REVISIONAL CIVIL

Before Mr. Justice A. H. deB. Hamilton

PANDIT CHANDRA DHAR TEWARI AND OTHERS (PLAINTIFFS) *v.* THE DEPUTY COMMISSIONER, LUCKNOW, INCHARGE COURT OF WARDS, SISSENDI ESTATE (DEFENDANT)*

1938 *November,* 29

Evidence Act (I of 1872), section 124—Privileged communication, what is—Judge as to whether disclosure will harm public interest, who is—Court to decide whether communication was made in official confidence—Public officer, meaning of—Court of Wards, whether public officer—Demi-official letters whether included in communications made in public confidence—Privilege regarding complete files or particular papers in those files.

The sole judge as to whether disclosure will harm the public interests is the public officer concerned and it is not for the Court to decide whether public interests would or would not suffer. *Nagaraja Pillai* v. *The Secretary of State for India in Council* (1), *Tribhawan Nath Singh* v. *Ajudhia Estate* (2), *King-Emperor* v. *Nanda Singh* (3), and *the Collector of Jaunpur* v. *Jamna Prasad* (4), referred to.

Under section 124 of the Evidence Act it is for the Court to decide whether certain communications were made in official confidence.

Section 124 of the Evidence Act is designed to prevent the knowledge of official papers that is to say papers in official custody beyond that circle which would obtain knowledge of them in confidence whether the confidence was express or implied. It would normally include all officers including clerks of superior officers and might also apply to non-officials to whom such papers were disclosed on the understanding express or implied and the knowledge should go no further. The word "disclose" in the section means the first disclosure of communications made in official confidence and does not apply to disclosure in a court of law of what has already been disclosed outside it. The object is to prevent the disclosure of things not known outside that circle which is in confidence and the section has no application when once there has been disclosure to a member of the public to whom the contents

*Civil Miscellaneous Application No. 955 of 1938, in Original Civil Suit No. 4 of 1937.

(1) (1916) I.L.R., 39 Mad., 704. (2) (1918) 5 O.L.J., 294.
(3) (1925) 2 O.W.N., 422. (4) (1922) I.L.R., 44 All., 560.

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of such papers has not been made known in confidence. Privilege cannot therefore be claimed under the section in respect of papers inspection of which has already been allowed to the opposite party.

The term "public officer" in section 124 of the Evidence Act means an officer with public, as opposed to private, duties who receives communications made to him in official confidence of such a nature that disclosure in certain cases would injure the public interests. The court of wards for the purposes of section 124 should be considered a Government Office and is included in the term "public officer". *Daljit Singh* v. *The Hon'ble Maharaj Pratab Narain Singh* (1), *Shahebzadee Shahunshah Begum* v. *Fergusson* (2), *Mahraj Bhanudas Narayanboa Gossavi* v. *Krishnabai* (3), *Vishnomal* v. *Court of Wards in Sind* (4), *Queen Empress* v. *Mathura Prasad* (5), *Nanda Lal Bose* v. *Ashutosh Ghose* (6), *Vasudeva Rao* v. *Municipal Council, Anantapur* (7), and *King-Emperor* v. *Bhagwati Prasad* (8), referred to.

A demi-official letter addressed by one officer by name to another officer by name in view of the reasons for which demi-official letters are usually written is written in official confidence, within the meaning of section 124 of the Evidence Act.

It is not proper for an authority claiming privilege to claim privilege for complete files without considering particular papers and then coming to a decision whether privilege should or should not be claimed.

Messrs. *M. Wasim, Radha Krishna, Ali Hasan* and *Sita Kant Shukla*, for the plaintiffs.

Messrs. *Niamat Ullah, H. S. Gupta* and *Bhagwati Nath Srivastava*, for the defendant.

HAMILTON, J.:—In an application undated but presented on the 16th November, 1938, the plaintiffs in Original Suit No. 4 of 1937, have asked that certain documents be exhibited.

The documents are ten in number—the first three being from a file there described as "Release File", and two are from what is called the "Succession file" both being files which have been submitted to this Court

(1) (1900) 3 O.C., 205.
(2) (1881) I.L.R., 7 Cal., Vol. 2, 499.
(3) (1926) I.L.R., 50 Bom., 716.
(4) (1928) A.I.R. Sind., 76.
(5) (1899) I.L.R., 21 All., 127.
(6) (1920) 55 I.C., 515.
(7) (1930) A.I.R., Mad., 844.
(8) (1930) I.L.R., 5 Luck., 207.

under a sealed cover by the court of wards. The remaining five are in a file described as "Assumption and Allowance of Rani's file from D. C.'s Office" and they are in a file which has also come under a sealed cover from the Deputy Commissioner of Lucknow.

Objection has been raised both on behalf of the court of wards and on behalf of the Deputy Commissioner claiming privileges under section 124 of the Evidence Act on the ground that the public interests would suffer by disclosure of these documents.

I must point out at once that the first three and the last five documents are in files which the plaintiffs have been allowed to inspect by the court of wards and the Deputy Commissioner respectively and the plaintiffs are, therefore, aware of what is contained in the papers which they seek to make exhibits. This does not apply to the fourth and fifth documents which in this application appear under numbers 45 and 46.

Hamilton, J.

It has been urged on behalf of the court of wards and the Deputy Commissioner that the sole judge as to whether disclosure will harm the public interests is the public officer concerned and in this respect *Nagaraja Pillai* v. *The Secretary of State for India in Council* (1), *Tribhawan Nath* v. *Ajudhia Estate* (2), *King-Emperor* v. *Nanda Singh* (3) and the *Collector* of *Jaunpur* v. *Jamna Prasad* (4), have been quoted.

Section 124 of the Evidence Act itself states that when the public officer considers that the public interests would suffer by the disclosure, he cannot be compelled to disclose communications made to him in official confidence and I, therefore, agree with the contention of counsel that it is not for me to decide whether public interests would or would not suffer. Learned counsel has admitted that it is for the court to decide whether the communications were made in official confidence, and it appears to me that it is beyond doubt that it is

(1) (1916) I.L.R., 39 Mad., 804. (2) (1918) 5 O.L.J., 294.
(3) (1925) 2 O.W.N., 422. (4) (1922) I.L.R., 44 All., 360.

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for the court to decide what is the meaning of the words "disclose" and "disclosure".

Learned counsel on behalf of the plaintiffs has urged that there cannot be disclosure within the meaning of section 124 of the Evidence Act now as there already has been disclosure when the plaintiffs were allowed to examine two out of the three files. He further urges that section 124, specially the words "made to him in official confidence", applies only to communications by an official to another official in confidence, not communications made by a non-official to an official in which case some such words as "received in confidence" would appear in the section instead of the words "made in official confidence". Learned counsel also urges that the court of wards as at present constituted is not a "public officer" within the meaning of section 124.

Possibly, the fact that two of these files have been disclosed may also be a guide to the court as to whether the communications therein contained were made in official confidence as presumably if they were so made, permission to inspect the files would not have been given.

In my opinion section 124 is designed to prevent the knowledge of official papers that is to say papers in official custody beyond that circle which would obtain knowledge of them in confidence whether the confidence was express or implied. It would normally include all officers including clerks of superior officers and might also apply to non-officials to whom such papers were disclosed on the understanding express or implied and the knowledge should go no further.

It has been urged by counsel supporting this application for privilege that section 124 of the Evidence Act applies to disclosure in courts and, therefore, privilege can be claimed even if there has been disclosure outside the court. I am not able to attach this restricted meaning to the section, for I hold that the object is to prevent the disclosure of things not known outside that

circle which is in confidence and this section has no application when once there has been disclosure to what I might call a member of the public to whom the contents of such papers has not been made known in confidence. To hold otherwise would be to place courts in an unfavourable position, while actually the courts are favoured in the sense that they have the power to order the production of documents which an ordinary individual has not. Even if the propagation of this knowledge is contrary to the public interests, the person who has been allowed to obtain knowledge of the contents of such documents can make known to any person what he himself has come to know, and the mischief, therefore, is done. I do not see that the public interests in the contemplation of the framers of the Evidence Act would suffer by promulgation in a court of law and not by promulgation outside it.

As regards these documents, therefore, I am of opinion that the word "disclose" means the first disclosure of communications made in official confidence and does not apply to disclosure in a court of law of what has already been disclosed outside it. Therefore, I hold that section 124 of the Evidence Act does not apply to any of these documents other than nos. 45 and 46 in the application and privilege cannot be claimed.

There remain then two documents no. 45 in the application is a letter of the Commissioner of Lucknow to the Secretary of the Board of Revenue, dated the 14th November, 1918, and paper 46 is described as a letter of Mr. MacLeod, dated the 25th February, 1919.

I have examined the files which have been submitted, and I find that there is no letter by Mr. MacLeod but only what purports to be a copy of it. This application is for exhibiting the original and I cannot take it to refer to the copy and further it has not been shown that this copy can legally be admitted in evidence in the place of the original.

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I have also examined that letter of the Commissioner of Lucknow. This is a "demi-official" letter addressed by one officer by name to another officer by name and in view of the reasons for which "demi-official" letters are usually written I have no hesitation in holding that this letter was written in official confidence. It is in a file inspection of which has not been given and, therefore, it has not yet been disclosed. I have already stated that it is in the power of the public officer concerned and not in the power of the court to decide whether disclosure of the contents of such a document would be detrimental to the public interests once a court has found the communication to have been made in official confidence and not to have been disclosed before

There remains then to be decided whether the court of wards as at present constituted is "a public officer" or whether the President of the court of wards is such officer for the purpose of section 124 of the Evidence Act.

Various decisions have been cited before me by the learned counsel for the court of wards and the Deputy Commissioner.

Daljit Singh v. *The Hon'ble Mahraj Pratab Narain Singh* (1), is a case where it was decided that public documents including *khasras* prepared by a patwari, who was not appointed by Government, but by the taluqdar, who did not receive his remuneration from Government but from the taluqdar, whom the Deputy Commissioner could not suspend, dismiss, or punish for neglect of duty but on whom it was incumbent to perform certain duties prescribed for him under the provisions of the Oudh Land Revenue Act amongst such duties being the preparation of *khasras*, were public documents. It was also held that such a patwari was a public officer as he was a person upon whom a special duty has been conferred by authority and for a public purpose.

(1) (1900) 3 O.C., 205.

In *Shahebzadee Shahunshah Begum* v. *Fergusson* (1), the Official Trustee was held to be a public officer and in *Mahraj Bhanudas Narayanboa Gosavi* v. *Krishnabai* (2), a school master in a Native State was held to be a public officer. In *Vishnomal* v. *Court of Wards in Sind* (3), it was held that the court of wards was a public officer. In *Queen-Empress* v. *Mathura Prasad* (4), the manager of the court of wards was held to be a public servant on the ground that the Board of Revenue was a department of the Government. At that time the court of wards was differently constituted from the present time and in fact the Board of Revenue was the court of wards and at the same time the Board of Revenue was of course a department of the Government.

On the other hand in *Nanda Lal Bose* v. *Ashutosh Ghose* (5), a learned Judge of the Calcutta High Court held that the manager of the court of wards is not a public servant within the meaning of section 2, clause (17) of the Code of Civil Procedure. In *Vasudeva Rao* v. *Municipal Council, Anantapur* (6), the municipality was held not to be a public officer for the purpose of the Code of Civil Procedure.

In *King-Emperor* v. *Bhagwati Prasad* (7), the question whether a station master in a State Railway was a public officer within the meaning of section 124 of the Evidence Act was left undecided. The learned Judge said that he was certainly a public servant for the purposes of Chapter IX of the Indian Penal Code under the provisions of section 137, Act IX of 1890, Indian Railways Act, but it would not follow from that that he was a public officer within the meaning of section 124, Act I of 1872.

There is, therefore, a divergence of opinion as to whether the court of wards and officers of the courts of

(1) (1881) I.L.R., 7 Cal., Vol. 2. 499.
(2) (1926) I.L.R., 50 Bom., 716
(3) (1928) A.I.R., Sind, 76.
(4) (1899) I.L.R., 21 All., 127.
(5) (1920) 55 I.C., 515.
(6) (1930) A.I.R., Mad., 844.
(7) (1930) I.L.R., 5 Luck., 297.

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wards and similar bodies are or are not public officers with regard to the definition of "public officer" elsewhere than section 124, Indian Evidence Act.

The court of wards now is composed of ten members of whom only one is nominated by the local Government: the President who is among these ten being appointed by the Governor (not by the Government): the Secretary too is appointed by the Governor and not by the Government. On the other hand, the supervision and control of the court of wards by the Government is great and under section 8 read with section 12 of the Court of Wards Act the Government can compel the court of wards to assume superintendence of the property of certain females and certain persons declared by the local Government to be incapable to manage or unfitted to manage their own property.

Hamilton, J.

It seems to me that the most reasonable construction of the term "public officer" in section 124 is to be partly derived from the section itself. He is an officer with public, as opposed to private, duties who receives communications made to him in official confidence of such a nature that disclosure in certain cases would injure the public interests. I can conceive the possibility of communications of a confidential nature being made to the court of wards specially in view of the fact that Collectors and Commissioners often have to do court of wards' work. In the majority of cases the communications would only injure private interests, if at all, but there may be cases in which they would injure public interests also.

The connexion between the court of wards and certain Government servants and the court of wards and the Government must necessarily be so close that there is considerable possibility that confidential communications would contain matters of public interests the disclosure of which would injure those public interests.

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Hamilton, J.

The nature of a public officer has been exhaustively discussed in *Vishnomal* v. *Court of Wards in Sind* (1) and the reasons there given together with that which I have just given have led me to the conclusion that the court of wards for the purposes of section 124 should be considered a Government office.

I, therefore, allow the claim of privilege as to paper no. 45 in the application.

I would, however, add certain observations necessary on the facts here. The plaintiffs summoned three files and not particular papers in those files and the claim of privilege was made as regards the three complete files without any attempt to discriminate which papers there might, if disclosed, injure the public interests, and it appears to me obvious that certain papers there, if disclosed, cannot injure the public interests. For instance, one paper is nothing more than a copy of the notification that the court of wards has released the Sissendi Estate and that notification must have appeared in the *Gazette*. Another is a slip of paper which runs as follows:

> "D. C. I think all points have got settled. Deposit file now".

It is not proper for an authority claiming privilege to claim privilege without considering particular papers and then coming to a decision whether privilege should or should not be claimed.

A further question which may arise here is whether in view of my refusal to grant privilege to eight papers the public interests are likely to suffer by the disclosure of this ninth document. I would, therefore, request the authority that has claimed privilege to examine it and then to decide whether it will continue to claim privilege or not. I do not say this in any way intending to put pressure on the authority to withdraw the claim of privilege, but because what I have stated above

(1) (1928) A.I.R., Sind, 76.

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shows that privilege was claimed about all papers indiscriminately and secondly because a new situation has arisen owing to my refusal to grant privilege to other papers.

I need hardly say that my decision is purely on the question of privilege under section 124 of the Evidence Act and has nothing to do with whether the documents are or are not admissible independently of section 124 of the Evidence Act.

Application partly allowed.

REVISIONAL CRIMINAL

Before Mr. Justice R. L. Yorke

1938
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BANSGOPAL AND THREE OTHERS (APPELLANTS) *v.* KING-EMPEROR THROUGH AMBIKA PRASAD MISIR (COMPLAINANT-RESPONDENT)*

Penal Code (Act 45 of 1860), section 447—Accused ejected from land and formal possession delivered to landlord—Landlord leasing land to another—Accused forcibly sowing crop and reaping it—Lessee of landlord entering into possession while land lying fallow—Lessee's possession ousted—Offence of criminal trespass under section 447, if committed—Criminal Procedure Code (Act V of 1898), section 106—Accused convicted under section 447 but no actual breach of peace—Order to furnish security to keep the peace under section 106, Criminal Procedure Code, if justified.

The accused was ejected from a plot of land and formal delivery of possession took place but even after that he continued in possession and sowed a crop therein although the land was leased by the landlord to another person and after the crop had been cut when the land was lying fallow the lessee entered into possession but was forcibly ousted by the accused.

Held, that the accused acquired no fresh right by forcibly cultivating the plot after his ejectment and the new lessee was in rightful possession when he was ousted by the accused. The primary intent in such a case was to intimidate and the secondary object was to enforce possession, and the accused by entering on property in the possession of another with intent

*Criminal Revision No. 125 of 1938, against the order of J. R. W. Bennett, Esq., Sessions Judge, of Fyzabad, dated the 30th August, 1938.