

KANDASAMY v. MUTTAMMA.

P. C., Pánaduré, 14,977.

1896.
June 17
and 18.

Master sued servant—Ordinance No. 11 of 1865, s. 11—Person entitled to prosecute.

Semble, the employer is the only person who can prosecute for offences under the Labour Ordinance ; but a Magistrate might be justified in issuing process on the complaint of a fellow servant on proof of his employer's authority to make the complaint. In that case, however, the employer should be described as the complainant.

THE facts of this case sufficiently appear in the judgment.

Pereira, for accused, appellant.

Cur. adv. vult.

19th June, 1896. BONSER, C.J.—

This is a peculiar case. The appellant, a Tamil woman, was charged with, and convicted of, the offence following : " That she " being an agricultural servant under a contract of hire and service " for the period of one month, and renewable from month to month, " quitted the service of her employer, Mr. Wetherall, of Perth estate, " without leave or reasonable cause, before the end of her term of " service or previous warning of her intention to determine the " contract of service."

I may here observe that this conviction is bad, for it does not state when the offence was committed. However, I will not deal with the case on this technical ground. From the evidence it would appear that she was charged with quitting service on or about the 10th May last.

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The plaint was filed on the 15th May by one Kandasamy Kangany in his own name. It is not necessary to determine finally whether this is legal or not.

In a similar case recently heard before Mr. Justice Withers, my learned brother expressed his opinion that, even if legal, it was highly improper. No doubt, according to the theory of the English Common Law, any person can prosecute on behalf of the Queen any offender against the Criminal Law. In theory, any bystander who sees one man assault another may prosecute ; but, as Mr. Justice Stephen in his work on the Criminal Law observes, although this is theoretically possible, yet it is practically impossible, because a jury would refuse to convict in such a case.

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BONSER, C.J.

In my opinion, the employer is the only person who can properly prosecute for offences under the Labour Ordinance, because he is the only person injured. It is not like an assault or breach of the Queen's peace, nor is it an offence which concerns any one but the parties themselves. It would be intolerable that if A's cook leaves him without notice, B, a complete stranger to both, should be allowed to institute a prosecution. No doubt a kangany is not a complete stranger, and if he stated and proved that he was instructed by the joint employer to set the law in motion, possibly a Magistrate might be justified in issuing process on his complaint; but in that case the employer should be described as the complainant, and thus made responsible for the proceedings.

In the present case, the employer was called as a witness for the prosecution, but he did not state that he ordered or authorized the prosecution, nor did the kangany allege that he had received any such orders.

[His Lordship then discussed the facts of the case, and held that the appellant had reasonable cause for leaving her employer's service.]

