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 22 G. 654=1  
 C. L. J. 364.

is only one other observation of the learned vakil for the appellant, to which I need make a reference. He suggested that the rule against splitting up of claims embodied in section 43 is not of such fundamental importance as to justify this Court in extending its application to the case of a defendant, who claims a set-off under section 111, when by its very terms the rule is limited to a plaintiff in a suit; and as an illustration, he referred to the case of *Ram Soondur Sein v. Krishno Chunder Goopto* (1), where Mr. Justice Jackson held that it was questionable whether the corresponding section of the Civil Procedure Code of 1859 (section 7, Act VIII of 1859) was applicable to rent suits under Act X of 1859. The doubt, however, which that learned Judge expressed, was obviously based on the ground that Act X of 1859 was a complete Code in itself and could not be supplemented by the incorporation of the provisions of other Codes; see *John Poulson v. Madhusudan Pal Chowdhry* (2), *Unnoda Persaud Mookerjee v. Kristo Coomarr Moitro* (3) and *Nagendro Nath Mullick v. Mathura Mohun Parhi* (4). The question on the other hand, which we have to consider, is the true meaning and effect of two provisions of the law, which find a place in the same Code; the relation between these must obviously be determined upon entirely different principles.

The result, therefore, is that the decree made by the Court below must be affirmed, and this appeal dismissed with costs.

*Appeal dismissed.*

32 C. 664 (=2 Cr. L. J. 512.)

[664] CRIMINAL REVISION.

*Before Mr. Justice Henderson and Mr. Justice Geidt.*

BHAGWATI SAHAI v. EMPEROR.\*

[4th April, 1905.]

*Public servant—Clerk to a Sub-Registrar—Illegal gratification—Penal Code (Act XLV of 1860), ss. 21, 161—Registration Act (III of 1877), ss. 6 to 14, 69, 84.*

A clerk appointed by a Sub-Registrar and paid out of an allowance given to the Sub-Registrar is not a "public servant" within the meaning of s. 21 of the Penal Code.

RULE granted to Bhagwati Sahai, the petitioner.

On the 17th of September, 1904, the Magistrate of the district who is also Collector and District Registrar, went to Bihpur (in the district of Bhagalpur) and while he was in camp a petition was presented to him complaining against the petitioner, who was the Head Clerk in the Sub-Registrar's office at Bihpur, to the effect that the complainant, Srinandan Singh, went on the 16th of September to the Bihpur Registry office to get a document registered; and, according to the usual practice, the document was made over in the first instance to the Head Clerk to see, if there were any corrections to be made; that when the deed was given to the Head Clerk he demanded a bribe of Rs. 2-8 as *tehrir*, and when this was refused he threw the deed down, but finally accepted it when Rs. 2 was paid by the complainant.

The District Magistrate at once made what enquiry was possible and ordered the petitioner to be prosecuted. In the result, the petitioner was

\* Criminal Revision No. 127 of 1905, against the order of W. H. Vincent, Sessions Judge of Bhagalpur, dated Jan. 16, 1905.

(1) (1872) 17 W. R. 320.

(2) (1865) B. L. R. Sup. Vol. 101.

(3) (1872) 19 W. R. 5.

(4) (1891) I. L. R. 18 Cal. 368.

convicted by the Deputy Magistrate of Bhagalpur under section 161 of the Penal Code, and sentenced to six months' rigorous imprisonment and a fine of rupees fifty.

[665] On appeal preferred by the petitioner, the Sessions Judge of Bhagalpur refused to interfere with the decision of the Deputy Magistrate, holding that the charge of taking the bribe was a true one; and he dismissed the appeal. As to the conviction of the petitioner under s. 161 of the Penal Code, the learned Judge observed as follows:—

"It is alleged that the case does not come under section 161 of the Penal Code, but obviously, if the money was taken, it was taken by a public servant for the purpose of showing favour to the complainant in the exercise of his duties as Head Clerk to the Sub-Registrar."

The petitioner then moved the High Court on the ground, amongst others that the conviction of the petitioner under s. 161 of the Penal Code was illegal, inasmuch as he was not a "public servant" within the meaning of s. 21 of the Penal Code, and obtained this Rule on that ground only.

Mr. P. L. Roy and Babu Lakshmi Narain Singh, for the petitioner.

The Deputy Legal Remembrancer (Mr. Douglas White), for the Crown.

HENDERSON AND GEIDT JJ. This rule raises a somewhat difficult question of law, namely, whether the petitioner who has been convicted under section 161 of the Penal Code of the offence of taking an illegal gratification is a 'public servant' within the meaning of section 21 of the Penal Code.

The petitioner, who was a clerk in the office of the Sub-Registrar of Bihpur, was found to have taken a bribe as a preliminary to causing a document to be registered. It is necessary therefore to consider what his position was. It is conceded that he was not a public servant, unless he comes within the description "Officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty" to be found at the end of the 9th clause of section 21 of the Penal Code.

Part II of the Registration Act III of 1877, provides for the Registration establishment. Section 6 empowers the Local Government to appoint such persons, whether public officers or not, as [666] it thinks proper to be Registrars of the several districts and to be Sub-Registrars of the several sub-districts formed under the Act; and section 7 declares that the Local Government shall establish in any sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars. Sections 10 and 11 deal with the appointment of persons during the absence on duty or otherwise of the Registrar from his district or in case of a vacancy in his office. Section 12 deals with the appointment of persons to act during the absence of the Sub-Registrar or in the case of a vacancy in his office. Then section 13 empowers the Local Government to suspend, remove or dismiss "any person appointed under the provisions of the Act and to appoint another person in his stead." But it is clear that the power thus conferred is in respect of the appointment of the persons, mentioned in the preceding sections, that is to say, Registrars and Sub-Registrars and persons, who may be appointed to take their places temporarily. Section 14 enables the Local Government to assign such salaries as it deems proper to the Registering officers appointed under the Act, or provide for their remuneration by fees or partly by fees and partly by salaries, and it goes on to provide that "the Local Government may allow proper establishments for the several offices under this Act." (1)

(1) See Supplement to the Calcutta Gazette, June 14th, 1905, p. 866.

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This last provision is the only provision in Part II which refers to the establishments for the several offices.

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By section 69 the Inspector-General of Registration is empowered to make rules in respect of certain matters enumerated in the section, and such rules after having been approved by the Local Government, shall be published in the Official Gazette and shall then have the same force as if they were inserted in the Act. None of the matters in respect of which rules may be made relate to the appointment, payment or position of persons, who form the establishment of the several offices. That subject is, however, dealt with by certain instructions and orders which are set out in Chapter V of the Bengal Registration Manual published in 1901 by authority of the Bengal Government. These do not profess to have the authority of rules under the Act. Under these instructions and orders it is made a condition of the appointment of [667] a Rural Sub-Registrar that he should keep an establishment sufficient to get through the work, it being laid down that Sub-Registrars, who allow the work of the office to fall into arrears, may lose their appointments (paragraph 4). The rate of Government allowances for a Rural Sub-Registrar's office establishment is given in paragraph 121 (a). These allowances, it is said, are given in addition to rates of commission provided for elsewhere to enable Rural Sub-Registrars to pay for their establishments. They are calculated on the number of documents registered, and are given to the Sub-Registrars to enable them to pay for their own establishments. Paragraph 5 declares that no profit is to be allowed to be made out of the allowance, and it provides that a clerk should not receive less than Rs. 15 or a moharir less than Rs. 10 a month, but that a Rural Sub-Registrar, in whose office the presentation for registration does not exceed one thousand documents in the year, may be allowed to pay his moharirs not less than Rs. 8. Nowhere does the Act provide, as it does in the case of Registrars and Sub-Registrars, for the appointment of the establishment under the Sub-Registrar. It merely provides that the Local Government may allow proper establishments for the several offices under the Act, and the instructions and orders referred to show how this is done. Sub-Registrars are to keep their own establishments, and receive allowances from which they are to pay the establishments at rates which must not be less than certain minimum rates fixed; but as no profit is to be made out of the allowance, the whole allowance must be expended on the establishment. It may happen, therefore, that the allowance may fall short of the amount required to pay the minimum salary, and the balance therefore would be payable by the Sub-Registrar. That being so, it cannot, we think, be said that a clerk or moharir is an officer in the service or pay of Government or that he is remunerated by fees or commission. He is appointed by the Sub-Registrar and paid out of an allowance given to the Sub-Registrar calculated on the number of documents registered. He is therefore not a public servant within the meaning of section 21 of the Penal Code. That it was not intended that he should be treated as such would, moreover, appear from section 84 of the Act, which declares that any [668] Registering officer appointed under the Act shall be deemed a public servant within the meaning of section 21 of the Penal Code. Had it been intended that the members of the establishment should also be deemed public servants, they would, we think, have been included amongst the persons declared by section 84 to be 'public servants.'

We must hold, therefore, that the petitioner in this case was not a public servant. It follows that his conviction under section 161 of the Penal Code must be set aside. The Rule is made absolute and the conviction and sentence set aside. The fine, if paid, must be refunded.

*Rule absolute.*

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32 C. 669 (=9 C. W. N. 673=15 M. L. J. 267=1 C. L. J. 319=32 I. A. 80=2 A. L. J. 794=8 Sar. 784.)

[669] PRIVY COUNCIL.

BONOMALI ROY v. JAGAT CHANDRA BHOWMICK.\*

[*On appeal from the High Court at Fort William in Bengal.*]

[16th February and 15th March, 1905.]

*Limitation—Suit to set aside putni lease—Regulations II of 1803 and II of 1805—Putni—Limitation Act (XIV of 1850)—Alienation by Hindu manager—Legal necessity.*

In 1887 a putni lease of a portion of a zemindari was granted to the predecessors of the defendants by a male owner's widow, who had at the time no estate in the property, but was acting as manager for B, the widow of her adopted son, who was then the legal owner, and it was recited in the deed that the consideration money was to pay the Government revenue then due.

B, in 1846, adopted a son, who was the father of the plaintiff, and who attained his majority in 1856 and died in 1880. By ekrars made between her adopted son and B she was allowed to remain in possession of the property in suit for her life.

The grantor of the putni lease died in 1848 and B died in 1894.

Held by the Judicial Committee (affirming the decision of the High Court) that a suit brought in 1897 to set aside the putni lease was barred.

If it was void the period of limitation ran from the date on which it was granted; if it was voidable only by B's successor, the right of action arose on his adoption, and time would begin to run against him from the date when he attained his majority in 1856.

[*Ref.* 8 C. L. J. 542; 10 M. L. T. 468=(1911) 2 M. W. N. 589=22 M. L. J. 85=13 I. C. 7; *Fol.* 41 *Mad.* 75.]

APPEAL from a judgment and decree (3rd July 1902) of the High Court at Calcutta, reversing a decree (2nd August 1898) of the Subordinate Judge of Rajshahye.

The plaintiff Bonomali Roy appealed to His Majesty in Council.

The facts giving rise to the suit, out of which this appeal arose, were as follows :—

The property in suit consisted of the villages of Kebaripur, or Chuck Haripur, and Kharamkuri which, together with a village called Bonomali-kuri, were granted by one Hemlata Chowdhrani to Makunda Chandra Bhowmick, the predecessor in title of the [670] present respondents on a putni tenure by a deed dated 8th August 1837. The consideration for the lease was Rs. 1,000 and the rent Rs. 351 per annum, and it was recited that the money was taken to pay the Government revenue.

The original owner of the property in suit was one Krishna Chunder Roy, who in 1817 executed an anumati patra or deed empowering his widow, Hemlata Chowdhrani, to adopt a son. He died shortly afterwards, and Hemlata Chowdhrani in accordance with the deed adopted one Gour Sunder Roy, who succeeded to the estate of his adoptive father, Krishna Chunder

\* *Present* :—LORD DAVEY, LORD ROBERTSON, AND SIR ARTHUR WILSON.