## CIVIL RULE.

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*Before Mookerjee and Richardson JJ.*

LEDU COACHMAN

*v.*

HIRALAL BOSE.*

1915

*April* 28.

*Contract—Trafficking in offices—Official corruption—Contract for return of money paid to Nazir to secure appointment as peon—Suit to enforce such contract, maintainability of—Public policy—Contract Act (IX of 1872) ss. 23, 65.*

The sale of a recommendation, nomination or influence in procuring a public office is illegal and void, for trafficking in offices would inevitably tend to official corruption : and the Court will not assist a party who has entered into a contract tainted by moral turpitude, both sides being *particeps criminis, in pari delicto.*

*Tappenden* v. *Randall* (1) followed.

A suit to enforce a contract for the return of money paid to a *Nazir* to secure an appointment as a District Court peon for the plaintiff's son is not maintainable.

*Bai Vijli* v. *Nansa Nagar* (2) referred to.

*Pichakutty* v. *Narayanappa* (3), discussed and distinguished.

Such an agreement is void *ab initio,* its object being opposed to public policy within the meaning of section 23 of the Indian Contract Act : while section 65 thereof applies to an agreement *subsequently* (i) found to be void, (ii) or made void by supervening circumstances.

*Bakshi Das* v. *Nadu Das* (4) and *Gulabchand* v. *Ful Bai* (5) considered inapplicable.

RULE obtained by Ledu Coachman, the plaintiff.

Small Cause Court suit for return of money paid

* Civil Rule No. 1161 of 1914, against the decision of Nirode Ranjan Guha, Small Cause Court Judge, Barisal, dated July 25, 1914.

(1) (1801) 2 Bos. & P. 467 ; 5 R. R. 662.

(2) (1885) I. L. R. 10 Bom. 152.

(3) (1864) 2 Mad. H. C. R. 243.

(4) (1905) 1 C. L. J. 261.

(5) (1909) I. L. R. 33 Bom. 411.

1915

LEDU COACHMAN v. HIRALAL BOSE.

to secure a public appointment disposed of by the Munsif of Barisal on 25th July 1914 by the following judgment:

"Defendant is the Nazir of the District Court. Plaintiff alleged that there was a "Contract" between the parties whereby plaintiff promised to pay Rs. 150 to the defendant and defendant promised to give a permanent peonship to plaintiff's son in consideration thereof and if unsuccessful to restore the money. Plaintiff alleged to have paid Rs. 100 to defendant and wanted to recover the sum in this suit because defendant failed to keep his promise. The point is whether the suit is maintainable? Plaintiff relied on Sections 58 and 56 of the Contract Act and also cited *Srirangachariar* v. *Ramasami Ayyangar* (1), *Ram Chand Sen* v. *Audaito Sen* (2) and *Juggeswar* v. *Panchcowree* (3). Sections 58 and 56 cannot possibly apply to the facts of this case and the facts of *Srirangachariar* v *Ramasami* (1) are also quite different. *Ram Chand Sen* v. *Audaito Sen* (2), *Juggeswar* v. *Panchcowree* (3) are rather against plaintiff's contention. Defendant cited *Amjadnessa Bibi* v. *Rahim Baks Shikdar* (4) and also *Ram Pratap Rai* v. *Ram Phal Teli* (5). There is hardly any room for doubt on this point. I find that the contract was void and the suit is not maintainable.

ORDER—Suit dismissed with costs."

The plaintiff thereupon moved the High Court under s. 25 of the Provincial Small Cause Courts Act, and obtained this rule calling upon the defendant to show cause why the aforesaid order should not be set aside.

*Maulvi A. K. Fazlal Huq*, for the petitioner.

*Babu Mahendra Nath Roy*, *Babu Manmatha Nath Roy* and *Babu Suresh Chandra Bose*, for the opposite party.

*Cur. adv. vult.*

MOOKERJEE AND RICHARDSON JJ. We are invited in this Rule to set aside a decree of dismissal in a suit for recovery of money on the basis of a contract. The defendant is the Nazir of the Court of the District

(1) (1894) I. L. R. 18 Mad. 189.
(2) (1884) I. L. R. 10 Calc. 1054.
(3) (1870) 14 W. R. 154.
(4) (1914) 18 C. W. N. cxcii. n.
(5) (1912) 18 Ind. Cas. 9.

Judge of Barisal. The case for the plaintiff is that there was a contract between him and the defendant that if the latter provided his son with the post of a permanent peon within two years, the plaintiff would give the defendant Rs. 150, and that if the defendant failed to secure the appointment, he would return the money paid by the plaintiff. The plaintiff asserts that in accordance with the terms of the contract, he has from time to time paid the defendant several sums aggregating Rs. 100 and that the defendant has failed to provide his son with the appointment, though the two years have elapsed. The plaintiff consequently sues to recover the money. The defendant denied the truth of the allegations of the plaintiff and also pleaded that the suit was not maintainable as it was based on an illegal and void contract. The Court below has not investigated the facts, but has dismissed the suit as not maintainable on the face of the allegations contained in the plaint. The question for determination is, whether the agreement was void, as its object was opposed to public policy within the meaning of section 23 of the Indian Contract Act.

It is well settled that contracts which have, for their object, the influencing of appointments to public offices and the restricting of the discretion vested in public officers in the selection of persons to be appointed, are illegal and void. The principle is that an officer, who has the power of appointment, should make the best appointment possible, and it is contrary to public policy that such officer be deprived of this discretionary power by a contract previously made or an obligation previously assumed ; in other words, public policy forbids that a public office be made the subject, of contracts, for the contrary view would inevitably tend to official corruption. Illustrations of this doctrine will

1915

LEDU COACHMAN v. HIRALAL BOSE.

be found in cases of high authority [*D. Blackford* v. *Preston* (1), *Hartwell* v. *Hartwell* (2), *Thomson* v. *Thomson* (3), *John Card* v. *William Hope* (4), *Hopkins* v. *Prescott* (5), *The Queen* v. *Charretie* (6), *Parson* v. *Thompson* (7), *Richardson* v. *Mellish* (8), *Gardner* v. *Grant* (9)] which all affirm the rule that the sale of a recommendation, nomination or influence in procuring a public office is illegal and void. The question has frequently come up for judicial consideration in the Courts of the United States, which have emphatically condemned contracts of this nature. Mr. Justice Field, in delivering the unanimous opinion of the Supreme Court of the United States in *Providence Town Co.* v. *Norris* (10), observed as follows: "These offices are trusts, held solely for the public good and should be conferred from considerations of the ability, integrity, fidelity and fitness for the position of the appointee. No other considerations can properly be regarded by the appointing power. Whatever introduces other elements to control this power, must necessarily lower the character of the appointments, to the great detriment of the public. Agreements for compensation for procuring these appointments tend directly and necessarily to introduce such elements. The law, therefore, from this tendency alone adjudges these agreements inconsistent with sound morals and public policy: *Gray* v. *Hooke* (11). Other agreements of an analogous character might be mentioned, which the Courts, for

(1) (1799) 8 T. R. 69 ; 4 R. R. 598.
(2) (1799) 4 Ves. 810.
(3) (1802) 7 Ves. 470 ; 6 R. R. 151.
(4) (1824) 2 B. & C. 661.
(5) (1847) 4 C. B. 578 ; 72 R. R. 647.
(6) (1849) 13 Q. B. 447.
(7) (1790) 1 H. Bl. 322 ; 2 R. R. 773.
(8) (1824) 2 Bing. 229 ; 27 R. R. 603.
(9) (1885) 13 S. & D. 662.
(10) (1865) 2 Wallace 45.
(11) (1851) 4 N. Y. 449.

the same or similar reasons, refuse to uphold. It is unnecessary to state them particularly; it is sufficient to observe generally, that all agreements for pecuniary considerations to control the business operations of the Government, or the regular administration of justice, or the appointments to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements; and it closes the door to temptation, by refusing them recognition in any of the Courts of the country." Equally explicit is the condemnation of such contracts by Mr. Justice Swayne in *Mcguire* v. *Corwine* (1): "frauds of the class to which the one here disclosed belongs are an unmixed evil. Whether forbidden by a statute or condemned by public policy, the result is the same. No legal right can spring from such a source. They are the sappers and miners of the public welfare and of free government as well. The latter depends for its vitality upon the virtue and good faith of those for whom it exists and of those by whom it is administered; corruption is always the forerunner of despotism." To the same effect are the decisions in *Marshall* v. *B. & O. R. R. Company* (2), *Coppell* v. *Hall* (3) and *Trist* v. *Child* (4). But it is needless to multiply authorities on the subject of trafficking in offices, which will be found collected in Greenhood on Public Policy, pp. 338-349. Our attention, however, has been drawn to the decision in *Pichakutty* v. *Narayanappa* (5). There the defendant had agreed, in consideration of a sum of money received by him, to obtain a more

(1) (1879) 101 U. S. 108.
(2) (1853) 16 Howard 314.
(3) (1868) 7 Wallace 442.
(4) (1874) 21 Wallace 441.
(5) (1884) 2 Mad. H. C. R. 243.

1915

LEDU COACHMAN v. HIRALAL BOSE.

favourable assessment upon certain villages in respect of waste and cultivable lands, and in case of failure to repay the amount received. In a suit to recover the amount paid to the defendant, Scotland, C.J. and Frere, J., held that the contract was not vitiated by illegality. The reason assigned in support of this view was that there was nothing to show an understanding between the parties that the defendant was to have recourse to corrupt or illegal means of any kind or that he would use personal influence which he professed to possess with any public servant. The case was thus treated as one where the defendant undertook the task of preparing and presenting before the Revenue authorities the case of the tenants and made his claim to remuneration contingent upon his success. The case is consequently distinguishable, though we are by no means convinced that the decision is based on sound principles. We affirm without hesitation the rule that any contract to appoint one to a public office or involving the sale of a public office or securing an office for the promisor or recommending him for such office is opposed to public policy and is consequently void. It is plain, therefore, that the contract, which is the foundation of this suit, is based on an unlawful consideration, is opposed to public policy and is void. It follows that, under such circumstances, when the illegality of the contract has been made to appear, the law will not extend its aid to either of the parties who will be left to abide the consequences of their own act. We are not unmindful that there are exceptions to the general rule that money paid or personal property transferred in accordance with the terms of an illegal contract cannot be recovered, notwithstanding the other party refuses to perform his part of the agreement. It is plain that although where money has

1915

LEDU COACHMAN v. HIRALAL BOSE.

been paid under an unlawful agreement, but nothing else done in performance of it, the money may be recovered back, yet this exception will not be allowed if the agreement is actually criminal or immoral; where the contract is illegal because contrary to positive law or against public policy, an action cannot be maintained to enforce it directly or to recover the value of services rendered under it or money paid on it. Lord Alvanley, C.J., observed in *Tappenden* v. *Randall* (1) that where there is moral turpitude in the contract, the Court will not allow the party, who has advanced money on such a contract, to recover it back. In the case before us, the substance of the matter is that the plaintiff, if his allegation is true, offered a bribe to the defendant to secure an appointment for his son, and made part payments which were accepted by the latter. The parties are clearly in *pari delicto* and the Court will not assist either of them. In *Collins* v. *Blantern* (2) where money had been paid for the purpose of stifling a prosecution for perjury, Wilmot, C. J. said: "Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of the Court to fetch it back again." To the same effect is the observation of Kenyon, C. J. in *Howson* v. *Hancock* (3) where money deposited upon an illegal wager had been paid over to the winner by the consent of the loser: "there is no case to be found where, when money has been actually paid by one of two parties to the other upon an illegal contract, both being *participes criminis*, an action has been maintained to recover it back again.". The same principle is

(1) (1801) 2 Bos. & P. 467; 5 R. R. 662.

(2) (1765) 2 Wilson 341.

(3) (1800) 8 T. R. 575.

1915

LEDU COACHMAN
*v.*
HIRALAL BOSE.

illustrated in *Taylor* v. *Chester* (1) where the consideration was immoral and, in *Kearley* v. *Thomson* (2) where the defendants were in substance bribed not to appear at the public examination of a bankrupt [see also *Harse* v. *Pearl L. A. Co.*, (3)]. The principle has been applied in this country in a case where the money had been paid to a married woman to enable her to obtain a divorce and marry the plaintiff: *Bai Vijli* v. *Nansa Nagar* (4). The cases mentioned at the Bar related to marriage brokage contracts, which, as is clear from the decision in *Bakshi Das* v. *Nadu Das* (5) and *Gulab Chand* v. *Ful Bai* (6), stand on a special footing of their own and have no analogy to the case before us. The principle that the Court will not assist a party who has entered into a contract tainted by moral turpitude, should be strictly applied in the circumstances of the case now before the Court. If the Court were to assist the plaintiff to recover his money, bribery and corruption would be encouraged; every person in the position of the plaintiff will be tempted to say, let me offer a bribe to get an appointment for my son, for I can do so with impunity and without risk or loss; if he secures the appointment, the end is achieved, if he does not, I can sue to recover back my money. No Court of Justice will tolerate such a position.

We may add that, in the course of argument, reliance was to some extent placed on section 65 of the Indian Contract Act, but that section is of no real assistance to the plaintiff, as it relates to the obligation of a person who has received an advantage under an agreement which is discovered to be void or under a contract which becomes void. The case

(1) (1869) L. R. 4 Q. B. 309.
(2) (1890) 24 Q. B. D. 742.
(3) [1904] 1 K. B. 558.
(4) (1885) I. L. R. 10 Bom. 152.
(5) (1905) 1 C. L. J. 261.
(6) (1909) I. L. R. 33 Bom. 411.

1915

LEDU COACHMAN v. HIRALAL BOSE.

before us is, however, not that of an agreement "discovered" to be or "becoming" void. The agreement is void on the face of it, and it was void *ab initio*, while the words of the section can only be aptly applied in such cases as that of an agreement which is subsequently found to be void on account of some latent defect or of circumstances unknown at the date of the agreement or of an agreement which is afterwards made void by circumstances which supervene.

The result is that the decree of the Small Cause Court Judge is affirmed and this rule discharged with costs. We assess the hearing fee at one gold mohur.

We direct that a copy of our judgment be forwarded to the District Judge with instruction to make a thorough inquiry into the allegations made by the plaintiff against the defendant who is the Nazir of the District Court. The District Judge will report to this Court, as early as practicable, the result of his investigation.

G. S. *Rule discharged.*