

Lord Justice COTTON in *Derry v. Peek* (1) quoted at page 360 in 14 Appeal Cases, said :—“ What in my opinion is a correct statement of the law is this that where a man makes a statement to be acted upon by others which is false and which is known by him to be false or is made by him recklessly or without care whether it is true or false, that is fraud.”

This principle ought to be strictly applied in execution cases just as in any ordinary suit for decision.

*Appeal allowed.*

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## REVISIONAL CIVIL.

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*Before Mr. Justice Figgott.*

H. BEVIS AND CO. (APPLICANT) v. RAM PRASAD (OPPOSITE PARTY).\*

*Practices—Subordinate courts—Rules of High Court prescribing hours of sitting for subordinate courts—Case taken up after 5 p.m.—Material irregularity.*

Where a court subordinate to the High Court, in contravention of a rule of the court prescribing certain usual hours of sitting for subordinate courts, took up a fresh case after 5 p.m., and dismissed it on account of the absence of the plaintiff, it was *held* that this amounted to a material irregularity justifying the intervention of the High Court.

THE facts of this case are sufficiently stated in the judgment of the Court.

Dr. *Kailas Nath Katju*, for the applicant.

Pan<sup>lit</sup> *Uma Shankar Bajpai*, for the opposite party.

FIGGOTT, J. :—This is an application in revision against an order of the Judge of the Court of Small Causes at Cawnpore rejecting an application to have a suit restored, which had been dismissed for non-appearance on the part of the plaintiff when the suit was called on for hearing. The facts alleged by the plaintiff have not been controverted, either by affidavit of the opposite party, or by anything placed on record by the presiding Judge himself. I am entitled, therefore, to assume that those facts are admitted. The suit in question was down for hearing on the 3rd of March, 1921. The plaintiff was personally present in court up to 5 p.m. At that hour the court was still

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\*Civil Revision No. 85 of 1921.

(1) (1889) 14 A. C., 387 (360).

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engaged in hearing some other suit. The plaintiff's pleader came round to the court-room and some conversation took place between them, as a result of which both the plaintiff and his pleader left the court. The suit was subsequently called on. I gather from the record that the defendant was present, although the plaintiff was not, and after recording the defendant's denial of the claim, the court dismissed the suit. When the plaintiff applied for restoration, setting forth the facts above stated, the court passed an order the effect of which is that the plaintiff was to blame for leaving the court-room while he knew that the court was still sitting, and on this ground alone the application for re-hearing was rejected. This Court has issued a rule binding on subordinate courts which lays down, that the ordinary hours for the attendance in the court building of Judges presiding in Civil Courts for judicial work shall be from 10-30 a.m. to 4 p.m. and these hours shall not be altered except under special sanction granted by the High Court. No doubt it was never intended by this rule to fetter the discretion of subordinate courts to an unreasonable extent. For a court to sit after 4 p.m. for the purpose of concluding the hearing of a particular case, when the parties are agreed that their own convenience will be suited by the court's doing so, would certainly not be regarded as a breach of this rule. In the present instance, however, the hearing of a fresh suit was commenced after 5 p.m. No reason has been stated for the adoption of this course, nor is it suggested that the learned Judge intimated in any way to the litigants present in court that for some special reason he felt it incumbent upon him to sit to an unusually late hour on the day in question. The commencement of the hearing of a fresh suit after 5 p.m. was not only a contravention of the rule which has already been quoted, but it involved a practice which if persisted in would prevent the due observance of other rules and directions issued by this Court, such, for instance, as the directions contained in the orders of January, 1921, regarding the precautions to be taken against the occurrence of fire in court buildings. It has been suggested that in any event this is not a proper case for interference by this Court in revision, inasmuch as the learned Judge of the Court of Small Causes

was within his jurisdiction in determining whether or not sufficient cause had been shown by the plaintiff for his absence when the suit was actually called on for hearing. The question, however, in my opinion is very distinctly one for the consideration of this Court in the exercise of the powers of superintendence given it by the Provincial Small Cause Courts Act. If proceedings such as those now before me are upheld by this Court, in the absence of any representation as to the existence of exceptional circumstances warranting the said procedure, the practical result will be that this Court must acquiesce in the open disregard of the very proper rules which it has issued for the purpose of regulating the business of subordinate courts. Under the circumstances of the case this suit should, in my opinion, have been readmitted for hearing. I am even prepared to say that the learned Judge of the court below did, in my opinion, act in the exercise of his jurisdiction with material irregularity where, without any previous warning to the public and as I must presume, in the absence of any exceptional circumstances which could be pleaded as warranting such a course, he called on this particular suit for hearing after the hour of 5 p.m.

I allow this application and, reversing the order of the court below, direct that the suit in question be restored to the pending file of the Court of Small Causes at Cawnpore and set down for hearing according to law. The costs of this application will be costs in the cause.

*Application allowed.*

## APPELLATE CIVIL.

*Before Mr. Justice Ryles and Mr. Justice Gokul Prasad.*

BECHU SINGH AND OTHERS (PLAINTIFFS) v. BALDEO SINGH AND OTHERS  
(DEPENDANTS.)\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Act No XII of 1881 (N. W. P. Rent Act), section 9.—Occupancy tenant—Inheritance—Succession to tenant dying before 1902.*

\* Second Appeal [No. 377 of 1920, from a decree of Lal Gopal Mukerji, Additional Judge of Allahabad, dated the 8th of January, 1920, confirming a decree of Abdul Halim, Subordinate Judge of Mirzapur, dated the 7th of August, 1918.

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