions of the City of Bombay Improvement Act, No. IV of 1898.

The plaint was filed on the 24th February, 1903, and on the same day a *rule nisi* for an injunction in terms of the above prayer was obtained by the plaintiffs with an *interim* injunction until the further order of the Court.

The rule was not argued, but it was arranged that the suit should be heard at an early date by two Judges.

No written statement was required or filed, and the case came on for hearing before Jenkins, C.J., and Batty, J.

*Scott* (Advocate General) and *Jardine* for the Secretary of State (defendant 1).

*Scott*. (Advocate General) and *Lowndes* for the Trustees (defendant 2).

*Lowndes* and *Binning* for the Special Collector (defendant 3).

The following issues were raised on behalf of the first defendant :

(1) Whether having regard to the provisions of section 424 of the Civil Procedure Code (Act XIV of 1882) this suit is maintainable.

(2) Whether the proceedings before the Special Collector referred to in the plaint are void for any of the reasons stated in the plaint.

(3) Whether the plaintiffs are entitled to the injunction claimed by them.

Counsel for the Trustees (defendant 2) joined in the above second and third issues and raised the following fourth issue:

(4) Whether the plaint discloses any cause of action against them.

*Inverarity and Stanhope Bayley* for plaintiffs:—As to the first issue, we say that section 424 of the Civil Procedure Code (Act XIV of 1882) does not apply to suits for injunctions. To require two months' notice of a suit necessary to prevent an immediate threatened wrong would be a denial of justice, for the wrong would be done before the suit could be filed. In this case the plaintiffs would have been ejected and their house demolished within the two months and no remedy would be left to them. The words of section 424, no doubt, are wide enough to cover all classes of suits, but the Courts must read into the section the additional words "except in cases of necessity": *Bateman v. Poplar District Board of Works*<sup>(1)</sup>; *Flower v. Local Board of Low Leyton*<sup>(2)</sup>; *Municipality of Parola v. Lakshmandas*.<sup>(3)</sup> The case of *Secretary of State v. Rajlucki*<sup>(4)</sup> may be cited against me. But as to how far judgments are authorities, see Lord Halsbury's observations in *Quinn v. Leatham*.<sup>(5)</sup> It is probable that, in section 424, the comma after the first mention of the Secretary of State in Council has crept in by inadvertence and should be disregarded. It did not appear in the corresponding section of the previous Code (Act X of 1877). If this comma were not there, the words would have a narrower application. The punctuation of an Act is no part of it: *Duke of Devonshire v. O'Connor*<sup>(6)</sup>; *Claydon v. Green*.<sup>(7)</sup>

As to the merits, we say the City of Bombay Improvement Act is invalid, being *ultra vires* of the Bombay Legislature. This Court has power to inquire into the validity of an Act: *Empress*

(1) (1886) 33 Ch. D. 360.

(2) (1877) 5 Ch. D. 347, 349.

(3) (1900) 25 Bom. 142.

(4) (1897) 25 Cal. 239, 240.

(5) (1901) Ap. Ca. 495 at p. 506.

(6) (1890) 24 Q. B. D. 468 at p. 478.

(7) (1868) L. R. 3 C. P. 511 at p. 522.

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v. *Burah*.<sup>(1)</sup> Previously to 1834 the Bombay Legislature had certain legislative powers, but in that year it was deprived of them and until 1861 it had no powers of legislation at all.<sup>(2)</sup> By the Indian Councils Act (Stat. 24 & 25 Vict., c. 67), section 42, certain limited powers were given to it. It was to legislate "for the peace and good government" of the Presidency and for that purpose might repeal and amend any laws previously passed by any Indian authority so far as they affected the Presidency. But it was not to legislate so as to affect that Act or any other Act of Parliament then or thereafter to be in force. Next came the Indian Councils Act, 1892 (Stat. 55 & 56 Vict., c. 14), of which section 6 defines "province" and section 5 extends the power to repeal or amend laws. What is the combined effect of these two statutes from which all the powers of the Bombay local Legislature are derived? They give very limited power to legislate for the province: they do not allow legislation for part of the province, nor do they allow legislation for classes of persons or for individuals.

The Bombay Legislature in passing the Improvement Act assumed powers of legislation which the above Acts did not confer and which it therefore does not possess. First, it creates a person or corporation called the Board of Trustees. It has no power to do that. Only the Crown can create a corporation: see Encyclopædia of the Laws of England, tit. "Corporation," Vol. 3, page 437. Then it empowers this person or corporation to acquire land in a manner different from that in which, by the Land Acquisition Act, the Supreme Legislature had authorised land to be acquired and on exceptionally advantageous terms. Thus it legislates for a person and not for the province, which it cannot do; and it alters or amends the Land Acquisition Act in favour of the new person or corporation only, and with respect only to the City of Bombay, leaving the Act in full force and unaltered in the rest of the Presidency.

Next, the Improvement Act (section 48) creates a new Court and interferes with the functions and jurisdiction of the High

(1) (1878) 4 Cal. 172; 3 Cal. 63.

(2) See speech of Sir F. Stephens in Proceedings of the Governor General's Legislative Council, Vol. 9, page 157.

Court. The Indian Councils Acts of 1861 and 1892 give the local Legislature no power to do that. Only the Governor General in Council can legislate for Courts of Justice : see section 22 of the Indian Councils Act, 1861, and section 44 of the Letters Patent, 1865. The Councils Act, 1892 (55 & 56 Vict., c. 14), leaves that exclusive power unaltered, for (section 5) it makes the powers of the local Legislature "subject to the provisions of the Councils Act, 1861." The Bombay Legislature exceeded its power in passing the *Municipal Act (Bombay Act III of 1888)* which affected Courts of Justice and consequently Act XII of 1888 was found necessary in order to validate it. That is a legislative recognition of the fact that the local Legislature cannot legislate for Courts of Justice.

The Improvement Act legislates for Courts of Justice in this way. It not merely creates a new Court (section 48) to deal with cases in which land is compulsorily acquired which it has no power to do, but it takes away the right of appeal to the High Court which is given in such cases by section 54 of the Land Acquisition Act (I of 1894) (see section 47 and schedule A of the Improvement Act). By section 18 of the Land Acquisition Act I of 1894 (which is incorporated in the Improvement Act) a right is given to refer to this Court (see clause *d*, section 3). From the decision on such reference there would be an appeal under clause 15 or 16 of the Letters Patent, 1865. But all the rights thus given to persons whose land is acquired for public purposes are taken away by the Improvement Act. This Act thus withdraws from the High Court the jurisdiction which it has had under the Land Acquisition Act (I of 1894) and it allows no appeal to the High Court except by permission of the President of the new tribunal (see clause 11 of section 48). In section 49 the tribunal is called a Court. In section 48 it is "deemed to be the Court." We submit that the Bombay Legislature can neither create a Court nor constitute a tribunal to exercise the functions of a Court. If it can do this it might constitute a tribunal to exercise the functions of the High Court and thus supersede the High Court altogether. The new Act ordains that a certain class of cases arising between certain litigants shall be decided by this tribunal. If it can do this it could pass an Act

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that all questions of contract arising, *e.g.*, between Parsis, should be decided by such a tribunal.

Again, section 104 of the Improvement Act is *ultra vires*, for it prevents the application of the ordinary law of limitation. If in the present case the plaintiffs are ejected by the Collector, they would have twelve years under the Limitation Act within which to sue; but section 104 only gives them six months.

Again, section 31 is *ultra vires*. It enables the Board of Trustees to take land not required for any public purpose, but any land which may "be affected" by a street scheme. The effect of this is to enable the Board to speculate in land.

Next, can it be said that this Act is "for the peace and good government" of the City of Bombay? Its procedure is oppressive. After a notification has been issued under section 27, the Board need take no further steps for years. They are bound by no limit of time. In the present case the notification was issued in December, 1898, and no further steps were taken until the 9th November, 1902. Once a notification is issued the owner cannot sell his land, for of course no one will buy. And the compensation is fixed as of the date of the notification. Executors cannot realize their testator's property. Or suppose the case of a man who has just bought land for building. He mortgages it for a large sum. The Board issues a notification which includes his property. The result is he cannot sell. He dares not build (see section 49, clause 2) and yet he must pay the interest on his mortgage-debt. Thus the operation of the Act "for the good government" of Bombay ruins him.

Again, as to compensation, section 15 of the Land Acquisition Act, I of 1894, (incorporated by section 47 of the Improvement Act) states the principles by which the Collector is to be guided in awarding it. But while that section directs him to observe the provisions of sections 23 and 24 of the Land Acquisition Act, schedule A of the Improvement Act excepts certain clauses of these sections. Then if the owner goes before the tribunal, that Court awards compensation on different principles (see section 49) and by different rules from those applied by the Collector.

On the above grounds we contend that the Improvement Act is invalid.

Next, we contend that assuming the Improvement Act to be valid, its provisions were not in this case observed. Where by law power is given to one person to acquire compulsorily the land of another, the very letter of the statute must be followed: *Rea v. Croke*<sup>(1)</sup>; *Mayor of Liverpool v. Chorley*<sup>(2)</sup>; *North Shore Railway Company v. Pion*<sup>(3)</sup>; *Herron v. Rathmine, &c., Improvement Commissioners*.<sup>(4)</sup> We say the letter of the law has not been observed in this case and the proper procedure has not been followed. By section 47 of the Improvement Act certain portions of the Land Acquisition Act are incorporated. They are made part of the new Act. The notices, therefore, should have been issued under the Improvement Act and it should have been stated that the land was to be acquired under that Act. But the notice is stated to be issued under the Land Acquisition Act (I of 1894) and the plaintiff was informed that the land was to be taken by Government (see section 9 of Act I of 1894). The declaration issued also was not in proper form.

The Trust by the fourth issue suggest that they are not proper parties to this suit. But it is they who issue the notification. They negotiate with the owner of the land (see section 50). They are the parties chiefly interested; therefore under section 42 of the Specific Relief Act (I of 1877) they are rightly made parties to this suit.

*Scott* (Advocate General) for defendants 1 and 2:—The position of the Secretary of State, having regard to the provisions of statute 21 & 22, Vict., c. 106, sections 65 and 67, is discussed in *Kinlock v. Secretary of State for India*<sup>(5)</sup>; *Secretary of State v. Rajlucki*.<sup>(6)</sup> It is clear that he cannot be sued unless notice has been given (section 424 of the Civil Procedure Code). Section 104 of the Improvement Act does not apply to the Secretary of State, as the Crown is not mentioned: *Secretary of State v. Mathurubhai*.<sup>(7)</sup>

The Improvement Act is not *ultra vires* of the Bombay Legislature under 24 & 25 Vict., c. 67, sections 42 and 43. It

(1) (1774) Cowp. 26.

(2) (1852) 2 DeG. M. & G. 852.

(3) (1889) 14 Ap. Ca. 612 p. 624.

(4) (1892) Ap. Ca. 498 p. 523.

(5) (1880) 15 Ch. D. 1 at p. 8.

(6) (1893) 25 Cal. 239.

(7) (1889) 14 Bom. 213.

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has a general power of legislation with certain specific exceptions. It can legislate for persons as well as places within the Presidency. There are only two reported cases in which its powers have been challenged: *Premshankar v. The Government of Bombay*<sup>(1)</sup>; *Collector of Thana v. Bhaskar*.<sup>(2)</sup> Its power of amendment and repeal is co-extensive with its power of original legislation: Stat. 55 & 56 Vict., c. 14, section 5. The Governor General in Council can create corporations and constantly does so, e.g., for the purpose of allowing public bodies, e.g., Municipal bodies and companies, &c., to sue and be sued. No doubt it is a prerogative of the Crown, but Parliament with the consent of the Crown has given the power to the Indian Legislature.

The purposes of the Improvement Act could not have been effected by the Land Acquisition Act (I of 1894). It was necessary that the powers given by the latter Act should be extended, and the new legislation was for the "good government" of Bombay. Sanitary purposes fall within that description. The methods adopted by the Improvement Act are similar to those adopted in the Housing of Working Classes Act (Stat. 53 & 54 Vict., c. 70), on which it is to a large extent modelled: see Ilbert, page 263 *et seq.*; see section 20 of Stat. 53 & 54 Vict., c. 70; compare section 47 of the Improvement Act. Act I of 1894 is not repealed or amended, but it is applied by the Trust Act. The fact that certain provisions of the Improvement Act may produce hardship raises a question of policy with which this Court cannot deal. As to the delay complained of, compare the English Act (53 & 54 Vict., c. 70), section 20, sub-section 2.

The Improvement Act does not interfere with the jurisdiction of the High Court. The effect of the Act is to give rise to a new class of cases, and a new tribunal is created to deal with them. If, however, any of the provisions dealing with the new tribunal are *ultra vires*, that circumstance would not invalidate the whole Act.

[JENKINS, C.J.:—Would the Legislature have passed an Act for taking land if it had been aware that the provisions which it contained for ascertaining the compensation to be paid were invalid?]

(1) (1871) 8 B. H. C. Rep. 195 at pp. 197-9. (2) (1884) 8 Bom. 264.

The question in this case is as to the taking of the land. The point of compensation arises after the land is taken.

[JENKINS, C.J.:—But is not the Act an Act to take up land on payment of compensation? Is it not an expropriation Act?]

I submit the scheme of the Act is to acquire the land. The land is taken, whatever the amount of compensation may be. The mode of ascertaining the compensation may be defective, but that does not invalidate the Act so far as taking the land is concerned. In England the law is different. It is on payment that the land vests: Statute 53 & 54 Vict., c. 70. In India it is not so: see Rules and Regulations III of 1812, articles 27 and 29; Bengal Regulation I of 1824; Bombay Act XXVIII of 1839, section 16; Act VI of 1857, section 8, which is re-enacted in the Land Acquisition Act of 1870 and again in Act I of 1894. So it appears that in India, as soon as the first step to acquire the land is taken, the property vests in Government. The question as to compensation and the right of appeal does not affect the vesting.

But I submit that the provisions of the Improvement Act as to the tribunal are not *ultra vires*.

[JENKINS, C.J.:—The first question is whether the tribunal is a Court. If it is, then the local Legislature cannot interfere with the High Court's right of supervision. If it is not a Court, it is merely a body of arbitrators, and there is no appeal to the High Court.]

It is called a Court in section 49. I submit it is a Court, and the Legislature has power to create it, just as it created Mámlatdárs' Courts (Bombay Act III of 1876) and Revenue Courts (Bombay Act II of 1876), the latter of which gives a right of appeal to the High Court. So long as no statutes are affected, the local Legislature has power to legislate. Neither the Charter nor the Charter Act (Stat. 24 & 25 Vict., c. 104) is affected by the Improvement Act. The new legislation only gives additional work to the High Court. It does not interfere with its existing powers.

As to the merits of the case, we say the procedure was right. The notices were good, having regard to section 47 of the Improvement Act, which provides that Act I of 1894 is to

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regulate the procedure. The notices were issued under section 9 of the Act (I of 1894). There is no prescribed form of notice, but the notices given contained all that was necessary. This Court will not regard mere technicalities. The declaration also was good under section 29 of the Improvement Act.

*Lowndes* for the second defendant :—The notice and declaration need only state the limits of the land and the purposes for which the land is needed : see section 6 of Act I of 1894 ; section 29, clause (b), of the Improvement Act.

We submit that the tribunal is a Court. Section 48 of the Improvement Act does not prevent the High Court from making rules for the tribunal. If the tribunal is a Court, then there is an appeal from it to the High Court.

[JENKINS, C.J.:—Do you say that an appeal would lie whether a certificate is given or not ?]

There may be a question as to the cases in which an appeal would lie. That point would, no doubt, have to be decided.

As to the vesting of the land, it is clear that the policy of the Act is to take the land quite independently of the question of compensation. That appears from section 17 of Act I of 1894, and the invalidity of the section dealing with the latter would not affect the validity of the clause dealing with the former.

*Inverarity* in reply :—If the Improvement Act does not repeal, alter or amend Act I of 1894, then it must have been enacted under the powers given by the Councils Act, 1861. But that Act forbids the local Legislature to enact anything inconsistent with prior Acts of the Government of India. Now Act I of 1894 was the only Act under which land could be taken for a public purpose, and it provided for compensation being given in a particular way and paid out of a specified fund (see section 6 of Act I of 1894). That was the law in force. Whence does the local Legislature obtain power to enable a corporation to acquire land in a different way ? Act I of 1894 is repealed, altered or amended in favour of the Trust. If the Improvement Act does not repeal or amend it, then the Act is clearly *ultra vires*.

If the provisions for ascertaining compensation are invalid the whole Act fails, just as a good charitable gift may fail when it

is part of an invalid scheme: Tudor on Charity, page 47. The powers of the Bombay Legislature were challenged in *Reg. v. Reay*.<sup>(1)</sup> That Legislature has no power under the Councils Act, 1861, to legislate for Courts of Justice. Probably the Mámlatdárs' Courts Act and the Land Revenue Act are invalid, but the point has never been raised.

JENKINS, C.J.:—In the year 1898 certain improvements were projected in the City of Bombay, and an Act called the City of Bombay Improvement Act, 1898, was passed, giving to a Board thereby constituted certain powers with a view to carry these improvements into effect.

On the 25th of September, 1902, there was published in the *Bombay Government Gazette* a declaration purporting to be in pursuance of the Act, stating that the Governor of Bombay in Council had sanctioned a street scheme made by the Trustees for the Improvement of the City of Bombay under the provisions of the Act (that being the style of the Board thereby constituted) and that certain lands, including those in suit, were "needed to, be acquired by the said Trustees for the purposes of executing the said street scheme" and were required for a public purpose.

On the 27th November, 1902, the plaintiffs received notices addressed to Pandurang Nilaji, their deceased father, and also to each of them in the following terms:

Notice is hereby given that the undermentioned piece of ground, with the building thereon erected, situated within the limits of the Registration District of Bombay, in the Island of Bombay, and recently marked out and measured, is about to be taken by Government for a public purpose, viz., for the street scheme No. III from Elphinstone Bridge to Queen's Road proposed by the Trustees for the Improvement of the City of Bombay, under Act I of 1894, in accordance with a declaration, dated 22nd September, 1902, published in the *Bombay Government Gazette* of the 25th September, 1902. If you have any interest in this land and building, or are entitled to act for person so interested, you are hereby called upon to appear personally or by agent on Friday, the 12th December, 1902, at 11 A.M., at the office of the Special Collector, Bombay, in the Chartered Bank New Buildings, opposite Queen's Statue, on Esplanade Road, to state and prove by documents the nature of such interests in the land or building, and the amount and particulars of any claim you may wish to prefer for the same.

(1) (1870) 7 Bom. H. C. Rep. (Cr. Ca.) 7.

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All that piece or parcel of land or ground, together with buildings erected thereon, situate at 7th Khetwady Lane, assessed by the Collector of Land Revenue under New No. 9238 and New Survey No. 5459 and by the Collector of Municipal Rates and Taxes under D Ward, No. 1967, and street No. 13-15, bounded on the north by ; on the south by the property of Baboo Deoji, a Bagmali; on the west by the 7th Khetwady Lane; and on the east by the property of Jeewandas Ebji Sivji, containing an approximate area of 233 square yards, and is now in the occupation of Pandurang Nilaji.

(Signed) J. McNEILL,  
Special Collector.

Accompanying each was a document to the following effect:

IN THE MATTER OF THE LAND ACQUISITION ACT OF 1894.

NOTICE TO CLAIMANTS FOR PROPERTIES TO BE ACQUIRED  
UNDER THE ABOVE ACT.

*Special Collector's Office:*  
*Bombay, 27th November, 1902.*

To Mr.

With reference to the accompanying notice, I beg to inform you that in order to facilitate the making of awards in the large number of cases now pending before me under the above Act, the following procedure will, so far as practicable, be followed:

1. On the date and at the hour mentioned in the accompanying notice, you should appear personally or by duly authorised agents and should produce your documents of title and bills for Municipal taxes and Government and Fazendari or other rents paid by you and all other documents in support of your claim, together with a statement in writing of the amount claimed in respect of the property to be acquired.
2. You should also produce on the above date, under section 10 of the Land Acquisition Act, 1894, a statement in writing signed by you giving the following particulars as far as practicable:

The name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement. Should any of your documents of title be in the hands of a mortgagee or other third parties, you should obtain a *sub-pœna* from me for the production by any such third parties of those documents.

3. If you wish to support your claim by a valuation made by an Engineer, Surveyor or others, you will be required to be prepared with such valuation with your other papers on the date mentioned in the accompanying notice, and an adjournment will not be granted on the ground that such valuation is not yet completed or that the matter has recently been placed in the hands of professional advisers, unless it be proved to my satisfaction that the delay was unavoidable.

4. In the event of the amount claimed in respect of any property not being considered reasonable, the inquiry in respect of such property will either proceed or will be adjourned to some subsequent date, when you must be prepared to offer any evidence you may consider necessary in support of your claim.

(Signed) B. H. JAYAKAR,  
for Special Collector.

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On the 23rd of February, 1903, Mr. McNeill, one of the Special Collectors under the Improvement Act, having made an award of the compensation which in his opinion should be allowed for the premises, gave to the plaintiffs notice that they should hand over possession of the property on the 27th of that month.

On the 24th of February the plaintiffs commenced this suit against the Secretary of State for India in Council and the Trustees for the Improvement of the City of Bombay, praying as follows [His Lordship read the prayers, *supra*, page 428].

The proceedings to obtain possession are resisted by the plaintiffs on the ground, first, that the local Legislature had no power to pass the City of Bombay Improvement Act, and secondly, that if they had, the procedure prescribed by that Act was not observed.

At the hearing the following issues were raised [His Lordship read the issues, *supra*, page 429].

The original defendants were the Secretary of State for India in Council and the Trustees for the Improvement of the City of Bombay; the case, however, had proceeded but a short way when, on the plaintiffs' application, Mr. McNeill, the Special Collector, was added as a party. He raised the same issues as the Improvement Trustees.

It will be seen that the really important question in the case is, whether the City of Bombay Improvement Act was within the powers of the local Legislature, and that I propose first to consider. It is a legitimate subject of discussion in this Court, for the Governor of this Presidency in Council is a subordinate Legislature, whose authority in the way of law-making is subject to and dependent upon the Acts of Parliament, from which their legislative powers are derived, so that we have the right, and are charged with the duty, of deciding judicially, whether the impugned legislation is within the scope of their authority.

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It would be to no purpose now to trace the history of the local Government's legislative powers beyond the Statute 3 & 4 Will. IV, c. 85, whereby the several local Legislatures were superseded and one central legislative authority was established. Later, it was determined to restore to the Presidencies of Madras and Bombay the power of making laws and regulations within defined limits, and the Indian Councils Act, 1861, was passed.

The sections of that Act which deal with the subject are 42 and 43, which are in these terms :

42. The Governor of each of the Presidencies in Council shall have power, at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for the peace and good government of such Presidency, and for that purpose to repeal or amend any laws and regulations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency :

Provided always that such Governor in Council shall not have power of making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force or hereafter to be in force in such Presidency.

43. It shall not be lawful for the Governor of either of the aforesaid Presidencies, except with the sanction of the Governor General previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned ; that is to say—

(1) affecting the public debt of India, or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government :

(2) regulating any of the current coin, or the issue of any bills, notes or other paper currency :

(3) regulating the conveyance of letters by post office or messages by the electric telegraph within the Presidency :

(4) altering in any way the Penal Code of India, as established by the Act of the Governor General in Council, No. XLV of 1860 :

(5) affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India :

(6) affecting the discipline or maintenance of Her Majesty's Military or Naval forces :

(7) regulating patents or copyrights :

(8) affecting the relations of Government with foreign princes or States :

Provided, always, that no law or provision of any law or regulation which shall have been made by any such Governor in Council and assented to by the Governor General as aforesaid, shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

This Act was amended by the Indian Councils Act of 1892, which by section 6 provides :

6. In this Act—

The expression "Local Legislature" means (1) the Governor in Council for the purpose of making laws and regulations of the respective provinces of Fort St. George and Bombay ; and (2) the Council for the purpose of making laws and regulations of the Lieutenant-Governor of any provinces to which the provisions of the Indian Councils Act, 1861, touching the making of laws or regulations have been or are hereafter extended or made applicable :

The expression "province" means any Presidency, division, province or territory over which the powers of any local Legislature for the time being extend.

For the purpose in hand it is in these Acts, subject to the limitation imposed by 24 & 25 Vict., c. 104, that the constitution of the local Legislature is to be found.

I now will pass on to the Indian legislation which bears on the questions at issue in this suit. In 1894 there was passed by the Governor General in Council Act I of that year—an Act to amend the law for the acquisition of land for public purposes and companies,—and it was this Act of the Supreme Legislature that, at the passing of the City of Bombay Improvement Act of 1898 (to which I will in future refer as the Improvement Act), regulated the compulsory acquisition of land. Proceeding to the Improvement Act, we find that it recites as follows [His Lordship read the preamble to the Act]. Section 1 provides that it shall extend "only to the City of Bombay" and section 3 that :

The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are hereinafter contained, be vested in a Board, to be called "The Trustees for the Improvement of the City of Bombay," and such Board, hereinafter referred to as "the Board," shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid.

Chapter III deals with the duties exercisable under the Act in relation to the schemes contemplated by it and the acquisition of the land required for the purposes of the same.

Now it will have been noticed that section 3 enacts that the Board will be a body corporate and have perpetual succession. This has given rise to the argument before us that it is beyond

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the powers of the Bombay Legislature to create a corporation. In England the Sovereign's consent (express or implied) is necessary to the creation of a corporation by reason of the Crown's prerogative, and even a statutory corporation is no exception to this, as of the constituting Act the royal assent is an indispensable ingredient (Bacon's Abridgment: Corporation B.; Stephen's Blackstone, Book IV, Part III, Chapter I; and Chitty's Prerogative). That the Crown's prerogative extends here is recognised by section 24 of the Indian Councils Act, 1861.

It is, however, unnecessary to discuss the power of the local Legislature to create a corporation, for even if that power does not exist, still that would not make the Improvement Act *ultra vires* in relation to the matters at issue in this suit; for were the Board not legally incorporated, that would not defeat the purposes of the Act in an essential particular.

Apart from this, however, it is argued that the Improvement Act is beyond the powers of the local Legislature; that the compulsory acquisition of land in India is governed by the Land Acquisition Act; and that the Governor in Council had no power to depart from the principles and methods of that Act.

In the first place it is contended that so far as the Improvement Act can be regarded as a repeal or amendment of the Land Acquisition Act, its validity must be judged by section 5 of the Indian Councils Act of 1892, under which the local Legislature of any province can only repeal or amend as to that province. That, it is said, does not allow of an amendment or repeal affecting a particular corporation in a particular locality. In my opinion this argument has no force: the reference to the province is merely for the purpose of defining the limits of legislative operation and in no way imposes the condition that all legislation should affect the whole of that area. To accept the plaintiffs' argument would be to impose a restriction on local legislation not required by the words of the Act, and productive of great practical inconvenience.

Next, it has been contended that there has been no repeal or amendment of the Land Acquisition Act, and that the compulsory acquisition of land must, therefore, be governed by that Act. But so far as the Improvement Act is inconsistent with

the Land Acquisition Act, it is by implication a repeal or amendment of it. But in fact it is by no means clear that the Land Acquisition Act is touched by the Improvement Act, for it is limited in its operation to those cases in which the compensation to be awarded is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. But from section 3 of the Land Acquisition Act it is manifest that the Board, even if legally incorporated, is not a company within the meaning of the Act, while the compensation is not payable out of the public revenues or a fund of the character prescribed.

Then stress has been laid on the provision in the Indian Councils Act, 1861, that the Governor in Council is only empowered to "make laws and regulations for the peace and good government" of the Presidency. This legislation, it is said, does not comply with this condition, for it is calculated to cause discontent. Clearly this is a question into which we cannot go: it involves questions of policy, which it is outside our jurisdiction to discuss.

This brings me to the question whether the Act is vitiated by anything contained in section 48. A Tribunal consisting of a President and two Assessors is thereby appointed to perform the functions of the Court under the Land Acquisition Act, and by the 11th sub-section it is enacted that:

In any case in which the President may grant a certificate that the case is a fit one for appeal, there shall be an appeal to the High Court from the award or any part of the award of the Tribunal.

The scheme, therefore, of the Act in relation to ascertaining the compensation to be paid on the compulsory acquisition of land is, that the Collector in the first place is to award the compensation, which in his opinion should be allowed (see section 11 of the Land Acquisition Act); but any person interested, who has not accepted an award so made, may require that the matter be referred to the determination of the Tribunal of Appeal (section 18 of the Land Acquisition Act). From the award of the Tribunal there is, if the President of the Tribunal grants the necessary certificate, an appeal to this Court.

The provision in favour of this last appeal has hitherto proved illusory, because on no occasion has the President granted

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a certificate; still it is fair to assume that the Legislature regarded the provision for appeal to this Court as a part of the Act, that might have some useful operation. The question, therefore, arises whether the local Legislature had power to grant an appeal to this Court dependent on the will of the President of the Tribunal, and if not, to what extent the validity of the Act is thereby affected.

To answer this question we must first consider whether the Tribunal of Appeal is a Court; and this depends upon whether the Tribunal was intended to be a Court, and, if so, whether the creation of a Court was within the powers of the local Legislature.

In considering whether the Tribunal of Appeal is a Court, it is important in the first place to observe what is its constitution. It consists of a President and two Assessors, of whom only the President need have any legal training: the award of the majority (except on points of law) prevails: the President and one Assessor are appointed by the Government, the other Assessor by the Corporation, by which is presumably meant the Municipal Corporation of Bombay: the members of the Tribunal are appointed for one year and are eligible for re-appointment: they are removable by Government for inability, misbehaviour or other good and sufficient cause: the President alone has power to make rules for the conduct of the Tribunal subject to the sanction of the Government, while under the High Courts Act of 1861 (Stat. 24 & 25 Vict., c. 104), section 15, it is the High Court that is empowered to frame rules of practice for subordinate Courts: the Act does not purport to constitute the Tribunal a Court, but provides that it shall *perform* the functions of the Court under the Land Acquisition Act, and shall be *deemed* to be the Court: the President is deemed to be the Judge, and the Tribunal's award (subject to the right of appeal I have mentioned) is final. Can it reasonably be said that a body so constituted is a Court of Justice? I think not; it appears to me that the manifest purpose of the Legislature was to create a Tribunal that should not be a Court, but a body free from the control and superintendence of this Court, except so far as intervention by way of appeal might be sanctioned by its President, and I am of opinion that the object has been attained.

Under these circumstances it is unnecessary to consider whether the creation of a Court is an unauthorised invasion of the Crown's prerogative (see section 24 of the Indian Councils Act, 1861, and *Bell v. Municipal Commissioner for the City of Madras*<sup>(1)</sup>), or whether the creation of a new Court within the limits of this Presidency is within the legislative powers of the Governor in Council.

But if the Tribunal was not a Court, what power was there to give the limited right of appeal to this Court that section 48 (11) of the Improvement Act proposes to provide?

Apart from special jurisdiction in relation to particular matters derived from the authorised legislation of the Governor General in Council, the civil jurisdiction of the High Court is (1) ordinary original, (2) extraordinary original, or (3) appellate and revisional. Now this limited right of appeal under the Improvement Act does not come within either of the last two heads of jurisdiction: the appellate and revisional jurisdiction can only come into play when there has been a decision of a Court—a condition which *ex hypothesi* does not exist here,—while the extraordinary civil jurisdiction obviously can have no application. Can it then be said that our ordinary civil jurisdiction is of any avail? I think not. The conditions are so widely different from those under which our original jurisdiction is exercised that, in my opinion, they do not permit of our dealing with the case as falling within that jurisdiction.

But if this be so, the Improvement Act cannot confer on us this jurisdiction, because the local Legislature has no power to control or affect by their Acts the jurisdiction or procedure of the High Court, as that power rests with the Imperial Parliament and with the Legislative Council of the Governor General (see 24 & 25 Vict., c. 104).

What then is the result of this defect in the prescribed machinery for ascertaining the compensation payable under the Improvement Act? No authority has been cited to us that throws light on this question; but on a consideration of all the circumstances we think that the whole Act is not thereby invalidated. It may be that in some cases the several provisions of an Act are so

<sup>(1)</sup> (1902) 25 Mad. 457.

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closely connected and interdependent that invalidity in one would necessarily involve the invalidity of the rest; but that does not seem to me to be the case here. Though the machinery for ascertaining compensation may be defective so far as it provides for an appeal to this Court, I do not think that as a consequence the provision for taking possession (with which alone we are concerned in this suit) must be treated as beyond the powers of the Bombay Legislature.

The Colonial Laws Act, 1865, of course has no application to the present case, but the third section of that Act furnishes us with an interesting illustration of the principles on which the English Parliament has proceeded under similar circumstances. It is by that section provided that "any Colonial law, which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate or repugnant to any order or regulation made under authority of such Act of Parliament or having in the colony the force and effect of such Act, shall be read subject to such Act, order or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

If we apply this principle to the Improvement Act, then the provisions for taking possession are not void.

If it be said that the Improvement Act would not have been passed in its present form, had it been realised that the provision for a qualified right of appeal to this Court was of no effect, we can only say that here the discussion enters on a field of speculation closed to us; but no doubt the matter will receive due attention in the proper quarters and such reparation made as the circumstances of the case demand.

It may here be noted that even if it be that the Improvement Act has failed to carry out entirely the expressed wish of the Legislature, this would equally, perhaps, still more have been the case had we been able to hold the Tribunal to be a Court, for that would have attached the consequence of superintendence by this Court, which it manifestly was intended to avoid.

Having thus decided that the provision for taking possession is not void, I will now proceed to deal with the objection that the procedure prescribed by the Act has not been followed.

Section 32 provides :

Upon completion of a street scheme, the provisions of sections 27, 28 and 29 shall with all necessary modifications be applicable to the scheme in the same manner as if the scheme were an improvement scheme.

It is not suggested that the provisions of sections 27 and 28 have not been complied with. Section 29 (1) enacts that—

On receipt of the sanction of Government, the Chairman shall forward a declaration for notification under the signature of a Secretary to Government stating the fact of such sanction and that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose.

I have already referred to this declaration, and I cannot see in what respect it fails to comply with the provisions of the Act. It states (a) that the Governor in Council has sanctioned the scheme ; (b) that the lands are required for a public purpose ; (c) the purpose for which they are needed, the limits and approximate area ; and (d) the place where a plan may be inspected ; in this it has fulfilled the requirements of the Improvement Act.

Then complaint is made of the notices given. I have already read one set of these notices, and for the purpose in hand that will suffice, as the other sets are in identical terms.

These documents, it will be seen, refer only to the Land Acquisition Act, making no direct mention of the Improvement Act ; this, it is urged, is a failure to observe the requirements of the law.

It will be instructive to see how the reference to the Land Acquisition Act crept in. Portions of that Act are by section 47 incorporated into the chapter of the Improvement Act which deals with the acquisition of land ; that section runs as follows :

47. Notwithstanding anything contained in the Land Acquisition Act, 1894, (in this and the next succeeding section referred to as the "said Act") the said Act shall not, except to the extent set forth in Schedule A, apply to the acquisition of land under this Act, but the said Act shall, to the extent set forth in the said schedule, regulate and apply to the acquisition of land otherwise than by agreement and shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof, subject to the provisions of this chapter and to the provisions following (namely) :

(1) A reference to any section of the said Act shall be deemed to be a reference to such section, as modified by the provisions of this chapter, and the expression "land," as used in the said Act, shall, in addition to the meaning

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included therein under clause (a) of section 3 of the said Act, be deemed, for the purposes of this Act, to include rights created by legislative enactment over any street; and clause (b) of section 3 of the said Act shall, for the purposes of this Act, be read as if the words "or if he is the owner any right created by legislative enactment over any street forming part of the land" were added after the words "affecting the land";

(2) In the construction of sub-section (2) of section 4 of the said Act and the provisions of this chapter, the provisions of the said sub-section shall, for the purposes of this Act, be applicable immediately upon the passing of a resolution under section 23, 30 or 38, and the expression "Local Government" shall be deemed to include the Board, and the words "such locality" shall be deemed to mean the locality referred to in such resolution;

(3) In the construction of the sections of the said Act deemed to form part of this chapter and the provisions of this chapter, the publication of a declaration under section 29, 32, or 39 shall be deemed to be the publication of a declaration under section 6 of the said Act;

(4) In the construction of section 50, sub-section (2), of the said Act, and the provisions of this chapter, the Board shall be deemed to be the local authority or company concerned.

Turning to the schedule, we find that the portions of the Land Acquisition Act which regulate the acquisition of land under the Improvement Act are Part I except clauses (d), (e) and (f) of sub-section 3, and Part II except sub-section 1 of section 4, section 6, and sub-section 2 of section 17.

Now the section which deals with notices is the 9th, which provides:

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of the publication of the notice) and to state the nature of their respective interests in the land and the amount and the particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may, in any case, require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

Nothing has been said before us as to the public notice prescribed by the Act: nor has any suggestion been made that it was not in order: therefore I assume that it was not open to objection. The argument before us has been limited to the insufficiency of the notices I have read.

Now sub-section 3 enacts that the notice should state that the Government intends to take possession of the land. The notice, it is true, does not use those precise words, but it says that the land is about to be taken by Government, and that is substantially the same thing. Next, the notice should state that claims for all interests in the lands should be made to the Collector. With this too there has been, if not a verbal, at any rate practical compliance. In fact, it has not been urged before us or apparently before the Special Collector that the notice was not a good one under the Land Acquisition Act; the grievance has been that the notice being under the Land Acquisition Act the proceedings were under the Improvement Act. But there is nothing in the Improvement Act which prescribes that the notice shall be expressed to be under that Act; so that there has been no omission of a formality directed by the Act. It at most only is that there has been a misdescription in a particular, on which the Act is silent. Under these circumstances what we have to consider is, whether the plaintiffs have been in any way misled or damnified. I am clearly of opinion that the plaintiffs have made out no such case.

The merits on this part, therefore, are not in the plaintiffs' favour, and if we are to be guided by the strictest technicalities it is at least a question whether the plaintiffs can claim that they are on their side, for among the imported sections of the Land Acquisition Act is the 1st, which provides that the Act may be called the Land Acquisition Act, 1898, and this is to be deemed to form part of the Act—Chapter III of the Improvement Act—in the same manner as if enacted in the body thereof. But I do not intend to pursue this further, as in my opinion the reason I have already given is sufficient answer to the plaintiffs' objection,

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and an endeavour to discover the purpose and meaning of the Legislature in incorporating section 1 of the Land Acquisition Act is not, under the circumstances, profitable.

In this view of the case the plaintiffs must fail, but as the point has been argued before us at length, it will be convenient that we should consider and determine the issue, whether having regard to section 424 of the Civil Procedure Code (XIV of 1882) the suit is maintainable against the Secretary of State. That section provides :

No suit shall be instituted against the Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and name and place of abode of the intending plaintiff, and the relief which he claims ; and the plaint must contain a statement that such notice has been so delivered or left.

In this case no notice of suit has been given, but it is argued that, as the remedy sought is an injunction, no notice was necessary. In support of this view the English cases, of which *Flower v. Local Board of Low Leyton*<sup>(1)</sup> is a type, were cited to us. It was further said that the words "in respect of an act purporting to be done by him in his official capacity" must be read not only with "a public officer" but also with "the said Secretary of State in Council." In my opinion, the answer to this argument is that in this suit and in the circumstances of this case no injunction could be claimed against the Secretary of State. In illustration of the position of the Secretary of State in Council, I may refer to the judgment of James, L.J., in *Kinlock v. Secretary of State for India*.<sup>(2)</sup>

My finding, therefore, on the issues raised on behalf of the Secretary of State are :

(1) Having regard to section 424 of the Civil Procedure Code, the suit is not maintainable against the Secretary of State in the absence of notice.

(2) The proceedings before the Special Collector are not void for any of the reasons stated in the plaint.

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

(2) (1880) 15 Ch. D.

(3) The plaintiffs are not entitled to an injunction against him.

Of the three issues raised by the Trustees and the Special Collector the first was afterwards withdrawn, and my findings on the other two issues are in the negative.

There is one further matter on which I desire to comment; it is the fact that an *ex parte* injunction was granted. The power, no doubt, exists; but having regard to the circumstances under which business has to be conducted here, I think the greatest care should be employed in its exercise. There may be instances where the urgency is so great that an *ex parte* injunction is necessary, but that was not the case here. The suit was instituted and the *ex parte* order was made on Tuesday the 24th of February, 1903. But there was, so far as I can see, no reason why the plaintiffs should not have been required to serve short notice of motion for the following Thursday, as this would have been in time still to give the plaintiffs any *interim* relief to which they might have been entitled. Having regard to the conditions which prevail here, the Court should, if possible, always require notice, however short, to be given.

The decree which must be passed here is that the suit must be dismissed with costs, of which there will be two sets, one for the Improvement Trustees and one for the other defendants.

BARRY, J., concurred.

Attorneys for the plaintiffs—*Messrs. Craigie, Lynch & Owen.*

Attorney for the Secretary of State (defendant 1) and Special Collector (defendant 3)—*Mr. E. F. Nicholson* (Government Solicitor).

Attorneys for defendant 2 (Improvement Trustees)—*Messrs. Crawford, Brown & Co.*

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