

RODRIGO v. MEL.

*P. C., Pánaduré, 12 529.*

*Master and servant—Ordinance No. 11 of 1865—Agreement to attend at certain places for wages for dragging fishing nets.*

A person who by a written contract undertakes for wages to attend at certain places for and in the work of dragging nets cast into the sea is not a servant within the meaning of the Ordinance No. 11 of 1865.

THE facts of the case appear in the judgment of the Supreme Court.

*Jayawardene*, for appellant.

*Pereira*, for respondent.

19th February, 1895. WITHERS, J.—

This is a written contract whereby one person, for certain wages, undertakes to attend at certain places for and in the work of dragging nets cast into the sea.

In my opinion such a person as the defendant is not a servant within the meaning of the Ordinance No. 11 of 1865 ; and if he is not a servant, it goes without saying that he cannot contract himself into what I may call the criminal provisions of that Ordinance. I do not see how it could be said of this man that he quitted the service of his employer, and this is what he has been convicted of.

Even if this is a contract within the purview of section 7 of the Labour Ordinance, it is not alleged and proved by the complainant that the defendant neglected or refused to attend at any of the places, or at any of the times mentioned in the contract, without reasonable cause, or that he was guilty of any wilful disobedience of orders that might well be given him during the days in which he was required to attend for the dragging of nets.

Hence, because he is not a servant under the Ordinance, and because he has not been proved to have violated his contract in any sense appropriate to the contract within the 11th section of the Ordinance, I set aside the conviction and acquit the accused.

