

## APPELLATE CIVIL.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,  
and Mr. Justice Odgers.*

1923,  
March, 15.

THE PRESIDENT OF THE DISTRICT BOARD, SOUTH  
KANARA (DEFENDANT), APPELLANT IN SECOND APPEAL  
AND PETITIONER IN CIVIL REVISION PETITION,

v.

GOPALAKRISHNA BHATTA (PLAINTIFF), RESPONDENT  
IN BOTH.\*

*Provincial Small Cause Courts Act (IX of 1887), Sch. II, cls.  
13 and 19—Suit for compensation by toll-gate contractor  
against a District Board President, suit of a Small Cause  
nature—Section 6 of Tolls Act (XXI of 1901).*

A suit for damages by a toll-gate contractor against the President of a District Board for the latter's illegal obstruction to the collection of tolls is a suit of a Small Cause nature and the President is not an officer of the Government within clauses 1 and 3 of schedule II of the Provincial Small Cause Court Act (IX of 1887). Nor is the jurisdiction of the Small Cause Court to try such a suit ousted either by clause 19 of that schedule or by section 6 of the Tolls Act (XXI of 1901).

SECOND APPEAL against the decree of A. NARAYANAN NAMBIYAR, District Judge of South Kanara, in Appeal Suit No. 50 of 1920, preferred against the decree of K. RARU NAYAR, District Munsif of Kasaragod, South Kanara, in Original Suit No. 652 of 1918 and petition under section 115 of Act V of 1908 praying the High Court to revise the decree of the District Court of South Kanara in Appeal Suit No. 50 of 1920 preferred against the decree of the Court of the District Munsif of Kasaragod, in Original Suit No. 652 of 1918.

The facts are given in the judgment.

*Advocate-General (C. Madhavan Nayar) for appellant*

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\* Second Appeal No. 1 of 1921 and Civil Revision Petition No. 2 of 1921.

*B. Sitarama Rao* (with *R. Kesava Ayyangar* and *K. P. Sarvothama Rao*) for respondents.

JUDGMENT.—Second Appeal No. 1 of 1921.

SCHWABE, C.J.—A preliminary point is taken in this second appeal under section 102 of the Civil Procedure Code on the ground that this was a suit which could be brought in the Provincial Small Cause Court being for an amount under Rs. 500. The suit was rather a curious one. It was an action by a person who had bought the right to collect tolls on certain roads from the District Board. He had to comply according to his contract with the orders given by the President of the District Board. A large quantity of fodder being required for army purposes in this district, the Forest officers hired carts and sent them along the road on which the toll bar in question was. The respondent tried to collect tolls on these carts and he received an order from the appellant, President of the District Board, forbidding him to collect tolls, he basing his prohibition on his interpretation of the Army Act, under which he decided that no toll was payable in respect of carts carrying supplies for the Army. The respondent complied with the order which the appellant had issued and in due course brought a suit for damages claiming that this order forbidding him to collect these tolls was illegal and alleging that he had suffered damages by reason of that order.

The District Munsif and on appeal the Subordinate Judge, so found, and awarded him damages for Rs. 214. No second appeal lies against that decision, the amount being under Rs. 500 unless this is one of the suits set out in the second schedule to the Provincial Small Cause Courts Act IX of 1887. The article of that schedule relied upon is article 19

“A suit for declaratory decree, not being a suit instituted under section 283 of the Code of Civil Procedure.”

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—  
SCHWABE,  
C.J.

I agree that if the case is really a case for declaration the Court would be entitled to hold that the Small Cause Court's jurisdiction was excluded. If the case is really a case for damages as in our judgment this was, the Small Cause Court would have jurisdiction though in arriving at its decision, it would have to come to a conclusion as to whether this prohibition was rightly or wrongly imposed. The other articles relied upon are articles 1 and 3 which except from the cognisance of a Small Cause Court, suits concerning acts or orders purporting to be done by the Governor-General in Council or by a local Government or by a member of the Council and suits concerning acts or orders purporting to be done by any other officer of the Government in his official capacity. If the President of the District Board is an officer of the Government within the meaning of these articles, this suit would be excepted. But in our judgment he is not. Local Boards and Corporations are what may be called quasi-governing bodies, but by the very scheme of the Acts under which they are created they are not servants of the Government. Their representatives in some cases are nominated but generally elected by the people and they have their official capacity as such and not as officials of the Government. It is true that they are under Government in the sense that under the statute they have to account to the Government, and are under certain disciplinary powers of the Government. The Government has a duty cast upon it to see that these ministerial bodies carry out their functions lawfully. But in our judgment none of the officials of these municipalities and District Boards are officers of the Government coming within articles 1 and 3.

It follows that this preliminary point succeeds and that this Second Appeal does not lie and must be dismissed with costs.

C.R.P. No. 2 of 1921.

SCHWABE, C.J.—This Civil Revision is on the same matter just disposed of (Second Appeal No. 1 of 1921). It is suggested that the Court that heard the case had no jurisdiction by reason of section 6 of the Tolls Act XXI of 1901. By that section provisions are made for compensation to certain persons who sustain loss by reason of that Act. It is argued that loss had been sustained by the present respondent by reason of that Act. It is not at all so. Even if it were so, that section does not in my judgment exclude the jurisdiction of the Small Cause Court to hear cases such as this.

It is further suggested that this action did not lie because it was against the President and not against the District Board itself. That is not a question, as I understand it, going to the jurisdiction, and I see no ground for interfering in this case on revision.

This Civil Revision Petition will be dismissed. There will be no costs.

ODGERS, J.—I agree.

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—  
SCHWABE,  
C.J.

ODGERS, J.

N.R.

## APPELLATE CIVIL.

*Before Mr. Justice Ayling and Mr. Justice Odgers.*

DHARMARAJA (2ND DEFENDANT), APPELLANT,

v.

PETHU RAJA AND THREE OTHERS (PLAINTIFF AND DEFENDANTS  
1, 6 AND 7), RESPONDENTS.\*

1923  
March 16

*Practice—Appeal—Withdrawal of suit in appellate Court as against appellant alone—Withdrawal in appeal discretionary with Court—O. XXIII, r. 1, Civil Procedure Code.*

There is no provision of law allowing a respondent in an appeal to withdraw as of right his suit as against the appellant.

\* Second Appeal No. 553 of 1921.