APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

DARBAR SHRI DOLATSINGJI SURAJMALI (ORIGINAL PLAINTIFF), APPELLANT *v.* DESAI BAVABHAI DAMUBHAI (ORIGINAL DEFENDANT), RESPONDENT.* 1919. *October* 9.

Village Police Act (Bom. Act VIII of 1867), section 9—Talukdari village—Appointment of inferior village police—Power of District Magistrate to appoint such police.

Under Village Police Act (Bom. Act VIII of 1867), a District Magistrate has power to appoint *pagis* (inferior village police) in a Talukdari village.

SECOND appeal against the decision of R. S. Broomfield, Joint Judge at Ahmedabad, reversing the decree passed by K. K. Thakor, Subordinate Judge at Viramgaum.

Suit for a declaration.

The plaintiff, Chief of Patri, sued for a declaration that he was entitled to recover from his *bhayat* and *jivakdar* defendant Bavabhai Damubhai half of the salary paid by him to two village policemen or *pagis* employed by him under the orders of the District Magistrate, to work under the Police Patel of Kamijla. His case was that under the terms of Colonel Walker's Settlement of 1807, he (the plaintiff) had to pay a lump sum by way of tribute to Government anent all his villages including those granted to his *bhayats* by way of *jiwai*; that in 1817, when Ahmedabad District was first constituted, some of the villages of the State were included in it; that the plaintiff's ancestor gave half the income of the village of Kamijla by way of *jiwai* to defendant's ancestor; that the Patri Chief always appointed *mukhis* (Police Patels) in Kamijla village, and also the inferior village servants to help them in the discharge of their police and other duties; that the

*Second Appeal No. 433 of 1917.

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remuneration of Police Patels and inferior village servants was a charge on the village; that in 1907, Government compelled the chief to employ two *pagis* on a salary of Rs. 5 per mensem to help the Police Patel in the discharge of his duties; that the defendant was bound to pay half the salary of these *pagis*; and that as he failed to pay the same, the present suit was filed to recover Rs. 344-8-0 with future interest.

The defendant contended *inter alia* that he as the owner and occupant of the village had to employ *pagis*; and that the District Magistrate had no right to appoint *pagis* himself nor could he delegate the right of appointment to the plaintiff.

The Subordinate Judge allowed the plaintiff's claim holding that the Chief of Patri was obliged, under Government orders, to employ two *pagis* on an aggregate salary of Rs. 10 per mensem and that the defendant was bound to contribute one half of the salary. He relied on section 3 of Village Police Act (Bom. Act VIII of 1867) and a Government Resolution, Judicial Department, No. 6804, dated the 25th September 1895 (Exhibit 387).

On appeal, the Joint Judge held that the District Magistrate had no power to appoint inferior village police under the provisions of the Village Police Act (Bom. Act VIII of 1867). He, therefore, reversed the decree and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

G. S. Rao, for the appellant:—The question involved in this appeal is whether the District Magistrate was right in calling upon the Chief of Patri in employing two salaried *pagis* for the village of Kamijla. From time immemorial almost since 1882 the Government looked to the Chief of Patri for maintenance of peace in all his villages including those assigned to the cadets

of the reigning family for maintenance. It is the Chief who has the right to nominate the Police Patel of the village of Kamijla. The appointment of the two *pagis* by the Chief of Patri rests upon the question whether the District Magistrate had the power to appoint inferior village officers. The law on the subject is contained in sections 3, 4, 5, 9 of the Village Police Act, as well as sections 64 and 85 of the Bombay Hereditary Offices Act. The view of the District Court is wrong in law. He is wrong in holding that the words "administration," "control" and "direction" in section 3 of the Village Police Act, 1867, do not include the power to appoint. If the Police Patel is allowed to be appointed by the District Magistrate, the inferior police must of necessity be appointed by him. The sections of the Village Police Act are to be read with Exhibit 387. Government Resolution, dated 25th September 1895, which clearly shows that the appointments, punishments and the entire administration of the inferior village police rests with the District Magistrate.

[*Setalvad* objected to the Government Resolution being referred to or heard as evidence. The Court ruled that Government Resolution could not be referred to.]

Section 4 of the Village Police Act and section 76 of the Bombay District Police Act IV of 1890 authorize delegation or transfer of authority by the District Magistrate for purposes of police work or functions.

Before Act VIII of 1867, i.e., the Village Police Act, was passed, there was the Bombay Regulation of 1827 and sections 5, 6 and 22 of that Regulation show that the Zilla, i.e., District Magistrate, had to Superintend the conduct of the District and Village Police Officers and of the establishment subordinate thereto and punish them for misconduct. Section 30 of the Gujarat Talukdars' Act was also referred to.

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Setalvad, with *G. N. Thakor*, for the respondent :—The Act does not authorize any appointments by the District Magistrate other than that of the Police Patel : see section 5. The word "appointment" is used as being distinct from "administration." The appointment of the inferior police very likely vested in the village community. Section 8 assumes an existing village establishment at the date of the Act which therefore could not have been appointed by the District Magistrate.

Sections 5 and 8 of the repealed Bombay Act VII of 1867 make it clear that the power of appointment when conferred is distinctly specified as being distinct from administration or control. Besides, assuming power of appointment rests with the District Magistrate, it can certainly not be delegated to the Patri Chief. Section 30 of the Gujarat Talukdars' Act will help the defendant. If it applies it is for the Governor in Council to determine. The conditions of section 30 have not been complied with

Facts have not been gone into. Sections 65 and 70 cannot apply.

Rao, in reply, was allowed to refer to Exhibit 387 in spite of previous ruling. Exhibit 387 distinctly holds that the power of appointment vests in the District Magistrate. The defendant refused to appoint though called upon. Patri Chief was compelled to appoint. He is entitled to recover payments made.

Thakor, with permission of the Court :—Exhibit 387 is no evidence and is inadmissible. It is dated 1894 and cannot show the state of things in 1867. An Act of 1867 cannot legally be construed by the Government Resolution (Exhibit 387) of 1895. Exhibit 387 itself holds that delegation is illegal. The power cannot be delegated to the Chief. Facts cannot be gone into here in second appeal.

Sections VII and XLVIII, clause 2 of Regulation XII of 1827 show that the power of appointment is not with the Zilla Magistrate.

HEATON, J.:—The case we are dealing with relates to one of those Talukdari villages in the Ahmedabad Collectorate which form a part of the estate of the Patri Darbar, and I gather from the judgments that the Patri Darbar is the Talukdar of this particular village, the name of which is Kamijla. It seems that in the year 1907, the Police authorities came to the conclusion that the village establishment of this village of Kamijla was insufficient for Police purposes, and that two *pagis* ought to be added to that establishment. After correspondence, which it seems has been destroyed, but of which we have evidence in the *barnishi* of the Government offices, the Patri Darbar did appoint two *pagis* for this village, and has since paid them at the rate of Rs. 5 a month each. The Patri Darbar is the plaintiff in this case. The defendant is the person who receives an eight annas share of the revenues of the village, but it seems he has never paid any portion of the cost of these two *pagis*, and the plaintiff wishes to recover from the defendant half their costs. This claim opens up a very wide field of dispute, and there are a great many matters which seem to me to be matters of great difficulty about which I do not propose to say anything at all in this judgment, because the Court of first appeal, the Joint Judge of Ahmedabad, has wrongly disposed of the matter on a preliminary point. So the appeal will have to go back to be re-heard *de novo* and decided on its merits.

The original Court decided in favour of the plaintiff and the defendant appealed. The Judge in appeal was led to suppose that unless it was shown that the District Magistrate had power to appoint *pagis* in villages of this kind, the plaintiff's claim must fail. He found

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that the District Magistrate had not such powers and consequently he allowed the appeal and dismissed the suit.

It may be that the Judge was quite right in his assumption that if it was shown that the District Magistrate had not power to appoint *pagis*, then the plaintiff's claim must fail. I do not, however, at present quite follow why this is so; and I am unable to agree with the Joint Judge that this is shown. The case was dealt with as if the Village Police Act (Bom. Act VIII of 1867) was the law which governed the matter, and I will take it on that basis; although incidentally I may mention that I am not at all certain that the correct law is not to be found in the Gujarat Talukdars' Act (Bom. Act VI of 1888), particularly sections 5 and 30 of that Act.

However, I will now revert to the basis on which the matter is dealt with in the lower Court. The Joint Judge came to the conclusion on a perusal of Bombay Act VIII of 1867, that it was clear that the District Magistrate had no power to appoint *pagis*. The argument very briefly is as follows. The Village Police Act provides for the administration of Village Police. It provides specifically for the appointment of Patils. It recognises the existence of a village establishment or village servants, and this village establishment is by section 9 placed under the control of the Police Patil for the performance of Police duties. It is argued that because there is no specific provision for the appointment of what is called the village establishment, that no appointments to the village establishment are provided for by the Act. As regards vatandar village servants undoubtedly this is correct. The appointment of Vatandar village servants is provided for by the Hereditary Offices Act. Whether the Village Police Act contemplates appointments of non-vatandars

to the village establishment is a matter which could only be determined, it seems to me, by reading the Act itself in the light of a knowledge of the organization with which the Act is intended to deal. It seems to me to be as futile to attempt to construe this Act VIII of 1867 without some knowledge of the organization to which it relates, as it would be to attempt to construe an Act, we will say, relating to electricity, without some knowledge of electricity. It is quite conceivable, of course, that the organization to which this Bombay Act VIII of 1867 relates is an organization which excludes the appointment to the village establishment of any non-vatandar village servants. If that were so, if the organization as it existed was an organization of that kind, an organization to which additions in the shape of non-vatandar village servants were prohibited, then no doubt the Act would be read, and rightly read, as conferring no power, indeed, as excluding the power of appointment of village servants of that kind. But, if as a fact the organization did contemplate, and did in practice comprise the appointment of non-vatandar village servants, we will say for the sake of example, by the District Magistrate, then I should unhesitatingly construe the Act as not excluding, but as contemplating, such appointments; for that would come under the head of the administration of the organization. It is, therefore, primarily a question of evidence as to whether the organization did exclude or did include the appointment of village servants of this kind, that is, non-vatandar village servants. The Joint Judge has not dealt with it as a matter of evidence. The only evidence relating to the point which has been brought to our notice is a Resolution of the Government, Exhibit 387. This Resolution contains a letter by one of the Commissioners to Government, from which it

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appears that appointments of non-vatandar village servants were undoubtedly made. The only point which at that time seems to have excited doubt was whether, when such appointments were made for Police purposes, they should be made by the District Superintendent of Police or by the District Magistrate. Therefore such evidence as there is does indicate that the organization of the village was an organization which included the appointment of non-vatandar village servants. Therefore it seems to me that the decision of the Joint Judge was wrong. I cannot accept his interpretation of the Village Police Act, because it is not shown that the organization to which that Act relates is an organization of the kind which the Joint Judge assumed. Such evidence as there is indicates that it was not an organization of that kind. Therefore it seems to me inevitable that the decision of the Joint Judge must be set aside as having been arrived at erroneously on a preliminary point, and that the appeal must be remanded to be dealt with anew. The costs of both Courts will be costs in the appeal.

MACLEOD, C. J. :—I agree.

Decree reversed and case remanded.

J. G. R.