

1936
 THE
 BOMBAY
 BURMA
 TRADING
 CORPORATION, LTD.
 v.
 U PO
 HLAING.
 PAGE, C.J.

Colliery Co. (1) "if the thing he does imprudently or disobediently is different in kind from anything he was required or expected to do",—the employer is not liable to pay compensation under the Act; because in such a case the injury was not caused to the workman by an "accident arising out of and in the course of his employment." It is manifest from the agreed statement of facts in the present case, that the deceased Maung Me Gyi met his death by an accident caused through doing an act which he was not employed to do, and that in the circumstances the injury which caused his death was not due to an accident "arising out of and in the course of his employment."

For these reasons, in my opinion, the appeal must be allowed, and the order of the Commissioner for Workmen's Compensation is set aside.

BA U, J.—I agree.

SPECIAL BENCH (CIVIL).

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Ba U, and Mr. Justice Leach.

1936
 Mar. 30.

S.C. VENKANNA

v.

MANGAMMAL.*

Receiver, appointment of—Mortgage suit—Appointment whenever just and convenient—Interest in arrear—Value of property more than mortgage debt—Civil Procedure Code (Act V of 1908), O. 40, r. 1.

The Court will appoint a receiver in a mortgage suit, as in a suit of any other nature, when it is just and convenient to do so. Normally, when the interest is in arrear a receiver will be appointed as of course at the instance of the mortgagee. The fact that the property is more than

(1) (1912) A.C. 44.

* Civil Misc. Appeal No. 18 of 1936 from the order of this Court on the Original Side in Civil Regular No. 321 of 1935.

sufficient to cover the mortgage debt is not a ground upon which the Court ought to refuse to appoint a receiver.

Aga G. Ally Ramzan v. Bahazar & Son, Ltd., I.L.R. 14 Ran. 292 ; *Ma Joo Tean v. The Collector of Rangoon*, I.L.R. 12 Ran. 437—*followed*.

S.K.R.M. Chettyar v. V.E.A. Chettyar, I.L.R. 14 Ran. 16—*overruled*.

1936

S.O.
VENKANA
v.
MANGAMMAL.

Foucar for the appellant.

Rauf for the respondent.

PAGE, C.J.—The suit out of which the present appeal arises was brought on the 17th September 1935 to recover Rs. 12,751 principal and interest due under a registered instrument of mortgage. The principal sum due was Rs. 9,000, the balance being the amount of the interest which had been in arrear for four years.

On the 4th December 1935 the plaintiff obtained an *ex parte* order for the appointment of an interim receiver. On the 27th January 1936, Sen J. discharged the order appointing the receiver.

His Lordship stated that :

“As I have held on the materials before me that the security in my opinion is sufficient a receiver cannot be appointed merely on the fact that interest is considerably in arrear.”

Sen J. was bound by and followed the decision of a Bench of this Court (Mya Bu and Baguley JJ.) in *S.K.R.M. Chettyar v. V.E.A. Chettyar* (1), in which it was held that

“the question whether it is just and convenient to appoint a receiver turns generally on whether the security is reasonably sufficient to satisfy the amount of the decree which the plaintiff-applicant is likely to obtain in the suit.”

In our opinion that *dictum*, with all respect, went too far.

1936
S.C.
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PAGE, C.J.

The Court will appoint a receiver in a mortgage suit, as in a suit of any other nature, when it is just and convenient to do so (Order XL Rule 1). Normally, when the interest is in arrear a receiver will be appointed as of course at the instance of the mortgagee.

[*Ma Joo Tean and another v. The Collector of Rangoon* (1); *Aga G. Ally Ramzan Yezdi and another v. Messrs. Balthazar & Son, Ltd.* (2).]

The grounds upon which the Court in an ordinary case will be disposed to appoint a receiver in a mortgage suit were considered and explained in these cases, and it is unnecessary to reiterate what was there laid down. No doubt there may be special reasons, even when the interest payable under the mortgage is in arrear, that will make it not "just and convenient" that a receiver should be appointed, e.g. when the interest has been in arrear for a very short period, or when the interest has been tendered but acceptance of it has been refused; but, with all due respect, the fact that the property is more than sufficient to cover the mortgage debt is not, in our opinion, a ground upon which the Court ought to refuse to appoint a receiver in such a suit.

For these reasons the appeal will be allowed, the order under appeal will be set aside, and the appointment of the interim receiver will be confirmed. The appellant is entitled to his costs, in the trial Court two gold mohurs and in this Court four gold mohurs.

BA U, J.—I agree.

LEACH, J.—I agree.

(1) (1934) I.L.R. 12 Ran. 437.

(2) (1936) I.L.R. 14 Ran. 292.