1955 *Present :* **Pulle J.**

SUPERINTENDENT, YATADOLA ESTATE, MATUGAMA, Appellant, *and* MUTHURAMAN, Respondent

S. C. 247—Workmen's Compensation No. C. 30/7008/53

Workmen's Compensation Ordinance (Cap. 117)—Section 2 (1)—Superintendent of an estate—Maintainability of claim against him—Is he an "employer"?—Estate Labour (Indian) Ordinance (Cap. 112), ss. 3, 11-15.

In considering whether a claim for compensation under the Workmen's Compensation Ordinance can be maintained by a workman against the superintendent of the estate in which he works it is not permissible to call in aid the meaning of the word "employer" appearing in the Estate Labour (Indian) Ordinance. The superintendent who has himself taken employment on a contract of service at a fixed salary under the owners of the estate is not an "employer" within the meaning of that term in section 2 (1) of the Workmen's Compensation Ordinance.

APPEAL from an order made under the Workmen's Compensation Ordinance.

S. J. Kadirgamar, with *P. Somatilakam*, for the appellant.

Walter Jayawardena, with *R. Manicavasagar*, for the respondent.

Cur. adv. vult.

July 13, 1955. PULLE J.—

In this case the appellant is the superintendent of an estate called the Yatadola Group owned by the Kalutara Rubber Co., Ltd., whose agents and secretaries are Gordon Frazer & Co., Ltd. of Colombo. He appeals from an order made under the Workmen's Compensation Ordinance (Cap. 117) whereby he was adjudged to pay to the respondent, a workman employed on the estate and who met with an accident on the 17th March, 1953, a sum of Rs. 1,163·75 and the taxed costs of the action. The only point that arises on this appeal is whether it can be said that the appellant was the "employer" of the workman as that word is defined in section 2 (1) of the Ordinance. As it appeared to be inconceivable that either the local agents or the owners of the estate would stand in the way of the workman receiving the compensation, in the event of its being held that the superintendent was not the right person to have been sued, I suggested to learned Counsel on both sides that the parties should come to a settlement enabling the workman to draw the money deposited with the Commissioner for Workmen's Compensation. I was later informed, for reasons which I need not set out, that from the point of view of employers the question raised in this appeal is one of such general importance that I should give a considered decision.

The burden was on the workman to prove that the superintendent was his employer for the purposes of the Ordinance. He did not give evidence nor call witnesses, so that this case falls to be decided on the basis of only the evidence given by the superintendent.

The workman was first employed on the estate as a labourer about 1944 at which time the appellant was not the superintendent. He became superintendent three years later being appointed to that office by the local agents of the owners on a basic salary of Rs. 1,400 per mensem. On his contract of service with his employers, Messrs. Gordon Frazer & Co., Ltd., he had naturally to perform such functions as were assigned to him by his employers. In other words, Gordon Frazer & Co., Ltd. had a controlling power over the superintendent's functions as to how he should discharge them. If, as he says, he had upon instructions from his employers paid to a labourer money to which he was entitled under the Ordinance, that would be perfectly consistent with his not being the employer for the purposes of the Ordinance.

It is true that the appellant by virtue of his office would grant a discharge certificate under the Estate Labour (Indian) Ordinance (Cap. 112) and describe himself as the " employer ". The reason for it is that in Cap. 112 the word " employer " means the chief person for the time being in charge of an estate, " and includes the superintendent ". It does not follow that even for the purposes of that Chapter the actual contract of service is regarded by law as one between the labourer and the superintendent. For certain limited purposes a superintendent may act as the agent of the employer without breaking the nexus between the real parties to the contract of service. Such a limited agency is necessary not merely for running an estate but any other business undertaking where its owner may choose to assign duties to responsible employees in the performance of which they would have authority to bind the owner. Now the proprietor of an estate is the proper party to be sued by labourers for the recovery of wages. That is evident from sections 11 to 15 of the Estate Labour (Indian) Ordinance. These provisions, in particular the rules and orders in Schedule A, recognise that the contracts of service are between the labourers and the proprietors.

The word " employer " in the Workmen's Compensation Ordinance is defined to include the " managing " agent of an employer. Therefore, it is not every person who can be regarded as an agent who would come within the definition. Section 2 (1) defines " managing agent " as " any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer ". The local agents come clearly within the definition and equally clearly, it seems to me, the superintendent who has himself taken employment on a contract of service at a fixed salary is excluded from the definition because he can, at the most, be described as a manager subordinate to an employer. Nor is he, vis-a-vis the workman, in the position of an independent contractor.

I am unable to read the Workmen's Compensation Ordinance as being in *pari materia* with the statutes dealing with Indian immigrant labourers from the bare circumstance that they come within the definition of " workman ". Whether a superintendent is an employer for the purposes of the Ordinance is a question the answer to which must be sought within the Ordinance. It would be a strange result if, by having recourse

to the statutes which I have mentioned, one holds that a claim for workmen's compensation by an immigrant labourer can be maintained against the superintendent of the estate on which he works and that a similar claim against the same superintendent by a non-immigrant labourer would be defeated as being made against the wrong party, because in the latter case it would not be permissible to call in aid the same statutes. I do not think that it was the intention of the legislature to introduce such a refinement into the Ordinance.

The award appealed from is set aside but I make no order as to costs. I hope that this decision on what may be regarded as a technical procedural point will not result in the deprivation of the compensation to which otherwise the workman was clearly entitled.

Appeal allowed.