

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

CALURAM (COMPLAINANT),

v.

CHENGAPPA AND ANOTHER (PETITIONERS).*

1889.
October 24.
November 1.

Criminal Breach of Contract Act—Act XIII of 1859—Labourer—Carrier by boat.

An advance was made under a contract by which the party who received the advance undertook to convey salt by boat, but did not bind himself to render personal labour. The party who received the advance broke the contract :

Held, the parties to the contract were not an employer of labour and a labourer respectively, and consequently the contract did not fall within the provisions of Act XIII of 1859.

CASES referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by J. Lee Warner, District Magistrate of Chingleput.

The case was stated as follows :—

“ The appellant is a boat-owner, who plied his boat up on the Buckingham Canal. He engaged to carry salt for the complainant, whom for some reason or other he failed. For this default, he was convicted by the Second-class Magistrate of Ponneri under Act XIII of 1859; and on his appeal to the Deputy Magistrate, that officer rules that a boat-owner is a labourer, and that, as such, he comes within the scope of the Act referred to.

“ I think that the Deputy Magistrate’s opinion is bad in law, the boat-owner coming under the definition of a common carrier, and being therefore liable for the loss caused to the respondent under Act III of 1865; and I make this reference because applications of this sort to enforce Act XIII of 1859 against boat-owners are of very frequent occurrence in this district. It seems to me to make no difference whether the boat-owner works along with his boatmen in bringing the boat along or not.”

* Criminal Revision Cases Nos. 428 and 429 of 1889.

CALURAM
 v.
 CHENGAPPA.

Mr. *Kernan* for the accused.

Mr. *R. F. Grant* for complainant.

JUDGMENT.—The complainant is a contractor for the transport of salt to Madras from certain factories in the Ennore Circle, and on 6th March 1889 entered into an agreement with the defendant, which is termed a “salt transport agreement,” by which the latter bound himself to convey salt to Madras in his boat from 5th April to 30th September. The boat was to be used for this service exclusively, the loads and rates being fixed in the agreement and an advance of Rs. 120 paid. The defendant bound himself to give a bond for the amount of license tax required for the boat, which tax was to be paid by the complainant. It was further provided that at the close of the contract accounts were to be settled, and if it was found that defendant was in plaintiff's debt, his boat was pledged as security for the balance due.

Though by the agreement the defendant pledged himself to convey salt in the boat, there is nothing to show he was himself to render personal labour. It does not appear to us to fall within the provisions of Act XIII of 1859. It was an agreement for the carriage of salt, but we do not think that the complainant can be termed an employer of labour, or the defendant a labourer, within the meaning of Act XIII of 1859. The case appears to us analogous to that reported in High Court Proceedings of 13th July 1877, No. 1427, relating to contracts with cartmen. (Weir's Criminal Rulings, 3rd edition, page 461.)

The orders of the Magistrate must be set aside.
