

1912,

Present: Pereira J.

APPAVU *v.* PONNIAH.

469—*P. C. Badulla-Haldummulla, 5,078.*

Sub-kangany refusing to work as a cooly—Is he guilty of an offence under s. 11 of Ordinance No. 11 of 1865?

A sub-kangany who refused to work as a cooly when ordered to do so by his employer was held to have committed an offence under section 11 of Ordinance No. 11 of 1865.

THE facts appear from the judgment.

L. H. de Alwis, for the accused, appellant.—The accused was ordered to work as a cooly as a punishment for his alleged misconduct. It was held in *Maclean v. Appau Kangany*¹ that a

¹ (1896) 2 N. L. R. 54.

kangany who refuses to obey an order to perform manual labour in the reasonable belief, founded on the previous course of business on the estate, that it is no part of his duty to perform such labour is not guilty of wilful disobedience under section 11 of the Labour Ordinance. [See also *Ryan v. Weerappan*; ¹ P. C. Matala 21, 198.²] In this case, too, the accused refused to work, in the belief that it was no part of his duty to work as a cooly. The disobedience was not wilful, and the accused was therefore wrongfully convicted.

Wadsworth, for the complainant, respondent.—The evidence shows that it is usual for sub-kanganies to work as coolies. The disobedience was therefore not right. In *Natu Meya v. Kadersa Kangany* ³ a sub-kangany who refused to work as a cooly was convicted under section 11 of the Ordinance.

Cur. adv. vult.

July 9, 1912. PEREIRA J.—

The accused is charged under section 11 of Ordinance No. 11 of 1865 with refusing to work and absenting himself from work without leave or reasonable cause. He is a sub-kangany on Glenmore estate, and his defence is that he was asked to work as a cooly, and that being on the estate as a sub-kangany he refused to work as a cooly. The question of the liability of a kangany to work as a cooly has been considered by this Court in several cases. It is sufficient to refer here to only three of them. In *Maclean v. Appau Kangany* ⁴ Bonser C.J. held that a tea estate kangany who refused to obey an order to perform manual labour in the reasonable belief, founded on the previous course of business on the estate, that it was no part of his duty to perform such labour was not guilty of wilful disobedience under section 11 of the Ordinance. That case was followed by Mr. Justice Middleton in the case of *Ryan v. Weerappan*. ¹ The present case, however, is more in line with that of *Natu Meya v. Kadersa Kangany*. ³ There Wendt J. observed: "There is no evidence to show that an agricultural labourer, merely because he is a sub-kangany, is entitled to choose whether he shall himself work or not. It is not suggested that it is a generally recognized custom in such employment that a sub-kangany shall not be obliged to work with his own hands." These observations apply with equal force to the present case, and, moreover, here there is positive evidence to the effect that "nearly all sub-kanganies work as coolies, and it is usual for them to do so." But as in the case of *Maclean v. Appau Kangany*, ⁴ it is clear that in the present case the order to work as a cooly was

¹ (26,860—P. C. Matala) S. C. Min. Sept. 12, 1906.

² S. C. Min., Sept. 8, 1881.

³ (11,091—P. C. Badulla-Haldummulla) S. C. Min., Aug. 7, 1902.

⁴ (1896) 2 N. L. R. 54.

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not given to the accused in the ordinary course of estate management, but as a punishment for certain acts of misconduct by the accused which had been reported to Mr. Hudson. In *Maclean v. Appau Kangany*¹ the fact that the order was not one given in the ordinary course of estate management, but was an exceptional order given to assert the authority of the superintendent, went a great way towards contributing to the grounds on which the acquittal was based. The similar incident in the present case may not altogether exonerate the accused, but it may well be taken into consideration in mitigation of his offence. The reasons given by Wendt J. in *Natu Meya v. Kadersa Kangany*² for reducing the sentence apply with equal force to this case. I affirm the conviction, but reduce the sentence to a fine of Rs. 25, or in default of payment of the fine to one month's rigorous imprisonment.

Conviction affirmed; sentence varied.
