

Before Mr. Justice Ainslie and Mr. Justice Broughton.

1878
Dec. 10.

IN THE MATTER OF THE PETITION OF MODUN MOHUN.*

*Penal Code (Act XLV of 1860), cl. 9, s. 21 & s. 161—Illegal Gratification—
Public Servant.*

The manager of a Court of Wards Estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. *B*, a poddar in the Bank, demanded and took a reward for his trouble in receiving the money. On *B* being prosecuted and charged under s. 161 of the Indian Penal Code, *held*, that although the money might have been paid on account of Government, it was on behalf of the Bank, and not on behalf of the Government, that the money was received by the accused; and that the Poddar was a servant of the Bank only, and not a public servant within the meaning cl. 9, s. 21 of the Penal Code.

THIS was an application to the High Court for revision under s. 297 of the Criminal Procedure Code.

It appeared that, in June 1875, one Kasi Chunder sent, under an escort of his own men, a sum of Rs. 1,901, to be deposited with the Dacca Branch of the Bank of Bengal, on account of a certain estate of which he had been appointed manager by Government. This Branch of the Bank of Bengal was made use of by Government, the Bank being in the habit of receiving monies paid on behalf of Government; and it was also used as the Government treasury.

On the money above-mentioned arriving at the Bank for the purpose of being deposited, one Modun Poddar, a servant of the Bank, refused to receive it unless he previously was paid a sum of Rs. 5 for his trouble. Eventually one rupee was paid to the Poddar by one Govinda Chunder Gangooli, one of the servants in charge of the money.

The manager of the estate complained to the Collector of the district, who directed him to lodge a complaint against the Poddar for receiving money, other than a legal gratification, for doing an official act, he being at the time a Poddar of the

* Criminal Motion, No. 202 of 1878, against the order of C. B. Garrett, Esq., Sessions Judge of Zilla Dacca, dated the 24th of August 1878.

Government treasury at the Bank, and as such, a "public servant." On the case coming on for hearing, the Deputy Magistrate found that the accused was guilty of the offence specified in the charge under s. 161 of the Penal Code, and directed that he should be fined 80 rupees, or, in default, should undergo rigorous imprisonment for one month.

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The Poddar appealed to the Sessions Judge, who, however, dismissed the appeal, holding that a Poddar of the Dacca Branch of the Bank of Bengal was a public servant, and as such, having received an illegal gratification, he had been rightly convicted by the Magistrate.

The Poddar thereupon applied to the High Court under s. 297 of the Criminal Procedure Code to have the sentence and conviction set aside.

Baboo *Jugesh Chunder Dey* and Baboo *Hurri Mohun Chuckerbutty* for the petitioner contended, that the Poddar was one of several Poddars in the Bank, all of whom were appointed exclusively by the Khazanchi of the Bank; that no separate Poddars were appointed to receive Government remittances; and that, under these circumstances, the lower Courts were wrong in holding him to be a public servant as defined by cl. 9, s. 21 of the Penal Code.

The *Junior Government Pleader*, Baboo *Juggadanund Mooharjee*, for Government.

The decision of the Court was delivered by

AINSLIE, J.—We are of opinion that the conviction of the petitioner under s. 161, Penal Code, is bad in law. The Magistrate takes it for granted that a Poddar of the Bank of Bengal is a public servant within the meaning of cl. 9, s. 21 of the Penal Code. The Sessions Judge has given certain reasons for coming to the same conclusion, but neither Court appears to have thought it necessary to consider the point with reference to any evidence bearing thereon, and the learned *Junior Government Pleader*, who has appeared to support the conviction, is unable to show that there is any.

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The Sessions Judge has fallen into error by varying the words of the Act. He says it was the duty of the prisoner to take money paid in on account of Government. The definition of a public servant, which, if any, is applicable to this case, runs, "every officer whose duty it is as such officer to take on behalf of Government."

It may be that the money was paid by the Court of Wards manager on account of Government; but it was on behalf of the Bank, and not on behalf of the Government, that it was taken by the accused. He was the servant of the Bank, and if he had in any way failed in his duty, any consequent loss would have fallen upon the Bank, and not upon the Government, which, in making this deposit, was dealing with the Bank as any other constituent might have done.

The conviction and sentence are set aside. The fine, if paid, is to be refunded.

Conviction set aside.

Before Mr. Justice Jackson and Mr. Justice McDonell.

1878
 Nov. 28.

IN THE MATTER OF THE PETITION OF MACKENZIE v. SHERE BAHDOR SAHI.*

Possession—Butwara Proceedings—Possession given by Ameen, Effect of—Criminal Procedure Code (Act X of 1872), s. 530.

The possession given by an ameen in a butwara proceeding is simply one of ownership and not of occupancy. Such possession cannot, therefore, in proceedings under s. 530 of the Code of Criminal Procedure, be held to oust tenants occupying lands previous to such delivery of possession.

The petitioner in this case had obtained leases of two respective plots of land, part of the joint and undivided estate of the respondent and certain other co-proprietors. A partition was afterwards effected between these proprietors, and a portion of the

* Criminal Motion, No. 198 of 1878, against the orders of C. F. Worsley, Esq., Magistrate of Muzufferpore, dated the 18th September 1878.