Feb. 28, 1911

[FULL BENCH.]

Present : Lascelles C.J. ; Middleton and Grenier JJ.

TAYLOR *v.* HENRIE

55—*P. C. Kurunegala*, 9,144.

Attempt to seduce—Punishment—Ordinance No. 11 of 1865, s. 19—Penal Code, s. 289.

Section 19 of Ordinance No. 11 of 1865 provides no punishment for an attempt to seduce a labourer. The offence is punishable under section 289 of the Penal Code with a fine.

THE question of punishment in this case was referred by Middleton J. to a Bench of two Judges. Lascelles C.J. and Middleton J., before whom it was argued on February 27, 1911, referred it to a Full Bench.

Sampayo, K.C. (with him *H. J. C. Pereira* and *Sansoni*), for the accused, appellant.—Section 19 of Ordinance No.11 of 1865 does not provide any punishment for the offence of attempting to seduce. The section declares that any person seducing or attempting to seduce a labourer shall be guilty of an offence, and goes on to enact : " shall be liable on conviction to a fine not exceeding £5 in respect of each of the servants, &c., so seduced, and to imprisonment ....., if the Court shall see fit to impose such imprisonment."

It is clear that the sentence of imprisonment could not be imposed except where a sentence of fine has been imposed ; a sentence of fine can be imposed only where the accused is guilty of seduction. As section 19 does not provide a penalty for attempt, we must look to section 289 of the Penal Code, which provides only a fine.

To interpret the section as imposing a sentence of imprisonment for an attempt to seduce will be unreasonable. The Legislature could not have intended to punish an attempt more severely than the offence itself.

Elliott, for the complainant, respondent.—The law often treats the actual commission of the offence and the attempt on a par.

Where actual seduction has been committed, the law imposes a fine at the rate of £5 per person seduced ; in the case of attempt it provides imprisonment only as a penalty, as it is impossible to say how many persons have been attempted to be seduced.

It is only when there is a clear case of omission to provide for a penalty that section 289 of the Penal Code should be applied. Section 289 has never been applied to this section since 1865.

Sampayo, K.C., in reply, referred to section 490, Penal Code, and to *Grenier's Reports* (1872), *Part* I., *p.* 36.

Cur. adv. vult.

February 28, 1911. LASCELLES C.J.—

In this appeal a question of some difficulty is raised with regard to the construction of section 19 of Ordinance No. 11 of 1865, which is the principal Ordinance regulating the rights and duties of servants and labourers. In the case now under appeal the accused was convicted of wilfully and knowingly attempting to seduce certain labourers from the service in which they were employed, and he was sentenced to imprisonment for three months and to a fine of Rs. 100. On appeal, the difficulty to which I shall now refer was brought to light. The section is to the following effect. The first part of the section is clear enough. It provides that any person who shall wilfully and knowingly seduce or attempt to seduce from his service or employment any servant or journeyman artificer, or who shall do any other of the enumerated acts of the same kind, shall be guilty of an offence ; and then the section goes on, " and be liable on conviction thereof to a fine not exceeding £5 in respect of each of the servants or journeymen artificers whom he shall have so seduced, taken, or harboured, or concealed, or retained as aforesaid, and to imprisonment with or without hard labour for any period not exceeding three months." It will be observed that in the penal portion of the section there is no provision for the offence of attempting to seduce a labourer or servant from his employment. The only fine authorized is a fine not exceeding £5 in respect of each of the servants or journeymen artificers whom he shall have so seduced, taken, or harboured, or concealed. It has been suggested that, although the section provides no fine for the offence for attempting to seduce, the persons who are guilty of this offence are nevertheless liable to imprisonment. After a careful examination of the section I am unable to adopt that view. In the first place, that reading of the section is not in accordance with the plain and grammatical meaning of the section. The words " and to imprisonment " obviously relate to the same class of offence as that for which the fine of £5 relates, viz., the class of offences in which the seduction or a similar offence has been actually committed ; and in the second place, it is hardly possible to imagine that it was the intention of the Legislature that, while the actual offence was punishable by either a fine or imprisonment, the attempted offence should be punishable only by imprisonment. The result is that the section

Feb. 28, 1911

LASCELLES C.J.

Taylor v. Henrie

is defective in so far as it provides no penalty for the offence of attempting any of the prohibited actions. In some cases, where there has been an accidental omission in an enactment, it is competent for the Court to give effect to the obvious intention of the Legislature by the introduction of the necessary words. But in penal cases the language of the enactment must be strictly construed. The utmost that we are able to do is to read the words of the enactment in the most favourable sense to secure the obvious intention of the Legislature, and if, for example, a word has two meanings, it is competent for the Court to adopt the meaning which is most favourable to the object of the Ordinance. In *Maxwell on the Interpretation of Statutes* there is a number of cases cited that are closely analogous to that now in question. I need hardly refer to these, but the result is that we are strictly bound by the terms of the section, and the section must be construed as it stands. It declares an attempt to seduce a servant or labourer to be an offence, but it does not provide any penalty for the offence. The only course open to us is to have recourse to section 289 of the Penal Code, which allows a fine to be imposed for an offence for which no penalty is provided, and we think, in the circumstances of this case, that a penalty of Rs. 100 is a fair and just punishment to impose. We hold that the sentence of the Magistrate must be set aside, and a fine of Rs. 100 under section 289 of the Penal Code be imposed. We think it unnecessary to make any order as to the costs of the appeal.

MIDDLETON J.—

I agree, and have only a few words to add, to say that since I gave my decision on the application of Mr. de Sampayo to reconsider this case with regard to the punishment, I have very carefully gone into the reading of the section, and I find it impossible to read the terms of the section other than in the way in which it has been construed by the Chief Justice. I think that the grammatical wording is such that we must say that the imprisonment there mentioned was intended to be inflicted in respect of each of the servants or journeymen artificers who had been seduced, taken, or harboured. That being so, it seems to me that there is a complete *casus omissus* here, which is not within the province of this Court to supply. I agree, therefore, that the section must be read in the way enunciated by my Lord, and the sentence should be reduced to a fine of Rs. 100.

GRENIER J.—

I agree with the rest of the Court, and nave nothing to add.

Sentence varied.