

SUPREME COURT.

MA MAR MAR (APPLICANT)

v.

P.S.O., AHLONE, AND OTHERS (RESPONDENTS).*

[On appeal from the High Court.]

*Union Judiciary Act, s. 6—Residuary provisions—When can be used—
Constitution Act, s. 25.*

Applicant applied under s. 6 of the Union Judiciary Act for special leave to appeal from an order of the High Court under s. 491 of the Criminal Procedure Code.

Held: That there is an effective remedy in s. 25 of the Constitution whereby the Supreme Court could issue directions in the nature of *habeas corpus*. S. 6, Union Judiciary Act, provides for cases which do not come within the purview of s. 5. It is a residuary provision enacted with the sole intention that no subject of the Union shall go without redress from the Supreme Court if he has a genuine grievance; but where there is an effective remedy provided in s. 25 of the Constitution for issue of directions in the nature of *habeas corpus*, the application for special leave will be refused.

The provision in s. 25 of the Constitution is only an adaptation of the English Common Law practice in *Eshugbayi Eleko v. Officer administering the Government of Nigeria and another*, (1928, A.C. 459).

Dr. Thein for the applicant.

U Chan Tun Aung (Assistant Attorney-General of the Union of Burma) for the respondent.

The judgment of the Court was delivered by

E MAUNG, J.—This is an application laid under section 6 of the Union Judiciary Act for special leave to appeal from an order passed by a Bench of the High Court under section 491 of the Code of Criminal Procedure.

* Criminal Misc. Application No. 1 of 1948; appeal from the order of a Bench of the High Court, Rangoon, dated the 2nd March 1948, passed in Criminal Misc. Application No. 2 of 1948.

† Present: **SIR BA U**, Chief Justice of the Union of Burma, **E MAUNG**, and **KYAW MYINT, JJ.**, of the Supreme Court.

Section 6 of the Union Judiciary Act provides—

"Notwithstanding anything contained in section 5, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, or final order of any Court (whether passed before or after the commencement of the Constitution) in any civil, criminal or other case."

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By section 5 of the Union Judiciary Act a right of appeal is granted in cases (a) where a question as to the validity of any law, having regard to the provisions of the Constitution, is involved, or (b) where the amount or value of the subject-matter of the suit and of appeal is rupees ten thousand or over, or (c) where, even though the value of the suit and of appeal is rupees ten thousand or over, but if the decree appealed from is of the affirmance of the decree of the Court of first instance, a substantial question of law is involved.

Section 6 of the Union Judiciary Act thus clearly provides for cases which do not come within the purview of section 5. It is what we call a residuary provision of law enacted with the sole intention that no subject of the Union shall go without redress by this Court if he has a genuine and a well-founded grievance either against another subject of the Union or against the State itself. Being a residuary provision, it can be made use of only when there is no other remedy open to an allegedly aggrieved subject of the Union. In the present case, there is an effective remedy provided for the applicant in section 25 of the Constitution, which says, *inter alia*—

"Without prejudice to the power that may be vested in this behalf in other Courts, the Supreme Court shall have power to issue directions in the nature of *Habeas Corpus*, *mandamus*, *prohibition*, *quo warranto* and *Certiorari*."

What this means is that, although a subject may have failed in his attempt to move another Court (*i.e.* the

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High Court in the present case) for issue of directions in the nature of *habeas corpus* under section 491 of the Code of Criminal Procedure, yet he can still come to this Court and move it under section 25 of the Constitution. This is not a new procedure of law ; it is only an adaptation of the English Common Law practice in the matter of issue of writs [see *Eshugbayi Eleko v. Officer administering the Government of Nigeria and another* (1)].

For all these reasons we do not propose to grant special leave. The application is dismissed.

(1) (1928) A.C. 459.