
(1912) 08 MAD CK 0057
In the Madras High Court

The Secretary of State for India in Council
Vs

APPELLANT

Ramabrahmam

RESPONDENT

Date of Decision : 05-08-1912

Acts Referred:

Citation : (1912) 23 MLJ 732(1)

Judgement

1. The suit in this case was for recovering the amount due to the plaintiff under a, contract entered into by him with the Government whereby he

undertook to repair a tank and to build a pipe sluice. The plaintiff's case was that the plaintiff had performed his part of the contract and was

entitled to the amount due to him under it. The defendant pleaded that the plaintiff had not carried out the work undertaken by him. The District

Munsif dismissed the suit but on appeal the plaintiff got a decree in the Subordinate Judge's Court. Defendant appeals to this Court.

2. A preliminary objection is taken that no second appeal lies in this case as the amount sought to be recovered is Rs. 500 and the suit is of a small

cause nature. It is contended for the defendant that a suit of this kind is exempted from the cognizance of the Small Cause Court by Article 3 of the

II Schedule of the Provincial Small Cause Courts Act. That article is in these terms. "" A suit concerning an act or order purporting to be done or

made by any other officer of Government in his official capacity or by a Court of Wards or by an officer of a Court of Wards in the execution of

his office."" The question is whether this can be regarded as a suit concerning an act purporting to be done by an officer of Government in his

official capacity. We are of opinion that it cannot. The article applies to a suit relating to some distinct act done by an officer of Government. We

do not think that a mere failure to carry out a contract can be regarded as such an act. In *Rajtnul Manichund v. Hanmant Anhaya* ILR (1895) B

697 it was held that the expression "'an act purporting to be done'" in Section 80 of the CPC was not applicable to the failure to perform a contract.

Chhaganlal Kishoredas v. The Collector of Kaira ILR (1910) B. 42 a merely held that Section 80 was not confined in its operation to torts but

was applicable wherever there, was a distinct act done by an officer of Government. In that case there was a declaration made by an officer in

virtue of a power vested in him under a statute and that was held to amount to an act. In *Bunwari Lai Mookerjee v. The Secretary of State for*

India ILR (1889) C. 290 the Calcutta High Court held that a suit for compensation for damages for injury done to an article of the plaintiff carried

by a State Railway did not come within the purview of Article 3 and was cognizable by a Small Cause Court. In *Mothi Rungayya Chetty v. The*

Secretary of State for India in Council ILR (1904) M. 213 this Court held that a suit for damages sustained by the plaintiff in consequence of the

Postal Department delivering an article without collecting the value if it was due from the addressee (the article being "sent by V.P.") was not a suit

which could be held to relate to an act done by the Postal officer concerned, in his official capacity. We must uphold the preliminary objection and

dismiss the second appeal with costs.