1913.

Present: Wood Renton J.

SAXTON *v.* WILSON.

535—P. C. Matale, 370.

Labour Ordinance, No. 13 of 1889, s. 6—No. 9 of 1909, s. 4—Failure to pay coolies their wages before end of following month—Request by coolies to hold back wages—Government Agent has locus standi *to prosecute.*

A superintendent of an estate did not pay the coolies their wages for November, 1912, in the following month at the request of the coolies themselves, who were anxious that the money should be kept back and paid to them with their wages for December in January, 1913, just in time for the Thai Pongal festival. The superintendent intimated to the coolies that he was prepared to pay them on December 28, but as the coolies had intimated their wish to get their wages in January, he took a comparatively small sum of Rs. 500, which would have enabled him to pay at once any malcontents.

Held, that the superintendent was guilty of an offence under section 6 of Ordinance No. 13 of 1889, as amended by Ordinance No. 9 of 1909.

WOOD RENTON J.—I cannot hold that there was anything that can fairly be described as a tender of the wages to the coolies so as to bring the case within sub-section (5) (*a*) of section 6. Nor do I think that the case can be brought within sub-section (6) itself.

A Government Agent has a *locus standi* to appear as prosecutor in cases of this kind.

THE facts appear from the judgment.

Wadsworth, for the accused, appellant.—The Government Agent has no status under the Ordinance to prosecute the accused for non-payment of wages to the coolies. The action should be brought by the cooly himself. It was held by this Court in several cases that only the employer or some person duly authorized by the employer could prosecute a cooly for offences under section 11 of the Labour Ordinance (No. 11 of 1865). See *Kandasamy v. Muttamma,*[1] *Cadersa v. Muttamma,*[2] *Hall v. Kandeswamy.*[3] The same principle would apply here. The cooly is the only person aggrieved by the omission. The accused offered the wages for the month of November in December. He had actually told the coolies so, and had on the day appointed a sum of money with him to pay them. But the coolies preferred

[1] *(1896) 2 N. L. R. 71.*

[2] *(1902) 6 N. L. R. 120.*

[3] *(1910) 5 A. C. R. 125.*

to leave the wages to accumulate for two months. The accused should not be held to have committed an offence under the Ordinance under these circumstances.

Counsel referred to *Baine v. Nallatamby.*[1]

Garvin, Acting S.-G., for the respondent.—[His Lordship called upon respondent's counsel to reply to the first objection—the right of the Government Agent to prosecute.] The cases cited are cases of quitting service; there was only a breach of contract. Here there is not only a breach of contract, but the infringement of a statutory duty. It is the Government Agent who has, under the Ordinance, to see to the working of the Ordinance in his province.

August 7, 1913. WOOD RENTON J.—

This case, if I may say so, has been extremely well argued on both sides, and raises questions of law of considerable general importance under the Indian Coolies Ordinance, 1909. The complainant is the Government Agent of the Central Province. The accused is Mr. Wilson, the superintendent of certain estates in the district of Matale. The prosecution is instituted under section 6 (1) of the Indian Coolies Ordinance, 1889 (No. 13 of 1889), as amended by section 4 of the Ordinance first referred to. The section in question provides that " it shall be the duty of every employer to pay the wages of the labourers in his employment monthly, within one month from the expiration of the month during which the wages have been earned." The section goes on to provide that an employer who is guilty of a breach of the requirement of the Ordinance as to the monthly payment of wages shall be quilty of an offence, and shall be liable on conviction to a fine which may extend to Rs. 50 on a first conviction, and Rs. 200 on a second or any subsequent conviction. The facts here are not in dispute. No doubt is thrown or can be thrown on the good faith and credibility of Mr. Wilson, or his Assistant Mr. Tyler, who also gave evidence in the case. The only question is whether or not Mr. Wilson has committed the statutory offence. The allegation on behalf of the prosecution is that, while under the Ordinance his coolies' wages for the month of November, 1912, should have been paid before the end of December in that year, they were held back, and were paid only with the December wages in January, 1913. That allegation is undoubtedly substantiated by the evidence. Indeed, there is no denial of it by Mr. Wilson or by Mr. Tyler. *Primâ facie*, therefore, the statutory offence has been committed. Two points, however, have been urged with a view to rebutting the *primâ facie* case which the evidence discloses. Of these pleas, one depends on the merits, and the other raises a question, although an important question, of

[1] *(1905) 8 N. L. R. 258, at p. 260.*

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form. I will deal with the latter first. It is argued that the Government Agent has no *locus standi* under the Ordinance to appear as prosecutor in cases of this kind. In support of that contention Mr. Wadsworth has referred me to a group of cases—*Kandasamy v. Muttamma,*[1] *Cadersa v. Muttamma,*[2] *Hall v. Kandeswamy*[3]—the short effect of which is that, in prosecutions under the Labour Ordinance, 1865 (No. 11 of 1865), section 11, only the employer, or some person proved to have been authorized by the employer in that behalf, can prosecute. Those cases do not appear to me to be applicable to the question that I have here to decide, for two reasons. In the first place, they deal with an offence, namely, quitting service without notice, which is directly and primarily a breach by the employé of his contract with his employer. The duty of the employer under section 6 (1) of Ordinance No. 13 of 1889 is something more. Failure to pay the wages of the cooly at the time when the Legislature has declared them to be due is no doubt a breach of contract as regards the cooly. But it is also a breach of a specific duty imposed upon the employer by the enactment in question—a duty for the purpose of safeguarding the performance of which the Legislature has imposed upon the employer another obligation, namely, that of forwarding to the Government Agent, under a penalty for default, a declaration that it has been duly fulfilled. In the second place, the structure of Ordinance No. 13 of 1889, as amended by Ordinance No. 9 of 1909, itself seems to me sufficient to indicate an intention on the part of the Legislature to give the Government Agent a *locus standi* where the statutory duties have been disregarded. I have already pointed out that the Ordinance requires the employer to forward a declaration that the monthly wages have been duly paid to the Government Agent, and the amended section provides that, where a fine imposed on an employer for failure to pay the wages of his labourers within the prescribed period has not been paid within twenty-one days from the date of its imposition, the Government Agent may recover the amount in the manner provided by section 22 of the Medical Wants Ordinance, 1880. Moreover, other statutory provisions in the new Ordinance require employers to prepare and keep complete registers of their labourers, and it certainly has been the practice for prosecutions for breaches of these provisions to be instituted by the Government Agent, although there is nothing in the enactment itself which expressly authorizes him to prosecute. On these grounds I hold that the formal objection to this prosecution fails.

I come now to the objection of substance. The defence set up by Mr. Wilson at the trial was, and the evidence shows, that he did not pay the coolies' wages for November, 1912, in the following month at the request of the coolies themselves, who were anxious that the

[1] *(1896) 2 N. L. R. 71.*

[2] *(1902) 6 N. L. R. 120.*

[3] *(1910) 5 A. C. R. 125.*

money should be kept back and paid to them with their wages for December in January, 1913, just in time for the Thai Pongal festival. It was contended in the Court below, and has been contended here, that, as Mr. Wilson was ready and willing to pay the coolies their November wages in December, told them that he was so, and was in fact ready on December 28 with a sum of Rs. 500, which would have been sufficient to meet the claims of any coolies who were dissatisfied with the arrangement as to the retention of the wages, he must be held either to have paid the money to the coolies within the meaning of the amended section 6 (5) (*a*), or, within the meaning of sub-section (6) of that section, to have been prevented from doing so owing to " the absence " of the coolies, for they did not in fact attend on the ordinary day and at the ordinary place of payment, or from an " unavoidable cause." The learned Police Magistrate has over-ruled this contention, as he over-ruled also the formal objection of which I have already disposed. He convicted Mr. Wilson, and sentenced him to pay a fine of Rs. 30. It appears to me that, on the merits as well as on the formal question as to the right of the Government Agent to prosecute, the decision of the Police Magistrate is correct. There was nothing here in the nature of a tender. Mr. Wilson no doubt intimated to the coolies that he was prepared to pay them on December 28. But when he was made aware of their insistent request that the wages should be kept back till January, he took no steps which would have enabled him to pay the coolies in full if they had changed their minds and in fact had come forward and asked for payment. He was provided merely with a comparatively small sum, which would have enabled him to pay at once any malcontents. I cannot hold that there was here anything that can fairly be described as a tender of the wages to the coolies so as to bring the case within sub-section (5) (*a*) of section 6. Nor do I think that the case can be brought within sub-section (6) itself. It is true that the coolies on the day in question were absent. But the sub-section contemplates absence of an unavoidable character in so far as the employer is concerned. The words are: " Owing to the absence of any labourer or to any other unavoidable cause." There is nothing in the evidence in the present case to show that if Mr. Wilson had said to the coolies: " The intention of the law is that your wages should be paid to you every month, and I require you to be present on a specified day, so that I may discharge the duty which the law has imposed upon me," they would have not attended in full force. This observation applies equally to that part of the argument which turns on the words " unavoidable cause." I agree with the Police Magistrate that the probability is that if Mr. Wilson had regarded it as his duty to see that the coolies were paid their November wages before the month of December expired, and had brought a little pressure to bear upon them, they would have accepted their wages without

further demur. In these circumstances, it cannot be said that the failure to pay the wages was due to any unavoidable cause. If the law were to be interpreted in a contrary sense, one of its main objects would in a great measure be defeated. The intention of the Legislature was to exempt the cooly from imprisonment for debt by giving him practially no excuse for getting into debt. The only means of securing that end is to provide that his wages shall be paid to him monthly. The practical result of wages being held back in prospect of a great and popular festival would be that the cooly would get into debt before the time for the festival came, and that when it came he would spend the wages that were paid to him on the festival and not in payment of his debt. The appeal must be dismissed. But as there has been no previous decision on the question involved in it, I propose *ex mero motu*, for no application was made to me on the point by the appellant's counsel, to reduce the penalty from one of Rs. 30 to one of Rs. 5.

Appeal dismissed.