

Crosthwaite Vs. Hamilton

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All87

Judge : Turner, Officiating C.J., ;Pearson and ;Oldfield, JJ.

Appellant : Crosthwaite

Respondent : Hamilton

Judgement :

1. The first issue had reference to the institution of the suit on behalf of the Secretary of State for India in Council. That personage, it was argued, was not a party to the bond or interested therein. The Government Advocate admitted the force of the argument, and was allowed to amend the plaint by substituting the present Judge of the Small Cause Court, Mr. Crosthwaite, as plaintiff. By this amendment of the plaint, the objection taken to the competency of the plaintiff to maintain the suit has been removed.

2. The Government Notification of the 6th June 1866, prima facie determines the second issue in the affirmative. It is argued that the permanent investiture of the Judges of the Small Cause Courts of Agra, Benares, and Allahabad, ex officio, with the powers of a Principal Sudder Amin by a single order was not within the scope or in accordance with the spirit and intention of Section 51, Act XI of 1865, which provides that 'whenever the state of business in any Court of Small Causes, the Judge of which shall be the Judge of such Court only, is not sufficient to occupy his time fully, the Local Government may invest him within such limits as it shall from time to time appoint, in addition to his powers as such Judge, with the powers of a Principal Sudder Amin.' But we cannot hold that, because the order is open to some criticism on the ground urged, the Judges thereby invested with the powers of a Principal Sudder Amin had no legal jurisdiction to exercise the powers so conferred upon them, and that all acts done by them in that capacity are null for want of such jurisdiction. Without meaning any disrespect to the learned Judges who passed the decision dated the 27th February 1873, in the regular appeal case No. 135 of 1872, Musammat Bijee Kooer, Appellant, v. Rai Damodar Dass, Respondent H.C.R., N.-W.P., 1873, p. 55, to which our attention has been drawn, we are unable to concur in the conclusion at which they arrived on this point. The Government, it may be presumed, had reason to believe that the Judges of the three Small Cause Courts mentioned in the order had generally leisure to dispose of more business than was supplied by the small causes instituted in their Courts; and on the strength of this belief, in the exercise of the discretion which the law has given to it, passed the order of the 6th June 1866. If this belief was well founded, or if it was entertained bona fide, we should not be justified in declaring the Government to have exceeded its power, or to have contravened the law, although the occasional investiture of Small Cause Court Judges by name from time to time with the powers of a Principal Sudder Amin may have been the mode of procedure contemplated by the legislature as the one likely to be ordinarily adopted. We are, therefore, of opinion that, by the Government order of the 6th June 1866, the powers of a Principal Sudder Amin were legally conferred on Mr. Tyrrell, who was officiating as Small Cause Court Judge on the 20th March 1871, the date of the execution of the bond in suit.

3. We proceed to the third issue. The evidence of Mr. Tyrrell proves that, as a matter of fact, 'it was a part of Mr. Church's duties, as Clerk of the Small Cause Court, to receive moneys realized under decrees or processes issued by the Judge in the exercise of his powers as Subordinate Judge.' It could not well be otherwise; for there was no separate establishment to carry out the orders of the Judge exercising those powers.' Under this head we may notice the fallacy of the second plea set out in the defendant's written statement, to the effect that, 'by the terms of the bond on which the suit is based, he is not liable for any money received by the Clerk of the Court of Small Causes, J.W. Church, except in his capacity as such Clerk and within the scope of such office; and the plaintiff has misconceived the extent of defendant's liability in suing him for sums received by the said Clerk acting as nazir, or bailiff, of the Subordinate Judge.' That fallacy consists in supposing that the grant of the powers of a Principal Sudder Amin, or Subordinate Judge, to the Judge of the Small Cause Court, constituted him a Subordinate Judge, and created a Court distinct from that of the Small Cause Court. This supposition is altogether erroneous. The Judge of the Small Cause Court when exercising the powers of a Subordinate Judge is still the Judge of the Small Cause Court; decrees passed by him in the exercise of those powers are decrees of the Small Cause Court; moneys paid into Court under such decrees are paid into the Small Cause Court, and under Section 45, Act XI of 1865, it is the duty of the Clerk of the Court to take charge and keep an account of them. If it was Mr. Church's duty, as Clerk of the Small Cause Court, to receive moneys paid or realized under decrees by the Judge of that Court in the exercise of the powers of a Subordinate Judge, it follows that the defendant, as Mr. Church's security, is liable for the misappropriation by his client of any of those moneys. A Munsif is sometimes invested with the powers of a Small Cause Court within certain territorial and pecuniary limits. The decrees passed by him in the exercise of such powers are decrees of the Munsif's Court not less than decrees passed by him in the exercise of his ordinary jurisdiction. It is equally the duty of the nazir of his Court to receive moneys paid or realized under all decrees whether passed by the Munsif in the exercise of the one or the other jurisdiction; and the surety of the nazir is just as much responsible for his client's misappropriation of moneys paid or realized under decrees passed in the exercise of the Small Cause Court jurisdiction as of moneys paid or realized in the exercise of the ordinary jurisdiction. This was not disputed by the defendant's advocate, but he contended that the case of a Munsif invested with Small Cause Court powers was essentially different from the case of a Small Cause Court Judge invested with the powers of a Subordinate Judge. The only difference is that the grant of the powers of a Subordinate Judge to a Small Cause Court Judge gives him a larger jurisdiction than he possessed as Small Cause Court Judge; whereas the investiture of a Munsif with Small Cause Court powers only gives him a peculiar kind of jurisdiction in some classes of causes which he had before jurisdiction to try. The difference does not in the least degree affect what is the matter in question, viz., the extent of the duty of the Clerk of the Court, and of the Nazir, and of the liability of their sureties.

4. The third issue is, therefore, decided in the plaintiff's favour.

5. Our decision on the second issue relieves us from the obligation of deciding the fourth; but we have no hesitation in expressing our opinion that, had the Small Cause Court Judge, at the date of the execution of the bond in suit, not been invested with the powers of a Subordinate Judge, the Clerk of his Court would, nevertheless, have been bound to receive, take charge and keep account of any moneys paid or realized under decrees passed by any of his successors in office invested with such powers, and that the Clerk's surety would have been liable for his client's misappropriation of any of those moneys. This, indeed, follows from what we have already said in disposing of the third issue. The Clerk's duty is to take charge of all moneys paid into the Small Cause Court, and this duty remains the same whether the Judge of the Small Cause Court only exercise his ordinary jurisdiction, or be invested with additional powers. The grant and exercise of such powers is an accident attached by the law to the office of a Small Cause Court Judge; and the Clerk of his Court is as much bound to perform the accidental as the ordinary duties of his appointment, and the surety's pecuniary liability is co-ordinate with that of the Clerk. The defendant would not, therefore, have been able to repudiate his liability in respect of moneys paid to, or realized by, the Clerk in respect of decrees passed by the recent Judges, of the Small Cause Court at Allahabad in the exercise of the powers vested in them of a Subordinate Judge, even had it appeared that, at the time when he executed the bond, Mr. Tyrrell had not

been invested, or not legally invested, with those powers. The circumstance that, at that time, and for some years before, the Judge of the Small Cause Court has exercised those powers, and the Clerk of his Court had, as a part of his duty, received all moneys paid or realized under decrees passed in the exercise there of, precludes the defendant from pleading with plausibility, and us from believing, that he executed the bond in ignorance of the Clerk's duty and liability, and under the impression that he was only undertaking a risk in respect of moneys paid or realized under decrees passed by the Small Cause Court Judge in the exercise of his ordinary jurisdiction. The description of Mr. Church in the bond as the Clerk of the Small Cause Court and of Mr. Tyrrell as the Judge of that Court is strictly accurate, and not at all incomplete by reason of the absence of any mention of the powers of a Subordinate Judge vested in the Judge of the Small Cause Court. The plea that in reference to that description, the defendant's liability was limited to moneys paid to, or realized by Mr. Church under decrees passed by the Judge in the exercise of his ordinary jurisdiction is not sustainable.

6. Decree for plaintiff with costs.

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