

Present: Pereira J.

PIERIS v. HENDRIC SINNO.

821—P. C. Panadure, 40,533.

Servant—Labourer—Ordinance No. 11 of 1865, s. 11—Quitting service without notice.

A carriage painter is a servant within the meaning of Ordinance No. 11 of 1865.

THE facts appear sufficiently from the judgment.

A. St. V. Jayewardene, for the accused, appellant, contended that the conviction was wrong as the accused did not come within the meaning of the term "servant" as defined in Ordinance No. 11 of 1865. The accused is clearly not an "artificer," as he is not a person who makes anything. *Morgan v. London General Omnibus Company*.¹

It cannot be said that a painter like the accused is a "labourer." His trade is one which requires skill and experience. It has been held that a lithographing or copying clerk [(1872) 2 Gren. 13], a farrier (*Fernando's Rep.* 8), and a barber (*Raman v. Kanapathy* ²) do not come within the term "servant" under the Ordinance. Similarly, a carriage painter ought to be excluded.

J. W. de Silva, for complainant, respondent, contended that the accused's trade was one which did not require any skill or training in the real sense. Every trade practically requires skill. The accused is clearly a labourer.

Cur. adv. vult.

November 25, 1912. PEREIRA J.—

The accused, who is described in the evidence as a "painter," was been convicted under section 11 of Ordinance No. 11 of 1865, and that he, being a monthly paid servant, quitted the service of his employer, the complainant, without reasonable cause. The Magistrate has not elicited, as he should have done, what the complainant meant when he said that the accused was a "painter." Is he a portrait painter, or one who did the usual painting work in dwelling houses in this country? In his judgment the Magistrate says that the accused is "apparently" a person painting carriages, carts, &c. The omission in the evidence cannot be supplied in any way, and I would have been obliged to quash the conviction

¹ L. R. 13 Q. B. D. 322.

² (1904) 3 Bal. 235.

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but for the fact that the accused comes to the rescue by describing himself in the petition of appeal as " a carriage painter." The question arising in this appeal is whether the accused is a " servant " or an " artificer " in the sense in which those words are used in Ordinance No. 11 of 1865. The word " servant " is defined by the Ordinance to extend to and include " menial, domestic, and other like servants, pioneers, kanganies, and other labourers whether employed in agricultural, road, railway, or other like work." The definition by reason of the use of the word " include " is not exhaustive, and if the accused can be said to be a " labourer," he would, of course, be a servant under the Ordinance. It has been argued by the counsel for the appellant that the accused is not a labourer, nor is he an artificer, and that he is therefore altogether exempted from the operation of the Ordinance. An artificer is a skilled workman (see *Morgan v. London General Omnibus Company* ¹), and it has also been held that he is one who makes something as distinguished from one who only does something (*Palmer v. Snow* ²). A carriage painter can hardly be said to " make " anything, so that he must be taken off the category composed of artisans. The question then is narrowed down to this: " Is he a labourer?" There is, of course, a class of persons, like chauffeurs or drivers of motor cars, who belong to the working classes, but who, as recently held by this Court, are neither " labourers " nor " artificers." They are not " artificers " in that they cannot be said to " make " anything, and they are not " labourers " in that they are skilled workmen, and it is contended that the accused belongs to this class. There is hardly any work that requires absolutely no skill. A " labourer " is understood to mean one " who does work requiring little skill," and I take it that, although the work of a carriage painter requires some skill, it does not require that special training, education, and experience that is necessary to constitute one a skilled workman. In this view I think that an ordinary carriage painter is no more than a labourer, and I affirm the conviction.

Affirmed.

¹ 13 Q. B. D. 332.

² (1900) 1 Q. B. 725.