

intended to lay down any definite practice on this particular matter, which was not necessary for the decision. We have consulted the learned Judge of the English department, and we have come to the conclusion that a stay order under section 19 of the Arbitration Act, when arbitration has in fact taken place, is sufficient finally to dispose of the suit. The intention of the Legislature was to oust the jurisdiction of the ordinary courts, and any procedure other than that provided by the Arbitration Act in matters which are referred to arbitration, would only create difficulty and confusion. There ought to be no difficulty so far as the file and records in the lower court are concerned in disposing of the suit which has been stayed. We would only further observe that it is satisfactory to note that the dispute arising out of this contract was disposed of by a decree within less than six months from the institution of the suit. The appeal and revision of the defendant against the order of the 21st of February, must be allowed with costs and the learned Judge's order set aside.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

ABDUS SAMAD v. YUSUF *

Act No. XIII of 1859 (Workmen's Breach of Contract Act), section 2—Summary trial—Offence—Criminal Procedure Code, section 260, 4(o).

A case under section 2 of the Workmen's Breach of Contract Act, 1859, is triable summarily under the provisions of section 260 of the Code of Criminal Procedure. *Queen Empress v. Indarjit* (1) referred to. *Emperor v. Dhondu* (2) and *Emperor v. Balu Saluji* (3) dissented from. *Pollard v. Mothial* (4) and *Queen Empress v. Kattayan* (5) distinguished

THE facts of this case appear from the order of the Court.

Munshi *Janki Prasad*, for the applicant.

The opposite party was not represented.

PIGGOTT and WALSH, JJ. :—In this case the complainant, a master, made a complaint before a magistrate of the first class

* Criminal Reference No. 615 of 1920.

(1) (1889) I. L. R., 11 All., 262. (3) (1908) I. L. R., 33 Bom., 25.

(2) (1904) I. L. R., 33 Bom., 22. (4) (1881) I. L. R., 4 Mad., 234.

(5) (1897) I. L. R., 20 Mad., 235.

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STRAUSS
AND CO.
v.
RAGHUBAR
DAYAL
DURGA
PRASAD.

1920
October, 29

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against a young workman under section 2 of Act No. XIII of 1859 alleging that he had been guilty of a breach of contract inasmuch as he had failed to continue to work, although payment for his labour had been made under the contract in advance by the master. A magistrate of the first class dealt with the case summarily and dismissed it on the merits. The matter came up before the Sessions Judge who raised the question whether the proceeding was a proper one on the ground that the magistrate had no jurisdiction to try the case summarily. The learned Sessions Judge has set out his view in a clearly reasoned statement referring to the authorities, and the magistrate who tried the case has submitted his explanation in an equally clear statement, maintaining his original view that he had jurisdiction to dispose of the case summarily.

The question turns upon the interpretation to be given to section 260 of the Code of Criminal Procedure. A magistrate of the first class has jurisdiction to try in a summary way offences not punishable with imprisonment for a term exceeding six months. The question which we have to decide is whether there is a punishable offence within the meaning of that section. In the ordinary colloquial sense of the term it certainly is not; but when reference is made to the definition of offence provided by section 4 (o) of the same Code, it is found to mean any act made punishable by any law for the time being in force. The Act under which this complaint was brought authorizes a magistrate to pass certain orders if a breach of contract is proved, and in the preamble, which does not conflict in any way with the enacting portion of the Act, it is provided that it is just and proper that persons guilty of such breach of contract shall be subject to punishment. Inasmuch as the Legislature has described the order which a Magistrate is authorized to make against a workman, in a case proved, as "punishment," we find it impossible to say that the act, if proved, is not an offence punishable by law within the meaning of section 4(o) and therefore within the meaning of section 260. It is unfortunate that we should find ourselves in conflict on this point with both ancient and modern authorities of other High Courts. The Madras High

Court in the case of *Pollard v. Mothial* (1) took another view ; but, as pointed out in the case of *Queen Empress v. Kattayan* (2), the definition in the Code of Criminal Procedure on which we base our decision is subsequent in date to that authority. As regards Bombay, there is a quite recent authority, following a previous authority, both of which are to be found in the same volume, namely, *Emperor v. Dhondu* (3) and *Emperor v. Balu Saluji* (4), in which the Bombay High Court, following an English authority which deals with the question of a penalty, has emphatically taken the other view, without, however, noticing the use of the word "punishable" in Act No. XIII of 1859. On the other hand, there is a clear dictum by a Judge of this Court, reported in the case of *Queen-Empress v. Indarjit* (5), which has never been questioned and which must be taken to have been for all these years the guiding principle in this province. We have come to the conclusion that we are compelled by the force of language to follow this ruling, and we hold that this offence is triable summarily by a magistrate of the first class. Let the record be returned.

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APPELLATE CRIMINAL.

Before Mr. Justice Tudball and Mr. Justice Walsh.

EMPEROR v. JANKI PRASAD AND ANOTHER.*

1920.

November, 9.

Criminal Court—Duty of a Criminal Court in respect of a case before it distinguished from the duty of a Civil Court trying a civil case—Relevant documents in existence, but on file of a connected case—Refusal of Court to send for record.

Whatever attitude may be taken up by a Civil Court trying a civil suit, where it is the duty of the parties to place their case as they think best before the Court, it is the duty of every Criminal Court to get to the bottom of a case and to bring all relevant evidence upon the record and to see that justice is done.

THE facts of this case are fully stated in the judgment of
TUDBALL, J.

* Criminal Appeal No. 707 of 1920 by the Local Government, from an order of Shekhar Nath Banerji, Sessions Judge of Mainpuri, dated the 15th of May, 1920.

- (1) (1881) I. L. R., 4 Mad., 234. (3) (1904) I. L. R., 33 Bom., 22.
(2) (1897) I. L. R., 20 Mad., 235 (238). (4) (1908) I. L. R., 33 Bom., 25.
(5) (1889) I. L. R., 11 All., 262.