Present: De Sampayo A.J.

1913.

SOLAMALAY *v.* VYTILINGAM.

333—P. C. Panwila, 23,277.

Labour Ordinance, No. 9 of 1909—Liability of superintendent to pay wages to coolies—Superintendent not supplied with funds by proprietor—Criminal Procedure Code, s. 432.

A superintendent or chief person in charge of an estate is bound to pay the wages of the labourers on his principal's estate, and is criminally liable if he fails to do so, even though he may not have been supplied by his principal with funds.

Section 432 of the Criminal Procedure Code has no application to a conviction for an offence under section 7 of Ordinance No. 9 of 1909.

THE facts are set out in the judgment.

Arulanandam, for appellant.—" Employer " as defined in section 2 of Ordinance No. 9 of 1909 does not include a visiting agent. The accused was merely a visiting agent, and had nothing to do with the payment of coolies. It is proved that Tiddy Carthigeser sent the statutory declaration about payment of coolies, and would appear to have taken all responsibility as superintendent. The acts attributed to the accused are not inconsistent with the supposition that he was merely a visiting agent. Being the brother-in-law of the proprietress, the accused took more interest in the estate than an ordinary visiting agent. This fact should not saddle him with responsibility as superintendent and make him accountable for moneys he never handled. Not a scrap of paper has been produced showing that the accused had arrogated to himself the position of a superintendent. No cheques were signed by accused as superintendent. The accused has been wrongly convicted.

No appearance for respondent.

Cur adv. vult.

June 14, 1913. DE SAMPAYO A.J.—

The accused-appellant was charged under section 6 (7) of Ordinance No. 13 of 1889, as amended by Ordinance No. 9 of 1909, with having failed to pay the wages of the labourers in his employment on St. John's Hill estate at Madulkele for the month of February, 1913, within a month of the expiration of that month. The coolies were not, in fact, paid within the time limited; but the question is whether the accused is liable to be prosecuted for the non-payment.

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It appears that St. John's Hill estate and another estate called Nellicollawatta belong to one Mrs. Carthigeser of Kandy, who is the widow of accused's deceased brother. The accused's case is that the superintendent of the estate was one Tiddy Carthigeser, a young man about eighteen years old, and son of Mrs. Carthigeser; and that he himself was only visiting agent, and had nothing to do with the payment of wages. The accused, who is the proprietor of Pitakande Group in Pussellawa, was admittedly superintendent of these estates for some eight months in 1911, and was succeeded by one Mr. Napier, and subsequently by one Mr. Morley. About September, 1912, Mr. Morley gave up charge, and in October, November, and December, 1912, the estates appear to have been managed by Tiddy Carthigeser and his sister, one Mrs. Vincent of Kandy. Between these two the estate was a good deal mismanaged; and the state of things was so bad that in January, 1913, the accused was asked to supervise the estate, which he did up to the time of this prosecution. The name by which he should be called in respect of the duties he undertook is not of much consequence, provided he is the employer of the labourers within the meaning of the Ordinance. Section 3 of the Ordinance says that for the purposes of the Ordinance "employer" means the chief person for the time being in charge of an estate and includes the superintendent. The accused calls himself " visiting agent," but is he the chief person in charge of the estate? He certainly does not reside on the estate; but neither did he when he was admittedly superintendent in 1911. Then, too, he visited the estate once or twice a month from Pussellawa as he does now. The conductor and kangany of the estate, who gave evidence, say that Tiddy Carthigeser left the estate in December, 1912, and that they looked upon the accused as the superintendent from January, 1913. He directed their work and paid the wages of the coolies for January, and one of those men even says that the accused came to the estate in January and called all the coolies together and told them he was superintendent. The accused admits that he gave orders to the conductor and kangany about their work, and as to the payment of wages for January; he says he did so in the absence of Tiddy Carthigeser, who was ill with a cold. It is quite clear that Tiddy Carthigeser was too young and wholly ignorant of estate management, and hence his mother's appointment of the accused. It is true that Tiddy Carthigeser on April 3, 1913, a day before the complaint in this case, sent the statutory declaration to the Government Agent that the wages for February had been duly paid and signed himself as superintendent; but as another prosecution is pending against him in connection with this same matter, I will say no more about him. It is strongly argued on behalf of the accused that he was only visiting agent, and that he took more interest than an ordinary visiting agent because of his relationship to the proprietor of the estate. I quite believe he acted out of

kindness to the family, and it is his misfortune to be involved in this prosecution. Whatever his reasons might have been, however, the question is whether he placed himself in such a position as to become the " employer " within the meaning of the Ordinance, and to be responsible as such. The Police Magistrate fully accepts the evidence of the conductor and the kangany, and he also believes that the accused initialled an entry in the check roll with regard to the issues of rice in January. The evidence, taken as a whole, leads to the conclusion that he actively managed the estate during the period in question, and had the supervision and disposal of the services of its labourers, and I think he should be regarded as the chief person in charge of the estate.

It remains to consider whether he is criminally liable for non-payment of the wages of the labourers. In the Full Court case of *Dunbar v. Robson*,[1] the point was whether a superintendent could be said to take a cooly " into his service or employment " so as to be civilly liable under section 20 of the principal Ordinance, No. 11 of 1865, and incidentally the Court had to consider the question whether the superintendent was the person liable to pay the wages of the coolies. The Ordinance No. 13 of 1889 did not contain any express provision as to who should pay the wages, and the Court held that, notwithstanding the definition of the word " employer " for certain purposes, the common law relation of the proprietor and the superintendent as principal and agent was untouched; that the contract of service of the labourer was with the proprietor through his agent, the superintendent, and that therefore it was the proprietor and not the superintendent that was liable to pay the wages. But this was before the enactment of the amending Ordinance, No. 9 of 1909. Now the substituted section 6 (1) provides that " it shall be the duty of every employer to pay the wages of the labourers in his employment," &c., and sub-section (7) enacts a penalty for failure to do so. I think these and the various other sub-sections of the substituted section 6 use the word " employer " in the sense of the definition in section 2, and supply what was found to be wanting at the date of the decision referred to. Consequently, a superintendent or chief person in charge, though he is not master of the coolies in the legal sense as decided in that case, is nevertheless bound to pay the wages of the labourers on his principal's estate, and is criminally liable if he fails to do so, even though he may not have been supplied by his principal with funds. This may be illogical and harsh, but it seems to be the intention of the Legislature to create such liability. The accused in this case protests that he had nothing to do with the financial side of the estate, and it is quite evident that his failure to pay the wages of the labourers was due to the inability or neglect of Mrs. Carthigeser to supply him with funds. In my opinion he was rightly convicted, but the

[1] *(1905) 5 Tam. 58.*

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circumstances should be taken into consideration in judging of the gravity of the offence. It is just to recognize the fact that the offence is a technical one by modifying the maximum penalty of Rs. 50 imposed in this case. I affirm the conviction, but reduce the sentence to a fine of Rs. 10.

I may add that the Police Magistrate, purporting to act under section 432 (1) (*b*) of the Criminal Procedure Code, ordered that out of the fine of Rs. 50 a sum of Rs. 25 should go to the complainant kangany as " compensation for the injury done him." This section of the Code has no application to such an offence as this. Moreover, the Ordinance provides that if the fine is not paid the Government Agent may recover the amount in the manner provided by the Medical Wants Ordinance, and I rather think, though it is not necessary now to decide the point, that the amount of the fine should be applied for the purposes of that Ordinance. I set aside that part of the Police Magistrate's order.

Varied.