

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hodge v. the Attorney-General of Honduras, from Honduras : delivered 10th December, 1864.*

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Present :

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

SIR JOHN TAYLOR COLERIDGE.

THIS is an appeal from two Orders made by the Supreme Court of British Honduras in an action brought in that Court by the Appellant against the Respondent. By one of these Orders, which was dated the 13th of June, 1862, the Court ordered that a verdict should be entered for the Defendant in the action (the Respondent to this Appeal) on all the issues in the action, and by the other of these Orders, which was dated the 20th June, 1862, and was made upon a motion on the part of the Plaintiff in the action (the now Appellant) for a rule to show cause why the Order of the 13th June, 1862, should not be rescinded, and the verdict for the Defendant in the action (the Respondent) thereby directed set aside, and a verdict entered for the Plaintiff in the action (the Appellant), or a new trial granted; such part of the notice of motion as related to the application for a new trial having been abandoned, the Court ordered that the motion should be refused with costs. The action out of which this Appeal has arisen was brought by the Appellant against the Respondent in the month of May 1859, for nine years' salary, from the 1st of February, 1848, to the 11th of February, 1857, at 500*l.* currency per annum, the Appellant claiming the salary to be due to him for his services as Agent of the Settlement in

England, appointed by the Public Meeting of the Settlement according to the provisions of a resolution of the said Public Meeting of the 4th March, 1822, and the Respondent being sued in the action for and in the place and stead of the public of Honduras. The questions arising upon this Appeal are so intimately connected with the constitution and government, and the laws and usages, of the Colony, and the case depends so much upon what has taken place as to the appointment of Agents for the Colony in England, that it will be convenient first to refer to these subjects.

As to the constitution and government of the Colony, and its laws and usages, the case appears to stand thus:—From the year 1786 down to the time of the passing of the Act 16 Vict., cap. 4, to be presently mentioned, the government of the Colony was (except for a short interval not material to be noticed) vested in a body called the Public Meeting, and in a Superintendent appointed by the Crown; the Public Meeting being composed of a portion of the inhabitants chosen for the purpose, who assembled from time to time, and passed resolutions adapted to the wants of the community, and the Superintendent exercising a control, the extent of which we shall presently notice, over the proceedings and resolutions of the Public Meeting. In the month of January 1853, an Act, 16 Vict., cap. 4, was passed in the Colony, which afterwards received the royal assent, and was proclaimed in September 1853, by which it was enacted by the Superintendent, with the advice and consent of the Public Meeting, That the Legislature of the Colony should consist of the Superintendent and a Legislative Assembly, to be constituted as therein mentioned; that every Bill which should be passed by the Legislative Assembly should be presented by the Speaker for Her Majesty's assent to the Superintendent, and that the Superintendent should declare according to his discretion, but subject to the provisions in the said Act contained, and to such instructions as might from time to time be given in that behalf by Her Majesty, that he assented to such Bill in Her Majesty's name, or that he withheld Her Majesty's assent, or that he reserved such Bill for the signification of Her Majesty's pleasure thereon; that it should be lawful for the Legisla-

tive Assembly, with the consent of the Superintendent, by enactment from time to time, to impose such duties, taxes, and imposts as should be sufficient to raise a revenue to meet the necessary expenditure for the public service; that with the deductions and subject to the provisions in the said Act contained, the whole of the revenue of the Colony arising from taxes, duties, and imposts levied on Her Majesty's subjects therein should be appropriated to the public service by Acts to be for that purpose enacted by the Superintendent with the advice and consent of the Legislative Assembly, and in no other manner, and it was provided that it should not be lawful for the Assembly to pass, or for the Superintendent to assent to, any Bill appropriating to the public service any sum or sums of money arising from the sources aforesaid, unless the Superintendent should first have recommended the Assembly to make provision for the specific public purpose for which such money was to be appropriated, and that no part of the revenue arising from the sources aforesaid should be issued or be made by law issuable, except in pursuance of warrants addressed to the Public Treasurer by the Superintendent, with the advice of an Executive Council. By another Act, 18 Vict., cap. 21, called the Laws in force Act, which was afterwards passed in the Colony, received the royal assent, and was proclaimed on the 8th March, 1856, it was enacted that all rules, orders, resolutions, and enactments of magistrates, or of public meetings of a permanent and municipal character, or intended as general laws of the Settlement, which had not been revoked, altered, repealed, or superseded by any similar rules, orders, or resolutions, or by any order, proclamation or other Act of Her Majesty's Government, or of Her Majesty's Superintendent for the time being, or by any other law of the Settlement prior to or during the then present session, and which had been acted upon as permanent and continuing laws since the 1st January, 1850, should be and continue, and were thereby declared to be laws of the Settlement as completely as if they had been expressly re-enacted by any other law under the then present constitution.

A further Act, 22 Vict., cap. 5, was also passed in the Colony, and received the Royal assent, for

enabling the Attorney-General of the Colony to be sued in case of proceedings against the Crown or against any of the public Departments of the Colony ; but in the view which we have taken of this case, it is not necessary to enter into the details of this Act. It may be added that the practice appears to have been for the Acts passed by the Public Meeting in each session to be laid before the Superintendent at the close of the session, for his assent or dissent.

What has taken place as to the appointment of Agents for the Colony in England appears to be as follows :—Before the year 1815 the public of Honduras had an Agent in England, through whom all communications necessary to be made to the Government of this country were made, but on the 3rd of July, 1815, in consequence of a communication then made to the Public Meeting by the Superintendent, a resolution was passed by the meeting that the office of Agent for the public of Honduras should be done away, and it was annulled accordingly ; and it was further resolved that all representations deemed necessary to be made to His Majesty's Government in future should be made through the medium of the Superintendent. This resolution remained in force until the month of March 1822, when two other resolutions were passed by the public meeting, by one of which the resolution of the 3rd of July, 1815, was repealed, and by the other of which, passed on the 4th March, 1822, it was resolved that an Agent should be appointed for the Settlement who should be resident in London, and should be authorised to represent matters submitted to him from the magistrates and public of the Settlement to His Majesty's Government, and to report the issue accordingly ; and that a salary of 300*l.* sterling per annum should be attached to the situation, to be remitted by the Public Treasurer annually, and the meeting nominated John Young, Esq., of London, to be their agent. It is to be observed that this appointment appears to have had the approval of the Superintendent ; for the Public Meeting, at a special general meeting held on the 8th April, 1822, requested the Superintendent to communicate the resolution to His Majesty's Government, and it must be presumed that he did so accordingly. In 1825 another appointment of an Agent (Henry Cooke), with the same salary of 300*l.*

sterling per annum, was made by the Public Meeting, the appointment being made on the recommendation of the Superintendent, and in July 1835 an Act was passed by the Public Meeting, with the consent of the Superintendent, by which it was enacted that James Hyde should be, and he was thereby appointed Agent, and that there should be allowed and paid to him yearly, at the rate of 300*l.* sterling per annum, clear of all deductions in remitting, for salary, and in full of all contingent accounts relating to such appointment, and of all other allowances whatsoever which could be claimed on account thereof; but on the 11th July, 1842, it was again resolved by the Public Meeting that the office of Agent for the Settlement should be discontinued. In the same Session, however, of the Public Meeting in which this resolution was passed, an Act, 6 Vict., cap. 4, was also passed by the Public Meeting, which was assented to by the Superintendent, for regulating the salaries of the public officers of the Settlement, and by this Act it was enacted that the Public Treasurer should pay to the holders of every public office enumerated in the schedule to the Act the sum set against the office in the said schedule, and amongst the offices enumerated in the Schedule to the Act was that of Agent in London, with a salary of 500*l.* currency (which was equivalent to 300*l.* sterling) set against the office.

Notwithstanding the passing of this Act, however, the resolution of the 11th of July, 1842, appears to have been acted upon, and no Agent for the Settlement was appointed until the 7th July, 1845, when the Superintendent having addressed a letter to the public meeting, suggesting the expediency of nominating a Commercial Agent for the Settlement in England to whom orders for all articles unprocurable at Belize might be forwarded, and the money simultaneously remitted, and who would be content to afford his services to the Colony at the usual mercantile charges, and stating that he should be glad if the Public Meeting would select Agents both in London and New York, with whom the Executive Government could communicate as occasion required; The Public Meeting appointed Mr. John Waldron Wright to be Commercial Agent for the Settlement, and the Superintendent approved the appointment. Mr. Wright's agency determined some time before the

month of February 1848 ; and on the 1st February, 1848, in a Committee of the Public Meeting on the Estimates of the Colony for six months ending the 30th June, 1848, it was resolved that there should be added to the Estimates as additional grants made by the Public Meeting, amongst other items a sum of 500*l.* currency per annum as a salary for a Political Agent of the Settlement in London, and that the Appellant should be appointed such Agent, and the Estimates were amended accordingly by introducing amongst other sums the sum of 250*l.* for six months' salary of the Political Agent. The Estimates thus amended were passed by the Public Meeting ; but on the 23rd February, 1848, the Superintendent disallowed the grant of the 250*l.* for the six months' salary of the Political Agent. This disallowance, however, does not appear to have been treated by the Public Meeting as affecting the Appellant's appointment, for they seem to have communicated the appointment to him, and on the 31st March, 1848, he addressed a letter to the Chairman of the Public Meeting to this effect—that nothing would be wanting on his part to promote the welfare of the public, whether he might or might not be confirmed in the appointment by the Superintendent ; and that should the meeting consider that any reduction in the salary ought to be made, or that no part of it should be drawn until prosperity returned, it would meet with his approval. The Public Meeting afterwards, in July, 1848, appointed a Committee of Correspondence to communicate with the Appellant, for the purpose of forwarding and carrying out the instructions, requirements, and representations of the meeting, and on the 30th January, 1849, they passed the following resolution :—That as a question had arisen as to the fact of the appointment of the Appellant as the Political Agent of the meeting, they recognised his acts in such capacity, and resolved that he was duly appointed such Agent at the Session of January 1848, and was authorised by the meeting to act in such capacity during the past year. And in the same month of January 1849, in a Committee of the Meeting to inquire into and take into consideration the state of the Settlement and the supplies required for the public service for the five months ending the 31st July, 1849, they passed a further resolution :—That it be recommended to

the Meeting to re-appoint the Appellant as the Political Agent of the Meeting in Great Britain, and to grant the sum of 166*l.* 13*s.* 4*d.* in lieu of salary to him for his services as such Agent for five months ending the 31st of July then next, being at the rate of 400*l.* a year. But this grant was also disallowed by the Superintendent; and in his letter to the chairman of the Public Meeting communicating his disallowance of this item, and his dissent from other proceedings of the Public Meeting during the Session, all of which had been laid before him for his approval, the Superintendent took occasion to desire that if he had omitted to express his opinion upon any of those proceedings, his omission to do so was not to be construed as a formal approval on his part. By an Act, 20 Vict., cap. 16, which was passed in the Colony in the year 1856, and received the Royal assent on the 11th February, 1857, after reciting that by a resolution of the Public Meeting, made in the year 1822, provision was made for the appointment of some person resident in England to act as Agent therein for the Settlement, and that the Appellant under and by virtue of the said resolution was appointed such Agent, it was enacted by Her Majesty's Superintendent, with the advice and consent of the Legislative Assembly, as follows:—That from and after the passing of that Act, the resolution in the preamble of the Act referred to should be and it was thereby repealed; that the appointment of the Appellant thereunder as such Agent was nevertheless confirmed, and he was thereby declared to be the lawfully constituted Agent of the Settlement in England; that the duties of the said office should be those theretofore performed by the Appellant, and that the then present Agent and any Agent thereafter to be appointed under the provisions of the Act should be remunerated for his services as such Agent by the payment to him of such mercantile commissions as might be agreed to be paid him by the Superintendent and Council, in respect of any matters in which he might be employed on behalf of the Settlement; and that when the said office should become vacant it should be lawful for the Public Assembly, at its meeting next ensuing such vacancy, to appoint some other person resident in England to act as such Agent; and that such

appointment, when certified under the hand of the Speaker of the Assembly to Her Majesty's Superintendent and approved of by him, should be full and sufficient evidence of the title of such person to act as such Agent. But afterwards, by another Act, 21 Vict., cap. 1, passed in the Colony, and which received the Royal Assent on the 6th February, 1858, after reciting that by the Act 20 Vict., cap. 16, respecting the Agent of the Settlement in England, it was amongst other things provided that the duties of the office of Agent should be such as had been theretofore performed by the Appellant, and that it was considered expedient more fully to explain and declare that such duties were intended by the said Act to comprise those of a commercial and not of a political nature, it was enacted and declared by Her Majesty's Superintendent, by and with the advice and consent of the Legislative Assembly, and by the authority of the same, that nothing in the said Act contained was intended or should be construed to extend to invest the said Agent with any power or authority other than that of a Commercial Agent, and that the duties to be performed by him should be solely of a commercial and not of a political character.

Reverting now to the action brought by the Appellant, the summons in the action was to the effect already stated. The pleas to the action on the part of the Respondent were:—1st. That the public of Honduras never were indebted to the Appellant as alleged in the summons. 2ndly. That the appointment of the Appellant as agent at a salary never was recognised or confirmed by Her Majesty's Superintendent, but that, on the contrary, the salary voted by the Public Meeting to the Appellant upon his appointment as Agent was not only not sanctioned, but was expressly disallowed, by the then Superintendent. 3rdly. That the action was commenced after the passing and coming into operation of the Act 16 Vict., cap. 4, to amend the system of government of British Honduras, and that no part of the revenue of the settlement arising from taxes, duties, and imposts levied on Her Majesty's subjects therein had been appropriated to the payment of a salary to an Agent of the Settlement in England, by any Act for that purpose, enacted by the Superintendent with the



advice and consent of the Legislative Assembly, and that prior to the passing of the aforesaid Act no public funds arising from the sources aforesaid, or from any other sources whatever, had ever been appropriated according to the law then in force to the payment of such salary. And 4thly. That prior to the passing of the 20th Vict., cap. 16, the then Superintendent did not recommend the Assembly to make provision for the payment of any monies to the Appellant as Agent. The action was tried on the 7th of September, 1859, when the jury found as follows:—That the Public Meeting in the year 1848 appointed the Appellant to be Agent in England of the settlement; that the salary was disallowed by the Superintendent; that the suit had been commenced after the passing of the 16th Vict., cap. 4; that the Superintendent had not recommended the Public Meeting to make any provision for the Agent's salary; and that it did not appear from the evidence that the Appellant had engaged to act gratuitously, or to renounce his salary: and they found a verdict generally for the Respondent, to be considered and applied by the Court. It is upon these findings the Orders under appeal were made.

There are two questions raised by this Appeal: first, whether the Appellant is entitled to recover the salary claimed by him for all or any part of the time during which he held the office of Agent; and secondly, whether, assuming him to be so entitled, the action for the recovery of his salary has been properly brought by him against the Respondent. Upon the second of these questions we do not think it necessary to give, and do not mean to give, any opinion. We are of opinion that the case may well be decided, and ought to be decided upon the first question only, involving as it does the substance of the case. This question must be considered in two points of view: first, as it stands independently of the Act 20 Vict., cap. 16, and secondly, as it stands with reference to that Act. Looking at the case in the first point of view, the important question to be considered appears to us to be what was the effect of the Act 6 Vict., cap. 4; for we are satisfied that independently of that Act, there can be no foundation for the Appellant's claim. The Superintendent appears at all times to have had and

exercised a large control over the proceedings of the Public Meeting, and his assent or confirmation appears to us to have been at all times necessary to give the force of law to measures passed by that Assembly. Without such assent or confirmation it was not, as we think, competent to the Public Meeting to appoint an Agent with a salary, and it is clear that the Superintendent never did consent to any salary being allowed to the Appellant. On the contrary, on each occasion on which the allowance of a salary to the Appellant was brought under the Superintendent's consideration, he expressly disallowed it.

But it was argued for the Appellant that by the Act 6 Vict., cap. 4, the salary was annexed to the office, and therefore that the Appellant, by virtue of his appointment to the office, became entitled to the salary. This argument, however, does not appear to us to be well founded. We very much doubt whether this Act can at all be called in aid by the Appellant, for it is plain that the intention here was that the Appellant should take his salary, not under the Act, but under the resolutions which were passed in connection with his appointment. Assuming, however, that the Appellant is entitled to call this Act in aid, it is clear that the Act applies only to officers of the Settlement, and although by the resolution of February 1848 the Appellant was proposed to be appointed as Political Agent of the Settlement, it appears from the resolution appointing the Committee of Correspondence in July 1848, and from the subsequent resolution of 1849, that he was considered to have been appointed, and was recognized as having acted as Agent of the Public Meeting only.

The crowning difficulty in the Appellant's case, however, appears to us to be: that the plain intention of the Public Meeting was that the Agency should be re-constituted, with a salary appointed by the resolutions of the meeting; and that the Superintendent, without whose consent the resolutions of the Public Meeting could not take effect, as plainly intended that this should not be done, and that his refusal to allow the salary was in substance a dissent on his part from the whole of the proposition of the Public Meeting. We are therefore of opinion that the Appellant's claim to the salary sought to be

recovered in this action cannot be maintained independently of the Statute 20 Vict., cap. 16.

The only remaining question then is, whether the Appellant's position in respect of his claim to the salary is altered by that Act, and we are of opinion that it is not. The Act indeed confirms the Appellant's appointment as Agent, but as explained by the Act 21 Vict., cap. 1, it confirms his appointment only as a Commercial and not as a Political Agent. It is silent, too, as to the past salary, which had been disallowed by the Superintendent. Some support to the Appellant's case was attempted to be derived from the Public Meeting having ultimately allowed in the estimates a sum which had been paid by the Superintendent to the Chief Justice of the Colony on account of the salary appointed for his office by the Act 6 Vict., cap. 4, notwithstanding the Public Meeting had refused to allow the salary, but as this sum was in fact allowed in the estimates, it does not seem to us that the Appellant's case is at all assisted by its having been paid. Upon the whole case we are of opinion that the Orders under appeal were right upon the merits, and we shall therefore humbly recommend Her Majesty to dismiss this Appeal, and with costs.

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