

SINCLAIR v. RAMASAMI KANKANI.

P. C., Hatton, 16,987.

Ordinances No. 11 of 1865, s. 11, and No. 13 of 1889, ss. 6 and 7—Loans to kankani for procuring coolies—Agreement to repay such loans by wages earned—Effect of such agreement on the criminal liability of the kankani under the Labour Ordinances—Meaning of “advances.”

Loans made to an estate kankani for procuring coolies cannot be debited to him in the settlement of wages due to him, as such loans are not “advances” in the sense of the term explained in section 12 of the Ordinance No. 13 of 1889.

Even if there was an agreement between the labourer and his employer that such loans should be set off against wages due, it cannot have the effect of making him criminally liable under the Ordinance if, at the time of quitting service, the monthly wages earned by him shall not have been paid in full within sixty days from the expiration of the month during which such wages have been earned.

THE facts of this case are fully stated in the judgment of the Supreme Court.

Dornhorst and Seneviratne, for the accused appellant.

Van Langenberg, for respondent.

Cur. adv. vult.

10th May, 1895. LAWRIE, J.—

The accused, a head kankani, who had a gang of coolies, took service under the complainant in September, 1894. It is not said on what estate he (the accused) and his coolies had formerly served, but it is clear that they owed money, and that the complainant advanced to the accused Rs. 1,000 to be paid to his creditors, to enable him to clear accounts and to come to the estate. The accused gave two promissory notes for these advances of Rs. 1,000.

After the accused and his coolies had been on the estate for about two months and a half, the accused got a further advance of Rs. 1,000 from the complainant for the purpose of procuring and bringing to the estate some more coolies; the accused succeeded in getting more coolies, who joined his gang.

For this advance of Rs. 1,000 the accused gave a third promissory note. There is evidence, which the Magistrate believed, that after the first advances were made, and about the time the last advance of Rs. 1,000 was paid, the complainant and the accused arranged and agreed that "these loans and advances should be repaid in a special way, if the complainant should so desire, viz., by accused's wages as earned being set against them as part payment." On the 1st January, 1895, there was a pay day on the estate, and the wages to the end of October were paid. I understand that the accused then received his wages in cash, and that the agreement that the complainant might retain them in part payment of the debt on the promissory notes was not taken advantage of by him.

At the end of February the accused wished to leave the estate with all his coolies; the complainant objected. On the 27th February there was a meeting with a Proctor on behalf of the head kankani, who made an offer to pay the Rs. 2,000, but that offer was rejected by the complainant. The accused then left the estate, but next day (28th February) he was tried in the Hatton Police Court for the offence of quitting service without leave or notice, and on the 22nd March he was found guilty and sentenced to three months' rigorous imprisonment. Hence this appeal.

The 7th section of Ordinance No. 13 of 1889, as amended by section 2 of the Ordinance No. 7 of 1890, enacts that no labourer shall be liable to punishment for quitting service without leave or reasonable cause, if at the time of such alleged offence the monthly wages earned by him shall not have been paid in full within sixty days from the expiration of the month during which such wages have been earned.

The 6th section enacts that, in computing the amount of wages due to a labourer for any period of service, such labourer shall be debited with the amount of all advances of money made to him, and with the value of all food, clothes, or other articles supplied to him during such period, which the employer is not liable to supply at his own expense. The words "during such period" are material; old advances may not be taken into consideration, only advances or supplies made within the period for which wages are claimed and the subsequent sixty days. Here the employer had paid Rs. 1,000 to the accused in December subsequent to the month of November for which the accused pleads his wages were not paid. Was then the advance of Rs. 1,000 in December an advance which can be computed in ascertaining whether wages were due on the 27th February?

In endeavouring to fix the meaning of the words "all advances of money" made to a labourer, I hold that an advance is different from a loan. It is competent to turn to the 12th section of the same Ordinance to see what there is meant by an advance: it there means "money, food, clothes, or other articles which had been advanced or supplied to the labourer as against the wages for which he may be suing."

In Jacob's case (P. C., Kandy, 15,797, decided on 3rd August, 1893), my brother Withers said:—"My interpretation of the Labour Ordinance is that only advances by way of anticipated wages can be taken into account in computing what, if anything, is due to a labourer by way of wages earned by him at the date of his committing the offence of quitting service without leave."*

This is a direct authority which I with confidence follow, but the complainant urges that by custom, and in this case by special agreement, the advance of Rs. 1,000 made in December was an advance to be repaid out of wages to be subsequently earned.

Whatever was formerly the effect of the customary understanding that large loans made to a head kankani were to be repaid out of wages, and that wages could legally be retained in payment of old advances, I think that customary understanding was corrected by the Ordinance I have quoted, which enacts that as a set-off to wages shall only be put advances made against wages, not (as I read the Ordinance) advances for bringing coolies and the like.

The Magistrate rests his judgment indeed entirely on the special agreement which he holds was made between the complainant and the accused. It is not necessary to decide now what the effect of that agreement would be in a civil case for wages. It surely has no effect in a criminal case. If this kankani is not liable to punishment under this Ordinance, he has not made himself liable by this agreement criminally.

His wages for November were not paid to him; more than sixty days elapsed under the Ordinance; he was not liable to punishment if he then left; he did not render himself liable to punishment because he agreed with his employer that he might retain the wages in payment of a debt: that was an advantage to the employer, which I assume the employer might gain by, but the agreement cannot bring within the punitive clauses of the Labour Ordinance a man who is not liable to punishment if he had not made the agreement.

I am of opinion that the accused was wrongly convicted, and that he is entitled to an acquittal and discharge.

* *Ante*, p. 42 of these reports.