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the land lost by limitation from that which is admittedly applicable to the case of the whole interest. The principle laid down in the cases cited in the beginning of this judgment is, in our opinion, therefore, applicable to the present case. We must send down an issue to have the nature of the possession of the plaintiffs' father and of the plaintiffs between 1862 and 1882 determined. It will be:—

Was the possession of the plaintiffs and of their father between 1862 and 1882 adverse to the defendant within the meaning of this judgment?

Finding to be certified in this Court within two months.

*Issue sent down.*

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## CRIMINAL REVISION.

*Before Mr. Justice Jardine and Mr. Justice Ranade.*

IMPERATRIX *v.* APPA'JI BIN YADAVRAO.*

1896. *January* 16.

*Penal Code (Act XLV of 1860), Sec. 161—Public servant—Revenue and police pátel—Agreement to restore village Mahárs to office on payment of Rs. 300 towards repair of a village temple—Gratification—Official act.*

The Mahárs of a certain village having been suspended from their office for some months a meeting of the villagers was held at the house of the Pátel, at which the Pátel was present, to consider the question of their restoration to office, and an agreement was there come to that they should be restored on their paying a sum of Rs. 300 towards the repair of the village temple.

*Held*, that the Pátel, being a public servant, had committed an offence under section 161 of the Penal Code (Act XLV of 1860).

THIS was an application under section 435 of the Code of Criminal Procedure (Act X of 1882) for the exercise of the High Court's criminal revisional jurisdiction.

The accused was the revenue and police pátel of Chinchodi in the Ahmednagar District. He was convicted under section 161 of the Penal Code (XLV of 1860) of taking a gratification for an official act under the following circumstances.

In 1892 the Mahárs of the village in question were removed from the services of the village, and Mángs were employed in

* Application for Criminal Revision, No. 364 of 1895.

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their place. In 1894 a meeting of the villagers was held at the house of the accused, at which meeting the accused was present, to consider the question of the restoration of the Mahárs, and an agreement was come to that they should be restored on their paying a sum of Rs. 300 for a village purpose, *viz.*, the repair of one of the village temples. This payment was apparently in the nature of a fine for the poisoning of certain cattle of which the Mahárs were supposed to have been guilty during the period of their suspension.

The Collector sanctioned the prosecution of the accused for taking part in this transaction. The charge against him was that of taking a gratification for an official act under section 161, Penal Code.

The First Class Magistrate of Ahmednagar convicted the accused and sentenced him to suffer imprisonment for four months and pay a fine of Rs. 50, or in default of such payment further imprisonment for one month.

In appeal the Sessions Judge (G. C. Whitworth) of Ahmednagar confirmed the conviction and sentence. The following is a portion of his judgment :—

"The evidence leaves no doubt that some three years ago the Mahárs were removed, if not completely, yet in the main, from their services, and that in the rains of 1894 there was a general meeting at the appellant's house when the question of the restoration of the Mahárs to service was considered, and an agreement was come to that on the payment of Rs. 300 they might be restored. These facts are proved by several persons who were present on the occasion and whose testimony is not weakened by the fact that some of them mention incidents not spoken to by others. Nor are they wholly denied by the pátel himself. He has at one time taken the position that the villagers other than himself made the whole settlement with the Mahárs and merely informed him of it. But when examined by the Mámlatdár in 1894 he said that he and the villagers removed the Mahárs from service and subsequently brought them back on their furnishing security to pay Rs. 300 in consideration of their re-employment. It was natural that the pátel should take a leading part in a transaction of this kind carried out on behalf of the village at large, and there is no doubt that he did so. The evidence in particular of Mahadu (No. 6), the Vani who made himself responsible for the payment and who was obviously (as appears from his deposition) a most unwilling witness for the prosecution, confirms this.

"A more difficult question, however, remains, namely, whether this transaction, which seems to have been carried through without concealment and to have been at one time avowed by the pátel, comes within the provisions of section 161 of the Penal Code. It is contended that the money was intended for a village purpose, namely,

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the repairing of a temple; that it was in the nature of a fine in respect of cattle supposed to have been poisoned by the Mahárs during their period of suspension; and, further, that this suspension was only from their private services to the villagers and not from their public service to Government. The village system is older than the institution of pátel as Government servants, and it was probably not the intention of the criminal law to forbid a bargain being made between the general body of the residents of a village and the distinct body of the Mahárs. I do not find it proved that the patel intended to take the Rs. 300 for himself alone. On the contrary the Mahárs themselves seem to have regarded the transaction as a contract and not as a bribe, for they claimed, according to the chief constable's evidence, to cancel the *hawála* they had given through Mahadu when they found that their restoration to service was forbidden.

"But though there might be a legitimate bargain between the villagers and the Mahárs, I do not think the present one was such. I do not think the public and private services of the Mahárs can be distinguished in the way attempted, or that the distinction was present to any of the parties' minds at the time. It is well known, and the records of any village will show (see, for instance, Village Form 9 in Hope's Manual of Revenue Accounts) that public remuneration is given to village servants who are 'useful to the village community' as well as to those who are 'useful to Government.' Besides, I think it is proved that the Mahárs were removed generally from the essentially public function of carrying the village revenue to the táluka. For though the trying Magistrate is mistaken in saying that there is no instance of their doing this during the period of suspension, yet the fact that only four instances have been found and that none of these is later in date than 14th December, 1892, shows that the suspension was general and was, for the space of a year and a half, complete.

"The appellant as a public servant must have known that he had no right to deal with the Mahárs who were in receipt of remuneration from the State. His first act in removing them is not in question now; but when in his public capacity he becomes a party to their restoration, and agreed to accept, even for a village purpose, a sum of money as a consideration for such restoration, which could not be effected without his concurrence—for the Mahárs serve immediately under him—he committed the offence of which he has been convicted."

The accused applied to the High Court under its revisional jurisdiction.

*Kirkpatrick* (*N. C. Chandavarkar* with him) for the accused:—There has been no offence under section 161 of the Penal Code. The Judge finds that the Rs. 300 were to be paid, not to the pátel (accused) but to repair a village temple. This cannot be a "gratification" within the meaning of the section. The accused is not shown to be personally interested in the temple. If he has any interest it is an interest common to all the parties to the arrangement and to the whole village community. He had no power, as pátel, to restore the Mahárs to their employment. Only

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the villagers as a community could do that. His concurrence, therefore, was not an "official act." It was not as pátel, but as a villager, he concurred. The fact that he holds the office of pátel does not divest him of his rights and interests as a villager. There was no corrupt motive on either side, nor any concealment. The arrangement was made by the villagers at a meeting at which he was present, but not as an official. He was surely not bound to absent himself or, if present, to dissent and by his influence prevent an arrangement restoring peace between the different classes in the village. The satisfaction arising from the knowledge that he had assisted in restoring peace is not a "gratification" within the section.

There was no appearance for the Crown.

JARDINE, J. :—On the findings of fact of the Sessions Judge we have to say whether the act done is punishable under section 161 of the Indian Penal Code. The accused, being the revenue and police pátel, is a public servant. He agreed to accept money as a motive for restoring some village Mahárs to office. These village servants have duties connected with the public revenue, the village police, and the civil administration; they are usually remunerated by *haks* of money or kind; and have long been recognised as officers, and are called so in such statutes as Bombay Act III of 1874. The pátel is their superior; he is the head of the village police under Bombay Act VIII of 1867, and of course must use all his lawful powers to prevent and detect cattle-poisoning, a form of crime to which such persons as village Mahárs are sometimes prone, as recognised in section 64 of Bombay Act III of 1874, because of their alleged right to the corpse or the skin of dead cattle as a *hak*. This statement shows that the bargain about reinstating the Mahárs in office was connected with official functions. It appears to come within the words of section 161 of the Penal Code, which are wide, and deal with any gratification whatever other than legal remuneration.

The question then arises whether what was done comes within the meaning. The plain words exclude the defence that the benefit bargained for was to go to somebody else, and also exclude

the notion that an officer is protected if he agrees to let his official acts be swayed by the motive of accepting a gratification to be used professedly for advancing some public, not private, object, such as charity, science, or religion. That kind of motive is different to the desire of private lucre: but it may easily lead to oppression, and the subject in the pursuit or enjoyment of a right ought not to be hampered by any thought of pleasing the officer by promising a subscription of any kind, however laudable. Nor ought an officer to be affected in his duty to the Crown in dealing with a subject by such a consideration. There is no distinction between offices held at common law or by statute. The Imperial legislation extended to India is sweeping in its penalties against acceptance of gifts by officers. (See 33 Geo. 3, c. 52, s. 62.) The law is very jealous of bargains for offices, as the numerous reported decisions on English and Indian cases on the Statute 5 and 6, Edward VI, c. 16, show, for which see chapter 15 of Bk. 2, Russell on Crimes, of buying and selling offices. The scope of Parliamentary legislation is fully discussed in the case relating to the corrupt mámlatdárs, who confessed to the purchase of offices of civil and criminal judicature. Such a person is disabled from holding office during life, and although the Queen may pardon the misdemeanour, it is not lawful for the Queen to replace him in office. (See *In re Ganesh Narayen Sathe*[1].) One chief reason of the disability is the danger of extortion from the suitors. So the Commons in impeaching Lord Chancellor the Earl of Macclesfield replied: "When it is said that a good officer may give money for his place and may resist the temptation of extortion, it is what the law of England would not trust to human frailty." So in matters outside that Act of Parliament the Courts have often held these bargains to be against the public policy.

In the present case there was the danger that if the village Mahárs paid Rs. 300 for restoration to office, they might make the enterprise profitable by illegal or dishonest practices. On these considerations we infer that the act done is a misdemeanour, and, therefore, such as the law strikes at by penalties. (See *Queen-Empress* v. *Ganesh*[2], followed in *Queen-Empress* v. *Soshi*

(1) I. L. R., 13 Bom., 600 at p. 616. (2) I. L. R., 13 Bom., 506.

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*Bhushan*[1]. The answer to an argument of the learned counsel that the village people were equally concerned in the bargain is that such a circumstance does not lessen the misdemeanour. The principle applied to the Member of Council of Madras by the King's Bench on a criminal information—*Rex* v. *Hollond*[2]—applies here. The accused officer is liable for his own acts and omissions as well as for what he did in concert. We confine our remarks to the present case, as we concede to Mr. Kirkpatrick that there may easily be cases apparently within the words of section 161 which are outside its spirit. (See Lord Macaulay's Note E. on the Penal Code : and what is said by the Judges as to corruption in *Richardson* v. *Mellish*[3], which illustrates the care required in forming a judgment on the quality of the motive, and the difference between an office and an employment.)

As regards the case before us, we think the objections taken by Mr. Kirkpatrick to the danger of a wide interpretation are met by the judgments in *Douglas* v. *The Queen*[4], construing the scope and intent of 33 Geo. 3, c. 52, s. 62. While upholding the conviction, we are of opinion that the publicity of the bargain should weigh in reducing the punishment. The facts as found by the learned Judge, with whom we concur, appear to show the absence of corrupt or oppressive motive : and the pátel's conduct may be explained by referring it to a wish to end quarrels and promote a public object. We have already admitted him to bail, and we now reduce the sentence to one of fine of Rs. 10 only.

(1) I. L. R., 15 All., 210 at p. 218.
(2) 5 T. R., 607.
(3) 2 Bing., 229.
(4) 13 Q. B., 74.

## APPELLATE CIVIL.

*Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.*

1893.
*January* 14

GANGADHAR RAGHUNATH JOSHI (ORIGINAL DEFENDANT), APPELLANT, *v.* DAMODAR MOHANLAL GUZARA'THI (ORIGINAL PLAINTIFF), RESPONDENT.*

*Contract—Condition against sub-contract—Sub-contract made notwithstanding condition—Suit by sub-contractor—Illegality of sub-contract—Damages—Compensation for work done—Contract Act (IX of 1872), Sec. 23.*

* Second Appeal, No. 684 of 1891.