

1912.

Present: Lascelles C.J.

PRICE v. SUPPAN

267—P. C. Kandy, 28,436

Notice cancelling a notice to quit—Must be given to employer, and not to agent of employer—Ordinance No. 18 of 1889, s. 3—Ordinance No. 9 of 1909, s. 20.

A notice by a cooly to cancel a previous notice to quit (like the original notice to quit) must be given to the employer (and not to his agent).

An "employer" is the chief person, for the time being, in charge of an estate, and includes the superintendent.

The question whether a person is or is not an "employer" within the meaning of the Ordinance is one of fact. It is not concluded by the circumstance that he was the Assistant Superintendent, and not the Superintendent, of the estate, for it may well be that an Assistant Superintendent is at a certain time the chief person in direct charge of the estate, and the only person in authority who is accessible to the labourers.

A PPEAL with the sanction of the Attorney-General. The facts are set out in the judgment.

Grenier, for appellant.—Section 3 of Ordinance No. 3 of 1889 defines the term "employer" as the chief person for the time being in charge of the estate. Here Mr. Price, though he was Assistant Superintendent of the estate, was in charge of the estate. And even if he cannot be called employer, he acted as agent of Mr. Coles, the employer, and as such the notice of revocation given to the agent is good in law.

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Wadsworth, for respondent.—The question as to who the accused's employer was is a question of fact. The original notice to quit was given to Mr. Coles, the Superintendent. The present prosecution was at the instance of Mr. Coles. Mr. Price himself stated that he charged the accused with the authority of Mr. Coles. At the end of the trial the charge itself was amended by alleging that the accused quitted the service of Mr. Coles, and not that of the complainant, Mr. Price. Under our law there is no provision for an agent of the employer to give or receive notice. The notice to quit must be given to the employer, and consequently any revocation of that notice must be given to him.

Cur. adv. vult.

May 9, 1912. LASCELLES C.J.—

This is an appeal, with the sanction of the Attorney-General, from the acquittal of the accused on a charge preferred against him by Mr. Price, the Assistant Superintendent of Nilembe estate, of having illegally quitted the complainant's service on March 4, 1912. It was proved that Mr. Coles, who, I understand, is the Superintendent of the estate, received a notice of their intention to quit his service signed by the accused and other coolies. Subsequently some coolies denied that they had signed the notice, and Mr. Price questioned the accused whether he had signed the notice, and whether he wished to leave the estate and the accused, while admitting that he had signed the notice, stated that he wished to cancel it and remain on the estate. On March 4 accused left the estate, and was at once charged by Mr. Price. The accused then stated that he wished to leave the estate. The learned Police Magistrate acquitted the accused, on the ground that the accused's statement of his intention to cancel the notice being made to Mr. Price, and not to Mr. Coles, did not amount to a valid revocation of the notice to quit.

In appeal it was contended that Mr. Price was the "employer" within the meaning of the Ordinance, and that in any case Mr. Price, as the agent of Mr. Coles, was entitled to receive notice of the accused's wish to cancel the notice. Section 20 of "The Indian Coolies Ordinance 1909," designates the "employer" as the proper person to receive notice of the labourer's intention to determine the contract of service, and section 3 of Ordinance No. 13 of 1889 defines the term "employer" to mean the chief person, for the time being, in charge of an estate, and to include the superintendent. The question, therefore, whether Mr. Price was or was not the "employer" within the meaning of the Ordinance is one of fact; it is not, in my opinion, concluded by the circumstance that he was the Assistant Superintendent, and not the Superintendent, of the estate, for it may well be that an Assistant Superintendent is at a certain time the chief person in direct charge of the estate, and the

only person in authority who is accessible to the labourers. But in the present case it is clear that Mr. Coles, and not Mr. Price, was regarded as the chief person in charge of the estate. The original notice to quit was given to Mr. Coles; the charge was instituted by Mr. Price, as he himself states, with the authority of Mr. Coles, and the complainant's proctor at the hearing moved to amend the plaint by alleging that the accused quitted the service of " Mr. J. B. Coles " instead of the " complainant's " service. There can, I think, be no doubt but that Mr. Coles was treated by all the parties and was in fact the " employer " within the meaning of the Ordinance. Then, the question arises whether Mr. Price was entitled as the agent of the employer to receive the notice cancelling the notice to quit. It is true that the Labour Ordinances are silent as to the person who is entitled to receive a notice cancelling a previous notice to quit. But, I think, it is clear that the notice to cancel a previous notice to quit, like the original notice to quit, must be given to the employer. One of the reasons why these Ordinances provide that the notice of an intention to quit must be given to the employer is that the liability of the labourer to criminal prosecution may depend upon the validity of a notice to quit. The law, therefore, provides that the notice can only be validly given to the responsible employer in charge of the estate. The same consideration is applicable to a notice revoking a previous notice to quit. If the doctrine were admitted that such a notice could be legally given to the employer's agent, who might be a person in a very subordinate position, the confusion and uncertainty which would arise are obvious. The liability of the labourer to conviction may depend upon the validity of a notice cancelling a previous notice to quit, in the same way that it may depend on the validity of a notice to quit. And when the law provides that notice to quit can only be given to the employer, I think it is a necessary consequence that a notice of intention to revoke a notice to quit can only be given to the same authority, namely, the employer. I think the decision of the Police Magistrate was right, and I dismiss the appeal with costs.

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