

Present: Mr. Justice Middleton.

ROBERTSON v. PERUMAL KANGANY.

1906.
October 25.

P. C., Ratnapura, 4,392.

Indian labourer—Imprisonment during service—Period of such imprisonment when to be deemed as part of the term of service—Fresh notice—Ordinance No. 11 of 1865, s. 24.

The accused, who was a monthly labourer employed on Wewelwatta estate, gave notice on 3rd July, 1906, and left on 1st August. He was convicted of quitting service without notice under section 11 of Ordinance No. 11 of 1865 and sentenced to a term of imprisonment, which expired on 24th August. He was then charged with failing to attend on the 25th and 26th August at the said estate for work before his term of service had expired. The Magistrate ordered the accused to go back and work another month and give fresh notice.

Held (reversing the order of the Magistrate) that, as the Magistrate did not make any order under section 24 of Ordinance No. 11 of 1865 directing that the period of imprisonment should not be taken as part of the period of service, the period of service terminated one month from the original notice, viz., on 2nd August, and that the accused could not be convicted of failing to attend to work on 25th and 26th August.

A. W. Hunt v. Muttan and others (4 S. C. C. 3) distinguished.

Held, also, that even under section 24 the accused was liable to work only for two more days at his employer's option.

MIDDLETON J.—If the Magistrate does not make an order under section 24, the period of imprisonment must be deemed to be part of the period of service.

A PPEAL from a conviction with the leave of the Magistrate. The facts sufficiently appear from the judgment. No counsel appeared.

Cur. adv. vult.

25th October, 1906. MIDDLETON J.—

The accused was charged with quitting service without due notice, and was sentenced to twenty-one days' rigorous imprisonment. Upon the expiry of this term he was charged again with failing to attend on the 25th and 26th August on Wewelwatta estate to work before his term of service had expired. He had given a month's notice on 3rd July and left on 1st August, and came out of jail on 24th August.

The Magistrate held that the notice was voided by his quitting the estate before the full term of the notice had expired, and that defendant was bound to give fresh notice. The complainant was

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willing to take the accused back to the estate, and the accused apparently consented to go, and the Magistrate ordered that he should go back and work another month and give fresh notice before he could leave the estate.

The accused appealed, with the consent of the Magistrate, with a view to obtain a ruling in this Court on the question whether the service had expired by the original notice.

It is clear that in this case the appellant was only bound according to his notice to remain in the complainant's service up to the end of 2nd August.

Section 24 of the Ordinance directs that "if any servant or journeyman artificer, having entered into any contract of hire and service subject to the provisions of this Ordinance, shall, during the subsistence of such contract, have been imprisoned or have absented himself without leave, the Court before which he is tried shall award that no part of the period of such imprisonment or of such absence (and which period the said Court is to ascertain by evidence and define) shall be deemed or taken to be a part of the period of his service, but that he shall be compellable, at the option of his employer, to serve for the full period defined as aforesaid for which he shall have contracted to serve; and until such extended service shall have been completed, he shall be and shall continue subject to the provisions of this Ordinance."

From this section the inference may be drawn, as Clarence J. says in *A. W. Hunt v. Muttan and others* (1), that the Legislature did not understand a conviction for quitting service as discharging the contract, but in that case no notice had been given.

The inference may also be drawn from that section that if the Magistrate does not make such an order, the period in question would be deemed to be part of the period of service.

A proper month's notice, however, under section 3 unquestionably does terminate the contract.

In my opinion, therefore (unless the Magistrate who originally heard this case made an order under section 24), the appellant's period of service expired at the end of 2nd August, and unless the Magistrate who heard the original case made an order under section 24, the appellant is under no obligation to serve longer.

The only order he could make under that section in the present case is that the appellant was compellable to work for two more days at his employer's option.

I can see no reason, nor do I know of any authority, for saying that a fresh month's notice would be required.

The servant under the Ordinance is bound to serve during the subsistence of the service, which in this case terminated by the notice at the end of 2nd August.

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I think, therefore, that the order of the Magistrate in this case is wrong, and I therefore set it aside.

Conviction set aside.
