

rents of the house and garden which are the subject-matter of appellant's preliminary mortgage decree.

Respondent will bear appellant's costs in the lower Court and in this Court. Advocate's fee in this Court to be two gold mohurs.

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## ORIGINAL CIVIL.

*Before Mr. Justice Chari.*

RAHMAN & CO.

*v.*

MAUNG WAIK.\*

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*Statutory right created for benefit of individual or class—Right of injured individual to sue—Special statutory remedy when a bar to ordinary civil remedy—Rangoon Small Cause Courts Act (Burma Act VII of 1920), s. 35.*

Where a statute creates a right, for example, in the form of a duty which a public officer must perform for the benefit of an individual or of a class of individuals, and the statute at the same time provides a remedy for the breach of that duty, the presumed intention of the law is that the remedy is exclusive of ordinary remedies.

*Held*, that as s. 35 of the the Rangoon Small Cause Courts Act provides a special remedy (by way of application to the Chief Judge of the said Court) for the recovery of compensation in cases where a party finds himself unable to execute an order on account of a bailiff's breach of duty, the ordinary civil courts have no jurisdiction to entertain a suit for the same relief.

*Halkar* for the plaintiff.

*A. Eggar* and *E Maung* for the defendant.

CHARI, J.—This is a suit for the recovery of Rs. 2,279-8-0 against the Bailiff of the Rangoon Small Cause Court in the following circumstances:—

The plaintiff filed a suit in that Court for the recovery of Rs. 2,000, in respect of timber sold and delivered against one L. Shwe Main, (Civil Regular Suit No. 4493 of 1923). An *ex parte* decree was

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\* Civil Regular Suit No. 435 of 1926.

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passed on the 31st of August, 1923. On the 1st of September, the defendant, Shwe Main, filed an application to set aside the *ex parte* decree. On the 19th September, 1923, the learned Judge of the Small Cause Court passed an order giving the defendant a week's time to furnish security upon which being done, he ordered the case to be restored, otherwise the application to stand dismissed. Though there was no express order calling on the defendant to furnish security, it is clear that the defendant was by that order directed to furnish security before getting the *ex parte* decree set aside. In pursuance of this order, the Bailiff of the Small Cause Court, on the 26th day of September, 1923, accepted a personal bond from the defendant. On this being done, the *ex parte* decree was set aside, and the suit proceeded to hearing, and, on the 14th of November, 1923, the learned Judge, after taking the evidence tendered on behalf of both the parties, passed a decree in favour of the plaintiff. On the 16th of November, Shwe Main presented an application in the Insolvency Side of the High Court and was on his own application adjudicated insolvent on that day. The present suit was instituted on the 30th August, 1926.

The cause of action alleged against the defendant is that, though the Court did not order personal security, the defendant, as Bailiff of the Small Cause Court, accepted the personal bond of the defendant; that, even in accepting the bond of the defendant, he was grossly negligent in that he omitted to verify the existence of the value of a godown referred to by Shwe Main in his affidavit; and that the defendant was also guilty of fraud in allowing Shwe Main to take back the title deeds of a rubber plantation deposited with the Bailiff as security.

I raised five issues, three of which, the first, second and the fourth, have been argued before me as preliminary issues which required no evidence. The first issue relates to the negligence of the defendant in accepting Shwe Main's bond. The defence as regards this issue is that the defendant acted in accordance with the rules of the Small Cause Court respecting securities; and that, therefore, he has not, in any way been negligent. The defendant's plea in respect of the second issue is that section 35 of the Rangoon Small Cause Courts Act provides a special remedy; and that, therefore the present suit does not lie. As regards the fourth issue, which relates to limitation, the defendant's contention is that under Article 36 of the First Schedule of the Limitation Act, the plaintiff's suit is barred.

I shall dispose of the second issue first; and, in order to do so, I shall briefly consider the legal position of the parties.

The defendant in the suit is a Bailiff appointed under the Rangoon Small Cause Courts Act, and he has, under the rules framed under the Act, which, by virtue of section 31, are incorporated in the Act, to perform certain specified duties. These duties mostly relate to service of summons of his own and other Courts and similar matters. The relevant portion, so far as this case is concerned, is contained in rules 70 to 73. The duty is laid upon him to take the security required when security has been ordered by the Court.

It will thus be seen that the duty enjoined on him is a statutory duty. The performance of that duty is not intended for the benefit of the general public, but of the particular litigants in the suit in respect of which securities are ordered, or, possibly,

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for the benefit of that class of persons who litigate in the Small Cause Court of Rangoon.

The cause of action, therefore, in favour of the plaintiff is the breach of a statutory duty or negligence in the performance of that duty. This negligence no doubt gives the plaintiff a cause of action because the performance of the duty is intended for his benefit.

It is contended on behalf of the defendant that section 35 of the Rangoon Small Cause Courts Act provides a special liability in respect of the acts of the Bailiff in the execution of any order or warrant, and prescribes a special procedure by which the person injured by the neglect, connivance or omission of the Bailiff, may recover the amount from the Bailiff.

Whether the rights of the plaintiff are created by that section, or whether they exist independently of them, may be a matter of some doubt, but there is no doubt that the Bailiff's duty, the breach of which gives the plaintiff a right to compensation is a creature of the Rangoon Small Cause Courts Act.

It has been repeatedly held both in England and in India that, where there is a breach of statutory duty created for the benefit of an individual, or of a class, an action for damages will lie for the breach of that duty, unless the statute itself provides a special remedy.

It is unnecessary to cite the case which are collected and can be found in Pollock's Law of Torts (Eleventh Edition), at page 26, and in Underhill's Law of Tort (Second Indian Edition), at page 36.

The learned Government Advocate cited two cases :—*Abdur Rahman v. Abdur Rahman* (1) and

(1) (1925) 47 All. at p. 532.

*Sheobaran Singh v. Kulsum-un-nissa* (1). These cases are merely an application of the same principle. Where special rights are created by statute and a special tribunal created for the enforcement of those rights, the ordinary tribunals have no jurisdiction in the matter. The negligence in performing the duties imposed by statute or omission to perform the same is undoubtedly a breach of that duty.

As section 35 of the Small Cause Courts Act provides a special remedy for the recovery of compensation in cases where a party finds himself unable to execute an order on account of the bailiff's breach of duty, the ordinary Civil Courts have no jurisdiction to entertain a suit for the same relief.

I, therefore, hold that the suit does not lie and dismiss the same with costs in favour of the defendant.

As regards the first and the fourth issues, I have considered them and have formed my opinion as to the answer to be given. If the only remedy against my judgment open to the plaintiff were an appeal to the Appellate Bench of this Court, I would, in order to save a remand, have given my findings, on these issues. It is, however, possible that the plaintiff may accept my finding on the second issue and move the learned Judge of the Small Cause Court in accordance with the provisions of section 35 of the Act. I do not want any expression of my opinion to influence that learned Judge, and I, therefore, refrain from giving my findings on the other issues.

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