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that case the Magistrate, who had been invested with summary powers, tried an offender summarily for an offence which could not be tried summarily. But in so acting the Magistrate deprived the accused of his right of appeal, and therefore, the High Court could, under s. 297 of Act X of 1872, have annulled the proceedings and ordered a new trial. In the present case, on the point before us, I see no cause for interference.

13 B. 502 = 13 Ind. Jur. 469.

13 B. 506.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Candy.

QUEEN EMPRESS *v.* GANESH KHANDERAO AND GANESH DAULAT.* [29th January, 1889.]

Indian Penal Code (Act XLV of 1860), s. 182—Giving false information to a public servant—Construction.

Under s. 182 of the Indian Penal Code (Act XLV of 1860) the giving of false information to a public servant is penal, when either of two consequences is intended to be caused, or is known to be likely to be caused, by the false information; the first being the causing the public servant "to use the lawful power of such public servant to the injury or annoyance of any person," the second being the causing the public servant "to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known to him."

To constitute an offence under the latter part of the section, it is not necessary to show that the act done would be to the injury or annoyance of any third person.

A personated *B* at an examination, called the Vernacular Sixth Standard Examination. *A* passed the examination, and obtained a certificate from the educational authorities in *B's* name. *B* thereupon applied to the Assistant Collector to have his name entered in the list of candidates for service in the Revenue Department. He attached to this application the certificate issued in his name as it was a rule of Government that only those who had passed the Sixth Standard Examination were eligible for employment in the Revenue Department. On receipt of this application the Assistant Collector ordered *B's* name to be entered on the list of candidates.

[507] *Held*, that *B* was guilty of the offence of giving false information to a public servant within the meaning of the latter part of s. 182 of the Indian Penal Code.

[F., 22 B. 768 (769); Rat. Unr. Cr. Cas, 584; Rat. Unr. Cr. Cas. 761 (762); 1 Weir. 118 (120); Appr., 15 A. 210 (218); R., 19 B. 363 (368)=19 B. 717 (723); 21 B. 517 (518); 28 M. 90 (98) (F. B.)=1 Weir 538—A; 13 Cr. L. J. 737=17 Ind. Cas. 49=7 P. L. R. 1913=2 P. R. 1913 Cr.=43 P. W. R. 1912 Cr.; 4 M. L. T. 324; 10 P. R. 1902 Cr.; Rat. Unr. Cr. Cas. 564 (569); Rat. Unr. Cr. Cas. 792.]

APPEAL by the Government of Bombay from the order of acquittal passed by E. Hosking, Sessions Judge, in criminal Appeal No. 13 of 1888.

The facts of this case were briefly as follows :—In October 1886 an examination, called the Vernacular Sixth Standard Examination, was held at Ahmednagar. At that examination the accused No. 2, Ganesh Daulat, personated accused No. 1, Ganesh Khanderao. He passed the examination, and obtained a certificate from the educational authorities in the name of accused No. 1.

* Criminal Appeal, No. 190 of 1888.

Thereupon accused No. 1 applied to the Assistant Collector to have his name registered in the list of candidates for the offices of *talati* and *karkun*. He attached the certificate to this application, as it was a rule in the Revenue Department that none but those who had obtained a certificate of having passed the Vernacular Sixth Standard Examination were eligible for those offices. The Assistant Collector granted this application, and directed the applicant's name to be registered as a candidate for the public service.

Under these circumstances accused No. 1 was charged, under s. 471 of the Indian Penal Code, with fraudulently using as genuine a certificate of his eligibility for the public service, knowing it to be forged, and also under s. 182 with giving false information to the Assistant Collector of his having passed the public service examination, intending thereby to cause that officer to enter his name in the candidates' list. Accused No. 2 was charged under s. 109 with abetment of the said offences.

The Assistant Sessions Judge, who tried the case with the aid of assessors, convicted accused No. 1 under s. 182, and accused No. 2 under ss. 182 and 109 of the Indian Penal Code, and sentenced each to suffer rigorous imprisonment for two months.

[508] On appeal the Sessions Judge held, on the authority of the rulings in *In the matter of the petition of Golam Ahmed Kazi* (1) and *The Queen* v. *Periannan* (2), that the accused were not guilty of an offence punishable under s. 182 of the Indian Penal Code or under any other section or Act. The Sessions Judge remarked: "At first sight the facts would appear to constitute an offence under the latter part of s. 182; but, in accordance with the ruling of the Calcutta High Court, it must be shown that the act done would be to the injury or annoyance of some third person, and according to the rulings of both High Courts there must be some special person against whom the information is levelled, and the act done must tend to some direct and immediate prejudice of that person. In the present case the false information did not affect any special person, though it might indirectly injure a third person by retarding or preventing his getting an appointment in consequence of Ganesh Khanderao (accused No. 1), obtaining an appointment under false pretences."

On these grounds the Sessions Judge reversed the convictions and sentences, and directed that both the accused be acquitted.

Against this order of acquittal the Government of Bombay appealed to the High Court.

Rav Saheb *V. N. Mandlik*, (Government Pleader), for the Crown.—The Sessions Judge has misconstrued s. 182 of the Indian Penal Code. The section consists of two distinct parts, one not necessarily connected with the other. It is not necessary to import into the latter part of the section the words "to the injury or annoyance of any person." It is not an essential ingredient of the offence under the latter part that a third party should be prejudiced. It is sufficient, if the public servant does or omits to do any thing which he ought not to do, or omit to do, if the true state of facts were known to him. The present case falls within the latter part of s. 182. Refers to *Queen Empress* v. *Vithal Narayan Joshi* (3). The accused are also guilty of the offence of cheating under s. 416.

(1) 14 C. 314. (2) 4 M. 241. (3) 13 B. 515.

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[509] *Shantaram Narayan, for* accused, relied on *In the matter of the petition of Golam Ahmed Kazi* (1); *The Queen* v. *Perinnan*(2); *Queen-Empress* v. *Madho*(3).

JUDGMENT.

The judgment of the Court (JARDINE and CANDY JJ.,) was delivered by

JARDINE, J.:—This is an appeal directed by the Government of Bombay under s. 417 of the Code of Criminal Procedure, from an appellate order of acquittal passed by the Sessions Judge of Thana, reversing the convictions and sentences passed by the Assistant Sessions Judge for offences punishable under s. 182, and s. 182 with s. 109 of the Indian Penal Code. The Sessions Judge did not enter into the merits; but, assuming the facts to be as found by the Assistant Sessions Judge, held, on the authority of *In the matter of the petition of Golam Ahmed Kazi* (1) and *The Queen* v. *Periannan* (2) that they did not constitute any offence.

The Public Prosecutor has argued for the Crown that s. 182 has been wrongly construed, and that this section applies to the facts, and that they also constitute the offence of cheating by personation as defined in s. 416 of the Indian Penal Code. In *Golam Ahmed Kazis'* case (1) the learned Judges placed a limitation on the latter part of s. 182. They said: "As it seems to us, that section must be read as a whole, and, taken as a whole, we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things." In the case of *The Queen* v. *Periannan* (2) an interpretation was placed on the words "to use his lawful power," which occur in the first part of s. 182; the question, whether the act done came within the language of the second part of the section, does not appear to have been raised or considered. No other reported cases in which s. 182 has been interpreted have been cited in the arguments. That of [510] *Queen-Empress* v. *Madho* (3) was decided in the absence of fraudulent intention, and is hardly in point.

The Court has to determine whether the second part of s. 182 can be read without importing into it the words "to the injury or annoyance of any person." In other words, can we construe the section as making the giving of false information to a public servant penal, when either of the two consequences is intended to be caused or is known to be likely to be caused by the false information, the first being the causing the "public servant to use the lawful power of such public servant to the injury or annoyance of any person," the second being the causing the "public servant to do or omit any thing which such public servant ought not to do or omit, if the true state of facts respecting which such information is given, were known to him?"

We are of opinion that this is the proper construction of the section, but as this opinion appears, at first, sight to differ from that expressed by the learned Judges who decided *Golam Ahmed Kazi's* case (1) and as the interpretation of a general penal law is a matter of general importance, we think we are bound to give our reasons with some fullness.

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(1) 14 C. 314 (315, 316). (2) 4 M. 241. (3) 4 A. 498.

It was said in *The King* v. *The Inhabitants of Hodnett* (1). "It is not true that the Courts, in the exposition of penal statutes, are to narrow the construction. We are to look to the words in the first instance, and where they are plain, we are to decide on them. If they be doubtful, we are then to have recourse to the subject-matter; but at all events, it is only a secondary rule." On examining the words of s. 182 we find no difficulty in reading them as stating the two consequences as quite distinct from each other, nor is it suggested in *Golam Ahmed Kazi*'s case (2) that they do not bear this apparent meaning. Then, is there any thing in the sense, or the objects, or the mischief of the enactment which requires that a limitation should be placed on the verbal meaning? The learned Judges in *Golam Ahmed Kazi's* case (2) recorded their opinion that the conduct of the accused amounted to no more than a hoax; and where this view of the facts [511] applies, it is less difficult to hold that there has been no offence. But where there has been something more than a hoax, is the person who gives the false information to the public servant with the intention of influencing his conduct to escape penal liability, unless the probable consequence is injury or annoyance to a third person? These words would doubtless cover an arrest so caused for a search of a man's dwelling. But it is easy to imagine serious results and danger to the well-being of the public, or classes of the public, when a public servant is induced by false information to do or omit something which he ought not to do or omit, and we think the section we have to construe deals with that mischief. The words in the section "such public servant ought not to do or omit" appear to us to resemble the words "to use the lawful power of such public servant to the injury or annoyance of any person" only in so far as both sets of words refer to official conduct. But the latter phrase using the word "ought," which implies duty and excludes personal choice, covers duties imposed by more particular statutes, as well as duties arising otherwise from the *status* or office of the public servant. The police, for example, are bound by express statute to vigilance in the prevention and detection of crime and the apprehension of offenders; the customs officers and abkari officers are in much the same position. But other public servants in the absence of statutes are required by the unwritten law to exercise vigilance and care, or like the ministers of the Crown to give good advice, or like the judges to hearken in their courts to the suitors and their counsel, or like the magistrates to suppress riots, or to comment on the misconduct of the police in cases before them—*Kendillon* v. *Maltby* (3). The office, the honour, and the duty go together and all relate to the public welfare. Now as the officer is bound to act in the discharge of his office in the proper circumstances, it may often be an interference with his duty, and thus dangerous to the public welfare, if through false information he is prevented from acting, or induced to act wrongly. To withdraw a member of the Government from his duties in the council, or judge from his court, or a military officer from his command, by giving him false information may thus be prejudicial [512] to the interests of the State, although no particular person can be pointed out as injured or annoyed at the time. Although, as Mr. Mayne remarks in commenting on forgery under s. 463 of the Penal Code, "writing a spurious invitation to dinner might be very culpable as a hoax, but would not be a fraud," it may well be that the Legislature took a more serious view of deceitful interferences, with what public servants ought to do; and, as a general rule, there are many acts of

(1) 1 T. R. 96 (101). (2) 14 C. 314.
(3) 2 Moody & Rob. 438=1 Car. & M. 402.

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deceit and folly which are criminal, because of their dangerous results, and by no means to be excused as hoaxes.

The second part of s. 182, it may be remarked, did not appear in the first draft of the Penal Code prepared by Lord Macaulay's Commission; in the second report, dated 23rd July, 1846, s. 102, reference is made to a proposal in the Digest of the English Law to punish under the head of "deceits on public officers" those who wilfully give public servants false information.

The Courts, no doubt, differ in their estimates of particular acts, and the decisions are not easily reconciled. (Compare 6 Madras High Court Rulings, p. 12, with *The Queen* v. *Luthi Bewa* (1) and *Reg.* v. *Bhavanishankar* (2)). In *Empress* v. *Dwarka Prasad* (3) Mr. Justice Tyrell held that a person who tried to obtain his recruitment in the police of a district by giving certain information about himself to the District Superintendent of Police, which he knew to be false, had not committed an offence punishable under s. 177 or 182, or s. 415 of the Indian Penal Code. (See also, as to the meaning of "fraudulently", *The Queen* v. *Lal Mahomed* (4).) But in *Empress* v. *Dhunum Kazee* (5) Mr. Justice Norris quotes Maule J.'s *dictum* in *Reg.* v. *Nash* (6) that "it is not necessary that any person should be in a situation to be defrauded."

In the present case, the Assistant Judge found that under some rule of Government only persons who have passed an [513] examination, called the Sixth Vernacular Standard, are to be employed in the Revenue Department; that the accused Ganesh Khanderao falsely informed the Assistant Collector that he had passed this examination, intending thereby to get the Assistant Collector to give him an appointment in the Revenue Department, which the Assistant Collector ought not to have done if he had known the true facts; and that Ganesh Daulat had abetted Ganesh Khanderao by supplying him with a certificate of having passed the examination, whereas it was Ganesh Daulat who passed it, having personated Ganesh Khanderao at the examination. The Assistant Sessions Judge held that these facts brought the case within s. 182 of the Indian Penal Code. He applied the same reasoning which has led us to our construction of that section. He observes: "There are many acts of public servants, as in the present case, where there may be no specific injury to any specific person, and yet the public servant ought not to do the act." The remaining question is, whether the giving the Assistant Collector false information in order to procure an appointment in the public service, which it would have been wrong of the Assistant Collector to bestow upon the applicant if he had known the real facts, comes within the words and meaning of the latter part of s. 182. We think it does. In discriminating between hoax and mere deceit on the one side, and criminal offences on the other, the Courts ought to have regard to the general policy of the law. It consists with public policy that the State should be well served in all departments; it is the right and duty of the Government to secure fit men and to take precautions to prevent the offices being filled by the unfit.

We are, therefore, of opinion that as the false information comes within the words, so it does within the scope and meaning; and that it

(1) 2 B. L. R. Cr. 25. (2) 11 B. H. C. R. 3. (3) 6 A. 97.
(4) 22 C. W. R. Cr. R. 82. (5) 9 C. 53 (60).
(6) 2 Denison's C. C. 500=21 L. J. N. S. Mag. Cas. 147.

is a fit subject of criminal punishment, especially if it was given, not as a mere joke, but with a purpose of obtaining the place. We are fortified in this opinion by the view taken of the criminal character of a similar act by West and Nanabhai, JJ., in the unreported case of *Queen-Empress* v. *Vithal Narayan Joshi* (1). In that case the prisoner, in order to induce a Collector to [514] give him an appointment, made use of a certificate in which his age had been recorded as twenty-three years, but which had been altered so as to state it as only twenty years. The learned Judges said: "It was argued by Mr. Athlaye, for the accused, that there was no dishonesty within the meaning of s. 24 of the Indian Penal Code, inasmuch as the accused, if he had got the employment at all, would have got only his wages for work done. If, however, the alteration was made fraudulently, that suffices for the purposes of s. 464, as shown by illus. (*k*), and that illustration shows that the mere fabrication of a false certificate of character raises the presumption of fraud. It was held by Le Blanc, J. so long as a century ago, that by fraud is meant an intention to deceive whether it be from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial—*Haycraft* v. *Creasy* (2).

"With regard to the operation of s. 471, illus. (*k*) to s. 464 is equally applicable to the one section as the other. To induce the Collector to enter into the contract to employ this man as a *karkun* under the belief induced by the forged certificate that he was not more than twenty-five years of age, brings the case under s. 471. This case falls most strictly within the definition of using a forged document."

We may also give as a further reason for treating acts of this sort as such as the Legislature may have intended to discourage by penal enactment, that they approach the character of misdemeanour at English Law. It seems to be an established rule that whatever openly outrages decency and is injurious to public morals is a misdemeanour at Common Law. (See 4 Bl. Com., 65, and 1 Hawkin's Pleas of the Crown, c. 5, s. 4). To attempt to procure a public office by bribery is a misdemeanour—*Rex* v. *Vaughan* (3). One reason is that the offices thus get into the hands of unfit persons, as stated by Hawkins in his Pleas of the Crown. The same may happen where the office is gained by false representations. The injury is of a public nature—*The King* v. *Richards* (4). In his General View of [515] the Criminal Law, p. 59, Sir Fitzjames Stephen says: "There is a close analogy between torts and misdemeanours: each is a violation of a duty imposed by statute or common law, and each class is made up of members which are shown to belong to it, not by reference to any definite catalogue—like those which might be drawn up of felonies—but by reference to broad general principles." At p. 58 he says: "Indeed, a prosecution for a misdemeanour is hardly distinguishable from an action for tort, in which the Queen is plaintiff, and which sounds in punishment instead of damages. This is true as far as the procedure is concerned in respect of felonies also, and there is little, and indeed, no reasonable distinction between statutory misdemeanours (such as obtaining goods by false pretences) and felonies; but the question, what is a misdemeanour at common law? hardly admits of any better answer than that it is a tort prosecuted by the Crown."

It is in our opinion unnecessary at the present stage to deal with the question whether cheating or any other offence was committed. For

(1) 13 B. 515.
(2) 2 East, 92 (108).
(3) 4 Burr. 2494.
(4) 8 T.R. 634 (637).

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these reasons we reverse the order of acquittal passed in appeal by the learned Sessions Judge. As he decided the appeal only on the question of law with which we have dealt, and without determining the merits, or the question as to local jurisdiction which has been raised here, but which depends partly on the facts, we now, under s. 423, Criminal Procedure Code, direct that the appeal of the prisoner be retried by the Sessions Judge. For such an order we find a precedent in *The Government of Bengal* v. *Gokool Chunder Chowdhry* (1). That case was tried under the Code of 1872, but we are of opinion that the words relating to trial in the present Code, in s. 423, are used in a sense wide enough to include the trial of appeals as in ss. 342, 344, 352 and some sections of chap. 25.

Order of acquittal reversed, and appeal directed to be retried by Sessions Judge.

13 B. 515 N.

NOTE.—The following is the decision of WEST and NANABHAI, JJ., in the case of *Queen-Empress* v. *Vithal Narayan* (Criminal Appeal No. 47 of 1886), referred to in the above judgment :—

"This is an appeal made by the Government of Bombay against an order of acquittal passed by the Assistant Sessions Judge of Poona in the case of **[516]** *Imperatrix* v. *Vithal Narayan Joshi*, who was charged with the offence of using as genuine a forged document under s. 471 of the Indian Penal Code. The accused passed the Public Service Examination (called *Moolky* Examination) in the year 1883. At that time his age was 23 years, and in the certificate that was prepared by the educational authorities it was put down as 23. In the copy of the certificate that was furnished to the accused his age appears to have been altered from 23 to 20. This is evident on the document itself. The accused admits that he was 23 years of age when he passed the examination, and that he forwarded this certificate to the Collector along with his petition for employment.

"The Assistant Sessions Judge Mr. Steward acquitted the accused, on the ground that though he intended to delude the Collector by a false statement of his age into admitting him into the public service, still that did not amount to defrauding the Collector.

"The questions for consideration are :—

"(1) Whether the certificate furnished to the accused stated his age as 23 which was subsequently altered to 20?

"(2) Whether the accused is guilty of using a forged document under s. 471 of the Indian Penal Code (Act XLV of 1860)?

"As to the facts of the case, the Assistant Judge has clearly found that the figure 23 was altered to 20 by erasure, and that it was so altered before it was sent to the Collector. Leaving aside the question as to how far a person using such a document should be liable for civil purposes, it is certain that for criminal purposes there must be proof, beyond all reasonable doubt, that the tampering was the act of the accused, or that he was aware of it.

"The age of the accused was, as admitted by himself, 23 on the date of the certificate. In the office copy it is put down as 23. Being anxious for the result when he appeared at the examination, and having passed it successfully, he must have looked at the certificate furnished to him with sufficient care to enable him to see whether his age was mentioned as 23 or 20. If it contained the figure 20, he would have at once found it out and got it corrected. It was a small document, and it cannot be supposed that the figure could have escaped his notice either when he got it or when he sent it to the Collector. The only possible conclusion is that the age of the accused was mentioned in this certificate as 23. It was his duty to the public and it was his own interest also to keep the certificate intact. It was altered in a way beneficial to him. It must, therefore, be held that the accused made the alteration either himself, or through somebody, and apparently with a view to induce the Collector to the belief that he was of an age junior to his real one, and giving him a longer time for public service. It was argued by Mr. Athlaye, for the accused, that there was no dishonesty within the meaning of s. 24 of the Indian Penal Code, inasmuch as the accused, if he had got the employment at all, would have got his wages for work done. If, however, the alteration was made fraudulently, that suffices for the purposes of s, 464,

(1) 24 W. R. Cr. R. 41.

as shown by illus. (*k*), and that illustration shows that the mere fabrication of a false certificate of character raises the presumption of fraud. It was held by [517] Le Blanc, J., so long as a century ago, that by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself, or from the ill-will towards the other, is immaterial: see *Haycraft* v. *Creasy* (1).

"With regard to the operation of s. 471, illus. (*k*) to s. 464 is equally applicable to the one section as the other. To induce the Collector to enter into the contract to employ this man as a *karkun* under the belief induced by the forged certificate that he was not more than 25 years of age, brings the case under 471.

"The case falls most strictly within the definition of using a forged document.

"We, therefore, reverse the order of acquittal passed by the Assistant Sessions Judge, and direct the re-trial of the accused.

24*th June* 1886, [F., L.B.R. (1893—1900), 266; R., 13 B. 506; 28 M. 90=1 Weir 538 (*a*); 4 L.B.R. 315 (318)].

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13 B. 517.

APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Parsons.

BALVANTRAO AND OTHERS (*Original Plaintiffs*), *Appellants v.* BHIMASHANKAR AND OTHERS (*Original Defendants*), *Respondents.**

[5th March, 1889.]

Valuation—Subordinate Judge's power to make—Court Fees Act (*VII of* 1870) *s. 7 cl. iv, (f)—Civil Procedure Code, (Act XIV of* 1882), *s. 54 cls. (a) and (b)—Practice—Procedure.*

The plaintiffs brought a suit for an account and approximately valued their claim at Rs. 16-15-0. The Subordinate Judge was of opinion that the claim was for recovery of money, and should have been valued at Rs. 1,000. He therefore called on the plaintiffs to make up the stamp to that required on this valuation; and the plaintiffs refusing, he dismissed their suit under s. 54 (*b*) of the Civil Procedure Code (Act XIV of (1882).

Held, that, in any case, the Subordinate Judge was wrong. If the suit was really one for an account, the plaintiffs were entitled to value the relief they sought approximately, as they had done; if it were not one for an account, but for recovery of money, still the Subordinate Judge had no power himself to value the relief sought, but should have called on the defendant to value the relief he sought, and then if he had thought such relief was undervalued, he could have applied s. 54 (*a*) of the Code of Civil Procedure (Act XIV of 1882), and rejected the suit.

SECOND appeal from a decision of W. H. Crowe, District Judge of Poona.

This was a suit brought by the plaintiffs for an account of the profits village of an *inam* managed by the defendants from the [518] year 1824 to 1884. They valued the claim at Rs. 16-15-0, and paid the Court fees on that valuation. The Subordinate Judge of Poona was of opinion that the suit was really one for money had and received, and that the claim would amount to Rs. 1,000. He, therefore, called upon the plaintiffs to make good the stamp duty, as if the claim were for Rs. 1,000, within a certain time. The plaintiffs having declined to do so, the Subordinate Judge dismissed the suit under s. 54 (*b*) of the Civil Procedure Code (Act XIV of 1882).

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* Second Appeal, No. 42 of 1887.

(1) 2 East, 92 (108).