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Present: Wood Renton C.J. and De Sampayo J.

SOYSA v. ANGLO-CEYLON AND GENERAL ESTATES CO.

356—D. C. Kandy, 23,514.

*Indian Coolies Ordinance, No. 13 of 1889 (No. 9 of 1909), s. 24—Acceptance of tundu and payment by cheque—May acceptor repudiate contract on the ground that discharge ticket was not sent forthwith?—If contract was repudiated on one ground, may another ground of repudiation be pleaded as a defence?*

The word "forthwith" in section 24 (2) of the Indian Coolies Ordinance should be construed as meaning, not "within a period reasonable in the circumstances," but "without any delay that can possibly be avoided."

A strict construction of the requirement of section 24 (2) of the Indian Coolies Ordinance is essential, if effect is to be given to its letter and its spirit. Non-compliance with this requirement on the part of the employer is a ground for a repudiation by the new employer of his contract to take them over.

THE facts are set out in the judgment.

*Bawa, K.C.* (with him *Samarawickreme*), for plaintiff, appellant.

*Elliott*, for defendants, respondents.

*Cur. adv. vult.*

November 21, 1916. WOOD RENTON C.J.—

The plaintiff, Mr. R. E. S. de Soysa, sues the defendants, the Anglo-Ceylon and General Estates Company, Limited, who are represented here by their agent, Mr. Neil Campbell, of Nuwara Eliya, for the recovery of a sum of Rs. 6,276.25, in the following circumstances. The plaintiff is the proprietor of the Hangurankete group of estates, which includes an estate called Wewatenne. In November, 1914, his superintendent, Mr. van Schoonbeck, issued four *tundus* in respect of four kanganies and forty coolies of Wewatenne, undertaking to pay them off on payment of the debts due by them respectively. Those debts amounted to Rs. 6,276.25. The defendants' superintendent on Gonavy estate, Mr. Hawkes, accepted the *tundus*, and on December 14, 1914, sent his cheque for the amount just mentioned by his kanakapulle, Muniandy, to whom, according to Mr. van Schoonbeck, the four kanganies and forty coolies were handed over on December 20. The cheque was presented for payment at the bank on December 23, but was returned to the plaintiff with an endorsement to the effect that payment had been stopped. It was presented again on January 8, 1915, and was dishonoured at the instance of the drawer himself. The plaintiff now sues for the amount of the cheque on the ground that he had completely fulfilled his part of the contract, by paying

off and discharging the four kanganies and forty coolies from his estate and by delivering them over to the defendants' kanakapulle. The defendant company in their answer pleaded that they had repudiated the contract because several coolies were not coolies of the plaintiff on Wewatenne estate, while others did not belong to the gangs of the kanganies mentioned in the *tundus*. At the trial the defendants' counsel raised a preliminary issue of law, namely, whether the plaintiff's action could be maintained at all, inasmuch as his superintendent, Mr. van Schoonbeck, had failed to forward the discharge ticket "forthwith," as required by section 24 (2) of the Indian Coolies Ordinance, 1909.<sup>1</sup> The learned District Judge answered this issue in the negative, and dismissed the plaintiff's action with costs. There was an appeal to this Court. The decree of the District Court dismissing the plaintiff's action was set aside, and the case sent back for trial on the merits, and also for the determination of the question whether Mr. Hawkes was entitled to, and did, rescind the agreement before it was completed. At the further hearing two additional issues were accepted on the suggestion of the defendants' counsel, namely:—

" (1) Were the defendants entitled to repudiate the contract because of the delay in sending the discharge ticket?

" (2) Did they, in fact, repudiate the contract because of such delay? "

The learned District Judge after hearing evidence on both sides held, in effect, that the plaintiff's superintendent had not carried out his part of the agreement, that there had been unreasonable delay in the forwarding of the discharge tickets, and that Mr. Hawkes was entitled to repudiate, and had repudiated, the contract on that ground. He, therefore, again dismissed the plaintiff's action with costs; hence this appeal.

Before dealing with the facts, it may be desirable to refer to two incidental points of law that were raised by the plaintiff's counsel. The Supreme Court held on the previous appeal that the omission of Mr. van Schoonbeck to forward the discharge tickets to Mr. Hawkes at once did not preclude the plaintiff from maintaining the present action, and there is no need to consider that point further now. But we were pressed to define the meaning of the term "forthwith" in section 24 (2) of the Indian Coolies Ordinance, 1909,<sup>1</sup> and also to decide whether failure on the part of an employer who was discharging coolies to send on the discharge tickets to their new employer "forthwith"—whatever that expression may signify—would or would not be a good ground for the repudiation of the contract. In my opinion the word "forthwith" in the enactment in question should be construed as meaning, not "within a period reasonable in the circumstances," but "without any delay that can possibly be avoided." Until the new employer

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1916. has received the discharge tickets, he is not in a position to enter into a contract with the coolies under the Labour Ordinances, he has no power to prevent them from dispersing, and if they are "bolters," he may himself run the risk of prosecution if he retains them on his estate without having the discharge tickets in his possession. A strict construction of the requirement of section 24 (2) of the Indian Coolies Ordinance, 1909,<sup>1</sup> is essential if effect is to be given to its letter and its spirit. Moreover, in view of the peremptory character of that enactment, as well as the importance to the new employer that it should be complied with, I see nothing unreasonable in treating non-compliance with this requirement on the part of the employer discharging coolies as a ground for a repudiation by the new employer of his contract to take them over. Even if it were the fact that Mr. Hawkes repudiated the contract on another ground, he would still be entitled to rely on the default of Mr. van Schoonbeck in regard to the forwarding of the discharge tickets, if that default were in existence, as it in fact was, at the date of the repudiation. Mr. Hawkes's letter of repudiation (P 5) was dated December 23, 1914; he had stopped payment of his cheque on the 20th; the coolies were handed over to Muniandy on the 20th; and Mr. van Schoonbeck was able on that day to write a letter (P 4) to Mr. Hawkes acknowledging the receipt of his cheque, and stating that he would forward the discharge tickets "shortly". Whatever may have been the state of Mr. van Schoonbeck's health at the time, there is nothing in the evidence to show that he was physically unable to send them on that or the following day.

Two conflicting versions of the facts as to the coolies actually discharged were placed before the learned District Judge. The case for the plaintiff was briefly this. Mr. van Schoonbeck on December 20 paid off and discharged the kanganies and the coolies whom he had contracted to hand over to Mr. Hawkes. The money due to the coolies was paid by him into their own hands. Mr. Hawkes's kanakapulle, Muniandy, not only took over the coolies in question, but signed a formal receipt showing that he had done so. The delivery over of the kanganies and the coolies to Muniandy completed Mr. van Schoonbeck's obligations under the contract. If they bolted and disappeared before they reached Gonavy estate, the matter was one that concerned Mr. Hawkes alone. From the time that they were handed over to Muniandy, they were held by Muniandy at his employer's risk. The case for the defendant, on the other hand, rested upon evidence that the full quota of kanganies and coolies was never delivered over by Mr. van Schoonbeck to the kanakapulle, that through the fraud of the plaintiff's head kangany Annavi—a fraud to the successful perpetration of which Mr. van Schoonbeck had negligently contributed—the places of absent coolies really belonging to the

<sup>1</sup> No. 9 of 1909.

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gangs in question had been taken by other coolies who had no connection with these gangs, and that even the number of coolies who actually came to Gonavy estate on December 21 fell far short of those whom Mr. van Schoonbeck had contracted to supply.

The points that may be put in favour of the plaintiff's presentation of the case are these:—No charge of fraud was made against Mr. van Schoonbeck. He gives positive evidence as to the coolies being paid off, and his story is corroborated by the receipt granted by Muniandy, by the evidence of Solamally, the kanakapulle under Annavi, and by entries in the estate books. But, on the other hand, Mr. van Schoonbeck admitted in cross-examination his ignorance of the contents of the books—an admission the effect of which is not, to my mind, done away with by his explanation, in re-examination at a later date, of the irregularities to which his attention had been called. No person responsible for the books was, in fact, examined as a witness. Weerasoria, the teamaker, declined to stand sponsor for them. Solamally's check roll was not the check roll from which the books were made up—that was with the conductor, who was not put in the witness box—but merely a private record of the accounts as between Annavi and the coolies. A medical certificate was put in at the commencement of the trial stating that the conductor was unable to attend. But the trial lasted for some time, and there is nothing to show that his ailment was of such a character as to prevent his appearance at a later stage in the proceedings. Thangapalam, the clerk who was said by Weerasoria to have been in the immediate charge of the books, also did not give evidence. But what was still more remarkable was the disappearance of Annavi in the course of the trial after his identity with the kangany Chiamboo, who was alleged to have carried out a similar fraud on another estate, had been proved by the defendants' witness Govinden. The explanation offered of Annavi's absence, namely, that he had been summoned to India by a telegram with reference to the illness of some near relative, is by no means convincing. The accuracy of Mr. van Schoonbeck's evidence that he had personally paid off each of the coolies has some doubt thrown upon it by the evidence of Weerasoria that, when the coolies were paid off to Gonavy, four or five of them were absent, having gone to the neighbouring boutiques. Finally, the measurements taken by Mr. Hawkes of the coolies actually delivered to him on their arrival proved that some of them at least were entirely different persons from those to whom the discharge tickets related.

In the face of such considerations as these, and there are many others with which I might have dealt, it is impossible for us to say that the District Judge has come to a wrong conclusion in the present case.

I would dismiss the appeal with costs.

DE SAMPAYO J.—I agree.

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*Appeal dismissed.*