Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Wood Renton.

May 2, 1910.

HORTIN *v.* MOOKEN.

P. C., Panwila, 19,843.

Notice of intention to determine contract of service—Letter by proctor—Delivered by cooly in person—"Personally signify"—"Employer"—Ordinance No. 9 of 1909, s. 20.

A cooly who, in the absence of the Superintendent, delivered in person to the Assistant Superintendent, who was the chief person in charge of the estate during the Superintendent's absence, a letter written and signed by his proctor giving notice of his intention to determine his contract of service, was held to have "personally signified" his intention within the meaning of section 20 of Ordinance No. 9 of 1909.

THE facts of the case are fully set out in the judgments. The case was first argued before Grenier J., who referred the case to a Bench of two Judges.

H. A. Jayewardene, for the accused, appellant.—The notice written and signed by the proctor is notice by the cooly himself, and not by "any other person" on behalf of the cooly. Even if the notice be deemed to have been given by some "other person" on behalf of the cooly, the cooly has in this case "personally signified"

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his intention by delivering the proctor's letter in person to Mr. Ramsten. In *Lyall v. Narayanan*[1] a letter sent by post was held to be a sufficient notice. [Hutchinson C.J.: In that case the notice was not sent by " any other person. "] Here the letter was delivered in person. [Hutchinson C.J.: Was it delivered to the " employer "?] The Superintendent was absent, and Mr. Ramsten, to whom the letter was delivered, was in charge of the estate during the Superintendent's absence. He was therefore an " employer " under section 3 of Ordinance No. 13 of 1889. Counsel also referred to *The Queen v. Muttucarpen Chetty*,[2] *Scowcroft v. Muttusamy Kangany*.[3]

A. St. V. Jayewardene, for the respondent.—Mr. Ramsten was an Assistant Superintendent. The definition of the term " employer " in Ordinance No. 13 of 1889 only includes a Superintendent and not an " Assistant Superintendent ". " Employer " does not include any person who happens to supervise the work of the estate during a temporary absence of the Superintendent. A kangany was held not to be an " employer " in *Kandasamy v. Muttamma*.[4] See also 143 P. C., Kalutara, 13,342.[5] In this case the Magistrate does not hold that the appellant personally delivered the letter to Mr. Ramsten.

Cur. adv. vult.

May 2, 1910. HUTCHINSON C.J.—

This is an appeal against the conviction of the appellant on a charge that, being an agricultural servant under a verbal contract of hire and service renewable from month to month, he quitted the services of his employer, J. P. Hortin, without leave or reasonable cause, an offence under section 11 of Ordinance No. 11 of 1865.

The appellant was a cooly on Selvakande estate, of which Mr. Hortin was Superintendent. At the beginning of December last Mr. Hortin was at Kandy attending the Supreme Court as a juror. There is no evidence how long he was absent, but he returned on December 8. The Assistant Superintendent was Mr. Ramsten; he resided on the estate, and his ordinary duty was to keep the check roll and supervise the work of the coolies; he had not the right to pay off coolies. During Mr. Hortin's absence he opened letters addressed to the Superintendent.

On December 6 the appellant got his proctor to write out a notice for him addressed to the Superintendent in these words: " I am instructed by Mooken Waddamalli " (the appellant), " of the above estate, to give you notice that he will, one month after receipt hereof, quit your service." This was signed by the Proctor, but not by the appellant. The appellant took it himself and

[1] *(1910) 13 N. L. R. 28.*
[2] *(1886) 8 S. C. C. 53.*
[3] *(1887) 8 S. C. C. 86.*
[4] *(1896) 2 N. L. R. 71.*
[5] *S. C. Min., March 22, 1910.*

handed it to Mr. Ramsten on December 7, and in pursuance of it he quitted the services on January 8. The appellant says that when he gave Mr. Ramsten the notice he told him that he would leave on January 8; Mr. Ramsten denies this; the Magistrate does not say which of them he believed. Mr. Ramsten handed the notice to Mr. Hortin on his return on December 8.

It is enacted by section 20 of Ordinance No. 9 of 1909 that "A notice or warning of the intention of any labourer to determine his contract of service, if given by any other person on behalf of the labourer, shall not begin to run or be in any way effectual in law, unless and until the labourer has personally signified to his employer his desire to determine his contract of service." It was therefore necessary for the appellant personally to signify to his employer his desire to determine the contract. If Mr. Hortin was his employer, he did not do this. If the servant causes a written notice signed by himself—signature including, in the case of an illiterate person, his mark—to be delivered to his employer, that is enough; otherwise he must personally, *i.e.*, himself, and not through an agent, signify his intention to his employer. If Mr. Ramsten was not the employer on December 7, he was merely an agent to hand the notice to the Superintendent, and that would not do. The appellant's counsel, however, contends that on December 7 Mr. Ramsten was the employer. Section 3 of Ordinance No. 13 of 1889 enacts that for the purposes of that Ordinance (with which the Ordinance of 1909 is incorporated) "employer means the chief person for the time being in charge of an estate, and includes the Superintendent." The Magistrate did not consider this point, and there is no evidence how long Mr. Hortin was absent, beyond his own statement that in December he had to attend the Supreme Court at Kandy as a juror, and that he returned on the 8th; and there is no direct evidence that the Assistant Superintendent was left in charge of the estate during his absence. I think that on the evidence the Magistrate ought to have found that Mr. Ramsten was on December 7 the chief person in charge of the estate, and was therefore the "employer." And the delivery by the servant personally to his employer of a written notice, such as in this case, was a personal signification of his desire to determine the contract.

If I had thought that the conviction must be affirmed I should have considered that the offence was a purely technical one, for which only a mere nominal penalty ought to have been inflicted.

I would set aside the conviction.

WOOD RENTON J.—

Our decision in this case will depend on the answers which we give to the three following questions: First, is the proctor's letter sent to the respondent on behalf of the accused-appellant intimating

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his intention to terminate his contract of service a letter by the accused-appellant himself, or one by some " other person on his behalf, " within the meaning of section 20 of the Indian Coolies' Ordinance, 1909 (No. 9 of 1909)? In the second place, if it is a letter by an agent on behalf of the accused-appellant within the meaning of that section, has the accused-appellant " personally signified his desire to determine his contract of service " as required by section 20? And in the last place, if so, was such personal signification made to his " employer " within the meaning of section 20 of Ordinance No. 9 of 1909 and section 3 of Ordinance No. 13 of 1889?

In regard to the first of these points, I adhere to the view which I indicated, without expressly deciding the question, in the case of *Lyall v. Narayanan*.[1] I hold that a letter written by a proctor in the cooly's name intimating to his employer his intention to leave the estate is a notice given not by the cooly himself, but by an agent on his behalf, and that, therefore, under section 20 of the Ordinance of 1909, it does not begin to run or to be in any way effectual in law, unless and until the cooly has " personally signified " his desire to terminate his contract of service. I come now to the more difficult question as to whether or not the accused-appellant " personally signified " his desire to leave the respondent's service in a sense that will satisfy section 20 of the Ordinance of 1909. It would have been, I should have thought, a comparatively simple matter for the Legislature to have found words that would have made its meaning on this point clear, and I am tempted to think that the terms " personally signified " furnish a fresh illustration of a practice not uncommon in the evolution of statute law on points as to which there is a difference of opinion among the authors of the enactment. Vague language is used, and each of the conflicting sections of opinion acquiesces in its retention in the hope that its own particular interpretation will receive the ultimate *imprimatur* of the courts of law. But we have to construe the words in question as we find them, and without attempting or desiring to lay down any exhaustive definition of either " personally " or " signified ", I think that the former, roughly speaking, means proceeding from the cooly himself, as distinguished from the act of another person on his behalf, referred to in the earlier part of the section, and that it should not be restricted to express communications, whether written or verbal, but would be satisfied by any mode of communication shown by the evidence to have clearly brought home the cooly's desire to leave to the mind of his employer.

I think that the evidence in the present case satisfies this requirement, if Mr. Ramsten, to whom the communication was made, was the appellant's " employer " within the meaning of the statute. The

[1] *(1910) 13 N. L. R. 28, 2 Cur. L. R. 55.*

appellant himself states that he handed to Mr. Ramsten the proctor's letter above referred to, and that in doing so he told him of his own accord that he would leave the estate on January 8, 1910. The proctor's letter was dated December 6, and it was handed to Mr. Ramsten on December 7, 1909. Mr. Ramsten admits the delivery of the letter, but says that the appellant said nothing when he handed it to him, and the learned Police Magistrate does not inform us whether he accepted the evidence of the appellant or the recollection of Mr. Ramsten on this point. I will take it, however, that no verbal communication was made, and that the evidence merely shows that the proctor's letter of notice was handed to Mr. Ramsten by the appellant, that Mr. Ramsten became aware of and acted upon its contents, and that the appellant actually left the estate on the expiry of the month's notice, which it contained.

I think that under these circumstances, assuming that Mr. Ramsten was the " employer " of the appellant, the latter " personally signified " to him his desire to determine his contract of service within the meaning of section 20 of the Ordinance of 1909. For the purpose of the decision of the present case, we must take the definition of " employer " in section 3 of Ordinance No. 13 of 1889. As defined in that section, it means " the chief person in charge of an estate for the time being." Here, again, I will not attempt any general enumeration of the classes of persons who would fall within the range of that clause. Each case must be decided on its own merits. It is here proved that Mr. Ramsten, to whom the notice was in fact given, is the Assistant Superintendent of Selvakande estate; that at the date of the delivery of the notice, Mr. Hortin, the Superintendent, was absent on jury service in Kandy; and that Mr. Ramsten believed himself to be entitled to open, and, to some extent, to deal with the Superintendent's letters during Mr. Hortin's absence.

I think that these circumstances constitute *prima facie* proof that he was the chief person in charge of the estate for the time being at that date. Mr. Hortin in his evidence said that the Assistant Superintendent had no right to accept notices from coolies, and that his general duties were to keep the check roll, to supervise the work of the coolies, and to pay them when asked by the Superintendent to do so. There is nothing, however, to show that the appellant was aware of any of the limitations of Mr. Ramsten's authority to which the Superintendent refers. Moreover, section 20 of Ordinance No. 9 of 1909 does not say that the notice must be given, if not to the Superintendent himself, to some person authorized by the Superintendent to receive such notices. It is sufficient if the facts show that the person to whom the notice was given was " the chief person in charge of the estate for the time being. " In my opinion, the evidence in the present case establishes that fact affirmatively *prima facie*, and it has not been rebutted by any evidence on the part of the respondent.

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I would set aside the conviction and sentence, and direct the acquittal of the accused-appellant. I may add that, even if I had thought that a technical offence had been established against the appellant, I should not have imposed such a substantial penalty as ten rupees. A fine of one cent would have been, I think, sufficient punishment, in view of the entire absence of any suggestion of bad faith on the appellant's part in giving notice to the Assistant Superintendent.

Appeal allowed.