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imprisonment and has now no hope of reward or expectation of punishment. It is difficult for us to see how the principles to which we have referred apply to him. No doubt, having been a receiver of stolen property with a guilty knowledge, and having suffered imprisonment, his character is such that his evidence requires to be scrutinized and carefully considered in connection with the other circumstances of the case. The Courts below seem to have examined the facts with a great deal of care, and they have come to the conclusion that there was no reason to disbelieve the direct testimony of Dusain. They do not ignore the fact that he was a receiver of stolen property, or that he had been in jail, yet the First Court which had the witness before it and the Appellate Court which dealt with the evidence, have both come to the conclusion that his evidence may be accepted. It is difficult for us to say that they are wrong in accepting his testimony, nor are we in a position to say, giving every consideration to Mr. Roy's argument, that circumstances are wanting to support the positive testimony. On the whole, therefore, after a careful consideration of the case we are of opinion that the conviction ought not to be interfered with, and we accordingly discharge the Rule. The accused being on bail must surrender to undergo the remaining portion of his sentence.

D. S. *Rule discharged.*

Before Mr. Justice Prinsep and Mr. Justice Handley.

NAZAMUDDIN (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

1900 *July* 9.

Public servant—Peon attached to office of Superintendent of the Salt Department—Manager of Estate under Court of Wards—Penal Code (Act XLV of 1860), s. 21, cl. 9.

An officer in the service or pay of Government within the terms of s. 21, cl. (9) of the Penal Code, is one who is appointed to some office for the performance of some public duty.

* Criminal Revision No. 404 of 1900, made against the order passed by A. E. Staley, Esq., Sessions Judge of Tirhoot, dated the 12th May 1900, affirming the order of F. P. Dixon, Esq., Joint Magistrate of Muzafferpur, dated the 11th of April 1900.

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Held, that a peon in the service and pay of Government and attached to the office of a Superintendent of the Salt Department is a public servant. *Held*, further that a Manager of an estate under the Court of Wards is not a public servant.

Reg. v. *Ramajirav Jivbajirav* (1) and *The Queen* v. *Arayi* (2) referred to. *Queen-Empress* v. *Mathura Prasad* (3) dissented from.

THE accused was a peon employed in the Salt Department, and was, on the 3rd December 1899, attached to the camp of Mr. Neem, the Superintendent of Salt Revenue at Hajipur. On that day, as it was Sunday, Mr. Neem ordered his office to be closed, and the issue of saltpetre licenses to be stopped except by his Inspector. Shortly after giving these orders Mr. Neem came out of his tent to see that they were being carried out, and caught the accused in the act of taking expired licenses and a fee of eight annas each from sixteen *nunias*. The accused was charged and convicted under s. 161 of the Penal Code of having as a public servant received illegal gratification. The accused appealed to the Sessions Judge of Tirhoot, who, on the 12th May 1900, dismissed his appeal.

Mr. *Abdur Rahim* (with him M. *Mahomed Ishfak*) for the petitioner.

The judgment of the Court (PRINSEP and HANDLEY, JJ.) was delivered by

PRINSEP, J.—The petitioner, who is a peon attached to the office of the Superintendent of the Salt Department in the District of Muzafferpore, has been convicted under s. 161 of the Indian Penal Code.

The first question that we have to consider on this rule is whether the petitioner is a public servant within the terms of s. 21 of the Indian Penal Code. It is contended by Mr. Abdur Rahim that he does not fall within the terms of the last portion of clause 9 of that section, which declares that "every officer in the service or pay of Government" is a public servant, because he is not an officer. The case of *Reg.* v. *Ramajirav Jivbajirav* (1) is cited as

(1) (1875) 12 Bom. H. C. R., 1.
(2) (1883) I. L. R., 7 Mad., 17.
(3) (1898) I. L. R., 21 All., 127.

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authority for this. The learned Judges in that case had to consider whether a lessee from Government was on the conditions of his lease a public servant, and, in doing so, they considered generally the meaning of the term "officer." It was there held that an officer means "some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. He is either armed with some authority or representative character, or his duties are immediately auxiliary to those of some person who is so armed." The meaning which we are asked to put on these words seems to us to be too narrow as applied to the present case. The peon who has been convicted as a public servant is in service and pay of the Government, and he is attached to the office of the Superintendent of the Salt Department. The exact nature of his duties is not stated, because this objection was not taken at the trial, but we must take it that, from the nature of his appointment, it was his duty to carry out the orders of his official superior, who undoubtedly is a public servant, and in that capacity, to assist the Superintendent in the performance of the public duties of his office. In that sense he would be an officer of Government, although he might not possibly exercise "any delegated function of the Government." Still his duties would be "immediately auxiliary to those of the Superintendent who is so armed." We think that an "officer in the service or pay of Government" within the terms of s. 21 of the Penal Code is one who is appointed to some office for the performance of some public duty. In this sense the peon would come within s. 21, cl. 9.

Our attention has been drawn to *The Queen* v. *Arayi* (4) in which the learned Chief Justice held that a peon of a Manager of an Estate under the Court of Wards is not a public servant. The grounds for that opinion are not stated; and it may be that the learned Chief Justice would have gone so far as to hold that a Manager of an estate under the Court of Wards is not a public servant. Mr. Abdur Rahim, we may here state, contends that such a Manager is a public servant, and, as authority for that, he relies on the case of *Queen-Empress* v. *Mathura Prasad* (5), in

(4) (1883) I. L. R., 7 Mad., 17.
(5) (1898) I. L. R., 21 All., 127.

which it was held by Mr. Justice Aikman that a Manager of an Estate employed under the Court of Wards is a public servant. We find ourselves unable to agree with that case, or to concur with the grounds upon which the learned Judge arrived at that conclusion. With every deference to his opinion we think that the grounds stated are sufficient for the contrary opinion which we hold. The fact that the Legislature has thought proper in Act XVII of 1885, specially to declare that a Manager of an Estate under the Court of Wards in the Central Provinces is a public servant seems to us to show that it was considered that, as under the existing law such person did not come within that term, it was necessary to provide for this. We may also point to the fact that in all legislation for the management of encumbered estates, a cognate subject, the legislature has thought proper specially to declare that a manager is a public servant, and we may add that, under the terms of the definition contained in s. 21 of the Penal Code, the Manager of an Estate under the Court of Wards is not, in our opinion, a public servant. The point, however, is relevant for the purposes of the case before us only in so far as it meets the contention of the learned Counsel, that the case of *The Queen v. Arayi* (6) is in point, and here we would only repeat that the learned Chief Justice in that case gives no reason for his opinion, and it may be that he would also have held that the Manager was not a public servant.

It is next contended by Mr. Abdur Rahim that, on the facts found, no offence has been committed. We are, however, of opinion that the facts found indicate that the object of the illegal gratification was to render a service to the persons paying it and that therefore an offence under s. 161 has been committed. The rule is, therefore, discharged.

D. S. *Rule discharged.*

(6) (1883) I. L. R., 7 Mad., 17.