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against defendant No. 2 must equally fail, for there is no evidence that the original hundi was really lost, and had not passed into the hand of this defendant *bond fide* by sale and purchase.

The result is that this appeal must be allowed, and the plaintiff's suit dismissed with all costs.

BAYLEY, J.—I think it is not necessary in this case to go into the question of custom, for the duplicate hundi and the endorsement upon it show the one distinct condition that no acceptance of the duplicate should be made if the original were once accepted, and the other that the original hundi had been accepted. The payment of the duplicate therefore by the very terms of that document is not due on the duplicate. The first hundi once accepted was an acceptance of all liability to the total amount of the bill, *viz.*, Rs. 1,000, and this suit by the plaintiff is only an attempt to make the defendant twice liable for one and the same amount. The duplicate was given by the defendant, on the mere representation of the loss of the original, as an act of grace.

I agree in reversing the judgment of the lower Courts with costs.

Appeal allowed.

[ORIGINAL CIVIL.]

Before Mr. Justice Phear,

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 June 26.

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*Contract of Service.—Suit against Government for Wrongful Dismissal—
 Public Servants.*

A suit for wrongful dismissal by one of its servants will lie against the Government.

In a suit by a subordinate officer in the P. W. D. for wrongful dismissal, against the Government, in which it was admitted that there was no time of service fixed and in which the plaintiff put in a memorandum of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government,—

Held, that the hiring was indefinite, and that although the plaintiff had bound himself to give six months' notice prior to leaving their service, there was no corresponding obligation on the Government to give notice before dismissing him. The Government, however, would not be allowed to exercise this power capriciously, or to the damage of the servant.

An indefinite hiring in India does not mean a hiring for a year. The mere payment of wages monthly is not enough to show that a hiring is a monthly hiring.

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This was a suit *in formâ pauperis*, against the Government of India, for damages for alleged wrongful dismissal, and for the recovery of certain sums amounting to Rs. 702, which the plaintiff alleged to be due to him in respect of his service.

The plaintiff was an engineer in the Public Works Department. He entered the service in May 1860, and received his dismissal in March 1870, for alleged insubordination and disobedience to orders.

The following document was produced by the plaintiff as a memorandum of agreement made between himself and the Government of India, under which he submitted he ought to have had notice given him of his discharge :—

Memorandum of Agreement between P. F. Hughes of Darjeeling, Province of Bengal, and the Secretary of State for India in Council, the 27th April 1865.

“Whereas P. F. Hughes hath entered into the service of the Government of India in the upper subordinate establishment of the Public Works Department, upon condition that he the said P. F. Hughes do deposit with Her Majesty's Secretary of State in Council, or with some officers duly authorized on his behalf, Rs. 200, upon the conditions hereinafter specified; and whereas the said P. F. Hughes hath, on this day, deposited with the Controller and examiner of Public Works Accounts in Bengal the sum of Rs. 200,—now the said P. F. Hughes doth hereby agree with the said Secretary of State for India in Council that the said Secretary of State in Council, or any officer having authority under him, shall hold and retain, and if necessary shall be at liberty to dispose of the above sum upon the following conditions,—that is to say,—That if the said P. F. Hughes has always since the commencement of his said service hitherto well and truly paid, and applied, and if the said P. F. Hughes, his executors or administrators, shall at all times hereafter well and truly pay and apply, all such sums of money, stores, or other property as he has received or shall receive, or has purchased or procured, or shall

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purchase or procure, in, by, or through the means, or by virtue or under charge of, the said service or appointment as aforesaid, according to the true intent and purpose for which the said moneys, stores, or other property have been or shall be and ought to be advanced, issued, paid or delivered, purchased or procured; and if the said P. F. Hughes has hitherto since the commencement of his said service rendered, and if the said P. F. Hughes, his executors or administrators, shall at all times hereafter render just and true accounts and particulars according to the requirements of the Controller and Examiner or Controllers or Examiners under whose orders he may have been placed or may be placed, or other duly authorized person, of the expense heretofore or hereafter incurred in all works done and all purchases made and materials and other things furnished by him or them or under his or their charge, and shall from time to time account for and refund to the said Secretary of State in Council the full amount of all such sums of money and the full value of all such stores, materials, and other property as may be justly disallowed or retrenched from his or their accounts or disbursements by the said Controller or Examiner or other person or persons having authority from the said Secretary of State in Council to audit his or their accounts or disbursements (the justice of such retrenchment or disallowance, if appealed against within two months from their being made known to the said P. F. Hughes, his executors or administrators, to be determined by the Governor General of India in Council, or such person or persons as he shall nominate and appoint to determine the matter of appeal); and if the said P. F. Hughes, his executors or administrators, shall pay and satisfy to the said Secretary of State in Council, his successors and assigns, the amount of such balance as on finally adjusting and setting the said accounts shall be found due from the said P. F. Hughes, his executors or administrators, and if the said P. F. Hughes shall and do in all things honorably and faithfully and to the best of his ability discharge the duties devolving upon him in respect of the said service and his employment for the time being, and obey and conform to all such lawful orders as shall from time to time be given him by such person or persons as shall be authorized or entitled to give him orders in his said employment, and also shall and do in all things well and truly conform to and abide by all such rules and regulations as have been or shall be made in respect of such service and employment by the Governor-General in Council or by any other competent authority; and if the said P. F. Hughes shall at any time absent himself from, quit, or neglect the service of the said Secretary of State in Council, or his

employment for the time being, without first giving six months' notice in writing to the Chief Engineer under whom he may be serving of his desire to quit the said service, or in case the said P. F. Hughes shall be guilty of any breach or neglect of orders, rules, or regulations as aforesaid, the damages arising from which breach, disobedience, or neglect cannot be estimated by the amount of pecuniary loss sustained by the Secretary of State in Council, or whereby the Secretary of State in Council shall not sustain any ascertainable pecuniary loss, then if the said P. F. Hughes shall and do in respect of each and every such default, breach or absence, disobedience or neglect, pay to the said Secretary of State in Council the sum of Rs. 200, to be paid to and recovered by the said Secretary of State in Council by way of liquidated damages and not of penalty, and which sum the said P. F. Hughes hereby agrees and binds himself to pay to the said Secretary of State in Council by way of ascertained and liquidated damages for and in respect of each and every such default, breach, absence, disobedience, neglect, or omission as aforesaid; and also if the said P. F. Hughes and his heirs, executors and administrators, or some or one of them, shall and do at all times hereafter fully and effectually indemnify and save harmless the said Secretary of State in Council, his successors and assigns, and all and every the officers and servants of Her Majesty's Indian Government of and from all and every or any losses, damages, or expenses which have accrued or happened or shall or may accrue or happen to them respectively, or any or either of them, from or by reason of any neglect or default of the said P. F. Hughes in all or any of the matters aforesaid, or from or by reason of his insolvency or bankruptcy, or that of his executors or administrators, and do and shall make good the same to the said Secretary of State in Council, his successors or assigns, or the officers or servants of Her Majesty's Indian Government respectively; then the above-mentioned sum shall be returned to the said P. F. Hughes, and the interest accruing thereon as allowed by the Government Savings' Bank shall in the meantime be paid to him as the same shall be received by the said Secretary of State in Council. But in case default shall be made by the said P. F. Hughes, his executors or administrators, in any of the particulars aforesaid, then it shall be lawful for the Secretary of State in Council to apply the said sum in and towards the liquidation of the liability of the said P. F. Hughes in respect of such default as aforesaid."

The case came on for settlement of issues.

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The following issues were settled :

1. Is the sum of Rs. 80 due to the plaintiff from the defendant in respect of the matter which is in the 2nd paragraph of the plaint alleged ?
2. Is the sum of Rs. 512 similarly due in respect of the matter in the 5th paragraph of the plaint mentioned ?
3. Is the sum of Rs. 10 similarly due as is in the 7th paragraph of the plaint alleged ?
4. Is the plaintiff entitled to any salary for any period after the 13th March 1870 ; and, if so, for how long, and at what rate ?
5. Has the plaintiff been wrongfully dismissed from his service ; and, if so, is he entitled to any sum of money by way of damages for the wrongful dismissal ?
6. Was the plaintiff by the term of his service bound to submit to being at any time dismissed by the Lieutenant-Governor of Bengal for any cause which the Lieutenant-Governor might *bonâ fide* consider to be just.

The defendant admitted the sum of Rs. 88 odd, to be due to the plaintiff.

The *Advocate-General* (with him the *Offg. Standing Counsel*), for the defendant, contended that the plaintiff had no right of suit, as he was by the terms of the Code of Regulations for the Public Works Department precluded from suing in respect of his dismissal, and that therefore no issue as to wrongful dismissal could be raised. There was no contract by the Government to engage the plaintiff for any fixed time. On the ground of policy no suit will lie. He cited *Nobinchunder Bose v. Robert O'Dowda* (1), *Johnson v. Sutton* (2), *Dawkins v. Lord Paulet* (3), *Dawkins v. Lord Rokeby* (4), *Baron de Bode v. The Queen* (5), and *Ohurchward v. The Queen* (6) : see also *Hopkinson v. Marquis of Exeter* (7), where the Courts refuse to interfere with the decision of expelling a member from a club.

The plaintiff in person, *contra*, submitted that he ought not to

(1) Unreported.

(2) 1 T. R., 510.

(3) 5 L. R., Q. B., 94.

(4) 4 F. & F., 806.

(5) 3 H. L. C., 449.

(6) 1 L. R., Q. B., 173.

(7) 5 L. R., Eq., 63.

have been summarily dismissed. He referred to the Code of Regulations of the Public Works Department, Chapter V, section 3, clause 50; Chapter IV, section 1, clauses 27, 28, 29; Sconce's Master and Servant, pages 34 and 35.

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PHEAR, J.—The question, which is now immediately before me in this suit is, what were the conditions of Mr. Hughes' service under the Government of India, as regards the duration of that service, and has the Government put an end to that service in breach of those conditions? If the Government has done so, then I may say, in reference to a portion of the learned Advocate-General's argument, I have no doubt that a suit lies against the Government to make it answerable for the breach of the terms of a contract of service, as well as for the breach of the terms of any other contract it may enter into; and that the Government itself contemplates the contingency of such a suit happening is evident from Chapter IV of the Code of Regulations, section 1 paragraph 32 (*realis*) (1). It is perhaps somewhat unfortunate that in a case where an issue of this kind is raised before the Court, for its consideration, the plaintiff has not had the advantage of professional assistance; and I have in consequence felt more difficulty in the matter than

(1) *Code of Regulations for the P. W. D. Chapter IV. Section 1 Clause 32.*— ever for the officer sued to contend that Government ought to be the defendant. The plaintiff may legally contend that he has a right to look to the party by whose act he has been aggrieved whether he could or could not have sued that party's principal. The distinction is between suits on contracts and suits for wrongs. In cases of the latter kind it will remain with the Government to determine whether it would be just and proper that the defence should be carried on at the expense of Government. In either case, failing to defend the suit or to repay to the plaintiff in person or by attorney or vakeel as the case may require, the officer or subordinate will become personally responsible."

"When any officer or subordinate in the Department is personally sued in a Court of requests, or any Civil Court, by parties claiming from him wages or money arising out of transactions in which he is concerned only in his official capacity and *bona fide* on behalf of Government, it will be necessary that he defend the suit by pleading that Government should be made the defendant as the party really interested. But when the suit is for damages in respect of an alleged wrongful act of a Government officer, the party aggrieved may, as a general rule, bring the suit against such officer, and it would be no defence what-

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probably would otherwise have been the case. I have no previous decisions to guide me. The learned Advocate-General has referred me to several English cases, among others to *Darbkins v. Lord Paulet* (1); but it appears to me they are of little service in the present matter, because they all turn on the question of the responsibility of a superior officer to an inferior for any act which may have been committed by him in alleged abuse of his authority to the detriment of the latter. Those cases do not help me to determine what in England is the customary duration of service in cases of the present kind. Generally speaking, public service may, I suppose, be classed under three forms; first, service for a term of years specified either expressly or by implication; secondly, service during the pleasure of the parties; and thirdly, a form which is, I imagine, now very unusual—service during good behaviour. This last is almost necessarily confined to the discharge of permanent officers, for it amounts in its nature to a service for life. Mr. Hughes' service clearly does not fall under this class; and as far as I can judge from the Code of Regulations, which, as Mr. Hughes admits, embodies all the essential terms of his service, and from his own statements, there has not been at any time between him and the Government any express specification of a period for which he is to serve. The hiring was, therefore, as far as I can make out, indefinite in that respect. In England, a general or indefinite hiring for personal service is commonly understood to constitute a contract of service for one year; but that is a matter of fact, and it can there be shown by evidence, if the case be so, that a given indefinite hiring is not really for a year but for a term, say less than one year. In this country there can, I think, be no doubt that an indefinite hiring does not mean a hiring for one year. It would perhaps seem more likely *a priori* that an indefinite hiring would be considered by the parties to mean a hiring for one month. I have no evidence, however, before me to show that a general understanding of this nature obtains, and I do not find any indication in the Code of Regulations of the Public Works Department,

(1) 5 L. R. Q. B. 94.

that either the Government on one side, or its servants in that department on the other, consider that an indefinite hiring is a hiring for one month. The mere payment of wages monthly is not enough to show that this was a monthly hiring in the contemplation of the parties. On the whole then, after giving the best consideration I can to the question, I think this service is one terminable at the pleasure of the parties, under certain conditions or qualifications which I will now consider. On Friday last Mr. Hughes handed in to the Court a memorandum of agreement in the nature of a security bond, by the terms of which, so far as they go, he at any rate is bound to the government during his service. And one of the terms of that agreement is that he will not leave his employment without giving six months' notice of his intention to do so; so that on Mr. Hughes' side, although he can, I think, put an end to the service at his pleasure, it is with this qualification, that he must give six months' notice before doing so. The ordinary contract of menial service in England effected by a general hiring,—*i. e.*, of service for a year certain,—may be terminated on the side of the master either by paying one month's salary or by giving one month's notice, and on the part of the servant by giving one month's notice. Mr. Hughes seemed to have this state of relations in his mind when he was arguing his case the other day, and, as I understood him, he wished me to deduce from it this inference, that in the kind of service now in question the Government cannot rightly put an end to the hiring without either giving a month's notice or paying a month's salary. But I do not think the analogy holds. The English rule with regard to the hiring of servants rests entirely on custom; and in order to apply the same rule here I must be satisfied that there is a similar custom here. But I have before me no evidence of any such custom, and I may say I believe it would be impossible to furnish evidence which would support it. I think I may safely assume that the Government has not as a fact been in the habit of giving either a month's notice or a month's wages; and in truth, the expression in the written agreement of the terms alone on which Mr. Hughes can put an end to the service, goes far to show that there was no

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corresponding limitation on the side of the Government. So that it seems to me, after the best consideration I can give to the matter, that the period of service contemplated by the parties is indefinite; that it may be put an end to by the Government at its pleasure, and by Mr. Hughes on having six month's notice. I think it right to add, that although the Government can put an end to the service at its pleasure, it would not be allowed in a Court of Equity or in a Court of Law to exercise that power capriciously to the damage of the servant. The cases of *Parker v. Lord Clive* (1) and *Vertue v. Lord Clive* (2), show that this restriction would always be taken to be an incident to power or right of this kind, pretty much, I may remark, upon the principle involved in the maxim *sic utere tuo ut alienum non lædas*. It will be well remembered that there the effect was not allowed to be given to the resignation of the military officers, although their contract of service was for an indefinite period determinable at pleasure, because the exigencies of the public service were at the time such that it was inconvenient that they should exercise their option at the particular juncture when they desired to do so (3).

Attorney for the defendant: Mr. Chauntrell, Government Solicitor.

(1) 4 Burr., 2419:

(2) 4 *Id.*, 2472.

(3) The case was heard on the merits on July 24th. Mr. Macrae appeared for the plaintiff, and a decree was given for the plaintiff for Rs. 89-0-4, the 2nd, 3rd and 4th issues being decided against the plaintiff. On the subject of costs. Mr. J., said:—

“Of Mr. Hughes' behaviour, both before the Court and in so much of the controversy as preceded the act of filing the plaint, as I have had occasion to consider, I think it right to say that it has impressed me very favourably. It is seldom indeed that a suitor pending trial

bears himself so fairly, with so much apparent honesty, and manly frankness towards his opponent as he has done. It is true that he has failed to establish the most important of his claims against the Government, but he has succeeded to a substantial extent, and it appears to me that the suit was one which, on account of the questions raised in it, it was very proper for him to bring in the superior Court. The fault, if fault there was, of making recourse to litigation necessary, is certainly not his; and I therefore direct that his costs be paid by the defendant.”