Present : Drieberg *J.*

1928.

VEERAPATHERAN *v.* PROPRIETORS OF EKKERALLA ESTATE.

123—C. R. Ratnapura, 20,310.

Master and servant—Action for wages by labourer—Quitting service without notice—Right of employer to forfeit wages—Time of payment—Ordinance No. 13 of 1889, s. 10.

A labourer, who has quitted service without notice, is entitled to maintain an action under section 10 of Ordinance No. 13 of 1889 to recover wages due for a completed term of service. In such a case the labourer may be paid his wages for the previous month at any time during the following month ; whereas, if he had given notice he would be entitled to payment on the termination of the contract.

THIS was an action instituted under section 10 of Ordinance No. 13 of 1889 by a head kangany for himself and on behalf of fifty labourers employed on Ekkeralla estate against the proprietors of the estate for the recovery of wages for the month of June, 1927, amounting to a sum of Rs. 500. It was contended on behalf of the defendants that the plaintiffs were not entitled to their wages as they had left the defendants' service without notice. The Commissioner of Requests held that no notice had been given by the plaintiffs but that they were not disentitled for that reason from claiming their wages.

N. E. Weerasooria, for defendants, appellant.—Plaintiffs have not complied with the provisions of the Labour Ordinance in the matter of giving notice of termination of their services. Therefore they cannot avail themselves of the provisions of this Ordinance to recover their wages. Further, the Commissioner finds that they

1928.

Veerapatheran v. Proprietors of Ekkeralla Estate

did not give notice at the end of the month and that they left on June 30, 1927. They did not work on June 30. They are therefore not entitled to recover any wages for the period they actually worked in June. The principle of *quantum meruit* will not apply to contracts of this nature. Counsel referred to the case of *Cutter v. Powell.*[1]

Aiyar, for the Agent of the Government of India.—Appellants' contention is wrong because the respondent's contract is one contemplated by section 5 of Ordinance No. 13 of 1889. Sections 6 (1) and (3) merely provide for manner of giving notice and the time of payment. Their wages could in any event be claimed under the Ordinance. See section 10.

As regards the question whether the principle of *quantum meruit* could be applied to this case, this does not arise. There is no distinct finding by the Commissioner as to the exact moment when the plaintiffs left service. The evidence is they were on the estate on June 30 for muster. They must therefore be paid for the period for which they actually worked. The failure to give notice does not work a forfeiture of wages already earned.

October 30, 1928. DRIEBERG J.—

This appeal was listed before my brother Dalton, who, in view of the plaintiffs not being represented and of the importance of the question involved, directed that the appeal be set down for argument after notice to the Agent of the Government of India in Ceylon.

This action was brought under the provisions of section 10 of Ordinance No. 13 of 1889 by Veerapatheran, a head kangany, for himself and on behalf of fifty labourers who were employed on Ekkeralla estate, against the appellants, the proprietors of the estate, for the recovery of wages for the month of June, 1927, which they estimated at about Rs. 500. The plaint was filed on October 21, 1927. The questions for decision are not affected by the amending Ordinance No. 27 of 1927, which came into operation on December 24, 1927.

The appellants appeared by their proctor and undertook to file a statement and produce their books. Later they filed an account prepared from the estate check roll showing only the amounts due to each of the plaintiffs, aggregating Rs. 211·04. Their proctor later filed a statement in the nature of an answer, in which they said : " Further to the extract from the check roll filed by us the defendants state that legally the plaintiffs are not entitled to the claim nor is the defendant under legal obligation to pay the amounts appearing on the said extract as the plaintiffs left the defendants' service without notice."

[1] *Smiths' Leading Cases, Vol. II., p. 17 ; 20 Halsbury, Master and Servant ss. 216–218.*

At the trial the plaintiffs agreed to accept the account filed by the appellants and two issues were framed: (1) Was notice given by plaintiffs to quit; (2) if not, are the plaintiffs entitled to their wages?

It is important to note in view of a point raised in appeal to which I shall refer, that the trial proceeded on the footing that the plaintiffs had worked during the month of June, and that the only reason the appellants advanced for denying their right to their wages for June was that they had left on June 30 without notice. It was not suggested that they had not performed their contract of service for the month of June.

The Commissioner found that notice of quitting service had not been given by the plaintiffs, but that this did not disentitle them to their wages for June.

The contention in the lower Court was that as no notice had been given by the plaintiffs they were not entitled to claim their wages for June; but this is not so.

The contract of these labourers, there being no stipulation to the contrary, was a contract of hire and service for a period of one month renewable from month to month (see section 5 of Ordinance No. 13 of 1889); at the end of June they completed a term of service and were entitled to wages; the only effect of their leaving on June 30 after due notice would be that they would have been entitled to immediate payment under section 6 (3), whereas if they had not given notice their wages could have been paid to them at any time during the month following (section 6 (1)); their wages would in both cases be due to them, though the time at which they could demand payment would be different.

Now the plaintiffs committed no breach of their contract of service for the month of June; the breach of contract on their part was in not working from July 1 and occurred on that day, the contract by reason of absence of notice being in law regarded as renewed on that day for a further term of one month. This breach cannot affect the right of the plaintiffs to payment for an earlier and completed term of service for which they had earned their wages. If it did, it could only do so on some right like forfeiture which the appellants do not possess. "If the employer desires to be in position to forfeit the wages of a workman who wrongfully leaves his employment he must make it quite plain by the terms of the contract that he has a right to do so," (Lord Alverstone in *Parkin v. South Hetton Coal Co.*[1]).

At the appeal Mr. Weerasooria advanced two other arguments: one was that even if the wages for June were due and payable to the plaintiffs when they brought their action, they were not entitled to make their claim in the statutory action under section 10; he

[1] *(1907) 98 L. T. 162.*

1928.

DRIEBERG J.

Veerapatheran v. Proprietors of Ekkeralla Estate

pointed to the unusual facilities allowed to plaintiffs in such actions and to the limited right of set-off and counterclaim allowed to defendants, and he suggested that this special form of action should not be permitted to plaintiffs who had made default in their obligations. It is not possible however to import into the Ordinance any such restriction. If the amount claimed is "wages" as defined by the Ordinance, and it is so in this case, an action under section 10 is available.

His other contention was that the plaintiffs had not performed their contract of service for the month of June. He based this on a statement of the second witness, Tharasi Seranandi, a sub-kangany under the plaintiff, that they left the estate at about 8 A.M. on June 30.

If this is so other questions arise: Are the plaintiffs entitled to wages at all if they left within the period of the contract?; and if not entitled to wages, are they entitled to compensation on the basis of a *quantum meruit*, and if so does such compensation fall within the definition of wages in the Ordinance? But these questions can only arise if it was proved that the plaintiffs had not worked on June 30. No attention was directed to this point and the trial proceeded on the footing that their only default was in their not giving notice; further, there is the evidence of the head kangany that he worked on the estate on June 30. The appellants have led no evidence on this point and nothing relating to it can be gathered from the account filed by them, which only shows the total amount due to each labourer.

I cannot accept the sub-kangany's evidence as conclusive and applicable to all the fifty plaintiffs, especially as no issue on the point was framed. I do not feel justified in sending a case of this nature back for evidence on a point not raised at the trial.

I dismiss the appeal.

Appeal dismissed.