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his summing-up was under no duty, to quote Parlett J. in *Nga Mya v. King-Emperor* (1),

“to enter into an irrelevant explanation which may have the effect of misguiding the jury.”

For these reasons I would hold that the summing-up in this case was correct.

GOODMAN ROBERTS, C.J.—I agree.

LEACH, J.—I agree.

### CIVIL REVISION.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Dunkley.*

#### RATILAL MEHTA v. PRAGJEE.\*

1936  
 Aug. 5.

*Limitation—Summary suit on negotiable instrument—Application for leave to defend—Period allowed—Rangoon Small Cause Court Rules, 100 and 101—Rule 101 ultra vires—Rules made under power conferred by ss. 122 and 128 (2) (f) of Civil Procedure Code—Rangoon Small Cause Court Act (Burma Act VII of 1920), ss. 31, 32—Limitation Act (IX of 1908), s. 29 and sch. I, art. 159.*

The combined effect of rules 100 and 101 of the Rangoon Small Cause Court Rules of 1922 is, in a summary suit on a negotiable instrument, to make the period allowed between the service of summons and the filing of the application for leave to appear and defend not more than five days, and in some cases as short as two days. The provisions of these rules are contrary to those of article 159 of the Limitation Act which gives a period of ten days during which such an application can be made.

*Held* that the rules in question were made in exercise of the powers conferred by s. 122, read with s. 128 (2)(f) of the Code of Civil Procedure, and not in exercise of the powers conferred by s. 32 of the Rangoon Small Cause Court Act. The Court has no power by such rules to abrogate or vary the periods of limitation set out in the Limitation Act in respect of proceedings to which that Act applies.

*S. A. Ganny v. Russell*, I.L.R. 8 Ran. 380—*followed*.

*Held*, therefore that s. 29 of the Limitation Act had no application, and that Rule 101 of the Rangoon Small Cause Court Rules was *ultra vires* to the extent that it conflicted with the provisions of art. 159 of the Limitation Act.

(1) 8 L.B.R. 306.

\* Civil Revision No. 209 of 1936 from the decree of the Small Cause Court of Rangoon in Civil Regular No. 3671 of 1936.

*Chakravarti* for the applicant.

*Dangali* for the respondent.

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DUNKLEY, J.—This is an application, under the provisions of section 25 of the Rangoon Small Cause Court Act, to revise a judgment and decree of the learned 2nd Judge of that Court. The suit was brought by the plaintiff-respondent against the defendant-applicant on a negotiable instrument, under the summary procedure in suits on negotiable instruments contained in Part III of the Rangoon Small Cause Court Rules of 1922. Under the provisions of sub-rule (2) of rule 100 of these rules, the defendant is not permitted to appear or defend the suit unless he obtains the leave of the Court to appear and defend, *provided that*, so far as a resident of Rangoon is concerned, he has been served with summons at least five clear days before the returnable date of the summons. Under the provisions of sub-rule (1) of rule 101, if the defendant desires to appear and defend, he must apply by a written application supported by affidavits for leave of the Court, but the application and affidavits must be filed in the office of the Registrar not later than three clear days before the day fixed for the defendant's appearance.

Now, in the suit out of which the present revision arises summons issued for service on the defendant-applicant was returnable on the 14th May, 1936, and that was the date fixed for his appearance. The summons was served on him on the 7th May, 1936. The application for leave to appear and defend was filed in the office of the Registrar on the 12th May. As this latter date was within three days of the date fixed for the defendant's appearance, the application for leave to appear and defend was

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rejected by the learned 2nd Judge, and the suit was decreed.

On behalf of the applicant it is contended that the provisions of the second clause of sub-rule (1) of rule 101, to the effect that the application with supporting affidavits for leave to appear and defend must be filed in the office of the Registrar not later than three clear days before the date fixed for the defendant's appearance, are *ultra vires* in that they conflict with the provisions of Article 159 of the First Schedule of the Indian Limitation Act. That the provisions of this clause do prescribe a shorter period of limitation for an application for leave to appear and defend than that prescribed by the Limitation Act cannot be gainsaid. Article 159 is as follows :

"For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) or under Order XXXVII of the same Code. Ten days. When the summons is served."

The combined effect of rules 100 and 101 of the Rangoon Small Cause Court Rules is, in a suit tried under the summary procedure, to make the period allowed between the service of summons and the filing of the application for leave to appear and defend as short as two days in some cases, and, therefore, it is clear that the provisions of these rules are contrary to those of Article 159, which gives a period of ten days during which such an application can be made.

On behalf of the plaintiff-respondent section 29 of the Limitation Act is called in aid. The effect of the provisions of this section is that when a period of limitation is prescribed by a special or local law, which period is different from the period prescribed

under the Limitation Act for the same suit, appeal or application, then the period applicable shall be that laid down by the special or local law. It is contended that under section 31 of the Rangoon Small Cause Court Act the rules contained in Schedule I of the Act have the same effect as if they were part of the Act itself, and, consequently, that this section makes the rules in Schedule I a "special or local law," within the meaning of section 29 of the Limitation Act and, therefore, that the period of limitation laid down in Article 159 is superseded by the period of limitation laid down in rules 100 and 101, when read together.

Section 31 of the Rangoon Small Cause Court Act enacts that "the rules in Schedule I shall have effect as if enacted in the body of the Act until annulled or altered in accordance with the provisions of section 32," and, therefore, it would appear that the contention which has been advanced on behalf of the respondent could not be resisted if the rules in question had properly and legally been made under the provisions of section 31. But this is not so, for this section applies only to the rules originally contained in Schedule I of the Act, enacted by the Legislature as part of the Act, and to any subsequent rules added to that schedule under the powers conferred by section 32. The original Schedule I to the Rangoon Small Cause Court Act (Burma Act VII of 1920) contained only 16 rules, and these rules referred to a single subject, namely, the recovery of possession of immovable property. The rules which are now printed as Schedule I to the Act consist of 111 rules, which are divided into four parts. Part II contains the rules referring to the recovery of possession of immovable property, and, therefore, the rules which succeed those originally

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enacted as part of the Act, and Part III contains the rules for summary procedure in suits on negotiable instruments. These rules, which are now printed as Schedule I of the Act, were issued by the Chief Court of Lower Burma with the approval of the Local Government by Notification No. 22 (Schedule) dated the 27th March, 1922. Consequently, the rules are not part of Schedule I as enacted in the original Act and, therefore, they cannot, under section 31 of the Act, have effect as if enacted in the body of the Act unless they are rules which were originally made as part of the Act or were subsequently made under the powers conferred by section 32.

Under section 32 the late Chief Court of Lower Burma had—and the present High Court has—power to alter or annul the rules contained in Schedule I to the Act in certain respects only. Under sub-section (1) of section 32 rules can be made to provide for the exercise by one or more of the Judges of the Court of any powers conferred on the Court by the Act or any other enactment for the time being in force. Under sub-section (2) rules can be made to regulate the procedure of the Court in the exercise of its jurisdiction under Chapter V, that is, the chapter relating to the recovery of possession of immovable property, and such rules may annul, alter or add to all or any of the rules in the original Schedule I. Under sub-section (3) rules can be made to provide for the delegation to any ministerial officer of the Court of any non-judicial or quasi-judicial duties. These are the only rule-making powers which were conferred upon the Chief Court by the Act, and they do not include power to make rules for the procedure of the Court except in the exercise of its special jurisdiction in ejectment. They do not include a

power to make rules for summary procedure in the trial of suits on negotiable instruments. It would appear that at the time when the late Chief Court issued its notification of 1922 it was recognized that all the rules contained in that notification could not validly be made under section 32 of the Rangoon Small Cause Court Act, for the preamble of the notification reads as follows :

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“ In exercise of the powers conferred thereon by section 32 of the Rangoon Small Cause Court Act, 1920, and under section 122 of the Code of Civil Procedure, 1908, of all other powers hereunto enabling, and with the previous approval of the Local Government, the Chief Court makes the following rules ”

and so on.

Consequently, in order to make the rules contained in this notification it was necessary for the Chief Court to call in aid its rule-making powers, not only under the Rangoon Small Cause Court Act, but also under the Code of Civil Procedure, and these rules were made in accordance with the procedure laid down in Part X of the Code of Civil Procedure, and have been included in the First Schedule of that Code as Order LIII. Strictly speaking, the only rules which were made under section 32 of the Rangoon Small Cause Court Act are those contained in Part II of the rules, and these alone should have been published as Schedule I to the Act ; the remaining rules should have been published as Order LIII of the First Schedule to the Code of Civil Procedure, and the rules in Part II should have been excluded from that Order. But presumably all the rules were published both in Schedule I to the Act and in Order LIII of the Code as a matter of convenience.

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It is plain that Part II of the rules could be made under the rule-making powers conferred by section 32 of the Rangoon Small Cause Court Act, whereas, on the other hand, the rules in Part III could not be made under section 32 of the Act, but clearly could be made under the powers conferred by section 122, read with section 128 (2) (f), of the Code of Civil Procedure. It, therefore, must be held that the rules now in question were made in exercise of the powers conferred by section 122, read with section 128 (2) (f), of the Code of Civil Procedure, and not in exercise of the powers conferred by section 32 of the Rangoon Small Cause Court Act. But Article 159 of the First Schedule of the Limitation Act specifically mentions "the summary procedure referred to in section 128 (2) (f)" of the Code of Civil Procedure, and, therefore, this Article is applicable to applications for leave to appear and defend under these rules. Since it is clear that the rules in Part III must have been made under the Code of Civil Procedure, the present application is concluded in favour of the defendant-applicant by the ruling of a Full Bench of this Court in *S. A. Ganny v. I. M. Russell* (1), in which case it was held that the High Court, acting under its rule-making powers under section 122 of the Code of Civil Procedure, is not entitled by such rules to abrogate or vary the periods of limitation set out in the Limitation Act in respect of proceedings to which that Act applies. Consequently, it must be held that rule 101 of the Rangoon Small Cause Court Rules is *ultra vires* to the extent that it conflicts with the provisions of Article 159 of the First Schedule of the Limitation Act.

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(1) (1930) I.L.R. 8. Ran. 380.

This application must, therefore, be allowed, the suit is restored to the file, and the learned 2nd Judge of the Small Cause Court is directed to take into consideration the application of the applicant for leave to appear and defend the suit and to pass orders thereon upon its merits. The applicant is entitled to his costs of this application as against the respondent, advocate's fees seven gold mohurs.

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GOODMAN ROBERTS, C.J.—I concur.

### CIVIL REVISION.

Before Mr. Justice Dunkley.

U SAN THEIN

v.

THE DISTRICT MAGISTRATE, MAGWE.\*

1936  
 Mar. 12.

*Pleader's misconduct—Power of suspension—Court entitled to inquire into misconduct—Court empowered to suspend—Procedure—Notice—Legal Practitioners' Act (XVIII of 1879), ss. 14 (5), 40.*

By the order of the District Magistrate, the applicant, a pleader, was suspended from practice, pending investigation into his alleged misconduct which took place in the Court of the Honorary Magistrates. No notice was issued to the pleader before suspension, and the District Magistrate apparently purported to act under s. 14 (5) of the Legal Practitioners' Act.

*Held*, that the Court empowered to inquire into the conduct of the pleader was the Court of the Honorary Magistrates before which the alleged misconduct took place, and that Court alone had the power of suspension. Further, the pleader must have notice of the charge against him and an opportunity of being heard in defence, and it is only after the Court has completed its inquiry and has recorded its findings and the grounds thereof, and has submitted the proceedings to the High Court that the power to suspend the pleader arises. The order of the District Magistrate suspending the pleader therefore was without jurisdiction.

*Bajraungi v. Muktear*, 15 C.W.N. 269—referred to.

*Kyaw Myint* for the applicant.

No appearance for the respondent.

\* Civil Revision No. 305 of 1935 from the order of the District Magistrate of Magwe in File No. II-2 of 1935.