Present: Lascelles C.J. and Wood Renton J.

1913.

PALANIAPPA CHETTY *v.* DE JONG *et al.*

27—D. C. Kandy, 21,590.

Principal and agent—Liability of owner of estate for debts incurred by the superintendent for the estate.

Superintendents of planting estates in Ceylon have no general authority as such to pledge the credit of their employers; the question whether any particular superintendent has such authority, and how far such authority extends, depends upon the circumstances of each particular case.

THE facts appear sufficiently from the judgment.

H. A. Jayewardene, for the plaintiff, appellant.—Toussaint was defendants' superintendent. He borrowed money and bought rice for the estate of the defendants. The defendants did not advance money for the upkeep of the estate. They allowed the superintendent to borrow money and get goods on credit for the estate. The amount sued for was advanced for the defendants' estate. Under similar circumstances it was held in *Sirjudin v. Walker* [1] and in *Sinniah Chetty v. Henderson* [2] that the estate owner was liable for the debt of the superintendent. Even if Toussaint committed a fraud in borrowing, the defendants are liable (*Lloyd v. Grace, Smith & Co.*[3]).

A. St. V. Jayewardene (with him *De Jong*), for the defendants-respondents.—The facts in the cases cited are different, and the cases therefore do not apply to this case. Here the defendants gave the superintendent funds.

Moreover, the District Judge is not satisfied that the goods, &c., were bought for the defendants' estate.

Counsel cited *Suppramaniam Chetty v. White.*[4]

H. A. Jayewardene, in reply.—It is not possible for the plaintiff to make sure for what use the superintendent puts the goods.

Cur. adv. vult.

March 4, 1913. WOOD RENTON J.—

The plaintiff-appellant sues the defendants-respondents in this action for a sum of Rs. 1,134.96 for rice sold to and money borrowed by them through one Toussaint, their superintendent on Wewalmaditte estate. The respondents admitted in their answer that

[1] *(1902) 5 N. L. R. 371.*
[2] *(1878) 1 S. C. C. 34.*
[3] *(1912) A. C. 716.*
[4] *(1902) 6 N. L. R. 182.*

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they were the proprietors of Wewalmaditte estate and that Toussaint was their superintendent, but denied that he had any authority to buy rice or borrow money on their behalf in his capacity as superintendent, and pleaded that, under their agreement with him, he himself supplied the necessaries for carrying on the work of the estate, while they on their part paid his accounts in full at the end of each month. The respondents say, and the fact is not disputed, that Toussaint was supplied by them with funds sufficient for the payment of all the accounts rendered to his employers during the whole period of his employment. They became proprietors of Wewalmaditte estate in February, 1910, and dispensed with Toussaint's services on October 29, 1911. Toussaint is now dead. There was a plea in the answer that he and the appellant had been acting fraudulently and in collusion, but no attempt was made to substantiate it at the trial. The learned District Judge has dismissed the appellant's action with costs, holding that Toussaint had no authority to pledge the respondents' credit; that the appellant had not shown that the rice sold and the money lent by him to Toussaint, who was also the superintendent of another estate with which they were unconnected, were supplied for the use of the respondents' estate; and that as they in terms of their agreement with him had at all times, as his accounts up to the date of his leaving the estate showed, supplied him with the funds necessary for carrying it on, the appellant had no remedy against them.

It is clearly settled that the superintendent of an estate has not, merely by virtue of his office, authority to pledge his employer's credit. On the other hand, an employer who puts a superintendent in charge of an estate without any payment of funds in advance must be taken to have been aware of the fact that the superintendent would obtain rice on credit and borrow money for the payment of wages. The general custom throughout the Colony—a custom to which the respondents in the present case conformed—is for the superintendent to render, and the employer to pay, the accounts for such purchases and advances at the end of each month. The respondents, in my opinion, are clearly liable to the appellant for at least one month's dealings between Toussaint and him. Although they have admitted, as I have said, in their answer that Toussaint was their superintendent, they presented him to the Court at the trial merely as a conductor remunerated at a small salary. If that were so, it is all the clearer that when they left him in sole charge of Wewalmaditte estate they must have known that he would pledge their credit both for rice and for coolies' wages. The appellant, on the other hand, is a Chetty who is not unfamiliar with the custom of estates in the Colony, and when he found that his accounts were not being paid, as they were not paid, regularly, he ought at once either to have called for payment, or to have

brought himself into touch with Toussaint's employers. I do not think that the appellant's action should have been dismissed altogether. But I would give him judgment only for the amount of the last month's dealings between himself and the respondents. Strictly speaking, only the amount of the first month's dealings should be recoverable, but a question of prescription might perhaps be raised in regard to such a claim, and as the appellant's account with Wewalmaditte estate is a continuous one, I would propose that the decree of the District Judge, dismissing the appellant's action, should be set aside, and that judgment should be entered for the appellant for the amount appearing from his books to be due to him by the respondents between September 29 and October 29, 1911. I would leave each side to pay its own costs of the action and of the appeal.

The District Judge has said that the appellant has not proved that the goods and money supplied by him to Toussaint were for the use of the respondent's estate. Apart, however, from the evidence of the appellant's kanakapulle, whom the District Judge regards as an untrustworthy witness, there are the appellant's books which were produced at the trial, and which have not been challenged as fictitious.

LASCELLES C.J.—

The question for decision is with regard to the extent, if any, to which the defendants-respondents are liable for debts incurred by one Toussaint, who was the superintendent of their estate.

It is well settled by a long series of decisions of this Court that superintendents of planting estates in Ceylon have no general authority as such to pledge the credit of their employers; but that the question whether any particular superintendent has such authority, and how far such authority extends, depends upon the circumstances of each particular case.

In the present case Toussaint was employed on a salary of Rs. 50 a month under an arrangement by which he was to procure the rice which was required for the estate and render monthly accounts of his expenses, which were to be settled in the course of the following month. Toussaint did in fact render monthly accounts of his expenditure, which were regularly met by the defendants' cheques. The position of Toussaint was that he was in a position to pledge the credit of his employers for rice for one month. He was in a position which is well recognized in Ceylon, and there is proof of no circumstance which would entitle the plaintiff to believe that Toussaint had any general power to pledge his employers' credit. When Toussaint's accounts with the plaintiff were not regularly met, the latter gave Toussaint further credit at his own risk.

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Ordinary prudence would have suggested some communication with Toussaint's employers, and all the more so as Toussaint was the superintendent of a small estate and drawing a small salary.

It is, I think, clear that the plainitff was entitled to deal with Toussaint on the footing that he had authority to pledge the credit of the estate for one month, and for this reason I concur in the judgment of my brother.

Set aside.