WELAYDEN *v.* PERUMAL.

1896.

October 23 & November 10.

P. C., Rakwana, 12,314.

Master and servant—Quitting service—Indian coolies—Ordinance No. 11 of 1865, s. 21—Ordinance No. 13 of 1889, ss. 6 and 7.

Semble, per LAWRIE, J., that the provisions of sections 6* and 7† of Ordinance No. 13 of 1889 supersede those of section 21‡ of Ordinance No. 11 of 1865 in cases where Indian coolies are concerned.

THE facts of the case sufficiently appear in the judgment.

Sampayo, for appellant.

Dornhorst, for respondent.

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*Section 6, sub-section 1, of Ordinance No. 13 of 1889 :—The wages of a labourer shall be payable monthly within sixty days from the expiration of the month during which such wages shall have been earned, and when such wages shall be payable at a daily rate, the monthly wages shall be computed according to the number of days on which the labourer shall have been able and willing to work, whether the employer may or may not have been able to provide him with work. Provided that no employer shall be bound to provide for each labourer more than six days' work in the week.

† Section 7 :—No labourer shall be liable to punishment for neglecting or refusing to work, or for quitting service without leave or reasonable cause, or for disobedience or for neglect of duty, if at the time of such alleged offence the monthly wages earned by him shall not have been paid in full within the period specified in sub-section 1 of section 6.

‡ Section 21 of Ordinance No. 11 of 1865 :—No servant or journeyman artificer shall be liable to punishment for neglecting or refusing to work, or for desertion, disobedience, or neglect of duty, if at the time of such alleged offence his wages shall have been unpaid for any period longer than a month : Provided always that in computing the amount of wages due at any time, such servant or journeyman artificer shall be debited with the amount of all advances of money made to him, and with the value of all food, clothes, or other materials supplied to him, and which the employer is not liable under this Ordinance to supply at his own expense. Provided also that the fact of such wages being so due as aforesaid shall not affect the liability of such servant or journeyman artificer to punishment under the provisions of this Ordinance, unless he shall at least forty-eight hours previously to the time of such alleged offence have demanded from his employer the payment of his wages so due, and the employer shall have refused or failed to pay the same.

1896. *October 23 & November 10.*

10th November, 1896. LAWRIE, J.—

The appellant was convicted of quitting service without leave or due warning or reasonable cause; he was sentenced to fourteen days' rigorous imprisonment. The Magistrate gave leave to appeal, and a matter of law was also stated. Much was said in the Police Court about a registered letter containing a demand for wages addressed to the employer of the accused. It seems to have been taken for granted that the document B filed at page 18 is that registered letter, which the superintendent refused to open. But I find no evidence that B is the letter. Mr. Vandenberg, who could have given the best evidence on this point, was not examined. As the writing and sending to the post and the registering of B have not been proved, it is in vain to discuss what would be the legal result had Mr. Stronach received a demand for wages.

The proof does not raise the question of law argued in appeal viz., whether the 21st section of the original Ordinance No. 11 of 1865 is still in force as to Indian coolies, or whether it has been superseded by the 7th section of the Ordinance No. 13 of 1889. I will, however, say that the 6th and 7th sections of the later Ordinance refer to and deal with the same matters as the 21st section of the original Ordinance, and my present opinion is that while the provisions of the old Ordinance are still in force for servants other than Indian coolies, the law on this matter, as it affects Indian coolies, is to be found in the provisions of the later Ordinance, which I think supersedes the Ordinance No. 11 of 1865 in cases where Indian coolies are concerned.

I hesitate to agree with the dicta of Mr. Justice Clarence in the case of *Henly v. Vellayan*, reported in *1 S. C. R. 136*, but it is unnecessary to go into that. The appellant has not proved that he made the demand required by the 21st section of Ordinance No. 11 of 1865.