1897.
September 3.

FARQUHARSON *v.* WEERA MUTTU.

P. C., Kandy, 4,954.

Master and servant—Desertion—Wages in arrear—Set-off of coolies' wages against debt due to estate by kangani.

An estate proprietor has no right to set-off the wages due to a cooly against a debt due to the estate by the kangani to whom the cooly is indebted. The cooly is not liable for desertion when, in consequence of such set-off, his wages remain unpaid for two months.

THE complainant in this case charged the accused with desertion. The defence was that the accused had a right to leave, as his wages were in arrears for two months. It was contended on behalf of the complainant that the wages due to the accused were set-off against a debt due to the estate by the kangani, to whom the accused, among the other coolies, was indebted. The Police Magistrate convicted the accused, and he appealed.

Van Langenberg, for appellant.

Bawa, for respondent.

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3rd September, 1897. BROWNE, A.J.—

When accused in this case sought to excuse his alleged desertion by the facts that his wages for November and December last had not been paid to him, it was alleged that these had been set off against the amount due the estate for advances, as it was customary to do on the estate every alternate two months when wages were computed and settled. The evidence, however, disclosed that the debt for advances was one by the kanakapulle to the estate, and that the debt of each cooly was to the kanakapulle. This debt of the estate, on the other hand, would *primâ facie* be to the cooly direct for the net balance of his wages after deducting rice and advances. To this accused was due for November-December check rolls the net sum of Rs. 2·20. Before Mr. Farquharson could pay this to anyone save the cooly, he should have consent given, which would be (1) by the cooly that it should be set-off against his debt for the kanakapulle; and (2) by the kanakapulle that it should be set off against his debt to the estate. The further evidence taken shows that one day in January Mr. Carey told the coolies and kanganies he was going to set off November and December wages against advances, and there was no dissenting voice. I suppose if accused had said he could not afford to go without all or some part of his pay, then he would have been paid what he required, but possibly he would have thought twice ere he did so. He has, however, at this further hearing, stated his position in very simple language: "What "I complain is that the money was not shown me before paying "to the kangani," *i.e.*, "I never knew either that the intention "to set-off was ever carried into effect, or how much then of my "pay was set off. When I would come to settle up with my creditor "hereafter, how could I say but he might deny any set-off was "made at all. He might allege there had been no wages due me "to set-off, or state some small sum falsely. I had a right "to be told what my balance was in my creditor's presence and "to have my debt so credited in effect by him with that sum."

All that was done was that, on some date unknown after Mr. Carey's announcement of his intention, a pay list showing the amount due each cooly was handed to the kanakapulle, and his debt to the estate was credited with the aggregate amount so due. He, in Court, says: "The accused's wages for November and "December were brought to account against his debt. I told him "so, and he agreed. In March I (the word is illegible, it may be "'reduced' or 'ended') his debt." In remitting the case for further evidence, I suggested that this creditor should show how

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his account with the cooly stood, and that the November-December net wages, *i.e.*, the Rs. 2·20, had been credited. It was but a trifle which this Court could do to see that the cooly had been really given the advantage of his work in a definite sum. This has not been done. In any civil action I would require clear proof of the actual amount set off by whoever alleged it, debtor or creditor, ere I allowed it, and I will require no less in such a case as this when it was a defence against a criminal charge.

I do not see it will be of any practical inconvenience on estates to require that in matters of this kind the pay list should be read out on the "set-off" day, and each cooly told how much he is being asked then to agree to set-off. I should not be at all surprised to find that is what many employers already do. I hold no set-off here is proved to have been made, even though the accused subsequently accepted pay, which the superintendent says was for January and February. I acquit and discharge accused. No question has been raised by the accused as to whether he was in the service of the estate or of the kangany. But I think it right to note that I observe his pro. note of 1st September last to the kangany contains the clause, "and in consideration thereof agree "to work with ourselves under the said kangany for one year."