1912.

Present : De Sampayo A.J.

ROBERTSON *v.* IDROOS *et al.*

321-3—P. C. Ratnapura, 18,576.

Prosecution for seducing and harbouring coolies—Names of coolies not borne on the estate register—Ordinance No. 11 of 1865, s. 19—Ordinance No. 13 of 1889, s. 3—Ordinance No. 9 of 1909.

A prosecution under section 19 of Ordinance No. 11 of 1865 can be maintained without proof of the fact that the names of the coolies seduced or harboured were borne on an estate register.

Neither Ordinance No. 13 of 1889 nor Ordinance No. 9 of 1909 affects the definition of "servant" for the purposes of the Ordinance No. 11 of 1865.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for the accused, appellants.—There is no proof that the names of the coolies said to have been seduced or harboured were borne on the estate register. Ordinance No. 9 of 1909, which amends Ordinance No. 13 of 1889, enacts: "Labourer" means any labourer and kangany (commonly known as Indian

[1] *(1909) 1 Cur. L. R. 153.*

coolies) whose name is borne on an estate register. It was held by Wood Renton J. in 708—P. C. Kalutara, 18,522,* that for a conviction under section 19 of Ordinance No. 11 of 1865 there ought to be proof of the fact that the name of the cooly seduced was borne on the estate register.

In an action to recover the amount due on a tundu the plaintiff's action was dismissed, as the coolies were not on the estate register of the transferring estate (see *Willis v. Higgins*[1]). The *ratio decidendi* of that case applies to a criminal prosecution of this nature.

No appearance for the respondent.

Cur. adv. vult.

* *Bawa*, for appellant.

A. St. V. Jayewardene, for respondent.

November 13, 1911. Wood Renton J.—

The accused-appellant was charged under section 19 of Ordinance No. 11 of 1865 in the Police Court of Kalutara with having seduced two coolies. The Police Magistrate convicted him and sentenced him to three months' rigorous imprisonment. The only point taken in the petition of appeal is that there is no direct evidence in the case, except that of one of the coolies, who is alleged to have been seduced, and that that evidence, uncorroborated by any other, is insufficient to sustain a charge under section 19 of Ordinance No. 11 of 1865. At the argument before me a few days ago, however, Mr. Bawa, the appellant's counsel, contended that the conviction was bad in law on the evidence as it stands, inasmuch as the superintendent of the estate from which the coolies are said to have been seduced, had not proved it to be an estate of which ten acres or more than ten acres were under cultivation, and had not shown that the two coolies alleged to have been seduced were on the estate register. There is clear evidence that the coolies in question are Indian coolies. Mr. A. St. V. Jayewardene, the respondent's counsel, argued that even if there was no affirmative proof that the estate was one to which the Labour Ordinances, Nos. 13 of 1889 and 9 of 1909, applied, there was evidence showing that the coolies were "servants" within the meaning of section 1 of Ordinance No. 11 of 1865, since the superintendent of the estate spoke of them as having worked on the estate. It is quite clear that both sides at the trial regarded the case as one to be governed by the provisions of Ordinance No. 13 of 1889, and there is no positive statement to the effect that the coolies were employed in agricultural work, so as to bring the case under section 1 of Ordinance No. 11 of 1865, irrespective of the later enactments. It appears to me on the evidence that the conviction was bad. But I am not prepared to direct the acquittal of the accused-appellant. I set aside the conviction and the sentence, and send the case back to the Police Court in order to give the prosecution an opportunity of proving affirmatively, in the first place, that the estate in question is one of which ten acres or more are actually cultivated, and, in the next place, that the names of the coolies alleged to have been seduced are on the estate register, within the meaning of the provisions of Ordinance No. 9 of 1909. If such proof is not forthcoming, the conviction and sentence will stand finally set aside, and the accused-appellant will be acquitted. If, however, affirmative proof on the two points which I have indicated is produced, it will be open to the Police Magistrate to adjudicate upon the case on the evidence as it now stands.

Conviction set aside and case sent back.

[1] *(1911) 14 N. L. R. 131.*

1912. May 17, 1912. DE SAMPAYO A.J.—

Robertson v. Idroos

The first accused was charged under section 19 of Ordinance No. 11 of 1865 with having seduced two cooly women from the service of their employer, Mr. E. A. Robertson, Assistant Superintendent in charge of Nivitigala estate, and the second and third accused under the same section with having harboured those coolies after they had been seduced from service. They have appealed from a conviction on the above charges.

It was submitted in appeal on their behalf that the conviction was bad, inasmuch as it had not been proved that the names of the cooly women were borne on the estate register provided to be kept by Ordinance No. 9 of 1909. This Ordinance is an amendment in certain respects of the Ordinance No. 13 of 1889 relating to Indian coolies, and therein called the principal Ordinance. The latter Ordinance (section 3) defines " labourer " for its own purposes as " every labourer and kangany (commonly known as ' Indian coolies ') employed on an estate in other than domestic labour, " and the Ordinance No. 9 of 1909 adds a further requisite to the definition in section 3 of the principal Ordinance, viz., that the name of the labourer should be borne on the estate register. I do not think that either of these Ordinances affects the definition of " servant " for the purposes of the Ordinance No. 11 of 1865, and in my opinion a prosecution under section 19 of this Ordinance can be maintained without proof of the fact that the names of the coolies seduced or harboured were borne on an estate register. Mr. Jayewardene, for the appellants, relied on the judgment of Wood Renton J. in P. C. Kalutara, 18,522, in which, in a case of seduction under section 19 of Ordinance No. 11 of 1865, my learned brother set aside the conviction and sent the case back for proof that the names of the coolies seduced were borne on the estate register. But he based his order on the special circumstances of that case, for he said " it is quite clear that both sides at the trial regarded the case as one to be governed by the provisions of Ordinance No. 13 of 1889, and there is no positive statement to the effect that the coolies were employed in agricultural work, so as to bring the case under section 1 of Ordinance No. 11 of 1865, irrespective of the later enactments." In this case, however, it is sufficiently proved by the evidence of Mr. Robertson that the two women were engaged in agricultural work on Nivitigala estate, and the objection itself is only taken for the first time in appeal.

I think the conviction is right, and the appeals are therefore dismissed.

Appeals dismissed.