

Constitution Act. But the application does not allege any contempt of this Court. The expression "any contempt of Court" in that provision must be held to mean "any act amounting to contempt of this Court". This was the view expressed in *Gauba's* case ⁽¹⁾ and we have been shown no reason for departing from that view. Under the Indian law the High Courts have power to deal with contempt of any Court subordinate to them as well as with contempt of the High Courts. It could not have been intended to confer on the Federal Court a *concurrent* jurisdiction in such matters. The wider construction may conceivably lead to conflicting judgments and to other anomalous consequences.

The application is dismissed.

Petition dismissed.

Agent for the Petitioner: *B. Banerji.*

Agent for the Opposite Party: *Rajinder Narain.*

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M. L. BANNERJEE *v.* THE KING EMPEROR.

AND

J. C. BHATTACHARJEE *v.* THE KING EMPEROR.

[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR
 and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

Government of India Act, 1935, ss. 240, 241—Criminal Procedure Code (Act V of 1898), s. 197—Indian Penal Code (Act XLV of 1860), ss. 34, 161—Railway servant holding Emergency Commission—Prosecution for receiving illegal gratification—Sanction of Governor-General, whether necessary—"Some higher authority", meaning of.

The expression "some higher authority" in s. 197 of the Criminal Procedure Code refers to the Central Government, the Governor-General and the Secretary of State. It cannot be construed as meaning "any officer of the Central Government".

Where a railway Goods and Yard Supervisor who had been granted an Emergency Commission and a Shed Inspector who had been made a Warrant Officer were prosecuted for an offence under s. 161 read with s. 34 of the Indian Penal Code and it was contended on their behalf that they were public servants who were

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not removable from office save by or with the sanction of an authority higher than a Provincial Government within the meaning of s. 197 of the Criminal Procedure Code and could not therefore be prosecuted without the sanction of the Governor-General under that section :

Held, that they were not within the class of public servants to whom the provisions of s. 197 of the Criminal Procedure Code would be applicable and sanction under that section was not therefore necessary for prosecuting them.

APPEALS from the High Court of Judicature at Calcutta. Criminal Appeals Nos. VIII and IX of 1944.

The material facts appear from the judgment. The appeals were heard together. Their Lordships first heard counsel on the constitutional questions involved in the cases.

1944. Dec. 12. *J. P. Mitra* (S. N. Mukherjee with him) for the appellant in Criminal Appeal No. VIII of 1944. The question raised under s. 270 (1) of the Constitution Act is concluded by the judgment of this Court in *Hentley's* case⁽¹⁾. The appellants, however, could not have been prosecuted without sanction under s. 197, Criminal Procedure Code. Once a Commission has been granted to a railway officer he cannot be dismissed without the sanction of G. H. Q. The appellant's capacity as a Second Lieutenant cannot be dissociated from the office of railway servant. They are not separate but co-terminous. A commission is given in virtue of his office as a railway servant. Under ss. 240 and 241 of the Constitution Act only the Governor-General or a person empowered by him could dismiss the accused. G. H. Q. is an authority higher than the Provincial Government. The Chief Commercial Manager, being an officer of the Central Government, is also an authority higher than the Provincial Government. In any case sanction under s. 197 was necessary.

Sardar Raghbir Singh for the appellant in Criminal Appeal No. IX of 1944. The arguments advanced in favour of the appellant in Criminal Appeal No. VIII of 1944 apply to the appellant in this case also as he is a Warrant Officer.

(1) [1944] F.C.R. 262.

Sir Brojendra Mitter (K. K. Raizada with him) for the respondent in both appeals. The expression "higher authority" in s. 197, Criminal Procedure Code, does not include G. H. Q. or all officers of the Central Government. It refers only to the Central Government, the Governor-General and the Secretary of State. Section 197 as it stood originally referred to the Local Government and Government of India only. These words were substituted to include the Secretary of State also. This amendment was made when the unitary constitution prevailed. In any event the appellants are not entitled to the benefit of s. 197. The old as well as the new rules both provide for delegation of powers by the Governor-General. Section 241 of the Constitution Act has no application at all. It applies only to appointments made after 1st April, 1937. The appellants have not shown that they were appointed by a "higher authority".

Counsel for the appellants were then heard on the merits with the leave of the Court.

Cur. adv. vult.

Dec. 13. The judgment of the Court was delivered by SPENS C. J.—These two appeals may be disposed of together. The appellant in Criminal Appeal No. VIII of 1944, Bannerjee, was in December 1942 officiating Goods and Yard Supervisor at Sealdah, which is the Calcutta terminus of the Bengal Assam Railway, and the appellant in Criminal Appeal No. IX of 1944, Bhattacharjee, was at that time Shed Inspector at Sealdah. Bannerjee was then holding an Emergency Commission as a Second Lieutenant and Bhattacharjee had been made a Warrant Officer. They were charged under s. 161 read with s. 34 of the Indian Penal Code, with having received from Dud Nath Pandey (P. W. 2) on the 31st December, 1942, the sum of Rs. 250 as a motive or reward for allotting to the firm on whose behalf Pandey represented himself to be acting, a wagon for the transportation of bales of cloth from Sealdah to Kisenganj. They were convicted by the Additional District Magistrate, 24 Purganas, and each of them was sentenced to undergo one year's rigorous

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imprisonment and to pay a fine of Rs. 500 and in default of payment of fine to suffer further rigorous imprisonment for three months. Their appeals to the Sessions Judge, 24 Purganas, and their Revision Application to the Calcutta High Court were dismissed. From the judgment of the High Court these appeals were preferred, supported by the usual certificate under s. 205 of the Constitution Act.

The constitutional question raised on behalf of the appellants before the High Court under s. 270 (1) of the Constitution Act was not sought to be re-agitated before us. It was conceded that it was concluded by the judgment of this Court in *Huntley's* case ⁽¹⁾. Some attempt, similar to that in *Afzalur Rahman's* case ⁽²⁾, was made to raise a constitutional point on the construction of ss. 240 and 241 in order to support an argument really based on s. 197 of the Criminal Procedure Code, that the cases must fail for lack of the necessary sanction under that section, inasmuch as the appellants were public servants who were not removable from their office save by or with the sanction of an authority higher than a Provincial Government, and the offence with which they were charged was alleged to have been committed by them while acting or purporting to act in the discharge of their official duty.

The appellants have in our judgment failed to establish that they were public servants who could be removed from their office only by some authority higher than a Provincial Government. The only evidence on the record on that point is a statement by P. W. 4, Mozumdar, who is a District Traffic Superintendent on the Bengal Assam Railway, to the effect that the Goods Supervisor and the Shed Inspector are subordinate to the Chief Transportation Manager and the Chief Commercial Manager who can jointly dismiss them. It was suggested that these officers, being officers of the Central Government, were "an authority higher than a Provincial Government". We are unable to accept this suggestion. To construe this expression as meaning any officer of the Central Government would lead to patent absurdities.

(1) [1944] F. C. R. 262.

(2) [1943] F.C.R. 7.

Having regard to the juxtaposition in which this expression occurs in s. 197 of the Criminal Procedure Code and the history of the enactment, we consider that the expression has reference to the Central Government, the Governor-General and the Secretary of State.

It was contended on behalf of Bannerjee that he had been given a Commission as Second Lieutenant by virtue of his position as a Goods and Yard Supervisor and that as he could be deprived of his Commission only by G. H. Q. he could not be removed from his office of Goods and Yard Supervisor except with the sanction of G.H.Q. which was an authority higher than a Provincial Government. Beyond the fact that in December 1942, Bannerjee held an Emergency Commission as a Second Lieutenant there is not a word on the record to indicate that he could not be dismissed from his office of Goods Supervisor without the sanction of G.H.Q. Nor are we inclined to accept the proposition that "G.H.Q." (whatever that expression may signify) is an authority higher than a Provincial Government within the meaning of s. 197 of the Criminal Procedure Code.

A similar contention was sought to be raised before us on behalf of Bhattacharjee, but counsel realising that his case could not in this respect stand on any higher footing than that of Bannerjee, did not press the point. That may also be the reason why this point was not taken on his behalf before the High Court.

In our judgment it has not been established that the appellants are within the class of public servants to whom the provisions of s. 197 of the Criminal Procedure Code would be applicable. In this view of the matter it is unnecessary to determine whether the offence with which they were charged was or was not alleged to have been committed by them while acting or purporting to act in the discharge of their official duty.

We were, with our leave, also addressed on behalf of the appellants on the merits, but nothing that was urged before us served to raise any doubt in our minds with regard to the correctness of the findings of the Courts below. The evidence clearly establishes the guilt of the appellants beyond any reasonable doubt and the

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sentences are, in our judgment, appropriate. These appeals are dismissed.

Appeals dismissed.

Agent for the Appellant in Appeal No. VIII: *Ganpat Rai.*

Agent for the Appellant in Appeal No. IX: *Ranjit Singh Narula.*

Agent for the Respondent in both appeals: *B. Banerji.*

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**BANK OF COMMERCE, LTD. v. KUNJA BEHARI KAR
 AND UPENDRA CHANDRA KAR.**

BANK OF COMMERCE, LTD. v. PROFULLA KUMAR MUKHERJEE.

BANK OF COMMERCE, LTD. v. KEDAR NATH BASU.

BANK OF COMMERCE, LTD. v. LALIT MOHAN MAZUMDAR.

BANK OF COMMERCE, LTD. v. ABDUL HAKIM.

BANK OF COMMERCE, LTD. v. SARALA BALA BASU.

BANK OF COMMERCE, LTD. v. MANMATHA NATH CHAKRAVARTY.

(Cases Nos. V to XI of 1944).

**BANK OF COMMERCE, LTD., v. NRIPENDRA NATH
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BANK OF COMMERCE, LTD. v. BIBHUTI BHUSAN GHOSH & OTHERS.

BANK OF COMMERCE, LTD. v. SARADA CHARAN BHATTACHARJEE.

BANK OF COMMERCE, LTD. v. TARAPROSAD RAHA.

(Cases Nos. I to IV of 1944.)

[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR
 and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

Bengal Money-Lenders Act (X of 1940) ss. 2(12), 3, 8, 13, 30, 36, 38—Negotiable Instruments Act (XXVI of 1881), ss. 32, 79, 80—Government of India Act, 1935, ss. 100, 107; Sch. VII, List I, entries Nos. 28, 38; List II, entry No. 27; List III, entry No. 10—Legislative powers—Provincial Legislature—Law regulating money-lending and money-lenders—Provision fixing maximum rate of interest and total amount recoverable on loans including promissory notes and for registration and licensing of money-lenders—Validity of Act—Encroachment on 'negotiable instruments' and 'banking'—Scope of entries Nos. 28 and 38 of List I—Meaning of 'banking'—Severability of Act—Tests of validity of Provincial legislation—Scope of the doctrines of pith and substance, and incidental encroachment.

The provisions of ss. 30, 36 and 38 of the Bengal Money-Lenders Act, 1940, affect the rules enacted by ss. 32, 79 and 80 of the Negotiable Instruments Act so substantially that it is impossi-