1942

Present : **Soertsz J.**

NAGASAMY *v.* HAMID.

14—C. R. Colombo, 72,706.

Labourer—Wages of tindal—Engaged in loading and unloading cargo—Seizure in execution—Civil Procedure Code, s. 218 (j).

A person, who is engaged in loading and unloading cargo and who engages other men to perform similar work, allots the work and himself works with them is a labourer within the meaning of section 218 (*j*) of the Civil Procedure Code.

APPEAL from an order of the Commissioner of Requests, Colombo.

C. Renganathan, for plaintiff, appellant.

S. S. Kulatilike (with him *Subramaniam*), for defendant, respondent.

Cur. adv. vult.

June 18, 1942. SOERTSZ J.—

This case recalls to mind the fable of the crow with the piece of cheese, and the fox, who begged him for a song, flattering him into the belief that his voice surpassed, in sweetness, that of the nightingale, and walked away with the bit of cheese which the crow let drop when he opened his beak to make his ambitious attempt. The difference between that instance and this is that, here, the appellant has come to deal with a more sophisticated bird in the person of the respondent, who denies the soft impeachment that he is a *contractor*, swears that he is a common or garden *labourer*, even going to the length of resuscitating the word *coolie*, which our Government with a meticulous sense of delicacy has put on its Index, *Verborum Prohibitorum*, and abashing himself with it, claims that he, like Longfellow's Blacksmith, is entitled to "look the whole world in the face" and declare that he "owes not any man". Or, if not quite that, that, in virtue of section 218 (*j*) of the Code of Civil Procedure, his position is as good as that.

It is common experience that simple and familiar words are among those most difficult to define, as Dr. Johnson found when he was driven to explain the three letter word *net* as "a reticulated fabric decussated at regular intervals".

It is not surprising, therefore that a great deal of learning appears to have been lavished in the Court below on the apparently simple question whether the respondent is a *labourer*. But after all, the word *labourer* is a word we use frequently in our daily intercourse, and even, if lacking the art, we find it difficult to frame a complete definition of it, we have a "shrewd idea" of what it means; and there ought to be no difficulty in answering this question unless, as observed by Lord Atkin in the House of Lords in the recent case of *Liversidge v. Anderson*[1], like Humpty Dumpty in "Alice Through The Looking Glass", the appellant is entitled to say, in as scornful a tone, "when I use a word it means just what I choose it to mean, neither more or less". But if we disregard the meaning the appellant chooses to give the word *labourer*, and

[1] *(1941) A.E.R. Vol. 3 at p. 361.*

consider the word for ourselves, the picture it conveys to our minds is that of a man who engages regularly in manual work that calls for considerable physical exertion in some unskilled operation, and that, substantially is what lexicographers tell us, and what is implied in the rulings given by the learned Judges in the cases referred to in the trial Court.

There are, of course, many instances in which a man's occupation involves him in multifarious tasks, some calling for skill, some for physical exertion, some for both, and some of a purely disciplinary character. This may be said to be such an instance, and in such cases, as was pointed out by Brett M.R., in the case of *Morgan v. The London General Omnibus Company*, cited in the Court below, one must look at "the substantial business" of the person concerned to decide whether it can be called manual labour. What, then, is the substantial business of the respondent? The evidence shows that he is concerned in the loading and unloading of cargo from and to ship for the firm of Narottam & Pereira. For that purpose, he engages other men, allots their work and supervises it, and himself works with them in loading, unloading, and arranging the cargo. So far as that goes, the evidence of a witness who speaks with knowledge and authority is that "there is no difference between the tindal (*i.e.*, the respondent) and other workmen so far as the work is concerned". The fact that the respondent is called the *Tindal*, that he deals directly with the employing firm, that he is responsible to the Harbour authorities for the observance of Port Regulations and things like that, do not, in any way, alleviate the burden of his manual labour. they may, perhaps, give him a certain standing in his little world of labourers by putting him in the position of *Primus inter Pares*. But the crucial fact, the fact whereby there hangs the tale, is that the respondent takes, more or less, an equal hand with the others in loading, unloading and arranging cargo, which is their substantial business.

Another point was taken by the appellant's Counsel. He contended that the money seized is not wages within the meaning of section 218 (*j*) of the Civil Procedure Code, but that it represents the amount that was due on a contract between the firm of Narottam & Pereira and the respondent for the loading and unloading of cargo at so much per trip. Counsel submits that the respondent and those engaged with him in the doing of this work were not on the pay-roll of Narottam & Pereira, and that the money was due to be paid to the respondent even if he himself had taken no actual part in the work of the loading and unloading. Counsel emphasizes the fact that remuneration was by the trip.

But the more we seek to change the thing by wrapping it in words of different form, the more we find it to be, in substance, the same thing. To make a man a labourer, it is not necessary that he should be on some particular pay-roll. Take the case of an "outside" railway porter. His work is casual. He takes whatever work he can find. He is paid by a score of different passengers in the course of a day. But nobody can deny that he is a labourer. Nor does it matter this payment is made by the trip. Those are matters pertaining to the manner in which Narottam & Pereira choose to conduct their business.

In regard to the agreement, that the respondent was due tc be paid even if he himself did not work with his hands in loading or unloading, the answer to that is, that in this case we are dealing with a man who, invariably, took an active part in loading and unloading and nct with a man who did no more than supply labour for that purpose. Ultimately, the real question is how was the money that has been seized earned? On the evidence in the case, there can be only one answer to that question, that is, that it was earned by the respondent and those who worked with him by loading and unloading cargo—an operation requiring great physical exertion but no particular training or skill. It is, therefore, the wages of labourers. Obviously, the wages of the others who worked with the respondent is not liable to seizure merely because it happens to be in the hands of the respondent. It is not his property. His own wages is not liable to seizure because, although it is his property, it is exempted by the section which the respondent invokes.

The appeal fails and is dismissed with costs.

Appeal dismissed.