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Present : De Sampayo J.

WALKER *v.* ALAGAN KANGANY.

766—P. C. Gampola, 3,553.

Labour Ordinance—Failure to attend work—Leaving the estate without permission—Reasonable cause.

In a prosecution under the Labour Ordinance for failure to attend work without reasonable cause, the accused pleaded that he was absent for the purpose of consulting a lawyer and instituting a case, which he did, against the superintendent.

Held, that it was a reasonable cause, and he could not be convicted.

THE facts are fully set out in the judgment.

H. J. C. Pereira, K.C. (with him *Sundaram*), for accused, appellant.—The accused left the estate for the purpose of consulting a lawyer and instituting a case against the superintendent. The circumstances of the case quite justify his absence. His wife had been refused leave to go to the coast for her confinement unless security was given for her debts. Later his attempt to leave the estate by giving notice and obtaining a *tundu* was obstructed. He had been himself insulted by the superintendent, and assaulted by the conductor in the presence of his coolies. This treatment the accused naturally resented, and left the estate, though against the express orders of the superintendent, to have resort to his legal remedy. In fact, on the advice of his lawyers, he instituted a case against the superintendent and the conductor on June 30, and had the summons served. Thus, his temporary absence from work on June 29 and 30 was justified, if he were entitled to set the law in motion against the superintendent. The test should be not whether the case instituted by the accused was well-founded or not, but whether he had a real grievance, for which he had a right to have recourse to law.

Bartholomeusz (with him *V. Rajakariar*), for complainant, respondent.—Reasonable cause for absence can only be pleaded if the grievance be well founded.

In this case the Magistrate has found that the grievance was not a real grievance. Counsel also cited *Wyness v. Vembady Kangany* (P. C. Avissawella 1,593).[1]

[1] *S. C. Min., Sept. 12, 1898.*

September 27, 1921. DE SAMPAYO J.—

This case turns upon a very interesting and practically important question of law touching the liability of a labourer to be prosecuted for failure to attend work. The accused was a head kangany on Penrhos estate with a gang of 62 coolies under him. He and his coolies had been employed on that estate for about six years. He appears to have served well, and there was no trouble whatever until June this year, when the events which culminated in this prosecution occurred. The accused's wife belonged to his gang of coolies, and appears to have owed the estate Rs. 500 for herself and two coolies. Some days before June 27 the accused asked the superintendent leave for his wife to go to her mother in the coast for her confinement. The superintendent refused this application, unless the accused made himself responsible for his wife's debt. There is a dispute as to what form of guarantee was demanded. The superintendent says that he wanted the accused to give him a writing promising to pay his wife's debt if she did not return, while the accused says that he was required to deposit cash security of Rs. 500. There may have been some misunderstanding on this point, or the accused may now be giving an incorrect version of the matter. But for the purpose of this case it is not material to decide this question of fact. It is certain, however, that the accused took to heart the refusal to give leave to his wife and felt considerable dissatisfaction. The wife herself gave a petition to the Police Magistrate complaining of the refusal to grant leave. There is also a dispute as to whether the accused thereafter asked for a *tundu* or not, but that, again, is unnecessary to decide. The next step taken by the accused was to obtain the signature of his coolies to a notice to quit service. This was on June 27. The superintendent, having heard of this on June 28, asked the accused to come with his coolies on the following morning to his bungalow. The accused and the coolies turned up at the bungalow as ordered, and were there paraded. The superintendent addressed the coolies, and asked those who wished to leave to stand on one side, and those who wished to remain to stand on the other side. About 25 coolies expressed their desire to leave, and the others wished to remain. All of them were then ordered to go to their work, and not to leave the estate without the superintendent's permission. This proceeding, as might be expected, instead of tending to peace, brought about a crisis. The accused left the estate that day and went to Hatton to consult a lawyer and institute a case, and, as a matter of fact, he on June 30 instituted the case No. 3,528 in the Police Court of Gampola (which is the proper Court) charging the conductor under section 314 of the Penal Code with assaulting him, and the superintendent under section 484 with having insulted him. He came with the summons himself and served on the conductor and the superintendent on June 30. Then on July 5

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the present case was instituted, at the instance of the superintendent, charging the accused (1) with having failed to attend work on June 29 and 30; and (2) with having wilfully disobeyed the order of June 29 not to leave the estate without the superintendent's permission. The accused was convicted on both charges, and was sentenced to undergo one month's rigorous imprisonment and to pay a fine of Rs. 50, which, if recovered, was to be paid to the complainant as compensation. It is not clear whether this compensation was to be paid to the superintendent or to Sanji Meera Kangany, who was the formal complainant on the record, nor in what manner compensation was due to either.

The first question I have to determine is whether, in the circumstances of the case, the accused had "a reasonable cause" for his failure to attend work on June 29 and 30, for the absence of a reasonable cause is a necessary element in the definition of the offence under section 11 of the Ordinance No. 11 of 1865. The Police Magistrate allowed that to leave for the purpose of consulting a lawyer and instituting a case would be a good cause, provided the case to be a true one. I am unable to accept this qualification as sound. It happened in this instance that the accused's case against the conductor and the superintendent was heard before the superintendent's case against the accused, and the Magistrate found the charge to be unfounded. But the order of hearing might well have been reversed, or the two cases might have been before two different Courts or heard by two different Magistrates, in which case there would have been no way of determining, before the case against the accused was heard, whether or not the accused's case against the conductor and the superintendent was false. Apart from this practical consideration, the right of every individual to resort for redress to a Court of justice is paramount, and in my judgment the Court will not go into the question whether or not the grievance which induces a servant to institute a case against his master is well founded, and make that a test for determining whether the servant had a good cause for his temporary absence from work. The true distinction appears to me to lie in the servant's intention. If the servant goes really to consult a lawyer and institute a case against his master, even if his grievance is ultimately found not to be well founded, I think there is a "reasonable cause" for his temporary absence. If, on the other hand, his purpose is not really to consult a lawyer and institute a case, but that he makes that pretext for absenting himself for some other reason, there is no "reasonable cause." In the present case there is no question that the accused's real and only purpose was to consult a lawyer and institute a case, which he, in fact, did. Nor was his grievance wholly imaginary. The parade of the coolies at the superintendent's bungalow took place under circumstances in which a slight incident would acquire great significance. The

accused was undoubtedly labouring under a great stress of feeling, in consequence of the refusal of leave for his wife to go to her home in India, and in consequence of the prevention of his attempt to give legal notice to quit. The superintendent's own description of the incident is as follows : " I told him I had had several thousand coolies under me and several kanganies, and no good Tamil cooly or kangany ever wanted leave without paying his debts ; only a bad man would try to do that." The superintendent spoke in Tamil in the presence of all the coolies. I do not know what expression he used for " bad man." It is true that the accused is found to have falsely charged the superintendent with having used some other expression which was of an abusive character. But there was something said and done which in the accused's then irritated state of mind probably amounted from his point of view to an insult. Then as regards the charge of assault against the conductor, the superintendent in his evidence in the accused's case said that some of the coolies hesitated when they were ordered to go to their work at once, and that " the conductor drove them off by pushing them." The accused's way of describing this odd course was that the conductor " assaulted " the coolies, and that he himself was so assaulted. The Police Magistrate's finding was that the accused's complaint was " either wholly untrue, or at the best a grossly exaggerated version of what took place." In the circumstances which I have mentioned, the accused's alternative of this finding appears to me to come nearer the truth.

It is rather strange that there is no reported case directly bearing on the point of law I have above discussed. I am indebted, however, to Mr. Bartholomeusz for reference to the judgment of Lawrie J. in *Wyness v. Vembady Kangany* (P. C. Avissawella, 1,593).[1] That was also a case in which the accused was charged with neglect of duty, and his defence was that he had gone for the purpose of consulting a legal adviser and of getting a notice to quit written to the complainant. The learned Judge considered that that was not a reasonable cause, but the specific ground for this opinion was that a written notice was not necessary, and that if the superintendent on application refused leave of absence for having a notice written, the accused could have given verbal notice. That reasoning, however, does not apply to this case. To institute a case and to consult a lawyer for that purpose, it was absolutely necessary for the accused to leave the estate. I have not been able to discover a relevant English authority as to what is a " reasonable cause." It would appear to depend on the circumstances and on the particular subject-matter. But *Rex v. Johnson* [2] will be found interesting. The accused was indicted for perjury in taking a false oath at the hearing of a County Coroner's inquisition. The inquisition had, however, been held by the Deputy Coroner, in the absence of

[1] *S. C. Min., Sept. 12, 1898.*

[2] *(1873) 42 L. J. M. C. 41.*

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the Coroner. The Statute had provided that no such deputy should act except during the illness of the Coroner, or during his absence from any "lawful or reasonable cause." It was argued for the accused that the charge of perjury failed because the Coroner was not absent from a lawful or reasonable cause. The Coroner had on medical advice gone on a holiday. It was held that his absence was from a lawful and reasonable cause, even though he spent three or four days every week in shooting.

As regards the second charge against the accused, namely, disobedience of the superintendent's order not to leave the estate without his permission, the considerations I have above mentioned are equally applicable. A different ruling would lead to a strange result, for then a master could effectually prevent a legal proceeding being instituted against himself by prohibiting the servant from leaving his place of employment.

For these reasons, I think the conviction of the accused ought not to be sustained. It is, therefore, set aside.

Set aside.