

Present : Ennis J.

1913.

JONES v. VELLOO.

618—P. C. Balapitiya, 37,999.

Master and servant—Insolence—Ordinance No. 11 of 1865, s. 11.

The assistant superintendent of an estate (complainant), when enforcing a rule of the estate, treated the wife of the accused somewhat roughly. Some time afterwards the accused came up to the complainant and used abusive and insulting language to him.

Held, that accused was guilty of misconduct in the service of the employer within the meaning of section 11 of Ordinance No. 11 of 1865.

IN this case the learned Magistrate (H. J. V. Ekanayake, Esq.) held that the complainant met the wife of the accused on the estate road with a bundle of twigs and leaves, which the estate coolies were not allowed to pluck, and that he treated the woman with some violence in what he thought was the enforcement of an estate rule. Some time after the accused insulted the complainant by abusing him in offensive terms. The wife of the accused gave evidence to the effect that the complainant held her by the hand and offered her Rs. 5, and asked her to come off the road and get under a rock in the vicinity. The Magistrate convicted the accused, and sentenced him to one month's rigorous imprisonment.

The accused appealed.

F. de Zoysa, for the accused, appellant.—The accused appears to have had reasons for believing that the complainant's conduct towards his wife was improper. Under the circumstances he had a right to remonstrate. In any case the insolence complained of had nothing to do with the service for which accused was employed. The mere impertinence of a cooly to the superintendent is not an offence under the section. If, for instance, the cooly was insolent when ordered to do anything, that would be an offence. Counsel cited *Edley v. Suppiah Kangany*.¹

Balasingham, for the respondent.—The object of the section is to enable the employer to maintain discipline on the estate. If the accused thought that the complainant acted improperly, he or his wife should bring an action against him, but he had no right to behave insolently towards the master.

Cur. adv. vult.

¹ (1879) 2 S. C. C. 72.

1913.

*Jones v.
Velloo*

September 11, 1913. ENNIS J.—

In this case the accused was convicted under section 11 of Ordinance No. 11 of 1865 of behaving in an insolent manner towards the assistant superintendent of Igalkanda estate. The Magistrate has found that the assistant superintendent, when enforcing a rule of the estate, treated the wife of the accused somewhat roughly. Some time afterwards the accused came up to the complainant and used abusive and insulting language to him. It has been urged on the appeal, although it was not raised in the petition, that this was not misconduct in the service of the employer within the terms of the section. In my opinion there can be no doubt that insolence to one whose duty it is to superintend on the estate is misconduct in the service of the employer. Had the insolence been to a stranger the argument would have been tenable, but the circumstances of this case clearly bring it within the terms of the section.

I see no reason to interfere with the conviction or sentence, and dismiss the appeal.

Appeal dismissed.

