

## APPELLATE CRIMINAL.

1886  
February 5.*Before Mr. Justice Straight.*QUEEN-EMPRESS *v.* PARMESHWAR DAT.*Act XLV of 1860 (Penal Code), s. 21—Public servant.*

Any person, whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties, and accepts those responsibilities, and is recognised as filling the position of a public servant, must be regarded as one, and it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties and the recognition by others of such performance, he is not a "public servant," within the definition contained in s. 21 of the Penal Code.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Mr. *J. Simeon*, for the appellant.

The *Public Prosecutor* (*Mr. C. H. Hill*), for the Crown.

STRAIGHT, J.—This is an appeal from a decision of the Sessions Judge of Gorakhpur, Mr. R. J. Leeds, dated the 26th September, 1885, convicting the appellant of three offences under s. 420 of the Penal Code of cheating. These offences relate to three aggregate sums of Rs. 455-4-11, Rs. 297-14-3, and Rs. 323-15-4, constituting a very considerable amount of money, which was improperly paid to other persons in consequence of misrepresentations made by the accused. The appellant has also been convicted under s. 167 of the Penal Code, but no sentence has been passed upon him in respect of that section. This latter conviction involves the question whether the accused was a public servant, and subject to the responsibilities attaching to that character. It appears that his duties were as follows:—He was, and had been for several years, attached to the tahsildar's office at Gorakhpur,—*i.e.*, he was employed at the office without receiving any pay, and was learning the duties performed there by the officials, in the hope and expectation of eventually being taken on the staff, and paid like the other persons employed in the office. It seems to me that it is now too late for the contention to be raised on his behalf that he was not a "public servant," within the definition contained in s. 21 of the Penal Code. I am of opinion that any person, whether receiving pay or not, who chooses to

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take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties, and accepts those responsibilities, and is recognized as filling the position of a public servant, must be regarded as one, and that it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties and the recognition by others of such performance, he is not a public servant. If such a contention were allowed, and the question whether a man was a public servant were to depend wholly upon the test of his receiving or not receiving a salary, very great mischief and difficulty might arise in a country like this, where numerous persons are engaged in the performance of public duties without pay. I am therefore of opinion that the appellant must be regarded as coming within the definition of "public servant." This disposes of the first objection which has been taken on the appellant's behalf. I will now briefly state the circumstances under which the accused has been convicted. It appears that the military authorities, for purposes of convenience, made an arrangement with the Collector of Gorakhpur, by which the latter should ascertain every month, through the tahsildar's office, what were the current rates in the bazar for grain and other articles of food; and in the ordinary course of business it was the accused's duty to prepare an average list of such rates in Persian, which he had to take to Mr. Augustin, in the Collector's office, and to read out to him from the Persian list the figures of the rates. From this Mr. Augustin made a list in English for the Collector, who forwarded it to the commanding officer of the regiment, who, upon the basis of the list so prepared, directed payment from time to time to the banias supplying the articles of food required. So that, if by any arrangement with any persons in the bazar the accused chose to make incorrect statements as to the amount of the rates of food to Mr. Augustin, the list prepared by Mr. Augustin upon such statements would necessarily be incorrect also, and this would result in larger sums being paid to the banias than they were entitled to receive. I cannot conceive circumstances more clearly within the meaning of s. 420 of the Penal Code. It has been proved that the Persian list of averages prepared by the accused was correct, and Mr. Augustin has shown that his English list was prepared with reference to the

translation of the Persian list given to him by the accused. A comparison of the two documents makes it obvious that the appellant misrepresented the contents of the Persian list, because in Mr. Augustin's list there was a large excess in the alleged prices. The case is overwhelming, and I must dismiss the appeal.

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*Conviction affirmed.*

## FULL BENCH.

*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

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February 13.

JIWAN ALI BEG (APPLICANT) v. BASA MAL AND OTHERS (OPPOSITE PARTIES). \*

*Civil Procedure Code, s. 549—Practice—Appeal—Security for costs—Poverty of appellant.*

*Held by the Full Bench (TYRRELL, J., dubitante), without laying down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself, and without reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs.*

THIS was an application by the respondent in First Appeal No. 133 of 1885 for security for costs which came on for hearing before Straight, J., who made the following order of reference to the Full Bench:—

“This is an application by the respondent in an appeal to this Court, that the appellant, who was unsuccessful in the Court below, be ordered to give security for the costs incurred, not only in that Court, but in this appeal. The allegation of the respondent in his petition, and vouched by affidavits, is that the appellant is a person without means, and indeed I understand the appellant's counsel to admit that, so far as he is aware, except the property which is the subject-matter of the present suit, and which was hypothecated in the bond sued upon, the appellant possesses no property whatever. Under these circumstances, the respondent urges that the appellant be required to furnish security. It has been ruled on three occasions in this Court—twice by myself (1)

\* Miscellaneous Application in F. A. No. 133 of 1885.

(1) *Dalip Singh v. Azim Ali Khan and Bachman v. Bachman*, Weekly Notes, 1884, pp. 99 and 103 respectively.