REVISIONAL CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Telang.

QUEEN-EMPRESS *v.* RAJAB.*

1892.
January 12.

Act XIII of 1859—*Breach of contract—Jurisdiction of Magistrates to interfere in cases of wilful and fraudulent breach of contract—Meaning of the expression "Advance of money on account of work."*

Act XIII of 1859 (an Act to provide for the punishment of breaches of contract by artificers, workmen and labourers in certain cases) applies only "where there has been an advance of money on account of any work," which words do not include mere loans or old debts. The interference of the Magistrate under the Act is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse.

As a rule, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action. And a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process.

THE accused, Rajab valad Mira, received Rs. 75 from the complainant, and agreed to work for him as a weaver for two and a half years until the money was paid off.

He worked for a month and left the complainant's service.

The accused was thereupon prosecuted under section 2 of Act XIII of 1859 before Mr. Doderet, Magistrate (First Class) at Sholápur. The Magistrate ordered the accused to work for the complainant for two years and five months.

The following is a translation of the contract of service entered into by the accused with the complainant:—

"I have entered into your service under an agreement to do such weaving work as you may ask me to do. The agreement in respect thereof is as follows:—As to the wages of weaving work that I may do (for you) I am to receive the same as they accrue due for my maintenance; and I have now received from you Rs. 52, in letters fifty-two, in cash and caused Rs. 13, thirteen, to be paid in cash to Chhatrappa Mashtagi and Rs. 10, ten, of the Surat currency to be paid in cash to Malkarjun Shete besides, making in all Rs. 75, in letters seventy-five. As to whatever payment I may make on account of the said amount I will take a receipt in respect of the same. I will not plead payment orally. I have entered into your service to do weaving work under an agreement for two and half years. If your amount is not repaid according to the fixed time, I will pay off the amount at once in case I take to work for another person or stay at home. During the time fixed I will not give up doing work for you of my own accord and go away. I have duly given this agreement in writing of my own

* Criminal Revision, No. 509 of 1891.

free will and accord and in my sound mind and conscious state without being under the influence of intoxicating drink or drug. I have received in full the said sum of Rs. 75, seventy-five, in cash of the Surat currency which you paid. I have duly given this agreement in writing. The third of *Margashirsha Vadya* in *Shak* 1807 (corresponding to the 24th of December 1885)."

The High Court in the exercise of its Revisional Jurisdiction sent for the record and proceedings of this case and also of another case decided under the same Act (XIII of 1859).

The judgment of the Court (Jardine and Telang, JJ.) was delivered by

JARDINE, J.:—In disposing of these two cases we think it desirable, for the guidance of the Magistrates, to mention the decisions which have been passed on the Act. The interpretations of the Breach of Contract Act XIII of 1859 have not been uniform except as to the classes of persons made subject to its operation. In *Taradoss' case*(1), the scope of the Act is restricted to fraudulent breaches: and the same view seems to have been held in *Reg.* v. *Jethya*(2). In the first case, however, the advance of money had been worked off, and in the second the judgment states that no money in advance was received, the consideration for the agreement to work for the complainant being an old debt. The terms in these contracts were for ninety-seven months and for three seasons, respectively. In *Vernede* v. *Abdul*(3) the Judges remark that the Act was passed for the purpose of punishing fraudulent breaches of contract: and held that imprisonment by order of the Magistrate did not bar civil suit for recovery of the money advanced. But in *Queen-Empress* v. *Indarjit*(4) Mr. Justice Straight differed from the decision in *Taradoss' case* and held that the scope of the enacting section 2 extended to wilful breaches and breaches without lawful and reasonable excuse, although the preamble referred only to fraudulent breaches. Here the contract was for three years. In *Koonjobeharry's case*(5), the contract extended over three years, not continuously, but for one season only in each year. The Court decided that such a contract was reasonable and might be enforced under the Act. This decision was followed in *J. Lyall's case*(6). The grounds on which the

(1) 8 W. R., Cr. R., 69.
(2) 9 Bom. H. C. Rep., 171.
(3) 2 Mad,. H. C. Rep., 427.
(4) I. L. R., 11 All., 262.
(5) 14 W. R., 29 Cr. Rul.
(6) 18 W. R., 53 Cr. Rul.

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case of *Empress* v. *Bhagván Bhivsan*[1] was decided, are not clear from the report. In the case of which a note is found in 7 Mad. H. C. Rep. Appdx. 31, the defendant, in consideration of an advance of Rs. 95 received from the complainant, bound himself to work for the complainant until the repayment of the amount advanced. The District Magistrate referred the trying Magistrate's order on the ground that it sanctioned a species of slavery. The High Court held that the contract was clearly not within the Act, and observed that a construction must not be adopted which would enforce a contract in violation of a law of a more stringent nature. The tendency of such contracts to oppress is noticed in *Taradoss' case*. In a case, *The Queen* v. *Tulukanam*[2], where the term was for twenty weeks, the contract was held enforceable. In *Taradoss' case* and in *Reg.* v. *Jethya* the distinction between an advance for work on the one hand and a premium on a contract or an old loan on the other is noted. The case of *Rám Prasád*[3] proceeds on this distinction: "The contract was for nothing more than for a loan of money, to which was attached a condition that the borrowers, in consideration of receiving the loan, should work for complainant and not transfer their services elsewhere until they repaid the money. This was something quite different to any contract which the Act contemplated." It would appear from these cases that although the Act being penal, *In re Kittu*[4], has been strictly interpreted; yet as it was passed for the protection of employers, *Unwin* v. *Clarke*[5], the Courts have not yet refused to extend its provisions to contracts extending over several years where there was nothing unreasonable or contrary to public policy.

The cases show that the Act only applies where there has been "an advance of money on account of any work," which words do not include mere loans or old debts, and the language used shows plainly that the interference of the Magistrate is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. As a rule, the Legislature has agreed "with the great body of jurists in think-

(1) I. L. R., 7 Bom., 379.
(2) I. L. R., 7 Mad., 131.
(3) I. L. R., 3 All., 744, at p. 746.
(4) I. L. R., 11 Mad., 332.
(5) L. R. 1, Q. B, 417

ing that, in general, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action"—Macaulay's Report of Commissioners on the Penal Code, quoted in Stokes' Substantive Law, 62. Act XIII of 1859 is, like chapter 19 of the Penal Code, an exception. But as stated in *Unwin* v. *Clarke* it is the duty of the Court to consider whether any excuse averred is lawful and reasonable; the Magistrate has to use a judicial discretion, and probably there would be room for the application of the principle stated in *Banks* v. *Crossland*[1] in construing the English statutes of a similar kind, that a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process, although in *In re Kittu* it was held that the Limitation Act of 1877 is no bar to a claim under Act XIII of 1859 to recover an advance. The question of limitation does not appear to have come before the other High Courts, and it is not necessary for our decision to determine that point.

We have now to consider the two cases which come before this Court in review by the light of these decisions. The record in No. 501 shows that there was an advance of Rs. 40, and that the accused agreed to work it off by a reduction of Rs. 2 from his month's wages. After thus reducing the debt by Rs. 4 he left the employment. The Magistrate has ordered him to return to his work: and apparently he consented so to do. This order may be held justified under some of the decisions mentioned, and the Court sees no reason to interfere of its own motion. In the other case, No. 509, which was tried by Mr. Doderet, there is no evidence, admission, nor finding that the Rs. 52 received by the accused in cash and the Rs. 13 and Rs. 10, paid to different people on his behalf, were an advance on account of work. The statement of the accused was that the money was advanced to him twelve years before on a bond to pay for his marriage expenses, that he then worked five years for complainant, and afterwards gave the present bond presumably for the old debt. The complainant deposed that the money was advanced, but he did not state that the advance was on account of

(1) L. R. 10 Q. B., 97.

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work to be performed, and the Magistrate did not question him as to the plea of the accused that the bond was for an old debt. The written contract sued upon, which is dated the 24th December, 1885, does not allude to any advance. On the contrary, it stipulates very plainly that the accused workman is to receive wages for his work as they accrue due: and it provides that he is to take a receipt for any money he may repay. The weaver contracts to work for the complainant for two and a half years, and promises to repay the Rs. 75 if during that interval he transfers his services to anybody else. The case appears to be on all fours with *In re Ramprasad*[1] and to fall within the principle of *Reg.* v. *Jethya*[2] and the case in 3 Mad. H. C. Rep. Appdx. 31. The evidence is that the default occurred five years ago. We are of opinion that the conditions required to give jurisdiction to the Magistrate under section 2 of the Act did not exist, and that he ought not to have passed the order which required the accused to work for the complainant for two years and five months as a weaver artisan from the date of the order. We now set the order aside, and direct that the Magistrate inform the accused of this decision. The remedy of the complainant is by a civil suit.

(1) I. L. R., 3 All., 744. (2) 9 Bom. H. C. Rep., 171.

REVISIONAL CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Telang.

1892.

January 14.

QUEEN-EMPRESS v. RA'MA.*

Criminal Procedure Code (Act X of 1882), Section 118—Security for good behaviour—High Court's power of interference when the amount of security is excessive—Magistrate's discretion to be properly exercised.

A Magistrate ordered the accused to execute a bond for Rs. 500 for his good behaviour for one year, and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison.

The High Court, being of opinion that the amount of the required security was excessive, and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction and reduced the amount.

THE accused was ordered by the First Class Magistrate of Poona, under section 118 of the Criminal Procedure Code (Act

* Criminal Revision, No. 468 of 1891.