

Present : Lascelles A.C.J. and Middleton J.

Mar. 14, 1911

WILLS v. HIGGINS.

10—D. C. Kandy, 20,524.

“Tundu” —Coolies not registered in estate register—No discharge tickets—Action to recover amount due on “tundu”—Illegal agreement—Ordinance No. 9 of 1909, ss. 22 and 23.

Plaintiff's agent issued a “tundu” to the effect that a gang of coolies would be paid off from plaintiff's estate on receipt of Rs. 1,313·06. The “tundu” was accepted by the defendant. A large proportion of the coolies were not on the estate register of the transferring estate, other coolies were without discharge tickets, and others with discharge tickets which were worthless, as they were issued, not by the superintendent of the transferring estate, but by a previous employer.

Held, that, inasmuch as plaintiff had failed to comply with the provisions of sections 22 and 23 of Ordinance No. 9 of 1909, the plaintiff could not recover from the defendant the amount due from the coolies.

LASCELLES A.C.J.—The Court will not lend its assistance to enforce an agreement which constitutes such a flagrant violation of the Statute Law of the Colony.

THE facts appear in the judgment of Lascelles A.C.J.

Elliott, for the plaintiff, appellant.

Bawa, for the defendant, respondent.

Cur. adv. vult.

March 14, 1911. LASCELLES A.C.J.—

On March 13, 1910, the plaintiff's agent, Mr. Frampton, issued a “tundu” to the effect that Caderuwel Kangany and 37 coolies would be paid off from Herisagalla estate on receipt of Rs. 1,313.06. The “tundu” was accepted by the defendant, who gave a post-dated cheque for the amount payable on April 15. Before that date the defendant stopped payment of the cheque, and, in answer to the plaintiff's claim for the amount, seeks to have the contract rescinded, on the ground that the defendant was induced to enter into the contract by misrepresentation and by concealment of material facts on the part of the plaintiff in various particulars which are set out in the answer. The answer also avers that the plaintiff had violated the provisions of the Indian Coolies' Ordinance, 1909. The claim is now reduced to one for Rs. 549.91, representing the indebtedness of the coolies known as Marikan's gang, as the defendant has

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himself given a "tundu" for the rest of the gang and has received the amount of their indebtedness, which he has placed at the plaintiff's disposal. The District Judge has dismissed the claim, partly, as I understand the judgment, on the ground of misrepresentation and concealment by the plaintiff, and partly on account of the violation of the Ordinance.

In the view which I have taken it is not necessary to consider the particulars in which misrepresentation and concealment have been alleged. It is well-settled law that no one can be permitted to sue on an agreement where the whole subject is in direct violation of a statutory enactment. If any authority be required for this proposition, I would cite *Bensley v. Bignold*¹ and *Fergusson v. Norman*².

I now proceed to inquire whether the transaction is an infringement of the Ordinance. Among the different parties of coolies which made up the total of 37 named in the "tundu" was the gang of Weerapper consisting of the kangany and 13 coolies. This gang was engaged by the plaintiff only two days before the date of the "tundu," and the plaintiff admits that he never entered these coolies on his estate register. This was a direct violation of section 22 of the Ordinance, and the plaintiff, by taking these men into his employment without entering their names on the register, was guilty of a punishable offence. But the illegality does not stop here. With regard to four of these men the plaintiff received no discharge tickets; their previous employer, Mr. Holmes, the Superintendent of the Experimental Station at Peradeniya, had been unable to issue discharge tickets, for the sufficient reason that he could not trace their antecedents. Here, again, the plaintiff committed a direct violation of section 23, and was guilty of a punishable offence. The defendant, of course, by receiving these men into his employment without discharge tickets was equally involved in the illegality. The extent to which the arrangement was tainted with illegality plainly appears from the defendant's evidence, "only 35 coolies," he states, "were sent to me and not 37; and of these, 19 only had discharge tickets, 6 had no tickets at all, and the balance had tickets issued by another employer." According to this evidence, which is uncontradicted, the transaction, besides involving the transfer of six coolies without any discharge ticket at all, provided for the transfer of ten others on discharge tickets issued, not by Mr. Frampton, but by a previous employer. Mr. Elliott contended that the matter now in dispute is merely Rs. 549.91, representing the debt of Marikan Kangany's gang, and that no illegality has been proved in relation to these coolies. This is true; but the agreement must be regarded as a whole; it is most improbable that the defendant would have accepted the "tundu" if it had related only to Marikan Kangany's gang, which consisted of an old woman as

¹ 5 B. & A. 335.

² 5 Bing N. C. 76.

kangany and three elderly coolies, with a debt of Rs. 549.91. Weerapper's men with their light indebtedness were an essential part of the agreement.

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It is clear to me that the transaction in respect of which the agreement was entered is in its essence a direct violation of the Ordinance. It provided for the transfer from one estate to another of a body of coolies, of whom a large proportion were not on the estate register of the transferring estate ; for the transfer of others without discharge tickets ; and of others, again, with discharge tickets which were worthless, as they were issued, not by the superintendent of the transferring estate, but by a previous employer.

The Court will not lend its assistance to enforce an agreement which constitutes such a flagrant violation of the Statute Law of the Colony. I would affirm the judgment of the District Court with costs, the plaintiff being at liberty to draw the sum which the defendant has placed at the disposal of the plaintiff.

MIDDLETON J.—

I agree. The policy of sections 22 and 23 of the Indian Coolies' Ordinance of 1909 is to strengthen the security of contracts of service and to prevent the illicit employment of coolies known as deserters, and the object of the Ordinance would be imperfectly attained if the Courts gave effect to a contract concerned with the transfer of coolies where the party seeking relief has deliberately infringed the penal clauses of the enactment.

Appeal dismissed.
