Jan. 27, 1910

Present: Mr. Justice Wood Renton.

LYALL *v.* NARAYANAN.

P. C., Matale, 33,774.

Ordinance No. 9 of 1909, s. 20—Quitting service—Notice by letter.

Section 20 of Ordinance No. 9 of 1909 does not prohibit a cooly from giving his employer notice of his intention to determine his contract of service by a letter which proceeds really from himself, even although it may have been prepared by a proctor

A notice by an Indian cooly by a letter to which he set his mark, and which mark was authenticated by a proctor, was held sufficient to satisfy the provisions of section 20 of the Labour Ordinance.

APPEAL against an acquittal with the sanction of the Attorney-General. The accused gave the complainant notice of his intention to determine his contract of service by a letter, to which he set his mark. This mark was authenticated by the signature of Mr. Proctor Pompeus, who certified that the accused set his mark to the letter in his presence. It was also proved that the accused understood the contents of the letter when he set his mark to it. The complainant, who admitted the receipt of the letter, charged the accused for quitting service without giving notice in terms of section 20 of Ordinance No. 9 of 1909. The Police Magistrate held that the letter was sufficient notice, and acquitted the accused.

The complainant appealed.

A *St. V. Jayewardene*, for appellant.—The construction placed on section 20 of the new Ordinance by the Police Magistrate would in effect nullify the object of the Ordinance, which was to require the cooly to give notice in person. Prior to this Ordinance notices were given either personally or by agent (*i.e.*, proctor or kangany). The giving of notices by agents had led to grave abuses, and was one of the matters referred to the Labour Commission and dealt with by them, as shown by their report. [WOOD RENTON J.—Do you (respondent) object to the report of the Commission being referred to? Mr. Wadsworth objected.] Portions of the report may be read to show to this Court the evils and abuses which this Ordinance intended to remedy. Counsel referred to *In re Mew v. Thorne*,[1] *Maxwell on the Interpretation of Statutes, p. 37.*

The Commission recommended that in the event of any cooly on an estate desiring to give notice or to apply for his tundu, he be required to appear before the superintendent, and that notice given on his behalf by his kangany or other agent, unless subsequently personally confirmed by him, should be deemed invalid (*Report of the Labour Commission, paragraph 30, p. xii*). In the "object and reasons" attached to the draft Ordinance it is stated

[1] *31 L. J. Bankruptcy 87.*

that it is introduced to give effect to the recommendations of the Labour Commission.

The present case is an attempt to evade the letter and the spirit of the law. This clearly amounts to giving notice by an agent. Formerly the agent himself used to sign the notice, but now he attests the signature of the cooly. The requirement of the law that the cooly should " personally signify " his intention would become a dead letter, if the accused's contention be upheld.

Wadsworth, for the respondent. In construing an Ordinance we have no right to look into reports of Commissions and parliamentary debates (*Attorney-General v. Sillem* [1]), except where there is any ambiguity in the words (*Maxwell on the Interpretation of Statutes, p. 39*). The words of section 20 are clear.

In this case the notice given by the cooly is not a notice given by an agent. The Ordinance does not prohibit the giving of notice by letter. If notice has to be given in person, a cooly who is ill may not be able to give notice. The Ordinance is a penal statute, and must be strictly construed. " Personally " does not mean in person.

Jayewardene, in reply, cited sections 25 and 8 of the Civil Procedure Code to show what " personally " meant.

January 27, 1910. Wood Renton J.—

This case, an appeal with the sanction of the Attorney-General, raises an important question in the construction of the Indian Coolies' Ordinance of 1909. It has been ably argued on both sides. Shortly stated, the material facts are these. The appellant, Mr. Lyall, who is the superintendent of Aluwihare estate, charged the respondent Narayanan with desertion from his service, in breach of section 2 of Ordinance No. 16 of 1905. He alleged that the respondent quitted the estate on November 26, 1909, without notice, in terms of section 20 of the new Ordinance, and also without leave or reasonable cause. The respondent was acquitted in the Police Court of Matale, on the ground that he had in fact given a notice sufficient for the purpose of satisfying the provisions of section 20 of the Ordinance of 1909, and against that acquittal the present appeal has been brought. The notice, which was in fact given in the present case, consisted of a letter dated October 20, 1909, and purported to bear the mark of the respondent. It is in the following terms: " To the Superintendent, Aluwihare estate, Matale: I beg to give notice that I will quit your services on November 25, 1909. " The respondent's mark is authenticated by the signature of Mr. Pompeus, Proctor, Matale, who certifies that the respondent set his mark to the letter in question in his presence. At the hearing of the charge Mr. B. R. Perera, a clerk of Mr. Pompeus, was examined. He stated that he wrote the letter in question on October 20 to Mr. Pompeus's dictation; that the

[1] *(1863) 2 H. and C. 521.*

Jan. 27, 1910

WOOD RENTON J.

Lyall v. Narayanan

accused-respondent put his mark to it in his presence, but that he had read and explained its contents to him; and that he then handed the notice, after putting it into a cover and addressing it to Mr Lyall—he does not say to whom the notice was in fact handed—to be posted after registration. In his evidence at the trial Mr. Lyall stated that he duly received the notice in question on October 21. If this notice satisfies in law the requirements of section 20 of the Ordinance of 1909, there can be no question that the respondent was entitled to leave Aluwihare estate on the 26th of the following November. I have, therefore to consider whether the provisions of section 20 have in fact been complied with. That section is in the following terms: " Notice of warning of the intention of any labourer to determine his contract of service, if given by another person on behalf of the labourer, shall not begin to run or be in any way effectual in law, unless and until the labourer has personally signified to his employer his desire to determine his contract of service. " It was argued by Mr. A. St. V. Jayewardene. on behalf of the complainant-appellant, that the clear intention of this section, particularly when viewed in the light of the report of the Labour Commission, on whose recommendation it was enacted, is to invalidate any notice of an intention to determine contract of service, which is either directly or indirectly given on behalf of the cooly through any agent, and he contended on the facts that in spite of the respondent's mark having been affixed to the notice here in question, a mark which I must hold on the evidence to have been duly authenticated, the whole transaction was in substance and in fact conducted by the respondent's proctor, and therefore obnoxious both to the letter and still more to the spirit of section 20 of the new law. The case is one of first impression, and I have to determine it in accordance with general legal principles. There can be no doubt as to what the duty of a Court is when it is called upon to construe an enactment of any Legislature. That duty has been defined in the case of *Attorney-General v. Sillem* [1] in language so far superior to any that I can find to express my meaning that I propose to cite a short passage from it *in extenso*:—

" It may be said that this is a lawyer's mode of dealing with the question, merely looking at the words. It is so, and I think it is right. A judge discussing the meaning of a statute in a Court of Law should deal with it as a lawyer, and look at its words. If he disregards them and decides according to its maker's supposed intent, he may be substituting his for theirs, and so legislate. As has been excellently said, better far be accused of a narrow prejudice for the letter of the law than set up or sanction vague claims to discard it in favour of some higher interpretation more consonant with the supposed intentions of the framers or the spirit which ought to have animated them."

[1] *(1863) 2 H. and C. 537.*

Applying this canon to the case before me, I am clearly of opinion that the learned Police Magistrate was right in holding that the notice here in issue is sufficient in law to satisfy section 20 of the Ordinance of 1909. It is proved on the evidence that it was in fact a notice which the cooly desired to be sent to his superintendent and under these circumstances I think it must be held to have been given by the cooly himself, and not by his proctor on his behalf. In arriving at this conclusion, I have also kept in view the point, which was well urged by Mr. Wadsworth on behalf of the respondent, that we are dealing here with a statute or, perhaps, I should say with a group of statutes, imposing a penal liability. Taking the language of section 20 in its fair and ordinary signification, I think that it does not prohibit the cooly from giving notice of an intention to determine his contract of service by a letter which proceeds really from himself, even although it may have been prepared by a proctor. Under these circumstances, the latter clause of section 20 does not apply. We have here a notice which I hold to be the act of the cooly himself and not of an agent on his behalf, and there was therefore no need for the cooly personally to signify to the employer his desire to determine his contract of service whatever the words " personally signify " may mean. I am prepared, however, to go a step further, and to consider the question whether there is anything in the Report of the Labour Commission to show conclusively that it was the intention of the Legislature to prohibit a cooly from himself sending a notice to his superintendent through the agency of a proctor, or for that matter of any other person. There is a long catena of authorities in English Law which establish the rule, that for the purpose of construing an Act of Parliament a Court is not entitled to look at the parliamentary debates which preceded its enactment. At the same time there is clear authority in the English Law Reports for holding that where the Court has to construe a statute, and particularly where there is room for ambiguity as to the meaning of the Legislature, it is permissible to look at parliamentary reports, which obviously do not possess the obnoxious characteristics of parliamentary debates, and which often show in the clearest light what were the defects, or supposed defects, in the old law, and what is the remedy that the new law was designed to apply to them.

In the case of *Symes v. Cuviller* [1] it was held by the Privy Council that the reports of the Commissioners who were connected with the preparation of the Canadian Civil Code, while they were not, of course, judicial authorities, could still be looked at as *ratio scripta*: and in the later case of the " *Solio* " *Trade Mark* [2] the Earl of Halsbury L.C. held that for the purpose of construing a later Trade Marks Act, it was not only legitimate, but highly convenient, to refer both to the former Act, to the ascertained evils to which it had given rise, to the later Act which provided the remedy, and in connection

[1] *(1880) 5 A .C. 138, 158.*

[2] *(1898) A. C. 571, 576.*

Jan. 27, 1910

WOOD RENTON J.

Lyall v. Narayanan

with all these enactments to the Report of the Commission which preceded, and in fact to a large extent formed the basis of the later legislation.

From the Report of the Labour Commission (paragraphs 30-33) it seems to me to be tolerably clear that the object of section 20 of Ordinance No. 9 of 1909 was to check the abuse of the *tundu* system, which is specially dealt with in the former of these paragraphs. After pointing out that, in its practical working, it was a transaction between a kangany, the superintendent of the old estate, and the superintendent of the new, the Commissioners say that " they are convinced that in a large number of instances the coolies who are transferred profit little or not at all by the transaction, that they follow their kanganies, for the most part, with an extraordinary docility, and are too often regarded by them as mere instruments by means of which money may conveniently be extorted from successive employers of labour." It is true, as Mr. Jayewardene pointed out, that in paragraph 33, clause (*b*), the Commissioners recommend that notice given on behalf of a cooly by his kangany " or other agent ", unless subsequently personally confirmed by him, should be invalid. In my opinion, however, these words are very far from being strong enough to justify me in holding that the language of section 20 of the new Ordinance prevents a cooly from consulting a proctor, and from himself giving notice in a letter proved to have been duly signed by him, even although his proctor has prepared it. I am far from saying that the language of section 20 should be restricted to the acts of kanganies, or from holding that where a proctor himself gave notice on a cooly's behalf of the latter's intention to determine a contract of service, such a notice would be effectual until it had been personally confirmed by the cooly himself. As I have already said, it is not necessary for the purposes of the present case to decide, and I do not decide, the question whether the words " personally signify in the latter part of section 20 should be interpreted as meaning signify by an appearance in person before the superintendent. It will be time enough to decide that point when it is directly in issue. But I am quite clear that neither the language of section 20 nor the terms of the Labour Commissioners' Report justify me in holding that the notice which was in fact sent to and received by the superintendent of Aluwihare estate in the present case, and which must be taken to have been really sent by the cooly with full knowledge of its contents, is a notice given by an agent on the labourer's behalf. I have thought it right to deal fully both with the facts of this cas and with all the legal issues which are directly raised in it, in view of its difficulty and importance, and of the great assistance I have received from both sides of the Bar in arriving at my decision. The appeal is dismissed.

Appeal dismissed.