

## APPELLATE CIVIL.

*Before Mr. Justice Heald and Mr. Justice Maung Ba.*

MADAN MOHAN AND ANOTHER

vs.

THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL AND ANOTHER.\*

1929

May 6.

*Rangoon Small Cause Court Act (Burma Act VII of 1920), ss. 14 (c), 35—  
Bailiff's neglect to take a proper bond for due satisfaction of decree—  
Bond taken for appearance only—Injured party's remedy—Matter not  
within the purview of s. 35—Suit cannot lie in the Small Cause Court.*

Where the charge levelled against the Bailiff of the Court of Small Causes, Rangoon, is that he has caused loss by neglecting to satisfy himself regarding the sufficiency of the security offered, the case does not come under the purview of s. 35 of the Rangoon Small Cause Court Act. That section deals with the default of the bailiff or other inferior ministerial officer of the Court in execution of an order or warrant. But the Court of Small Causes, Rangoon, has no jurisdiction in virtue of s. 14 (c) of the Act to entertain a suit against the bailiff for taking a wrong bond from a party.

*S. M. Bose* for the applicant.

*Gaunt* (Government Advocate) for the Crown.

HEALD and MAUNG BA, JJ.—This is an application to revise the decree of the Second Judge of the Court of Small Causes, Rangoon, dismissing applicants' suit against the Secretary of State for India in Council and the Bailiff of that Court.

Applicants sued one Gouri Shankar Tewari on a promissory note in the Small Cause Court and attached before judgment a sum of Rs. 468-4-0 which was lying in deposit to Tewari's credit in Civil Regular No. 8775 of 1924. Tewari then applied to the Court to allow him to withdraw the amount on furnishing security. He offered one Misser as surety. On that

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\* Civil Revision No. 157 of 1928 from the judgment of the Small Cause Court of Rangoon in Civil Regular No. 5031 of 1927.

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application the Court wrote this order "Bailiff for report as to the sufficiency of security." The Bailiff then wrote his report on the same application. The report reads "Security furnished. Bond accepted. Papers with bond are herewith returned." The Court then passed this order "Granted". The bond taken was for appearance and not for satisfaction of the decree nor for restoration of the amount withdrawn.

About four months later applicants obtained a decree but both Tewari and his surety absconded. Several attempts were made to recover the decretal amount by execution but without success.

Consequently applicants sued the Secretary of State and the Bailiff for Rs. 456-6-3 alleging "that the Bailiff knowing that the defendant and his surety had no property in Rangoon accepted their security and allowed the amount to be withdrawn".

The learned Judge of the Small Cause Court was of opinion that section 35 of the Rangoon Small Cause Courts Act, 1920, provides a special remedy and bars such suit. That view is incorrect. That section reads :—

"If any bailiff, clerk or other inferior ministerial officer of the Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by the order of the Chief Judge to pay to the person injured by such neglect, connivance or omission, such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, appears reasonable."

That section would apply only where the Bailiff or other inferior ministerial officer of the Court who is employed as such in the execution of any order or warrant loses, by neglect, connivance or omission, an opportunity of executing an order or warrant. Here the charge levelled against the Bailiff was that

he had caused loss by neglecting to satisfy himself regarding the sufficiency of the security offered.

The learned Judge has failed to notice that the suit is one excepted from the cognizance of the Small Cause Court under clause (c) of section 14 of the Rangoon Small Cause Court Act. That clause relates to "suits concerning any act ordered or done by any Judge or Judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer."

The applicants' advocate contends that the Court intended to take a bond for restoration of the amount which Tewari wanted to withdraw but that the Bailiff took a wrong bond for appearance of Tewari and that consequently the act of the Bailiff in paying out the amount to Tewari on a wrong bond could not be treated as an act done in pursuance of the order of the Court. In his opinion unless an act is done in strict compliance with an order the act cannot be considered to be one done in pursuance thereof. We are unable to accept this argument. So long as the act is done "under or by virute of" the order it is done in pursuance thereof. These words "under or by virute of" are used *ejusdem generis* with the words "in pursuance of" in Stroud's Judicial Dictionary as well as in Maxwell's Interpretation of Statutes. In the new Oxford Dictionary the chief current sense of "pursuance" is given as "prosecution, following out, carrying out".

The act complained of in the present case was not an independent act of the Bailiff. It was done in his capacity as Bailiff and under or by virtue of the order of the Court.

The Legislature does not intend Small Cause Courts, where procedure is summary, to try suits

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involving complicated questions of law and so it has excluded many suits involving such questions from the jurisdiction of Small Cause Courts.

The present suit involves complicated questions of law, *e.g.* (1) whether the Bailiff could claim protection under the Judicial Officers' Protection Act (XVIII of 1850) and (2) whether the Secretary of State can be held liable for the negligence of the Bailiff.

We have no doubt that the present suit falls under clause (c) of section 14 of the Rangoon Small Cause Court Act and that it has been decided without jurisdiction. We confirm the dismissal of the suit but on different grounds and dismiss the present application for revision with costs.