

Sept. 1, 1911

Present : Lascelles C.J. and Middleton J.

## HALLIDAY v. KANDASAMY.

509—P. C. Nuwara Eliya, 5,337.

*Offence under s. 17 of Ordinance No. 11 of 1865—Jurisdiction—Criminal Procedure Code, s. 423.*

Accused, an Indian cooly, entered into a contract of service with the superintendent of an estate at Nuwara Eliya on a Ragama certificate, on which it was stated that he was not previously employed on any estate in Ceylon. This statement was found to be false, and the superintendent charged the accused in the Police Court of Nuwara Eliya, under section 17 of Ordinance No. 11 of 1865, with having falsely pretended that he was never employed on any estate in Ceylon.

*Held*, that the Police Court of Nuwara Eliya had no jurisdiction to try the case ; but the Supreme Court affirmed the conviction as the accused was not prejudiced in his defence.

LASCELLES C.J.—“ Nothing that the accused did at Nuwara Eliya was done when offering to hire himself in any employment. The contract of hire and service was complete as soon as the accused left Ragama and his certificate was forwarded.

“ It was said that section 423 of the Criminal Procedure Code should only apply when no objection was taken to the jurisdiction of the court of first instance. But there is nothing in the section or in the context which lends the slightest support to this suggestion.”

MIDDLETON J.—“ This application of section 423 must by no means be considered to obviate the requirements of the law that criminal proceedings should be originally instituted in the Court having proper and competent local jurisdiction.”

**T**HE facts are fully set out in the judgment of Lascelles C.J.

This case was reserved for a Bench of two Judges by Grenier J.

*Bawa*, for accused, appellant.

*Tambyah*, for complainant, respondent.

*Cur. adv. vult.*

September 1, 1911. LASCELLES C.J.—

This is a case which has been reserved for the opinion of a Court of two Judges, principally on the question of jurisdiction which is raised in the petition of appeal.

The complaint made by Mr. Halliday, the Superintendent of Condegalle, was in the following terms :—

In the Police Court of Nuwara Eliya. On this 22nd day of May, 1911, I, L. E. Halliday, Superintendent of Condegalle estate, do hereby

complain that on the 3rd day of March, 1911, at Condegalle estate, within the jurisdiction of this Court, one Kandesamy *alias* Ponnasamy, an Indian agricultural labourer, having been before in the service or employment as a labourer of the Superintendent of Galatura estate, Ratnapura, did when offering to hire himself as a labourer to me, the Superintendent of Condegalle estate, falsely and wilfully pretend not to have been hired or retained in any previous employment, capacity, or service as such labourer, and thereby committed an offence punishable under section 17 of the Ordinance No. 11 of 1865.

Sept. 1, 1911

LASCELLES  
C.J.

*Halliday v.  
Kandasamy*

C. W. BARTHOLOMEWS,  
Proctor for the Complainant.

L. E. HALLIDAY.

It appears that the accused entered Mr. Halliday's employment under the name of Kandesamy on a Ragama certificate, on which it was stated that he had not previously been employed on any other estate in Ceylon, and that he was under no unliquidated liability to any other estate. These statements were found to be false. It appears that the accused up to about February last had been employed under the name of Ponnasamy on Galatura estate, and that he, together with other coolies, had left that estate on notice, leaving behind them a debt of Rs. 7,000.

The accused was convicted in the Police Court of Nuwara Eliya under section 17 of Ordinance No. 11 of 1865, and was sentenced to one month's rigorous imprisonment.

Before dealing with the question of jurisdiction, it is necessary to notice two other grounds of appeal which have been advanced.

It is said that Mr. Halliday, the Superintendent of Condegalle estate, had no status in Court as complainant, and could not institute this case. This objection, in my opinion, has no substance. Mr. Halliday, on receiving this cooly from Ragama, was entitled under "The Indian Coolies Ordinance, 1909," to a certificate containing a true statement with regard to the man's previous employment and liability for estate debts. When Mr. Halliday received a certificate on which these particulars were falsely stated, he was distinctly aggrieved, and was obviously a proper person to put the law in force against the person who was responsible for the false statements.

The other preliminary objection is that it has not been proved that the accused was in fact the person who gave the false information, and reliance is placed on the evidence of Mr. Dorysamy, the clerk who filled in the certificate at Ragama, that he could not identify the accused as the Kandasamy on whose information he filled in the particulars in the certificate.

The false information was given by a man who described himself to the clerk as Kandasamy; the certificate was given in respect of a man of that name despatched to Condegalle estate; the accused was at that time despatched to that estate; and a certificate relating to a Kandasamy was forwarded to the superintendent, and reached him a few days before the arrival of the accused.

Sept. 1, 1911

LASCELLES  
C.J.

Halliday v.  
Kandasamy

In the absence of any evidence to the contrary, I think that the Police Magistrate was justified by the evidence before him in holding that the accused was the man on whose information the clerk of Ragama filled up the certificate.

With regard to the question of jurisdiction, it is contended that, as it was at Ragama that the accused falsely pretended not to have been employed before on an estate, the offence was not within the local jurisdiction of the Police Court of Nuwara Eliya, but should have been tried within the judicial division of Colombo, within which Ragama is situated.

For the respondent it was argued that the offence was a continuing one, and that the false pretence was carried on up to the time and after the accused reached Condegalle estate.

In my opinion this argument is untenable. The false pretence, in order to constitute an offence under section 17 of Ordinance No. 11 of 1865, must be made by the accused "when offering to hire himself." But under section 25 (2) of "The Indian Coolies Ordinance, 1909," the contract of hire and service is complete as soon as the Superintendent of Ragama has despatched the labourer to the estate and has forwarded the certificate to the employer. Nothing, therefore, that the accused did at Condegalle was done "when offering to hire himself in any employment." The contract of hire and service was complete as soon as the accused left Ragama and his certificate was forwarded.

I think the offence was clearly committed at Ragama, where the accused gave the false information to the clerk, and that the Police Court of Nuwara Eliya had no jurisdiction to try the offence.

The next question is whether, in view of section 423 of the Criminal Procedure Code, this conviction should be set aside. The section is in these terms : "No judgment of any Criminal Court shall be set aside merely on the ground that the inquiry, trial, or other proceedings in the course of which it was passed took place in a wrong local area, unless it appears that such error occasioned a failure of justice." Various grounds were suggested in argument for cutting down the plain and natural meaning of this section. It was said that the section should only apply when no objection was taken to the jurisdiction in the court of first instance. But there is nothing in the section or in the context which lends the slightest support to this suggestion. To engraft such a proviso or exception on the section would, in my opinion, be an unjustifiable encroachment on the province of the Legislature. It was also contended that the section cannot be administered in its natural meaning without derogating from the rights of appeal allowed by chapter XXX. of the Code. I confess that I am unable to appreciate the force or effect of this argument. Nothing is commoner in legislative enactments than provisions which introduce with regard to some particular matter exceptions to or modifications of rights previously

granted in general terms. Many such instances could be cited from the Criminal Procedure Code ; the whole of chapter XLII., for example, is of this character.

If any authority be wanted for the proposition that section 423 should be construed according to its plain meaning and as complete in itself, I refer to the case of *Queen Empress v. Fazl Azim*,<sup>1</sup> which was a decision of the Full Bench of Allahabad on section 532 of the Indian Criminal Procedure Code (corresponding to section 423 of our Code). In that case a Sessions Judge had heard a criminal appeal at a place at which he was empowered to exercise civil but not criminal jurisdiction. But for the provisions of section 531 his order would have been a nullity.

The Full Court, however, gave full effect to section 531, and, finding that the irregularity had not occasioned any failure of justice, refused to set aside the order of the Sessions Judge.

Under section 423 I am clearly of opinion that it is our duty not to set aside the conviction in the present case on the ground that the proceedings took place in a wrong local area, unless we are satisfied that the error occasioned a failure of justice.

There is absolutely no reason for supposing that the accused was prejudiced in his defence by being tried at Nuwara Eliya rather than in the judicial division of Colombo. I therefore decline to set aside the conviction. Having regard to the importance of enforcing the provisions of the legislation on this subject, I cannot regard the penalty as excessive.

In view of the difficulties which have arisen in the present case and of the importance of preventing fraudulent entries in Ragama certificates, it seems desirable that the act of giving false information for the purpose of these certificates should be made a specific offence; that the Police Court or Courts having jurisdiction to deal with such offences and the persons entitled to prosecute should be specified ; and that provision should be made, if possible, for the identification of the coolies giving the information to the officials at Ragama.

MIDDLETON J.—

I agree entirely, but would also add that this application of section 423 of the Criminal Procedure Code must by no means be considered to obviate the requirements of the law that criminal proceedings should be originally instituted in the Court having the proper and competent local jurisdiction to try and determine the offence, or to prevent a Police Magistrate who doubts that he has jurisdiction to hear a case acting under section 145 and applying to the Attorney-General for directions.

*Appeal dismissed.*

<sup>1</sup> *I. L. R.*, 17 *Al.*, 37.

Sept. 1, 1911

LASCELLES  
C.J.

*Halliday v.  
Kandasamy*