

Present: Lascelles C.J.

1914.

HADDEN *v.* MALLAPEN.

531—P. C. Matala, 1,976.

“Wages”—Does the term include head money and pence money?—
Quitting service without notice—Reasonable cause.

The term “wages” in the Indian Coolies Ordinance, 1909,
includes “head money” and “pence money” earned by a kangany.

The non-payment of head money and pence money to a kangany
for one month after they had become due was held to be a reason-
able cause for quitting service.

THE facts are set out in the judgment.

No appearance for the appellant.

Elliott, for complainant, respondent.

June 26, 1914. LASCELLES C.J.—

This is an appeal by an estate kangany against a sentence of six weeks' rigorous imprisonment for the offence of quitting the service of the respondent on May 5, 1914, without reasonable cause.

The appellant in his petition of appeal sets out several grounds of defence, of which it is necessary to notice one only. It is

1914.
 LASORIELLES
 C.J.
 Hadden v.
 Mallapen

contended that the appellant had reasonable cause for leaving the service of his employer, inasmuch as his wages for the month of March were overdue and unpaid at the time when he left the service of his employer on May 5. This defence, if established, would entitle the appellant to be acquitted under section 7 of Ordinance No. 13 of 1889.

The facts as regards the alleged non-payment of the appellant's wages for the month of March are the following. The appellant on days when he supervised the labour of the men in his gang was always "given a name." In the month of March the appellant did no work at all of this nature, but he earned in respect of "head money" and "pence money" the sum of Rs. 55.30. It appears that when the coolies were paid for March the Assistant Superintendent proposed to pay the appellant only half this amount, which he refused to accept, and the matter ended by his not having received any portion of this amount when he left the estate on May 5.

The case of the respondent is that "head money" and "pence money" are not "wages" within the meaning of the Labour Ordinances, and the question which I have now to determine is whether the term "wages" in the Indian Coolies Ordinance, 1909, includes "head money" and "pence money" earned by a kangany.

There appear to be only two cases in which the point is at all touched upon. In the Police Court of Kalutara, 5,128, decided in 1888, it was decided, what was afterwards enacted by Ordinance No. 13 of 1889, that the term "labourer" includes "kangany." The other authority which incidentally refers to the same point is the case of *Gurusamy Pillay v. Palaniappen*.¹ But I have not been able to derive much assistance from this decision.

The case of the respondent is based on the definition of the term "wages" in section 3 of Ordinance No. 13 of 1889. It is as follows: "Wages means all sums which may be due to a labourer for and in respect of the work and labour done by him on an estate." And in virtue of this definition it is contended that the term "wages" does not include "head money" or "pence money." In my opinion this construction is inconsistent with the general scope and policy of the Labour Ordinances. The term "labourer" includes a kangany, and throughout the Ordinances kanganies are placed on the same footing as coolies as regards the payment of their earnings.

If it was intended to exclude a principal portion of the earnings of kanganies, it is difficult to believe that this intention would not have been specifically expressed in the Indian Coolies Ordinance, 1909, which was enacted after an exhaustive inquiry into the remunerations of all descriptions of Indian coolies.

¹ 3 A. C. R. 15.

The narrow interpretation of the word "wages," for which the respondent contends, would introduce much difficulty in the construction of the Ordinances; for example, under section 4 (3) of the Ordinance of 1909, when the contract of service is determined by notice on either side, "all wages due to the labourer for his period of service shall be paid in full to him by the employer on the day when such contract is determined as aforesaid."

1914.
 LASCELLES
 C.J.
 Hadden v.
 Mallapen

Would it be a reasonable construction of this section to hold that any employer was obliged to pay a kangany only what he had earned by labour in the field, leaving him to recover his head money and pence money as best he could? Such a construction would put the kangany in a worse position than the cooly.

Or could it be said with any show of reason that under section 9 of Ordinance No. 13 of 1889 head money and pence money do not constitute a first charge on the estate; or that the special procedure provided by that Ordinance for the recovery of "wages" could not be made use of for the recovery of head money and pence money?

It is, I think, essential to a reasonable construction of Ordinance No. 13 of 1889 and the Indian Coolies Ordinance, 1909, that the term "wages" should be understood to comprehend all the earnings of coolies and kanganies in the course of their employment on the estate. The definition of the term "wages" does not, in my opinion, exclude this construction. The term is defined to mean all sums due to a labourer "for or in respect of the work and labour done by him on an estate." It is not only the remuneration of "labour," by which I understand physical labour, that is comprehended in the term, but also remuneration of "work."

The word "work" is very comprehensive; it would include any activity or exertion in furtherance of a definite purpose.

The management of a body of labourers so as to induce them to turn out and labour at the proper time and place clearly involves "work." The amount of work involved in the operation may vary according to circumstances, but activity and exertion, mental or physical, can never be wholly absent.

I am therefore of opinion that the term "wages" in Ordinance No. 13 of 1889 and in the Indian Coolies Ordinance, 1909, must be understood to include the head money and pence money earned by kanganies. This finding disposes of the appeal. But I am bound to notice the fact that Mr. Hadden, the Assistant Superintendent of the estate, admitted that in October, 1913, and in January, 1914, the whole of the wages was "put against the advance account." The omission to pay the labourers their wages for these months is a punishable offence under section 4 (7) of the Indian Coolies Ordinance, 1909.

For the above reasons I set aside the conviction, and discharge and acquit the accused.

Set aside.