

CHATAMAL TEERTHDASS, PLAINTIFF AND APPELLEE, VS. POHOOMUL BROTHERS, DEFENDANTS AND APPELLANTS.

G.R. No. 4713. March 22, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendants in this action, at the time of the execution of the contract hereinafter presented, were merchants doing business in the city of Manila and in other places in the Philippine Islands. On the 12th day of June, 1902, the plaintiff and the defendants executed the following contract at Hyderabad Sindh, India:

"I, the undersigned, Chatamal Tikumal Hindu, aged 26 years, of Hyderabad Sindh, do hereby agree to enter the service of Messrs. Pohoomul Brothers, namely, Mr. Moolchand, Mr. Lekraj, and Mr. Sahijram, sons1 of Khiamull, on the following conditions:

"1. That I shall serve the said firm for the period of three years, commencing on the _____ day of the month of _____ 1902, in any place they may like to send me, at the salary of Rs. 45 per month for the said period and to be supplied with my daily food by the said firm during the period of my serving them.

"2. That all my traveling expenses to and from any place shall be at the charge of the said firm.

"3. My salary will commence from the date of departure and will be ceased from the date of leaving the destination.

"4. That I bind myself to serve the said firm honestly and faithfully and be obedient to my masters, their managers or persons in charge of their business in any place or at any time I shall be serving and I shall do the works they impose on me.

"5. The accounts to be settled at Bombay or Hyderabad Sindh, where the said masters wish.

"6. The accounts to be settled on the rate of English months.

"7. That I shall be responsible for anything and every article which will be trusted to me and shall pay all amounts of loss of such articles, as well as all amounts of goods whenever sold by me on credit, and bind myself to render all amounts or parts of them whenever and wherever called upon.

"8. That if these conditions or any of them is not strictly fulfilled by me, Messrs. Pohoomul Brothers or their agents or anyone in charge of their business at the time will be justified to diiiniss me from their service, retaining all pay or amounts of pay in their hands which may be due to me at the time without having I any right to claim from the firm any amounts or balance of pay and salary.

"9. If I after signing this agreement I do not enter the service of said company, I will be liable to pay Rs. 200 as damages to said company and will at once return the amount received, with interest from the date of receipt at the rate of Re. 1 per cent per annum.

"10. That I bind myself to leave Hyderabad Sindh as soon as I am ordered by any of the brothers of the said company to do so. If I fail to go I will be liable as in para. 9th.

"11. The sum of Rs. 25 the above mentioned masters will give here to my parents for the maintain of family members.

"Dated thus the agreement 12th June, 1902."

As shown by the contract itself, it bears date the 12th day of June, 1902. Pursuant to said contract and by virtue of the terms thereof, the plaintiff emigrated to the Philippine Islands, arriving at Manila on the 13th day of October, 1902, and immediately thereafter began work for the defendants as manager of their store at Tacloban. He continued in their employ until the 21st day of May, 1906. During all that time he was the manager of various stores belonging to the defendants in Calbayog, Tacloban, and Jolo and for a short time was employed in the main house in Manila. So far as appears in the evidence, the only occupation in which the plaintiff engaged while in the service of the defendants was that of manager of one or the other of their stores referred to. It does not appear except rarely that he worked as a clerk or performed any manual labor whatever, unless the performance of his duties as manager may be held to be such. As shown by the evidence, his work was to a very large extent management. We can not assume, for the purpose of bringing the plaintiff within the statute, that he contracted to do prohibited work or that he worked as a laborer while here. (U. S. vs. Gay. 80 Fed. Rep., 254.)

During such employment the plaintiff received from the defendants the sum of P1,208.76.

After the term mentioned in the contract had expired, the plaintiff discovered, as he believed, that the contract under which he came to the Philippine Islands was void under the laws of the United States prohibiting the importation of alien labor, and thereupon brought this action to recover the value of his services, disregarding entirely the said contract and the terms thereof and asserting his right to recover on a quantum meruit.

The defendants set up as their first defense that even though said contract was void, as in violation of said laws of Congress, still it is valid and binding upon the parties thereto for the reason that it has been fully executed by them. As a second defense they allege that some time prior to the commencement of this action they and the plaintiff made a full and complete settlement of their respective accounts and claims under said contract, observing strictly the terms thereof, and that it was found upon such settlement that there was due from the plaintiff to the defendants the sum of ^528.38, for which sum the plaintiff then and there gave his promissory note. They ask an affirmative judgment against the plaintiff for that amount.

As to the first defense, the plaintiff replied and asserted that the contract was absolutely void, it being clearly within the prohibition of the laws of Congress relating to the importation of alien labor and it could not, therefore, be an executed contract in the sense asserted by the defendants in their first defense. As to the second defense, the plaintiff admits the execution and delivery of the note, but alleges that the same was voidable because it had been executed by him while under duress caused by threats on the part of the defendants.

The court below in his decision found that the contract was void as claimed by the plaintiff, that the note given in pursuance of said settlement was made and executed by the plaintiff through excessive and controlling fear caused by the threats of the defendants to put him in state prison for a series of years, and that, for that reason, the execution of said note occurred while plaintiff was laboring under such fear and intimidation that he did not act of his own free will. Approving plaintiff's claim of a right to recover upon a quantum meruit, the court below disregarded the said contract wholly and gave the plaintiff a judgment for P1,208.86, and interest at 6 per cent from June 1, 1906.

This case does not fall within the provisions of the Act of Congress of March 3, 1903, but within the Acts hereinafter quoted. (Fornow vs. Hoffmeister, 6 Phil. Rep., 33.)

The Act of Congress of February 26, 1885, so far as it is material to the issues in this case, reads as follows:

"Be it enacted, etc., That from and after the passage of this Act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

"SEC. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership, or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service or having reference to the performance of labor or service by any person in the United States, its Territories, or the District of Columbia previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

"SEC. 3. That for every violation of any of the provisions of section one of this Act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories, or the District of Columbia, to perform labor or service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States or by any person who shall first bring his action therefor, including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the circuit courts of the United States; the proceeds to be paid into the Treasury of the United States; and separate suits may be brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

* * * * *

"SEC. 5. That nothing in this Act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants, or domestics for such foreigner temporarily residing in the United States as aforesaid;

"Nor shall this Act be so construed as to prevent any person or persons, partnership, or corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States:

"Provided, That skilled labor for that purpose can not be otherwise obtained; nor shall the provisions of this Act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants:

"Provided, That nothing in this Act shall be construed as prohibiting any individual from assisting any member of his family or any relative or personal friend to migrate from any foreign country to the United States, for the purpose of settlement here."

This has been amended and supplemented by several subsequent enactments, but not in a way to affect the questions involved in this action.

It is evident from reading the statute that, so far as the present action is concerned, the main provisions of the Act are: (1) That the prepayment of transportation or the assistance or encouragement of the immigration of aliens or foreigners under a contract to labor in the United States is unlawful; and (2) that such contracts made previous to their emigration are utterly void and of no effect.

The evidence is undisputed that the contract in this action was made at Hyderabad Sindh on the 12th of June, 1902, and that the purpose of the contract was to secure the emigration of the plaintiff to the Philippine Islands in order that he might serve the defendants as manager of one or more of their stores located therein. The contract contains an express provision for the payment by defendants of the expense of transportation of the plaintiff to these Islands. It is admitted that the plaintiff, at the time of the execution of the contract in question and at the time of his emigration to these Islands, was an alien and a foreigner, being a native of British India and a subject of that empire.

The facts proved in the case bring the contract clearly within the prohibition and condemnation of the statute above quoted provided the plaintiff may be considered a laborer within the meaning of that Act.

In the case of *Holy Trinity Church vs. United States* (143 U. S., 457), the court said at pages 463, 464, and 465:

"Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. (*United States vs. Union Pacific Railroad*, 91 U. S., 72, 79.) The situation which called for this statute was briefly but fully stated by Mr. Justice Brown when, as district judge, he decided the case of *United States vs. Craig* (28 Fed. Rep., 795, 798): 'The motives and history of the Act are matters of common knowledge. It had become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts, by which the employer agreed, upon the one hand, to prepay their passage, while, upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor market, and to reduce other laborers engaged in like occupations to the level of the assisted immigrant. The evil finally became so flagrant that an appeal was made to Congress for relief by the passage of the Act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage.'

"It appears, also, from the petitions, and in the testimony presented before the committees of Congress, that it was this cheap unskilled labor which was making the trouble, and the influx of which Congress sought to prevent. It was never suggested that we had in this country a surplus of brain toilers, and, least of all, that the market for the services of Christian ministers was depressed by foreign competition. Those were matters to which the attention of Congress, or of the people, was not directed. So far, then, as the evil which was sought to be remedied interprets the statute, it also guides to an exclusion of this contract from the penalties of the Act.

* * * * *

"We find, therefore, that the title of the Act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, the reports of the committee of each House, all concur in affirming that the intent of Congress was simply to stay the influx of this cheap unskilled labor."

In the case of *United States vs. Laws* (163 U. S., 258), the court cites and approves the doctrine laid down in the above case, and in speaking of the opinion written in that case says, at page 264:

"Upon the basis, therefore, that it could not be imputed as the intention of Congress, notwithstanding the language used in the Act, to prevent the introduction of religious teachers, it was held that the Act did not apply to the case before the court. Both grounds were covered in the opinion; the one that the Act was clearly intended to apply only to cheap, unskilled labor, and the other that in no event could it be construed as applying to a contract for the services of a rector or a pastor of a religious corporation. The first ground covers the case in hand. The construction given to the words 'labor or service' by this court in the above case was neither forced, unnatural, nor unusual. Considering the clear purpose of the Act, the construction adopted was a natural and proper one."

To quote further from the opinion in this case, pages 264 and 265:

"In *Aikin vs. Wasson* (24 N. Y., 482) the plaintiff contracted with a railroad company to construct part of its road. Defendant was a stockholder in the company, which became insolvent. It was indebted to plaintiff for the services of himself and his laborers and servants under his contract. Section 10 of the Railroad Act enacted that 'all the stockholders of every such company shall be jointly and severally liable for all the debts due or owing to any of its laborers and servants for services performed for such corporation.' It was held that the plaintiff was neither a laborer nor a servant within the meaning of the Act.

"In *Coffin vs. Reynolds* (37 N. Y., 640) the statute reads: 'The stockholders of a company organized under the provisions of this Act shall be jointly and severally individually liable for all debts that may be due and owing to all their laborers, servants, and apprentices for services performed for such corporation.' The plaintiff was the secretary of the company and commenced an action against the defendant as a stockholder to recover the amount of his salary, the company being insolvent. It was held that he could not recover. He was not a laborer or a servant within the meaning of the statute.

"In *Wakefield vs. Fargo* (90 N. Y., 213), under the same statute, it was held that one who was employed at a yearly salary as bookkeeper and general manager was not a laborer, servant, or apprentice within the meaning of the Act, and hence that he could not recover against the stockholders for a balance of salary due him from the insolvent corporation.

"These statutes were passed for the protection of laborers, servants, apprentices, and the like, and the opinions of the courts in relation to the class of individuals that would be included within the meaning of those terms are somewhat relevant, although not entirely analogous, to the case before this court."

It thus appears that the Supreme Court of the United States has decided clearly and definitely that the only laborers to which the Act in question refers are those engaged in cheap, unskilled labor.

In the case of the *United States vs. Gay* (80 Fed. Rep., 254), it was held that the Acts of February 26, 1885, and March 3, 1891, "are highly penal and must be so construed as to bring within their condemnation only those who are shown by direct and positive averments to be embraced within their terms;" and "they are to be construed in the light of the evil to be remedied, and are limited to cases in which the assisted immigrant is brought into this country under a contract to perform manual labor or service." This case was affirmed in 37 C. C. A., 46.

From the doctrine laid down by the cases referred to it is clear to our minds that the plaintiff in this action does not come within the prohibited class. We are confirmed in this view by an examination of the decisions of other jurisdictions. While not analogous to the case under consideration, they are helpful and instructive.

The court, in the case of *Brockway vs. Innes* (39 Mich., 47), interpreted the provision of the constitution of the State of Michigan which provided that corporation stockholders should be liable "for labor performed for such corporations." In that case an attempt was made to make the stockholders of the corporation liable for the services of an assistant chief engineer. The court in deciding that case said (p. 48):

"But we feel very sure that the position of an assistant chief engineer would never have been classed as that of a laborer, nor his work as labor, in the popular sense. It is mostly direction and scientific work, involving much more superintendence than personal exertion in manual labor. He is chosen for his knowledge and not for his muscular capacity, in which latter quality he may or may not be eminent."

In the case of *Trust Company vs. Grand Rapids Democrat* (113 Mich., 615) the question of the right of preference arose under a statute reading as follows:

"The funds which shall be owed for labor by any person, persons, or corporation at the time he, they, or it shall become insolvent, shall be preferred claims, etc."

The nature of the work performed by the person claiming preference "was the writing of editorials and the performing of various kinds of editorial work required to be done on the daily and weekly issues of the Grand Rapids Democrat, * * * the preparation and correction of copy for the printers, the direction of the make-up of the paper, including full charge of all branches of the mechanical department of said paper after the close of the business office each night." Another claim for preference was presented by one who was engaged in "proof reading and traveling around the city gathering news," Another claim for preference was presented by one who was engaged "in reporting, going around to the different wholesale houses, collecting market reports and assisting in editorial work and proof reading." In deciding the case the court said, in regard to these two claimants, "it was the work of professional men rather than the work of laborers, giving the word its ordinary acceptance, and is not such work as is intended to be covered by the statute."

In the case of *Wildner vs. Ferguson* (42 Minn., 112) it was held, interpreting a statute providing for the exemption of wages, that the words "a laboring man or woman" did not include and protect an agent who sells goods by sample, driving about for that purpose with his own horse and buggy and receiving a weekly salary.

In the case of *Wakefield vs. Fargo* (90 N. Y., 213), the question before the court was the interpretation of the meaning of the words "laborers, servants, and apprentices" in a statute making stockholders "liable for all debts that may be due and owed to their laborers, servants, and apprentices for services performed for such corporation." It was held in that case that one employed at a yearly salary as a bookkeeper and general manager is not a laborer, servant, or apprentice within the meaning of the provision of law just quoted. In that case the person seeking the favor of the statute "kept account of the receipts and disbursements of the company, and in the absence of the superintendent had the charge and control of its business."

In the case of *Aiken vs. Wasson* (24 N. Y., 482), the person seeking the favor of a statute similar to the one in the case last cited was "a contractor with the Albany and Northern Railroad Company, of which the defendant is a stockholder, for the construction of a part of its road." The court said (p. 483) :

"It is obvious from the nature and terms of this and other provisions of the Act, as well as from the general policy indicated by analogous statutes, that the legislature intended to throw a special protection around that class of persons who should actually perform the manual labor of the company."

It was held that such contractor was not a laborer within the meaning of the Act. To the same effect are *Balch vs. Railroad Co.* (46 N. Y., 521); *Ericsson vs. Brown* (38 Barb. (N. Y.), 390); *Stryker vs. Cassidy* (10 Hun. (N. Y.), 18).

In the case of *Railroad Co. vs. Leuffer* (84 Pa. St., 168), the court said (p. 171):

"When we speak of the laboring or working classes, we certainly do not intend to include therein persons like civil engineers, the value of whose services rests rather in their scientific than in their physical ability. We thereby intend those who are engaged not in head but in hand work and who depend upon such hand work for their living."

To the same effect are *Heebner vs. Chave* (5 Pa. St., 117); *Seider's Appeal* (46 Pa. St., 57); *Sullivan's Appeal* (77 Pa. St., 107).

A statute in the State of Texas gave a lien to "mechanics, laborers,, and operators who have performed labor or work with tools, teams, or otherwise in the construction, operation, and repair of any railroad." In the case of *Railway vs. Mathews* (75 Tex., 92), the court, interpreting that statute, said (p. 94):

"The word 'laborer,' as used in the statute, evidently means one who performs manual services in the construction, repair, or operation contemplated by the statute and does not embrace one who may work in

preparing something of his own to sell to a railway company after it has been rendered suitable through his toil to be used in the construction or repair of a railway."

In the case of *Farinholt vs. Luckhard* (90 Va., 936), the court said (p. 938):

"But we think it safe to say that the word 'laborer,' when used in its ordinary and usual acceptation, carries with it the idea of actual physical and manual exertion or toil and is used to denote that class of persons who literally earn their bread by the sweat of their brows and who perform with their own hands, at the cost of considerable physical labor, the contracts made with their employers."

In the case of *Ho King* (14 Fed. Rep., 724) it was held that "the term 'laborer' is used in the treaty with China of November 17, 1880, and the Act in aid thereof of May 6, 1882, in its popular sense, and does not include any person but those whose occupation involves physical toil and who work for wages." It was there held that a Chinese actor or theatrical performer was not a laborer.

In the case of *Malcomson vs. Wappoo Mills* (86 Fed. Rep., 192) the question was presented as to who came within the provisions of an Act entitled "An Act to provide for laborers' liens." The court said (p. 198):

"The body of the Act gives to all employe's in factories, mines, etc., a lien, whether they be employed either by the day or month, whether the contract be in writing or not, to the extent of the salary or wages that may be due. The word 'laborer' does not appear in the body of the Act. To sustain the Act * * * the word 'laborers' must be synonymous with the word 'employes;' and, as the word 'laborers' is used in the title, the word 'employes,' used in the body of the Act, must be so restricted as to mean such employe's as are laborers. This being so, neither the superintendent nor the bookkeeper comes within this term."

In the case of *Epps vs. Epps* (17 111. App., 196) it was held that a bookkeeper was not a laborer within a statute relating to exemptions. (*Coffin vs. Reynolds*, 37 N. Y., 640.)

In the case of *Richardson vs. Dexter* (85 Me., 372) it was held in ordinary speech a laborer is one who hires himself out, or who is hired out, to do physical toil. (See also *Kansas City vs. McDonald*, 80 Mo. App., 448; 18 Ency. of Law, p. 71.)

In the appeal of *Clark* (100 Mich., 448) it was held that:

"The general and collecting agent of a corporation engaged in the manufacture and sale of flouring mills and milling machinery, who receives an annual salary and his necessary and reasonable traveling expenses, and who occasionally, in the performance of his duties, performs some manual labor in fixing the machines that have been sold, in operating a new mill and securing its satisfactory running, and in giving instructions to others, is not a 'laborer,' within the meaning of Act No. 94, Laws of 1887, which prefers labor debts due from insolvent corporations."

The following cases have held that drummers are not laborers: *Wildner vs. Ferguson* (42 Minn., 112); *People vs. Remington* (109 N. Y., 631); *Briscoe vs. Montgomery* (93 Ga., 602); *Epps vs. Epps* (17 111. App., 196) ; *Eppstein vs. Webb* (44 111. App., 341).

In the following cases a civil engineer was held not to be a laborer: *Railroad Co. vs. Leuffer* (84 Pa. St., 168); *Conant vs. Van Schaick* (24 Barb. (N. Y.), 87); *Brockway vs. Innes* (39 Mich., 47); *State vs. Rusk* (55 Wis., 465).

The following cases have held that a superintendent is not a laborer: *Railroad Co. vs. Baker* (14 Kans., 428) ; *Blakey vs. Blakey* (27 Mo., 39); *Malcomson vs. Wappoo Mills* (86 Fed. Rep., 192); *Blanchard vs. Railroad Co.* (87 Me., 241) ; *Cole vs. McNeill*, (99 Ga., 250); *Wakefield vs. Fargo* (90 N. Y., 213); *Hill vs. Spencer* (61 N. Y., 274) ; *People vs. Remington* (109 N. Y., 631); *State vs. Rusk* (55 Wis., 465); *Isbell vs. Dunlap* (17 S. C, 581) ; *Whitaker vs. Smith* (81 N. C, 340); *Krauser vs. Ruckel* (17 Hun. (N. Y.), 463).

In *State vs. Rusk* (55 Wis., 465) it was said that the word "laborer," as employed in the Act empowering the governor to expend certain moneys in paying the claims of laborers, etc., for work on a line of railway, should be interpreted in the sense in which it is ordinarily used and understood when applied to men engaged in constructing railways. It was held that engineers were not included.

The court in the case of *Bank vs. Shenandoah Iron Co.* (35 Fed. Rep., 436), interpreting a statute of Virginia giving the wages of employees of an insolvent corporation preference, held that the president of an iron manufacturing company, whose official designation was "general manager," was not entitled to the preference provided by said statute. See *England vs. Organ Co.* (41 N. J. Eq., 470).

In *Kyle vs. Montgomery* (73 Ga., 343), the court held that the "boss" of a department of a factory, having charge of the employment and discharge of the men who worked under him, who was required to do no manual labor, but was simply required to exercise his experience and knowledge in the direction of the operatives, can not be regarded as a day laborer within the meaning and intent of the statute exempting the wages of such persons from garnishment. (18 L. R. A., 309.)

There are many cases holding, in some respects, apparently conflicting doctrines. For example:

In the case of *Heckman vs. Tammen* (184 Ill., 144) a bookkeeper was held to be a laborer within a statute preferring the laborers of an insolvent employer.

The following cases have held that a clerk is a laborer: *Cole vs. McNeill* (99 Ga., 250); *Railroad Co. vs. Baker* (14 Kans., 428) ; *Signor vs. Webb* (44 Ill. App., 338); *Epps vs. Epps* (17 Ill. App., 196).

In the case of *Heckman vs. Tammen* (184 Ill., 144), construing an Act entitled "An Act to protect employees and laborers in their claims for wages," in which it was provided that "in all such cases the debts owed to laborers or servants, which have accrued by reason of their labor or employment, shall be considered and treated as preferred claims, and such laborers or employees shall be preferred creditors," it was held that the parties claiming the favor of the statute performed "physical labor as typesetters, cylinder feeders, pressmen, and one also kept the books, at stipulated wages of so much per week. That in their employment they had acquired and used skill would not render the designation 'laborer' inapplicable. They labored with their hands for their employer for wages and were clearly laborers within the meaning of the statute. * * * While we are disposed to hold that the statute must be confined to those who perform manual service, still it can not be confined to such services only that require no skill in their performance of them."

In the case of *Lawton vs. Richardson* (118 Mich., 669), the court, interpreting a statute which gave a preference to debts for labor, held that debts due to employees in a dry-goods store, who act as department managers and salesmen, and perform such services as the unpacking of goods, marking them and placing them upon shelves, sweeping out the store, and keeping the stock in order, are debts for labor within the meaning of the statute. The court said (p. 671):

"The circuit judge found that, as to the work done by Mr. Lawton when in New York, it was not the work of a laborer within the meaning of the statute; but as to the other work done by him, and the work done by the other complainants, it was labor within the meaning of the statute. It is apparent from what has already appeared that nearly all the labor done was not intellectual or supervisional [professional] in its character, nor was it of an especially skillful kind. It was, in the main, manual labor and of such a character as the statute was intended to protect."

The following cases have held foremen to be laborers: *Flagstaff Silver Mining Co. vs. Cullins* (104 U. S., 176) ; *Capron vs. Strout* (11 Nev., 304); *Kyle vs. Montgomery* (73 Ga., 337).

The following cases have held a superintendent to be a laborer: *Gold Mining Co. vs. Bouscher* (9 Col., 385); *Coraker vs. Mathews* (25 Ga., 571); *Moore vs. Heaney* (14 Md., 559); *Pendergast vs. Yandes* (124 Ind., 159).

In the case of *Williams vs. Link* (64 Miss., 641), the court said (p. 643):

"Where physical toil is the main ingredient of services rendered, although directed and made more valuable by skill, the person performing them is a laborer within the meaning of the statute. The appellant is shown by the record to have been a laborer, engaged as a clerk in a store, and the wages earned by him as such laborer are exempt from garnishment."

In the case of the *Flagstaff Silver Mining Co. vs. Culling*, *supra*, the court said (p. 177):

"Statutes giving liens to laborers and mechanics for their work and labor are to be liberally construed. (*Davis vs. Alvord*, 94 U. S., 545.) The finding of the district court makes clear the character of the services rendered by the defendant in error. He was not the general agent of the mining business of the plaintiff in error. That office was filled by Patrick. He was not a contractor. His services were not of a professional character, such as those of a mining engineer. He was the overseer and foreman of the body of miners who performed manual labor upon the mine. He planned and personally superintended and directed the work, with a view to develop the mine and make it a successful venture. His duties were similar to those of the foreman of a gang of track hands upon a railroad, or of a force of mechanics engaged in building a house. Such duties are very different from those which belong to the general superintendent of a railroad or the contractor for erecting a house. Their performance may well be called work and labor; they require the personal attention and supervision of the foreman, and occasionally in an emergency, or for an example, it becomes necessary for him to assist with his own hands. They can not be performed without much physical exertion, which, while not so severe as that demanded of the workmen under his control, is nevertheless as really work and labor. Bodily toil, as well as some skill and knowledge in directing the work, is required for their successful performance. We think that the discharge of them may well be called work and labor, and that the district court rightfully declared the person who performed them entitled to a lien under the law of the Territory."

The reasons for this apparent conflict are found, not, perhaps, so much in the different ways in which different courts regard the general subject, as in the wording of the particular statutes under consideration, and in the fact that one who is called, for example, a clerk in one jurisdiction and performs therein a class of service which entitles him to that designation, will still be called a clerk in another jurisdiction, although he performs different or additional services. In other words, while his services in the former jurisdiction are purely those of a clerk, in the other they are a mixture of those of clerk and superintendent, or overseer or bookkeeper, or traveling salesman. This is a source of considerable confusion to one reading the decision hastily.

Moreover, in viewing the apparent discordance between the holdings of many of the courts above cited and those of *Holy Trinity Church vs. United States* and *United States vs. Laws*, *supra*, we must not overlook the fact that the rules of statutory construction and interpretation applicable to the statute under consideration in the case at bar are directly opposite to those applicable to the statutes interpreted and construed in the other cases. The statute now under consideration, being highly penal, must be construed with extreme strictness; while the statutes dealt with in the other cases, having for their object the giving of liens "to laborers and mechanic's for their work and labor," are to be liberally construed.

The courts are, however, substantially uniform in holding that, where the nature of the employment is essentially of superintendence or management, he who engages in that employment is not a laborer but a superintendent or manager and is not within the letter or the spirit of the Act.

The judgment of the court below is hereby reversed and the cause remanded for a new trial, without special finding as to the costs of this instance. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

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