

1902.

September 16.

ROLT v. MUTTUSWAMY.

P. C., Avisawella, 8,361.

*Labour Ordinance, No. 11 of 1865, s. 11—Quitting service without notice—
Ordinance No. 13 of 1889, s. 6 (1)—Payment of wages due—"Sixty days"
—"Able and willing to work."*

In section 6, sub-section 1, of the Ordinance No. 13 of 1889, the first clause of the sentence deals with the payment of wages, and the second clause with the computation, and not the payment, of the wages, where the labourer has not worked every day of the week, either because his employer did not provide him with work or because he himself was not able or willing to work.

The labourer who quits the service of his master is not to be punished if he has not been paid his wages within sixty days from the expiration of the month during which he earned the wages.

THE following case was stated by Mr. M. S. Pinto, the Police Magistrate of Avisawella, under the provisions of section 353 of "The Criminal Procedure Code, 1897":—

"On or about the 12th of August, 1902, at Atherfield estate, within the jurisdiction of this Court, the accused being a monthly paid servant under a verbal contract of hire and service for the period of one month and renewable from month to month, quitted the service of his employer, W. F. C. Rolt, without leave or reasonable cause, before the end of his term of service or previous warning of his intention to determine such contract, and punishable under section 11 of Ordinance No. 11 of 1865.

"At the hearing of the said charge it was proved that the accused's wages had been paid up to the end of April last.

"It therefore occurred to me that it might have been urged on the part of the accused that, at the time of quitting, the wages due to him had not been paid within sixty days from the expiration of the month during which such wages had been earned. But I being of the opinion that the words "sixty days" in section 6 (1) of Ordinance No. 13 of 1889 must be taken to mean sixty days during which the labourer was willing to work, held that the accused was guilty of the offence he was charged with, and sentenced him to three months' rigorous imprisonment.

"The question for the opinion of the Supreme Court is, whether the said determination was correct in point of law, and what should be done in the premises."

The case was argued on 15th September, 1902.

Rāmanāthan, S.-G., for the Crown.—There is no liability for quitting service if, at the time of such offence, the monthly wages earned by him shall not have been paid in full within the

sixty days from the expiry of the month during which such wages shall have been earned. 1902.
September 15.

The Ord. No. 13 of 1889, sections 7 and 6 (1), as amended by section 2 of Ordinance No. 7 of 1890, requires the labourer to be debited with all advances of money made to him, and with value of all food, clothes, &c., supplied to him during such period. There is no proof of advances made, and the Police Magistrate has misapplied the words "able and willing to work" in Ord. No. 13 of 1889, sec. 6 (1). *Sinclair v. Ramasami Kankani* (1 N. L. R. 43).

15th September, 1902. MONCREIFF, A.C.J.—

This is a point which has been reserved for the consideration of this Court by the Police Magistrate of Avisawella. A cooly, who was proved to have been under a contract of monthly service at Atherfield estate was charged under Ordinance No. 11 of 1865, section 11, with quitting his service without giving due notice, without leave, and without reasonable cause. The Magistrate convicted him and sentenced him to three months' rigorous imprisonment. For the cooly it is said that the Magistrate had no power under the circumstances of the case to convict him. Three points have been raised on behalf of the accused, but I think it will be sufficient if I deal with the first. It is said that the cooly, or rather his kangany, received his wages up to the end of April. The kangany was indebted to the estate for advances, and, as I understand, the superintendent instead of handing over the money due to the cooly kept it and credited his kangany with the amount. The accused remained on the estate during the months of May, June, and July, and on the 12th August he quitted his service.

Now, section 7 of Ordinance No. 13 of 1889 provides that a labourer shall not 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 the period specified in sub-section (1) of section 6. That sub-section provides that "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." The Magistrate seems to have taken a view of the correlation of the two provisions of that sentence which I think is not exact. The first clause of the sentence deals with the payment of wages; the second clause deals with the computation, and not with the payment

1902. of wages. The Magistrate seems to have thought that, as one
September 15. would naturally have expected, the second clause would deal also
MONCEIFF, with payment of wages, but under different circumstances. That
A..C.J. however is not so. The labourer is not to be punished for quitting
 service if he is not paid his wages within sixty days from the
 expiration of the month during which he earned the wages. That
 is clear; but the remainder of the sentence simply provides how
 the monthly wages are to be computed, where the labourer has not
 worked every day of the week, either because his employer did
 not provide him with work or because he himself was not able
 and willing to work. Between the end of May and the 12th
 August seventy-three days elapsed—that gives the accused a margin
 of thirteen days. According to the view which I take of the
 provisions to which the Magistrate has drawn the attention of this
 Court, the accused is entitled to the benefit of the terms contained
 in section 7 of Ordinance No. 13 of 1889. The result is that the
 conviction will be set aside, and the accused acquitted.

