

be said that he would be liable to the forfeiture of his licence. This is an indication that it was in the contemplation of the legislature that only the licensee should be tried for the offence of breaking his licence. Section 29 of the previous Act of 1867 also confirms this impression. It speaks of the breach being punishable, not of any particular person being liable to be punished, and it provides that the fine should be recovered from the person licensed notwithstanding that the default was due to the act of the servant or other person in charge. Where the legislature intends to provide for one or more persons being punished for a single offence under this Act it provides in clear terms for that being done—see sections 45, 71 and 72. For instance under section 45, the owner of a common gaming house and his assistants are made liable to be punished separately. Similarly in the Abkārī Act (Madras Act I of 1886), the holder of a licence is declared by section 64 to be punishable for such breaches of the licence as are mentioned in section 55, as well as the actual offender; if the actual offender is in his employ and he fails to prove that he has done his best to avoid any breach of his licence.

I agree with my learned brother that the convictions should be upheld in Criminal Revision Cases Nos. 654 and 656 and reversed in the other two cases and that the fines in Criminal Revision Cases Nos. 655 and 657 should be refunded.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Coultts Trotter.

HUSSAINA BEARI, PETITIONER (ACCUSED),

v.

KING-EMPEROR, RESPONDENT.*

Indian Penal Code (XLV of 1860), Section 211—Complaint, under section 1 of the Breach of Contract Act (XIII of 1859), withdrawn before passing of any order under section 2—Whether a 'criminal proceeding' within section 211, Indian Penal Code.

A complaint under section 1 of the Breach of Contract Act (XIII of 1859) which is withdrawn before any order is made by the Magistrate under section 2

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of the Act, either for a refund of the advance paid or for specific performance of the contract, is not a 'criminal proceeding' within the meaning of section 211, Indian Penal Code.

In the matter of Anusoori Sanyasi (1905) I.L.R., 28 Mad., 37, and *Derby Corporation v. Derbyshire County Council* [1897] A.C., 550, referred to.

CRIMINAL Revision petition under sections 435 and 439 of the Criminal Procedure Code against the conviction and sentence of the accused by NARAYANA NAMBIYAR, Sessions Judge of South Kanara, in Criminal Appeal No. 19 of 1919, filed against the conviction and sentence of the accused by ANANTAN NAYAR, Sub-divisional Magistrate of Coondapoor, in Calendar Case No. 33 of 1918.

The accused filed a complaint in December 1915, before the Second-class Magistrate of Buntwal, against one Angara Mukari, under section 1 of the Workmen's Breach of Contract Act, stating that the latter took an advance of Rs. 40 for some work in connexion with a firewood depot kept by the accused, that he signed an agreement to that effect, and that he thereafter refused to fulfil the agreement. On the day of hearing, the accused withdrew the complaint at the outset. Thereupon Angari Mukari obtained sanction to prosecute the accused, and filed a complaint against him under section 211, Indian Penal Code. Both the lower Courts convicted the accused. The accused preferred this Revision Petition.

B. Sitarama Rao for the petitioner.

V. L. Ethiraj for the Public Prosecutor for the Crown.

The ORDER of the Court was delivered by

COURTS
TROTTER, J.

COURTS TROTTER, J.—In this case the accused was charged under section 211 of the Indian Penal Code with making a false charge against one Angara Mukari, under section 1 of the Workmen's Breach of Contract Act, XIII of 1859. In order to determine the point at issue, which is one of considerable interest, it is necessary to examine both the wording of section 211 of the Indian Penal Code, under which the accused was convicted, and the wording of the Workmen's Breach of Contract Act. Section 211 of the Penal Code is as follows:

"Whoever, with intent to cause injury to any person, institutes or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an

offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished, etc.” By the Workmen’s Breach of Contract Act, section 1, it is enacted as follows:—

“When any artificer, workman or labourer shall have received from any master or employer, resident or carrying on business in any Presidency-town, or from any person acting on behalf of such master or employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen or labourers, shall wilfully and without lawful or reasonable excuse neglect or refuse to perform, or get performed, such work according to the terms of his contract, such master or employer or any such person as aforesaid may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such artificer, workman or labourer, and shall hear and determine the case.”

And section 2 enacts :

“If it shall be proved to the satisfaction of the Magistrate that such artificer, workman or labourer has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such artificer, workman or labourer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed, such work according to the terms of his contract; and, if such artificer, workman or labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months.”

It was proved in the lower Court, and it is not contested here, that the proceedings launched under section 1 of Workmen’s Breach of Contract Act were in fact falsely brought and that the charge was a baseless one, and indeed it was withdrawn almost immediately the case came on. The employer has been convicted under section 211 for falsely bringing those proceedings. The only point he takes before us here is that the proceedings under the Workmen’s Breach of Contract Act are not criminal proceedings within the meaning of section 211, Indian Penal Code.

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There has been a good deal of argument as to what the dividing line is in matters of this kind between criminal and civil proceedings and various analogies were suggested on one side or the other of the line. But we think that this matter has been clearly decided by a ruling of the House of Lords in England on a very analogous set of statutory provisions, so that it is needless to indulge in wide speculations as to the precise differentia of criminal from civil proceedings in general. If one looks at the Act, the preamble of it would certainly lend colour to the idea that the Act regarded some portion at any rate of the proceedings as criminal because the preamble recites that much loss and inconvenience are sustained by employers from fraudulent breach of contract on the part of workmen who have received advances and actually recites the inadequacy of the remedy by a suit in the Civil Courts and adds that

“it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment;”
and it goes on to enact the provisions which have been already set out.

It was argued on behalf of the respondent that the offence referred to in the Act must be regarded as the original offence of breach of contract, because that is the thing which in the terms of this preamble the Act sets out to punish or, at any rate, to prevent. There have been decisions of this Court to the effect that the offence created by the Act is, not the original breach of contract on the part of the workman but his subsequent disobedience to what we may call the order for specific performance which entails the punishment by imprisonment. That opinion was expressed by a Bench of three Judges of this Court, Sir ARNOLD WHITE, C.J., DAVIES and BENSON, JJ., in, *In the matter of Anusoori Sanyasi*(1); and Sir ARNOLD WHITE says :

“The offence created by the Act is not the neglect or refusal of the workman to perform his contract but the failure of the workman to comply with an order made by the Magistrate that the workman repay the money advanced or perform the contract.”

There is a similar ruling in *King-Emperor v. Takasi Muk-ayya*(2). Perhaps logically the offence is something that

(1) [1905] I.L.R., 28 Mad., 87.

(2) (1901) I.L.R., 24 Mad., 660.

comprehends both those elements. The offence is completed when the workman who has broken the contract and who has had an order under section 2 made against him fails to obey that order of the Magistrate. The necessary ingredients in the offence are: he must have broken a contract; an order under section 2, must have been passed and he must have disobeyed that order. When those elements are present, there is an offence as it would be defined for statutory purposes, e.g., for insertion in a criminal code. To that the argument is that the whole proceedings must be regarded as one and that as the offence, as we have defined it, when completed, culminates in a liability to punishment by imprisonment which of course obviously savours of a criminal proceeding, every step from the inception must be regarded as a step in a criminal proceeding, and it is said that you cannot split up a statutory procedure into two parts, one of which you are prepared to call criminal and the other civil. That argument to our minds is disposed of by the case of *Derby Corporation v. Derbyshire County Council*(1). In that case there had been a proceeding under the Rivers Pollution Prevention Act of 1876. The Act in its general scheme provided something very much of the nature of the remedy in this case. The proceedings by the Act are laid in the County Court, the Civil Court of the district. By the Act, the County Council is enabled to bring proceedings against persons who are alleged to have offended against the Act by polluting rivers. Thereupon, the County Court Judge has power to pass orders (if he finds that there was pollution) either in the nature of an injunction or by allowing a limited time for new measures to be taken or a new scheme carried out to obviate or abate the pollution. After the time limited by the order has expired, it is competent to the local authority to apply to the County Court Judge for a penal order levying a sum of money for every day that the defendant continues in default. In this case, the County Council had started proceedings for an order against the Derby Corporation. In the course of those proceedings they applied to the learned County Court Judge for an order for discovery of documents. They said that it was impossible for them to put before the Court the proper materials

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with regard to the methods of disposal of sewage and so forth carried out by the Corporation unless the Corporation were compelled to make discovery of documents, plans, maps and so forth. That was resisted on the ground that the nature of the proceedings was penal or criminal because the proceedings that were commenced were a step towards the recovery of a penalty, and reliance was placed in argument upon the case of *R. v. Whitechurch*(1), to which I shall refer presently. The House of Lords held, that discovery could be ordered because the initial stage of the proceedings was not criminal or penal at all. Lord HERSCHELL at page 552 says :

“ I will deal with the first objection, namely, that this is a penal proceeding, a proceeding which may end in a penalty. It seems to me nothing of the kind. This proceeding never can end in a penalty. All it can end in is an order under such terms and conditions as the County Court Judge thinks reasonable to prevent or abate a nuisance. The Legislature has provided that if that order is disobeyed then the County Court Judge may impose a penalty not exceeding £50 a day, as he thinks reasonable, payable to such persons as he thinks right, upon the authority or person who has disobeyed the order. My Lords, that is a separate and independent proceeding. It is true it is taken, as it is said, in the action or the proceeding, but it is really a separate proceeding in which the penalty for disobedience is imposed. The proceeding itself is no more a proceeding that may subject the present appellants to a penalty than is every proceeding which is ever taken in a court of justice.”

Their Lordships held, that where you have a remedial power vested in the Court in the first instance, followed by a penalty on disobedience of the order made in the first instance, it is the second proceeding alone that is penal in character and the first has no penal character whatever.

The case of *R. v. Whitechurch*(1) was a proceeding under the Public Health Act of 1875. Section 94 of that Act vests in the various local authorities, as defined by the Act, the power to serve notice on a person by whose act any nuisance cognizable by the local authority is caused, requiring the person on whom the notice is served to abate the nuisance within the time specified by the authority and carry out the works required for the purpose. Then by section 98, on non-compliance with the

(1) [1881] 7 Q.B.D., 534.

notice, the local authority can lay a complaint before a justice of the peace and he can issue a summons requiring the person named in the complaint to appear before a Court of summary jurisdiction and the Court of summary jurisdiction is enabled by section 96 to make an order for the execution of the works, and may also by the same order impose a penalty on the person on whom the order was made. It is obvious that the analogy of that case cannot be applied to the present one. The proceeding by the local authority corresponds to the first proceeding in the second section of the Workmen's Breach of Contract Act where the magistrate in the first instance makes an order in the nature of an order for specific performance. In the Public Health Act that power is not vested in a Court but is left to the local authority in the first instance, which goes very strongly to show that you cannot regard that part of the proceedings which is not even in a Court as in any way criminal. Then, when the matter comes before the magistrate he has jurisdiction from the very outset, without any further default being made, to impose a penalty, as Lord DAVEY pointed out in *Derby Corporation v. Derbyshire County Council*(1).

We are of opinion, that the authority of the House of Lords finally establishes that in cases of an analogous kind the initial proceedings which can only end in the nature of an order for specific performance must be separated from the final proceedings which will issue on disobedience of that order. It is the latter portion of these proceedings alone that can in any way be described as criminal proceedings and may come under section 211, Indian Penal Code. In the present instance, the only proceedings that were launched were under the preliminary portion of the section for execution of the work or for repayment of the advance, and we are of opinion that those not being criminal proceedings the present conviction cannot be sustained and must be quashed.

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(1) [1897] A.C., 550.