

## SOYSA v. APPUHAMY.

1895.  
October 23.*Additional P. C., Ratnapura, 3,062.**Ordinance No. 11 of 1865, s. 7—Labourer—Contract of service—Quitting service without leave or reasonable cause—Finding of Police Magistrate.*

In a prosecution under the Labour Ordinance of 1865 against a servant for quitting service without leave or reasonable cause, it is necessary that the Magistrate should, in the event of a conviction, state in his judgment the capacity in which the accused was employed in the complainant's service, so as to show that his quitting it without leave or reasonable cause constituted an offence against the Labour Ordinance.

Unless some definite term of service is expressed in a written contract for hire and service, it will be obnoxious to section 7 of Ordinance No. 11 of 1865, and the servant cannot be criminally punished under that Ordinance.

THIS case was brought up in revision on the application of the Attorney-General. The facts are sufficiently stated in the judgment of Mr. Justice Withers.

*Layard, A.-G.* The evidence recorded in this case does not disclose any offence. There was no formal charge. The complaint against the accused is as a labourer under a written contract of service. But the prosecution did not prove the special agreement. For some reason or other the contract has not been put forward. It may be outside the Labour Ordinance. In a criminal case the terms of a contract cannot be assumed in the absence of formal proof. The proceedings are otherwise irregular. The Police Magistrate does not record his reasons for the conclusions he arrived at.

*Morgan*, for the respondent. The proceedings must be admitted to be irregular. But the Police Magistrate's reason for finding the accused guilty is that he did not resume his service on the estate after his return from jail. He was bound to go back to the estate and leave it with due notice (*Hunt v. Muttan*, P. C. Ratnapura, 6,545, 4 S. C. C. 3). (WITHERS, J.—The contract in question does not appear to bring the accused within criminal liability. BONSER, C. J.—What is the distinction between monthly wages and daily wages?) The coolies on such estates are generally paid on the footing of daily wages earned. (BONSER, C. J.—Then they are day labourers.) I think that is the practice throughout the Island. (BONSER, C. J.—Then, if he does not work the whole month he is not liable to punishment.) As a rule they work about five days in a week. They have to work four days in a week, otherwise they will not receive the usual advance; and if the cooly attends muster every day, the master is bound to provide him with work. The written contract of service referred to was not

1895. proved. But I have it with me, and shall read it with Your  
October 23. Lordship's permission. (BONSER, C. J.—You may read it.)

The contract was read, but it did not appear to be within the purview of the Labour Ordinance.

WITHERS, J. 23rd October, 1895. WITHERS, J.—

The question for our decision in revision is whether the conviction of the petitioner in revision can stand.

The accused was convicted of quitting the service of the complainant, one J. F. Soyza, without leave or reasonable cause, in breach of section 11 of Ordinance No. 11 of 1865, and upon that conviction the accused was sentenced to a term of rigorous imprisonment for a "fortnight."

The Magistrate has not stated in his judgment, as he should do, the date on which the prisoner committed the alleged offence.

His judgment is further defective in not specifying the capacity in which the petitioner was employed in the complainant's service, so as to show that his quitting it without leave or reasonable cause constituted an offence against the Labour Ordinance.

As the evidence was read out by the Attorney-General (on whose application the case had been brought up in review), it transpired that the petitioner was bound to the complainant by a contract in writing, which, if produced, was not proved in the Court below.

Mr. Morgan, who appears on behalf of the complainant in these proceedings, has however read out to us the terms of the contract which, as a matter of fact, the petitioner did enter into with the complainant. Now we know what it was, it seems to us to be unnecessary to send these proceedings back to have the contract formally proved and put in evidence, because it does not come within the scope of the provisions of section 7 of Ordinance No. 11 of 1865.

That section enacts that—

No contract entered into in this Island for the hire and service of any servant or journeyman artificer for any period of time longer than one month shall be valid in law, so as to subject any party thereto to the provisions of this Ordinance for not performing the same, unless such contract shall be in writing, and shall clearly express the terms and conditions thereof, and shall be signed or acknowledged by the parties thereto in the presence of a Police Magistrate or a Justice of the Peace, or other person expressly authorized by the Governor, such Justice or other person not being himself the employer of such servant or journeyman artificer, or the agent of such employer. And it shall be the duty of such Police Magistrate, Justice of the Peace, or other authorized person to see that the contract is fully explained to the parties, and to certify on the contract that they fully understand the terms thereof, and are desirous to fulfil the same. And such contract, when produced in evidence, and having the certificate of the Police Magistrate, Justice of the Peace, or duly authorized person as

aforesaid, shall be *prima facie* evidence of the matters and things contained therein. And every such contract shall be executed in triplicate, and it shall be the duty of such Police Magistrate, or Justice of the Peace, or other authorized person as aforesaid, to give or cause to be given one copy thereof to the servant, and to send or cause to be sent, within ten days of the execution thereof, another copy thereof to the Police Magistrate of the district wherein such contract shall have been executed, and in default thereof such Magistrate or Justice shall be liable to a penalty of five pounds. And the said Police Magistrate is hereby required to preserve the said counterpart, and to allow any person who may be interested in the said contract to inspect the same. Provided always that no contract (excepting contracts made under the 8th section of this Ordinance) for the hire and service of any servant or journeyman artificer (whether made in Ceylon or in India as provided by the 9th section) shall be valid under the provisions of this Ordinance if made for a longer period of hire or service than three years.

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Now, this clearly implies that some definite time must be expressed in a written contract for hire and service.

It is impossible to say at what time the contract in question may be determined—it may be determined in a week, or it may not be determined for several years—the object apparently being to keep the labourer on the estate until he has worked off a sum of money which has been advanced him by his employer.

It is the absence of any express limitation of a term of service which renders the present contract obnoxious to the 7th section of this Ordinance, so that the petitioner cannot be criminally punished for anything he may have done in violation of the provisions of that contract.

The employer may or may not have his civil remedy, but the Labour Ordinance does not permit him to criminally prosecute a servant who is bound to him under a contract of this description.

For these reasons the conviction should be set aside and the petitioner acquitted and discharged.

BONSER, C. J.—I agree for the same reasons.

BONSER, C. J.

