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application that could not have been intended were we to hold that under the circumstances we have described there has been a liability incurred on account of the Government of India and chargeable on the revenues under 21 and 22 Vic., c. 106. For these reasons we confirm the decree of the District Court with costs.

*Decree confirmed.*

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Aston.*

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January 12.

DALSUKHRAM HARGOVANDAS (ORIGINAL PLAINTIFF), APPELLANT,  
v. CHARLES DEBRETTON (ORIGINAL DEFENDANT), RESPONDENT\*

*Contract Act (IX of 1872), section 23—Agreement to stifle a prosecution—  
Compounding a non-compoundable offence—Agreement as defence in a civil  
action—Suit for wrongful confinement.*

The plaintiff sued the defendant in damages for wrongful arrest and confinement. The defence pleaded an agreement whereby the parties had agreed to settle their differences in consideration of compounding some criminal charges, one of which was not by law compoundable and which were then pending between the parties in a Criminal Court. The Lower Appellate Court held that the plaintiff was prevented from bringing the action by reason of the agreement. On appeal—

*Held*, that the object of the agreement being to stifle a prosecution was bad in law, and that the agreement, therefore, could not be set up as a defence in a Court of law.

SECOND appeal from the decision of S. L. Batchelor, District Judge of Ahmedabad, reversing the decree passed by Vadilal Tarachand Parekh, Joint Subordinate Judge at Ahmedabad.

Suit for damages.

The plaintiff sued to recover Rs. 2,000 as damages for wrongful assault, arrest and confinement.

The defendant pleaded *inter alia* that the plaintiff had trespassed on his land, that the acts complained of having been done by his servants, he was not liable for their *bona fide* mistake,

\* Second Appeal No. 273 of 1903.

and that this action could not lie as plaintiff had agreed to settle amicably the differences between the parties by compounding the criminal charges that were then pending between the parties. The Subordinate Judge held that the plaintiff was wrongfully arrested and imprisoned and assaulted by the defendant's servants, that the plaintiff had unwittingly trespassed on defendant's land, that the defendant was liable to pay Rs. 500 as damages to plaintiff and that the plaintiff did apologise to defendant for his acts, but he was not thereby prevented from recovering the damages.

On appeal the District Judge agreed with the Subordinate Judge in holding that the plaintiff was arrested and imprisoned by the servants of the defendant, and that the defendant was liable for his servants' acts; but differed from him in holding that the plaintiff was debarred from bringing the suit by reason of the agreement arrived at between the parties. The plaintiff's suit was consequently dismissed.

The plaintiff appealed to the High Court.

*Branson* (with him *Bhaishankar, Kanga and Giridharlal*), for the appellants (plaintiff).

There was no appearance on behalf of the respondent.

CHANDAVARKAR, J. :—The District Judge has found that the plaintiff (appellant) was wrongfully arrested and imprisoned by the servants of the defendant (respondent) and that the defendant is liable for his servants' acts. But the District Judge has rejected the plaintiff's claim for damages on the ground that he "is prevented from bringing this action by reason of the private settlement effected in the course of the criminal proceedings" which had been taken by both the parties. These proceedings resulted in an order of acquittal passed by the Magistrate before whom they were taken on representations made by both parties that they had amicably settled their disputes and agreed to withdraw the respective complaints. It was admitted before the District Judge by plaintiff's Counsel that "it was a general agreement between plaintiff's party and defendant to compose all the differences between them arising out of the incidents of the evening of 3rd February 1900." In other words, the agreement

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between the parties was substantially, as found by the District Judge, that the plaintiff should give up all claims against the defendant for the defendant's illegal act in consideration of the defendant withdrawing his complaint. It was urged before the District Judge by plaintiff's Counsel that this agreement was void because it was based upon an unlawful consideration, namely, a promise to stifle a prosecution. The District Judge has, however, overruled the contention, holding that the principle of law that agreements based upon a promise to stifle a prosecution are void, cannot apply where "the injury inflicted," as the learned Judge puts it, "concerns the individual only and has no reference to the interests of the State." No exception can be taken to this view of the District Judge, but we cannot agree with him when he goes on to hold that "the compoundability or noncompoundability" under our Criminal Procedure Code "of the offence charged" is not the sole or decisive test of whether the offence implies an injury concerning the individual only, having no reference to the interests of the State. The prosecution of the plaintiff and eight others was under section 143, Indian Penal Code, for the offence of having been members of an unlawful assembly and under section 447, Indian Penal Code, for criminal trespass. A complaint for the former offence is not, according to the Criminal Procedure Code, compoundable. The Legislature has laid down in that Code the test for determining the class of offences which concern individuals only as distinguished from those which have reference to the interests of the State; and Courts of law cannot go beyond that test and substitute for it one of their own.

It may be, as observed by the District Judge, that the prosecution was in reality a private prosecution and that it was the Police, not the defendant, who must be held responsible for the specification of the offence under section 143 of the Indian Penal Code in the charge sheet. But that circumstance cannot affect the question whether the defendant, after having given information to the Police and led them to prosecute the plaintiff and others for two offences, one of which was non-compoundable and concerned the interests of the State, could legally enter into a contract not to lead evidence in the criminal case in considera-

tion of the accused (*i.e.*, the plaintiff) giving up all claims for damages against him. Whether rightly or wrongly, the plaintiff stood charged with the offence of being a member of an unlawful assembly; and the defendant could not enter into a valid and binding agreement the object of which was to stifle the prosecution.

Next, the District Judge observes:—"The authorities relied upon only lay down the rule that a plaintiff cannot succeed who sues to enforce an agreement based upon his promise to stifle a prosecution concerning public interests." This, we think, is not an accurate statement of the law. The law is laid down in section 23 of the Indian Contract Act: "Every agreement of which the object or consideration is unlawful is void." The agreement is opposed to public policy and cannot be recognized in any way.

The plaintiff sues for damages for a tort committed by the defendant's servants on his person. The defendant pleads in answer an agreement which is void. The agreement on which the defence rests being illegal is out of the case and the plaintiff is entitled to the damages he claims unless there are circumstances independent of the agreement, to deprive the plaintiff of them. This is a question which we cannot decide in second appeal. The District Judge has no doubt in the concluding paragraph of his judgment added:—"If plaintiff were to be considered technically entitled to damages, I should be unable to award him more than a nominal sum"; but he has not specified the sum which he would have awarded in that view of the case. As the District Judge has dismissed the suit substantially on the preliminary ground that it is not maintainable and as that ground is not, in our opinion, correct in law, we reverse the decree and remand the appeal for determination on merits. Costs to abide the result.

*Decree reversed. Case remanded.*

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