

## FULL BENCH.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das, Mr. Justice Mya Bu, Mr. Justice Brown and Mr. Justice Baguley.

MAUNG PHYE *v.* YEO WIN SU.  
U PO KIN *v.* MAUNG ON PE.\*

1933  
Mar. 17.

*Burma Rural Self-Government Act (Bur. Act IV of 1921), s. 79, Rules 34, 36—Election petitions—Competency to hear petitions—District Judge and Assistant Judge—Additional District Judge—Appeal to District Judge—Revision.*

The District Judge of Toungoo, purporting to act under Rule 36 of the rules made under s. 79 of the Burma Rural Self-Government Act, allocated certain election petitions to the Additional District Judge for disposal. The latter was transferred before the petitions were heard, and was succeeded by an Assistant Judge who was appointed Additional District Judge. This Judge heard the petitions, and declared the election of the respondents void. Appeals were filed against these orders to the District Judge of Toungoo, who set them aside. The petitioners applied to the High Court in revision.

*Held*, (1) that the District Court's first order was passed without jurisdiction as (a) under Rule 36 the petitions could only be tried by the District Judge himself or such Assistant Judge as he might appoint, and the Additional District Judge as such was not competent to try them; and (b) the Additional District Judge at the time was not an "Assistant Judge"; (2) that the succeeding Judge had no jurisdiction to try the petitions, as, although he was an Assistant Judge, he was not nominated by the District Judge to try the petitions as "Assistant Judge"; (3) that the Additional District Judge had never obtained *seizin* in law of the election petitions, and the only remedy of the parties was to apply to the High Court in revision. The District Court, therefore, had no jurisdiction to entertain the appeals, or to pass a "decree" setting aside the orders of the Additional District Judge.

*Anklesaria* for the applicants. Rule 34, made under the Burma Rural Self-Government Act, provides for the trial of election petitions by District Judges. The District Judge either hears the petition himself or transfers it to an "Assistant Judge", nominated by him under Rule 36. The present petition was first heard by an Additional District Judge, but on his transfer was disposed of by his successor who was an "Assistant Judge" in status,

\* Civil Revision Nos. 149 and 150 of 1932 from the orders of the District Court of Toungoo in Civil Misc. Appeal Nos. 31 and 32 of 1932.

1933  
 MAUNG PHYE  
 v.  
 YEO WIN SU  
 and  
 U PO KIN  
 v.  
 MAUNG ON  
 PE.

and from his decision an appeal was preferred to the District Judge. The District Judge could have no jurisdiction to hear the appeal, because the Additional District Judge who decided the case was in no way subordinate to him. The High Court ought, therefore, to interfere in its revisional capacity, under s. 115 of the Civil Procedure Code, and restore the original order. The District Judge in deciding the appeal purported to act as a "Court", and not as a *persona designata*, and s. 115 applies.

The question whether the District Judge, acting in these matters, is or is not a *persona designata* was raised in *U Ba Thwin v. Maung Ba Shein* (1), but not decided. The scheme of the rules (36—41) shows that the District Judge was meant to act as a "Court". He is given the power of transferring a case; he hears appeals from Assistant Judges; and the election cases are to be heard in open Court under a procedure similar to that which obtains under the Code of Civil Procedure.

[PAGE, C.J. Why should it not be inferred that when the term "District Judge" is used and not "District Court", the intention was to make the District Judge a *persona designata*?]

The term "District Judge" is used to denote a judicial officer, and nothing more. Where by statute matters are left to the determination of a Court the necessary implication is that the jurisdiction of that Court is enlarged, and all the incidents of such jurisdiction, *e.g.*, an appeal, remain unaltered. See *National Telephone Company, Ltd. v. Post Master General* (2).

(1) I.L.R. 10 Ran. 517.

(2) (1913) A.C. 546, 562.

The question whether an individual appointed to decide a particular matter is, or is not, a *persona designata* depends upon the circumstances of each case. The Courts have taken conflicting views on the subject. See *Parthasaradhi Naidu v. Koteswara Rao* (1); *Mohamed Ebrahim Moolla v. S. R. Jandass* (2); *Balaji Sakharam v. Merwanji Nowroji* (3); *Municipal Corporation of Rangoon v. M. A. Shakur* (4); *H. A. Aziz v. Kilyo Boy* (5).

The High Court may also interfere by virtue of its prerogative right to issue writs of *certiorari*. See *Muniswami Chetty v. Board of Revenue, Madras* (6).

*Thein Maung* for the respondent in the first case. The framers of the Burma Rural Self-Government Rules have used the term "District Judge" advisedly in order to show that he is a *persona designata*; otherwise the term "District Court" could conveniently have been used, carrying with it all rights of appeal. *Parthasaradhi Naidu v. Koteswara Rao*, cited *ante*, may be distinguished from the present case in view of the fact that, in that case, the rules speak of Courts subordinate to the District Judge. If the District Judge is a *persona designata* he can have no Courts subordinate to him. A *persona designata* cannot delegate his powers, and that is the reason why express provision has to be made in Rule 36 for transfer of an election petition to an Assistant Judge.

It cannot be assumed that there is a right of appeal in every matter that may come up for consideration before a Judge. The right has to be given specifically. The District Judge has been

1933

MAUNG PHYE  
v.  
YEO WIN SU  
and  
U PO KIN  
v.  
MAUNG ON  
PE.

(1) I.L.R. 47 Mad. 369.

(2) 11 L.B. R. 387.

(3) I.L.R. 21 Bom. 279.

(4) I.L.R. 3 Ran. 560.

(5) I.L.R. 4 Ran. 304.

(6) I.L.R. 55 Mad. 137.

1933  
 MAUNG PHYE  
 v.  
 YEO WIN SU  
 and  
 U PO KIN  
 v.  
 MAUNG ON  
 PE.

chosen to hear and dispose of election petitions finally as being the person best acquainted with local conditions. *U Ba Pe v. U Po Sein* (1).

Even if the High Court were disposed to interfere, as the rules have been substantially complied with any technical irregularity should not be allowed to invalidate the decision.

*Ba Si* for the respondent in the second case. The rules are framed with a view to the speedy disposal of election disputes, at the same time ensuring a fair trial by leaving the final decision with the District Judge, the highest judicial officer in any district. The High Court will not interfere in revision in such a case.

PAGE, C.J.—These are two applications filed under s. 115 of the Code of Civil Procedure for the revision of decrees of the District Court of Toungoo in Civil Miscellaneous Appeals 31 and 32 of 1932, setting aside the orders of the Additional District Court of Toungoo in Civil Miscellaneous 43 and 42 of 1931 respectively. The same question arises in each case, namely, whether the District Judge of Toungoo had jurisdiction to entertain and determine an appeal from these orders of the Additional District Judge of Toungoo.

Now, the present applications arise out of petitions filed by the applicants for the purpose of questioning the validity of an election of members of the Circle Board at Kathezu and Tantabin, under Rules 34 to 41 of the Burma Rural Self-Government Rules made under s. 79 of the Burma Rural Self-Government Act (IV of 1921). Under Rule 36 "if the District Judge considers that the petition ought to be tried he shall make an order

directing its trial either by himself or such Assistant Judge as he may appoint". The petitions in the cases under consideration were presented to the District Court of Toungoo, and in each case the petitioner prayed "that this Hon'ble Court will be pleased to admit this petition for the trial of this case, and on the conclusion of the same the election of the respondent may be declared void".

Now, it is to be observed that under Rule 34 "the validity of an election may be questioned by petition to the District Judge", and that under Rule 36 the petition is to be tried either by the District Judge "or such Assistant Judge as he may appoint". These rules appear to me to be so obscure that it is not easy to determine their meaning and effect. It was contended at the hearing that under the rules the District Judge is a *persona designata* for the purpose of hearing election petitions, and that in exercising the power with which he is invested under the rules the District Judge is acting in a private capacity, and not as a Court. It is unnecessary, and we do not propose, to determine this question, which is not free from difficulty, both because it is highly desirable that the rules under consideration should be redrafted in order clearly to give effect to the intention of the Legislature in passing them, and also because it is manifest that these applications in revision must be granted, having regard to the course that has been taken and the orders that have been passed in the proceedings initiated by the present petitions.

The District Judge, after the petitions had been filed in the District Court of Toungoo, passed in each case the following order "transferred to the Additional District Judge for disposal". This order plainly was passed without jurisdiction, because (1)

1933

MAUNG PHYE  
v  
YEO WIN SU  
and  
U PO KIN  
v.  
MAUNG ON  
PR.  
PAGE, C.J.

1933  
 MAUNG PHYE  
 v.  
 YEO WIN SU  
 and  
 U PO KIN  
 v.  
 MAUNG ON  
 EE.  
 PAGE, C.J.

the petitions could only be tried by the District Judge himself "or such Assistant Judge as he might appoint", and the Additional District Judge as such was not competent to try them, and (2) U Maung Maung, who was at that time the Additional District Judge of Toungoo, was not an "Assistant Judge". It appears, however, that before the petitions were tried U Maung Maung was transferred, and U Chit Swe, an "Assistant Judge", was appointed Additional District Judge of Toungoo in his stead. U Chit Swe in due course tried the petitions, and in each case passed an order declaring the election of the respondent void, and the petitioner duly elected. Of course, U Chit Swe, as should be obvious to anyone who reads the rules, had no jurisdiction to entertain or try the petitions or to pass any order in connection with them, because (1) he was not entitled as Additional District Judge to try an election petition, and (2) he had not been directed to try the petitions by the District Judge as "Assistant Judge", or in any other capacity.

From these orders of the Additional District Judge of Toungoo appeals were preferred to the District Court of Toungoo. Before the appeals were filed, however, Mr. Mosely the District Judge of Toungoo had been transferred, and U Ba Hla Tin had been appointed District Judge of Toungoo. Now, no appeal would lie from the orders of U Chit Swe, who had never obtained *seizin* in law of the election petitions, and the only course (if any) open to the parties aggrieved by these orders would have been to apply to the High Court in its revisional jurisdiction. Nevertheless, the District Judge not only entertained the appeals, but, purporting to act as the District Court of Toungoo, in each case passed a "decree" setting aside the order from which

the appeal had been brought, and dismissing the petition with costs.

Against these "decrees" or orders of the District Court of Toungoo the present applications in revision have been preferred. It cannot be doubted, in my opinion, that the District Court of Toungoo in entertaining and determining these appeals acted without jurisdiction, and that the "judgment and decree" of the District Court of Toungoo in each case must be set aside by this Court in the exercise of its jurisdiction under s. 115 of the Code of Civil Procedure.

The result is that the application in each case is granted, the orders of which complaint is made are set aside, and also the orders passed by the Additional District Judge of Toungoo to whom the petitions were transferred for disposal, and the petitions will be determined by the District Judge of Toungoo according to law. The costs of and incidental to these petitions and the subsequent proceedings in connection with them in the Court of the Additional District Judge and in the Court of the District Judge of Toungoo, and also in the High Court will abide the result of the petition in each case. In this Court the advocate's fee will be five gold mohurs in each case.

DAS, J.—I agree.

MYA BU, J.—I agree.

BROWN, J.—I agree.

BAGULEY, J.—I agree.

1933

MAUNG PHYE

YEO WIN SU

and  
U PO KIN

v. —  
MAUNG ON  
PE.

PAGE, C.J.