APPEAL FROM ORIGINAL CIVIL.

Before Sanderson C. J. and Rankin J.

VERNON MILWARD BASON

v.

ANN HELEN SKONE AND ANOTHER *

1925

Nov. 17.

Contempt of Court—Interference with the course of Justice—When Court to exercise jurisdiction.

Where proceedings in a Magistrate's Court would be quite sufficient to meet the requirements of the case, it is not desirable to invoke the special jurisdiction inherent in the High Court by way of proceedings for contempt of Court.

APPEAL from an order of C. C. Ghose J.

The plaintiff Bason instituted this suit against the defendant A. H. Skone and another for breach of an agreement The suit was dismissed with costs and the defendant's costs were taxed and an allocatur was issued for a sum of Rs. 5,827-4. It was served on Bason's attorneys on the 5th May 1925. On the 9th May the defendant Skone took out a notice under O. XXI, r. 37(*1*) of the Civil Procedure Code (Act V of 1908) requiring the plaintiff to appear in person before the Court and to show cause why he should not be committed to civil prison in execution of the decree for costs against him. On the 9th May one Ashit Kumar Pal, a clerk in the employ of Messrs. Orr Dignam & Co., attorneys, went to the residence of Bason to serve the said notice, he informed Bason of the purpose for which he called and made over to him the notice and a copy of it. Bason read the notice and flung the papers on the

*Appeal from Original Civil, No. 80 of 1925, in suit No. 1452 of 1924.

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floor; thereupon Ashit picked up the papers and showed the original notice with the seal of the Court to Bason and told him if he refused to accept service he would affix a copy on the outer door. On that Bason became very angry, abused Ashit, caught him by the throat, dragged him and pushed him towards the door. Thereafter Ashit fixed a copy of the notice on the front door of the room. On that the defendant Skone moved the Court for committing Bason for contempt and Bason was ordered to pay a fine of Rs. 200 and the defendant's costs of such application.

Bason preferred this appeal from that order.

Mr. L. P. E. Pugh (with him *Mr. W. W. K. Page*), for the appellant. There was no contempt for insulting somebody out of Court provided there was no interference with the working of Court. Contempt proceedings should be taken when time does not admit of other procedure and there is no other remedy. The peon did post the notice on the front door and there was no obstruction or delay. Halsbury's Laws of England, Vol. VII, p. 288; *Adams* v. *Hughes* (1), *In re Clements* (2), *In the matter of a Special Reference from Bahama Islands* (3), *McLeod* v. *St. Aubyn* (4), *R.* v. *Gray* (5).

Mr. N. N. Sircar and *Mr. S. K. Chakravarty*, for the respondent, were not called upon.

SANDERSON C. J. This is an appeal by Vernon Milward Bason against a judgment of my learned brother Mr. Justice C. C. Ghose which was delivered on the 22nd of May 1925.

It appears that the appellant had instituted a suit against certain defendants for damages for breach of

(1) (1819) 1 Brod. & Bing. 24.
(2) (1877) 46 L. J. Ch. 375, 382.
(3) [1893] A. C. 138.
(4) [1899] A. C. 549.
(5) [1900] 2 Q. B. 36, 41.

an agreement. The suit was dismissed with costs. The defendants' bill of costs was taxed and an allocatur was issued on the 2nd of May 1925. It was served on the appellant's attorneys on the 5th of May; and, on the 9th of May a notice was issued under Order XXI, r. 37, Code of Civil Procedure, which runs as follows:—"Notwithstanding anything in "these rules, where an application is for the execu- "tion of a decree for the payment of money by the "arrest and detention in the civil prison of a judg- "ment debtor who is liable to be arrested in pursu- "ance of the application, the Court may, instead of "issuing a warrant for his arrest, issue a notice "calling upon him to appear before the Court on a "day to be specified in the notice and show cause "why he should not be committed to the civil "prison". It was necessary to serve that notice on the appellant, and, one Ashit Kumar Pal, who was a clerk in the service of Messrs. Orr, Dignam & Co., was entrusted with the duty of effecting the service. He went to the place where the appellant resided in Moira Street. What took place on that occasion has been described by the learned Judge in his judgment.

An application was made to the learned Judge for an order committing the appellant to jail in respect of an alleged contempt of Court; the deponents were examined verbally and cross-examined. We were informed that the hearing occupied two days. The learned Judge accepted the account of the occurrence given by Ashit Kumar Pal and rejected the account given by the appellant.

In this Court the learned advocate, who appeared for the appellant, has not challenged the finding of the learned Judge upon the facts of the case. The learned Judge said as follows:—"He (*i.e.*, the clerk) "informed Bason of the purpose for which he had

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"called and made over to him both the original notice "under Order XXI, r. 37 (*1*), Civil Procedure Code, "and a copy. (It may be noted in passing that Ashit "in his affidavit states that he made over the original "notice only to Bason.) Bason read the notice and "flung the papers on the floor. Ashit thereupon "picked up the papers from the floor and showed to "Bason the original notice bearing the seal of this "Court and informed him that if he refused to accept "service he would affix a copy on the outer door. "Bason thereupon became very angry and called "Ashit Kumar Pal a damned swine and caught him "by the throat and dragged him and pushed him "towards the door, so that he nearly fell down. Ashit "states that thereafter he affixed a copy of the said "notice on the front door of the room."

Those being the facts the learned advocate has argued in the first place that no contempt of Court was committed by the appellant.

I am not able to accept that argument.

The learned advocate cited the case of *In the matter of a Special Reference from the Bahama Islands* (1); and I agree that the question is whether, what the appellant did was calculated to obstruct or interfere with the due course of justice or the due administration of the law. It is clear that it was necessary for the clerk to serve the notice upon the appellant. In the first place, it was necessary for him to try and effect personal service and if he could not effect personal service then it was necessary to affix a copy of the notice on the door of the appellant's flat.

I have no doubt whatever that what the appellant did to the clerk was calculated to obstruct or interfere with the course of justice and the due administration

(1) [1893] A. C. 138.

of the law, although, in fact, it did not prevent the clerk from affixing the copy of the notice on the door.

For these reasons, I am of opinion that the first point on which the learned advocate relied, is not a good one.

The next argument, which the learned advocate submitted, was that even if the action of the appellant did constitute contempt of Court, the learned Judge ought not to have invoked the jurisdiction, which is inherent in this Court, and should not have called upon the appellant to show cause why he should not be committed for contempt, *first*, because the matter was one which could have been investigated fully and dealt with adequately in a Magistrate's Court in Calcutta, and, *secondly*, because there was no necessity for the matter being immediately dealt with, because, in fact, the notice had been served and the proceedings in execution would go on.

I think there is considerable weight in that argument and if I had been sitting as a Judge of first instance and had been hearing the application, I feel sure that I should have rejected it and should have held that the proper place for this matter to be investigated was the Magistrate's Court in Calcutta. I do not think that this was a case, in which it was necessary to invoke the special jurisdiction which is inherent in this Court, by way of an application for committal for contempt of Court.

But the position is this: The learned Judge had jurisdiction. He heard the case, as I have already said, for two days. Witnesses on the one side and the other were examined before him. He investigated fully the facts and he came to a distinct conclusion, which was unfavourable to the appellant.

The learned advocate in this Court, as I have already said, has not ventured to challenge the finding

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of fact; and, the question, therefore, arises would it be right for this Court in these circumstances to interfere with the discretionary order which the learned Judge made?

In my judgment it would not, in the first place because the facts have been fully investigated and a distinct finding has been arrived at by the learned Judge—a decision which has not been questioned in this Court; and, secondly, because I am unable to say that the fine which was inflicted by the learned Judge upon the appellant in respect of the assault can be said to be unduly severe.

In my opinion, therefore, it is not necessary for this Court to set aside the decision of my learned brother in order that the matter might be dealt with in a Magistrate's Court in Calcutta.

At the same time I desire to make it clear that in my opinion, in such cases as this, where proceedings in the Magistrate's Court would be quite sufficient to meet the requirements of the case, it is not desirable to invoke the special jurisdiction inherent in this Court by way of proceedings for contempt of Court.

For these reasons, in my judgment, this appeal should be dismissed with costs.

RANKIN J. I agree.

Attorneys for the appellant: *B. N. Basu & Co.*

Attorneys for the respondent: *Orr, Dignam & Co.*

N. G.