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MAUNG  
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v.  
MAUNG BA  
GYI AND  
ONE.  
BROWN, J.

It is suggested that no appeal lay to the District Judge. The trial Court apparently purported to act under section 144 of the Code of Civil Procedure; and, if its order was passed under that section, then it is clearly appealable. But the matter appears to me to be only of academic interest. If this application were admitted on the ground that the District Court had no jurisdiction, all that could be done would be to set aside the order of the learned District Judge and then to pass precisely a similar order in revision here. That being so, there seems to me to be no ground for entertaining this application in revision.

The application is dismissed.

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## APPELLATE CIVIL.

*Before Mr. Justice Das and Mr. Justice Doyle.*

U MAUNG GYEE

v.

U BA TIN.\*

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April 24.

*Elections Offences and Inquiries Act (XXXIX of 1920), s. 12—Election Commissioners' report recommending costs—Order of His Excellency the Governor silent as to costs—Application for execution as to costs without the order as to costs, effect of—Court's power to examine report—Subsequent order as to costs, effect of—Analogy of a Court's judgment and decree.*

*Held*, that under the provisions of s. 12 of the Indian Elections Offences and Inquiries Act, the Court has no power to examine the report of the Election Commissioners to see their recommendations as to costs, and to issue execution as to costs on the order of His Excellency the Governor of Burma passed on such report but which order is silent on the question of costs. The application for execution must be dismissed, if, on the date of such application, no order as to costs existed, notwithstanding the fact that a subsequent order of His Excellency as to costs is produced at the hearing of the application. There is no analogy between the judgment of a Court followed by a decree, and the report of the Election Commissioners followed by an order of His Excellency the Governor.

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\* Special Civil First Appeal No. 312 of 1927.

*Hay* for the appellant.

*Kyaw Zan* for the respondent.

DAS and DOYLE, JJ.—On the 2nd July, 1927, the Commissioners appointed to try the West Rangoon (General Urban) Constituency Election Petition (*Maung Ba Tin v. U Maung Gye*), submitted their report in which they assessed advocate's fees at Rs. 1,000 and Rs. 120 as costs of the witnesses.

In General Department Notification No. 110, dated the 4th of July, 1927, His Excellency the Governor of Burma directed that the election of U Maung Gye should be set aside, but passed no order on the recommendation as to costs.

On the 16th of September, 1927, U Ba Tin applied to the Small Cause Court, Rangoon, to execute the order as to costs. The objection was raised that, as His Excellency the Governor of Burma had passed no order as to costs, there was no decree to execute.

On the 27th of October, 1927, by General Department Notification No. 168, His Excellency the Governor of Burma directed that U Maung Gye should pay U Ba Tin the sum of Rs. 1,120, as costs. This was produced on the 3rd of November, 1927, before the Chief Judge of the Small Cause Court.

It is again objected that, as, at the time the application for execution was made, there was no order in existence which could be executed, the application must be dismissed, even if subsequently an executable order be made. The learned Chief Judge of the Small Cause Court, in disallowing this objection, remarked as follows :—

“ \* \* \* The decision or judgment is the whole report of the Commissioners and the decree or formal order is the order issued by the Governor. There could be no order by the

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Governor without the Commissioners' report or different from that report. So it comes to this that the right of the petitioner <sup>act</sup> to recover costs is derived from the report of the Commissioners. The rules however require the production of the order of the Governor on it before the petitioner can obtain execution for recovery of those costs. Now in ordinary suits where the decree must follow the judgment the Court does not dismiss an application for execution because it happened to be filed before the decree was signed, when judgment has been given, but it is kept in abeyance until the decree has been signed. I fail to see why the present application should be dismissed when the report of the Commissioners had been published and it only required the production of the Governor's order on the report as to costs and that order has now been produced before the Court in order that execution may be ordered."

This decision of the learned Chief Judge of the Small Cause Court forms the subject of the present appeal.

In our opinion, there is no analogy whatsoever between the judgment and decree of a Court and the report of the Election Commissioners, followed by an order of His Excellency the Governor of Burma.

Order XX, rule 2, of the Code of Civil Procedure, read with the definition of a "decree" in section 2, sub-section (2), of the Code of Civil Procedure, makes it clear that the judgment is really incomplete without a decree, and that, for all practical purposes, they are one and the same order and are to be treated as simultaneous. Justification may, therefore, be found for the practice of holding an application in abeyance to which the learned Chief Judge of the Small Cause Court refers, since it is only reasonable to assume that the Judge to whom the application for execution is made has cognizance of his own judgment and of the defects therein.

In the present case, however, the only executable order which was before the learned Chief Judge of the Small Cause Court was the order of His Excellency

the Governor of Burma, and this was executable only under section 12 of the Indian Elections Offences and Inquiries Act. There was no power given by law to the Small Cause Court to examine the report on which the order was based, except for the purpose of satisfying itself that the order of His Excellency the Governor of Burma is conformable to the costs awarded under section 11 of the Indian Elections Offences and Inquiries Act.

Under these circumstances, therefore, the Small Cause Court was not empowered to take cognizance in any way of the date on which the report had been signed, and was bound to confine itself strictly to the order of His Excellency the Governor of Burma as being the only instrument that justified execution being taken out. As this order did not exist at the time the application was made, the Court had no option but to dismiss the application.

The order of the learned Chief Judge of the Small Cause Court is set aside, and the application dismissed with costs in both Courts.

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