Referred Case.

1867.
March 7.

GREAVES and others *v.* BHAGVA'N TU'LSI.

Municipal Commissioner—Public Servant—Acts done in Public capacity—Jurisdiction—Reg. II. of 1867, Sec. XLIII—Act XXVI. of 1850.

Held, that a Municipal Commissioner, appointed under Act XXVI. of 1850, is a public servant within the meaning of Reg. II. of 1827, Sec. XLIII.; and that, consequently, a Munsif has no jurisdiction to try a suit brought against him for acts done in his public capacity.

CASE referred for the decision of the High Court, under Sec. 28 of Act XXIII. of 1861, by J. R. Naylor, Senior Assistant Judge of the Súrat District, at Broach.

"Bhagván Túlsi brought a suit in the Court of Munsif No. 1 of Broach against the President and certain members of the Broach Municipal Commission, and against Mr. Macarthy, a Municipal servant, to compel them to rebuild an *oṭá* or verandah, which they were alleged to have illegally caused to be pulled down, in front of the plaintiff's house; or, in the event of such a decree not being passed, the plaintiff claimed Rs. 150 as damages.

The Munsif heard the case, and awarded Rs. 150 damages with costs against certain of the members, and against Mr. Macarthy, a municipal servant, and directed that the costs incurred by the president and other members of the municipality, against whom the decree was given, be borne by the plaintiff.

"Against this decision, the president, Mr. Macdonald, one of the members, Mr. Greaves, and the municipal servant, Mr. Macarthy, have appealed to this court: urging as a preliminary point that the Munsif, under Sec. 43 of Reg. II. of 1827, exceeded his jurisdiction in trying the case.

"My own opinion upon the point raised, and the reasons for this reference, will be gathered from the following extract from my finding on the 2nd issue in the case:—

"I now come to the next important issue of all in this case, namely, whether the Munsif, in entertaining this suit, exceeded his jurisdiction. The question turns upon the

1867.
GREAVES et al. v. BHAGVA'N TU'LSI.

point, whether the defendants are *public servants*, and whether the suit is brought for acts done by them in their *public capacity*, within the meaning of Sec. 43 of Reg. II. of 1827. (*a*)

"In considering this question it must be borne in mind that the suit is not against the municipality as a corporation or a company, but against certain members, and one of the servants of the municipality, personally. The recovery of damages was not sought by the plaintiff from the municipal funds; but from the defendants personally. The decree also passed by the Munsif is against certain of the defendants personally, and not against the municipality as a corporate body.

"Now, does Sec. 43 of Reg. II. of 1827 except municipal commissioners and their servants from the jurisdiction of the subordinate Native Judges?

"The Municipal Act having been passed in the year 1850, it is quite clear that the Legislative authorities could not have had municipal commissioners in contemplation when framing the Regulation of 1827. But, in framing that Regulation they thought proper to except public servants generally from the jurisdiction of the Native commissioners, with respect to acts done by them in their public capacity; and in order to ascertain, whether the defendants in this case can claim that exception, we have to decide whether they are public servants or not.

"Who is a public servant? The Munsif has recorded his own opinion that public servants are only those who are employed in Government Offices. But I cannot concur.

(*a*) Sec. 43:—"If whilst a suit is pending it shall appear that either of the parties * * * is related to the Commissioner (*b*), or is his servant or dependant; that the Commissioner is personally interested in the suit; that the defendant is a public servant, and that the suit is brought for acts done by him in his public capacity, * * * he shall stay further proceedings, and send up such suit to the Judge, or the Judge may require him to do so, and in either case the Judge may try the suit himself, or refer it to any competent authority for that purpose."

(*b*) The Native Commissioners or Judges were divided into three classes by Reg. XVIII. of 1831, and their designations were altered, by Act XXIV. of 1836, to those of Principal Sadr Amin, Sadr Amin, and Munsif.—ED.

Interpreting the Regulation, it must, I think, be interpreted liberally. The words used must be read with their ordinary and full meaning. There is no reason to suppose that in framing the above Regulation, the framers intended to give immediate servants of Government any additional privilege over and above other public servants. In fact, the Munsif, in his interpretation of the law, has substituted the words '*Government servant*' for '*public servant.*' It is true that all Government servants are public servants; but all public servants need not necessarily be Government servants. A public servant is simply a servant of the public, and is to be distinguished from all other servants in this, that whatever he does in his capacity of public servant, he does, on account of the public, and not for the the sake of, or in behalf of, a certain ascertainable master or masters. A private servant works for the interest of a certain person, or a certain partnership of persons; whereas a public servant performs his duties in the interest of everybody residing in or connected with the sphere of his labours. This is, as I understand it, the ordinary and full meaning attached to the words "public servant;" and without doubt municipal commissioners and their servants *(employés)* come within the meaning of the term.

"There is a definition of the words '*public servants*' given in the Indian Penal Code, Sec. 21, which, of course, is only binding when we wish to ascertain the meaning of the term as used in that Code; but that definition is, nevertheless, useful, as showing that the words 'public servants' are fairly applicable to a municipal commissioner, without in any way straining the meaning of the words, because that definition by no means includes any person whom one would not habitually call a public servant.

"The evidence clearly shows that the acts complained of were done by the defendants in their capacity of municipal commissioners. Mr. Macarthy is a servant of the municipality; and what he did was done in his capacity as servant. I have, therefore, no hesitation in saying that the acts done by the defendants for which the

1867.

GREAVES *et al.* v. BHAGVA'N TU'LSI.

suit is brought, were done by them in what I consider to be their *public capacity*.

The only disputed point is whether the defendants, in their capacity of commissioners, and of a servant of the municipality, respectively, are public servants. For the above recorded reasons, I consider that they are, and that, therefore, under Sec. 43 of Reg. II. of 1827, the Munsif exceeded his jurisdiction in inquiring into and determining the suit.

"In the event of my decision upon this point being as it is, the vakíls for the respondents applied that a statement of the case might be drawn up and submitted for the decision of the High Court, and drew my attention to a copy of a decision in a special appeal passed by the court on the 5th of April 1864, from which it is clear that the suit in that case, being against municipal commissioners, was tried, by the Principal Sadr Amín of Súrat; and that no objection was raised to his jurisdiction. If the point was not raised, it may well be that it escaped observation; but the fact that no exception was made, leaves some doubt in my mind. I understand also that there are other similar cases pending in the lower court, the proceedings in which must depend upon the issue in this case. I think, therefore, there is reason for acceding to the vakil's application.

"I may mention that several of the defendants in the original case were *ex-officio* members of the Commission, in accordance with Bombay Act IX. of 1862, Sec. 2.

The case was heard before COUCH, C.J., and NEWTON, J.

Nánábhái Haridás, for the plaintiff:—When Reg. II. of 1827 was passed, the terms "*Government servants*" and "*public servants*" meant the same thing. This appears from the Regulation itself, for the terms "Government servants," "public officers," and "public servants" are used in it without any distinction. Up to 1850, when the Municipal Act was passed, there were no other public servants but servants of Government. The Municipal Act does not say that persons

acting in pursuance of that Act shall be public servants; they cannot be public servants under Reg. II. of 1827. In the Penal Code a municipal commissioner is a public servant; but that is so far as that Code goes, and no further. The definition of a public servant in that Code is much wider than what the term meant before 1850. Under Reg. II. of 1827 no one would have contended that a member of a panchâyat was a public servant. It is not correct to suppose, as the Assistant Judge seems to do, that he who serves the public is a public servant. Then the Nagarsheṭ and Mahájan, who performed the duties of municipal commissioners before the Municipal Act XXVI. of 1850 was passed, would be public servants.

COUCH, C.J.:—When we look at the nature of the appointment of municipal commissioners—that they are appointed by Government, and can be removed by it—we think that they must be considered to be public servants.

The special appeal cited before the Judge is no authority, as the question was not raised in the case.

We shall, therefore, answer the reference by telling the Judge that we are of opinion that the defendants are public servants within the meaning of the Regulation.