

THIS was an appeal by the Government of Bombay against the order of Satyendranath Tagore, Acting Sessions Judge of Ahmedabad, annulling the conviction and sentence recorded by G. B. Reid, Magistrate (First Class).

The accused Bhagwan, a police patel, was convicted by Mr. Reid, under s. 217 of the Penal Code, of having, as a public servant, knowingly disobeyed a direction of the law as to the way in which he was to conduct himself as a public servant, intending [358] thereby to save, or knowing it to be likely that he would thereby save, a person from legal punishment, and was sentenced to pay a fine of Rs. 100; or, in default, to undergo rigorous imprisonment for three months. A gang of mounted thieves rode through the village of the accused, who failed to render such assistance in apprehending them as he was bound to do in his capacity of a police patel. The Sessions Judge was of opinion that the sanction of Government, or some officer empowered by Government, was necessary for the prosecution of the patel, and, as that was wanting, he annulled the conviction and sentence.

Nanabhai Haridas, Government Pleader, for the Crown.—Section 466 of the Code of Criminal Procedure (X of 1872) renders sanction necessary only in the case of public servant who is not removable from his office without the sanction of the Government. A police patel is not such a person; for under s. 9 of the Bombay Village Police Act, 1867, as amended by Bombay Act I of 1876, s. 2, he can be dismissed by a Magistrate (First Class), subject to the sanction of the Police Commissioner.

PER CURIAM.

The Court reverses the order of the Sessions Judge. It appears that a patel may be dismissed, on proof of misconduct, by a Magistrate (First Class), subject to the sanction of the Police Commissioner. Section 466 of the Code of Criminal Procedure, therefore, does not apply to the case. The Court of Session will dispose of the appeal on its merits.

Order accordingly.

4 B. 358.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice M. Melvill.*

SURYAJI AND ANOTHER (*Plaintiffs*) v. TUKARAM AND ANOTHER,
(*Defendants*).^{*} [23rd March, 1880.]

The Dekkhan Agriculturists Relief Act (XVII of 1879), ss. 11, 12 and 13.

The provisions of ss. 11 and 12 of the Dekkhan Agriculturists Relief Act (XVII of 1879) are applicable only to suits instituted upon and after the 1st November 1879.

[R., 4 B. 363; 31 B. 630=9 Bom. L.R. 917 (923) (F.B.)]

* six months, or dismiss him: provided that no person of the rank of patel shall be dismissed under this section without the sanction of the Police Commissioner.

"9-A.—Nothing in the last preceding section shall affect the liability of any police patel, or other member of a village establishment to a criminal prosecution for any offence with which he may be charged.

"Any Magistrate of the first class may suspend any such person subjected to any such prosecution pending the inquiry and trial."

* Small Cause Court Reference, No. 3 of 1880.

1880
MARCH 23.
APPEL-
LATE
CIVIL.
4 B. 358.

[359] THIS case was referred for the opinion of the High Court by Rao Saheb V. J. Ganu, Subordinate Judge (Second Class) at Rahuri, in the District of Ahmednagar, under s. 617 of Act X of 1877. He stated the case as follows :—

“The plaintiffs sue on a bond to recover from the defendants principal Rs. 10 and interest Rs. 1-7-0.

“The suit was instituted before 1st November 1879, the day on which the Dekkhan Agriculturists Relief Act (XVII of 1879) came into force. It came on for hearing for the first time on 7th February 1880, because on the day appointed for the first hearing I was absent at Nagar to attend a judicial conference. The defendants are agriculturists; the transactions, out of which the suit has arisen, commenced about twelve years ago; and the bond, sued on, purports to be one of the many bonds passed to the plaintiffs by the defendants on the same date.

“The point for determination is, whether the provisions of ss. 12 and 13 of Act XVII of 1879 apply to this case.

“There is no doubt that the Act is a remedial measure, and, therefore, the Courts will be bound to give effect, as speedily and extensively as possible, to the intention of the legislature, which is either expressed or can be evidently gathered from the several provisions of the Act read together. As far as I can see, there is nothing in the Act (XVII of 1879) to show that any of its provisions were meant to apply to pending cases. Section 3 of the Act provides that the provisions of Chapter II (ss. 3-10) shall apply to suits of specified descriptions, and instituted on or after the 1st November 1879. The Act is silent as to the application of the other provisions of the Act. The most natural construction which, I think, can be put upon such an enactment, is that it is intended to apply to cases that will arise on and after the day on which the Act become law.” * * * * *

The parties did not appear either in person or by pleaders in the High Court.

JUDGMENT.

WESTROPP, C.J.—“The Court,” mentioned in ss. 12 and 13, of Act XVII of 1879, is the Court mentioned in s. 11, which must be “a Court within the local limits of whose jurisdiction the defendant resides, and not elsewhere.” But suits [360] instituted previously to the 1st of November 1879, need not necessarily be instituted against the defendants therein in a Court within the local limits of whose jurisdiction the defendants reside. Such suits may have been instituted where the cause of action arose (Act X of 1877, s. 17), which very frequently is not where the defendants reside. Hence, we think that ss. 12 and 13 of Act XVII of 1879 are applicable only to suits instituted upon or after the 1st November 1879, as it is not probable that, in suits against agriculturists instituted before that time in those parts of the Deccan in which Act XVII of 1879 is in force, one mode of trial should be adopted in Courts within whose local jurisdiction the defendants reside, and another in Courts within whose local jurisdiction the causes of action arose, but where the defendants do not reside.