

1914.

Present: Lascelles C.J.

VAN LANGENBERG *v.* VEERASAMY.

349—P. C. Kalutara, 29,759.

*Harbouring a deserting cooly—Labour Ordinance, No. 11 of 1865, s. 19—
May assistant superintendent prosecute in offences against the
Labour Ordinance ?*

An assistant superintendent of an estate charged the accused under section 19 of Ordinance No. 11 of 1865 for harbouring a deserting cooly. The objection taken in appeal that the complaint should not have been accepted, as it was made by the assistant superintendent and not by the superintendent, was over-ruled.

The proprietor of a tea estate is *prima facie* a proper person to prosecute. But his duly authorized agents are equally competent for the purpose.

The opinion that an assistant superintendent cannot make complaints of offences against the Labour Ordinances rests on no solid ground either of principle or of authority.

Hall v. Kandeswamy ¹ doubted.

THE facts are set out in the judgment.

Wadsworth, for accused, appellant.

A. St. V. Jayewardene, for complainant, respondent.

¹ 5 A. C. R. 125.

May 20, 1914. LASCELLES C.J.—

1914.

This is an appeal from the conviction of the accused under section 19 of Ordinance No. 11 of 1865 for harbouring a deserting cooly. The principal ground of appeal is that the complaint, being made not by the superintendent of the estate, but by an assistant superintendent, should not have been accepted and acted on.

*Van Langen
berg v.
Veerasamy*

Before referring to the authorities on the point, it may be well to observe that the definition of the word "employer" in Ordinance No. 13 of 1869 is not material on this point, as section 19 of Ordinance No. 11 of 1865 deals with "servants or journeymen artificers" generally, and has no special application to Indian immigrant labourers. Further, the section makes no specific reference to the "employer," and is silent as to who is the proper person to institute proceedings under the section. Inasmuch as it is the person employing the servant or journeyman artificer who is aggrieved by offences under the section, he is obviously the most natural and proper person to be the complainant in charges under the section.

But as the actual employer frequently entrusts the management of his servants to an agent, the agent, in these cases, is a proper complainant. The question whether an assistant superintendent in charge of a division is a proper person to complain of offences under section 19 with regard to the labourers in his charge depends upon the extent of the authority which he has received from his employer. In the absence of direct evidence, which is rarely forthcoming on this point, the extent of an assistant superintendent's authority must be inferred from his position, due regard being had to the system under which estates are carried on in Ceylon.

The case law on the point is not in a satisfactory condition. In *Hall v. Kandeswamy*¹ Hutchinson C.J. felt himself obliged by two previous decisions of this Court to hold that a prosecution by an assistant superintendent under section 11 of Ordinance No. 11 of 1865 was bad, in default of evidence that the prosecution was authorized by the superintendent or by the accused's employer. I think I am right in saying that the soundness of this decision has more than once been doubted. The two previous decisions referred to are *Kandesamy v. Mutamma*² and *Caldera v. Mutamma*.³ In both these cases the actual question decided was that a prosecution by a kangani is illegal without proof of the authority of the employer to prosecute. Neither judgment refers to the position of an assistant superintendent; neither judgment differentiates between superintendents and assistant superintendents as regards their authority to prosecute under Ordinance No. 11 of 1865.

¹ 5 A. C. R. 125.

² 2 N. L. R. 71.

1914.

LASCELLES
C.J.Van Langen-
berg v.
Vee rasamy

But in *Kandesamy v. Mutamma*¹ Bonser C.J. stated: "In my opinion the employer is the only person who can properly prosecute for offences under the Labour Ordinance, because he is the only person injured."

This expression of opinion is of course purely *obiter*, and goes far beyond the decision of the question then in hand. But these words cannot be accepted as a precise and exhaustive statement of law. They were probably never intended to be so understood.

It seems to have been assumed that by the word "employer" His Lordship meant the superintendent of the estate. But this cannot be the case, for the superintendent is not injured by the misconduct of the labourers. The injury falls on the "employer," using that term in the ordinary sense of the word; on the person who pays the servants' wages and derives advantage from their labour; on the person who, in a case of a tea estate, is the proprietor.

The statement, if I may respectfully say so, obviously requires amplification. The proprietor of a tea estate is *prima facie* a proper person to prosecute. But his duly authorized agents are equally competent for the purpose. It has been generally admitted that a superintendent, in virtue of his employment, is authorized for the purpose. With regard to assistant superintendents, the true question is whether their authority and control over the labourers employed on their divisions is not such that they must be presumed to be authorized to take proceedings under the Labour Ordinance against the labourers in their charge. If, as is unquestionably the case, the assistant superintendent is responsible for the behaviour and discipline of the labourers on his division, if it is his duty to see that they carry out the obligations of their contract of service, I cannot doubt that he is the proper person to take the proceedings which the law allows to be taken to secure these objects. The extent of the authority of the assistant superintendent must depend upon the duties assigned to him.

In my opinion, the opinion that an assistant superintendent cannot make complaints of offences against the Labour Ordinances rests on no solid ground either of principle or of authority.

The facts of this particular case do not call for much comment. The deserter was missed from the estate on the 14th, and was arrested at Alutgama on the 22nd. It was proved that at some unspecified date the accused was seen with the deserter in a cassava garden, where they appear to have passed the night, and on the 20th they went together by train from Alutgama to Kalutara and back from Kalutara to Alutgama. There can be but little doubt that the accused took the deserter to Kalutara to get the application for a tundu, which was in fact forwarded to the superintendent.

The offence I think is clearly proved, and I dismiss the appeal.

Affirmed.