

Present: De Sampayo J. and Schneider A.J.

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BURNE v. MUNISAMY

650—P. C. Kalutara, 50,525

*Calendar month—Notice of intention to quit service—Ordinance No. 11 of 1865—Computation of time.*

Under Ordinance No. 11 of 1865 a labourer can give on any day of the month notice of his intention to quit at the end of a month from the day of such notice.

Where such notice was given by a cooly on June 11, it was held that the calendar month expired at midnight on July 11.

**T**HIS case was referred to a bench of two Judges by Loos A.J.  
The following is his judgment:—

The accused was convicted of having quitted the service of the Superintendent of Miriswatta estate without leave or reasonable cause, under the provisions of section 11 of the Ordinance No. 11 of 1865.

On June 11, 1919, a notice was received by the complainant from the accused and several other coolies of the estate that they will quit his service on the expiration of one month from that date, and on July 11, 1919, at 6.15 A.M., the accused quitted the estate.

It was contended on behalf of the accused-appellant that one calendar month had expired, and that he was, therefore, entitled to quit on July 11.

The Magistrate convicted the accused, being bound by the decision of this Court in P. C. Nuwara Eliya, No. 2,641, to the effect that a calendar month's notice to quit service should be given before the first of the month, to commence with the first day of the month and terminate with the end of that month, but expressed a doubt as to whether section 4 of the Ordinance No. 11 of 1865 did not provide that a labourer's contract could be terminated by a notice of one month composed of broken periods of calendar months.

I am of opinion that there is room for doubt on this point, and as the matter is one in which the question should be finally decided by this Court, I think it is desirable that this appeal should be listed before two Judges for decision.

*J. S. Jayawardene* (with him *Sunderam*), for accused, appellant.—  
Notice to quit may be given to run from any day in the month. See *Grenier* (1873) 42. The statement in the case relied on by the

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Magistrate (1 *Ceylon Law Recorder* 33) is only obiter. The month expired on July 10. The accused was right in quitting service on July 11. See *Migotti v. Colville*.<sup>1</sup>

*Wijemanne*, for complainant, respondent.—The month expired on the midnight of July 11. Counsel referred to 1 *C. W. R.* 22.

*Cur. adv. vult.*

September 22, 1919. DE SAMPAYO J.—

The accused was a cooly employed on Miriswatta estate on a monthly contract of service. On June 11, 1919, he gave notice of his intention to quit service at the expiration of one month from that date. He left the estate at 6.30 A.M. on July 11, 1919, and he has been prosecuted for quitting service without reasonable cause, and without giving due notice. The Police Magistrate convicted the accused and sentenced him to two week's simple imprisonment, and the accused appealed. My brother Loos has referred the case to a Bench of two Judges, especially in view of the judgment of my brother Schneider in *P. C. Nuwara Eliya* 2,641.<sup>2</sup>

The points of law to be determined are (1) whether the calendar month for which notice is required to be given should commence on the first day of a month and terminate on the last day, or whether it may consist of broken periods of two months; and (2) whether the month had expired when the accused in this case quitted service on July 11.

In the *Nuwara Eliya* case above referred to, my brother Schneider considered that for this purpose a calendar month meant a month commencing from the first day of the month and terminating on the last day. I entertain a different view on this point. The provision of section 3 of the Ordinance No. 11 of 1865 is that every verbal contract of service shall be deemed to be a contract for the period of one month, and to be renewable from month to month, "unless one month's previous notice of warning be given by either party to the other of his intention to determine the same at the expiry of a month from the day of giving such notice." The Interpretation Ordinance, No. 22 of 1901, section 3, declares that "month" in every Ordinance, unless there is something repugnant in the subject or context, shall mean a calendar month. According to the general rule, a calendar month does not necessarily mean only a month commencing from the first day; it may consist of broken periods of two months. But, apart from that rule, the Ordinance itself contemplates notice being given to commence from any day in the month, for it provides for a period of one month "from the day of giving such notice," and not from the beginning of a month. This is made more plain by section 4, which provides that where the service shall have been determined by notice on a day other than the last day of the month,

<sup>1</sup> 48 *L. J. C. P.* 695.

<sup>2</sup> *Ceylon Law Recorder* 33.

the wages for the broken period shall be payable to the day the service is so determined. So far back as 1878 Creasy C.J. said: "The 3rd clause, especially when read in connection with the 4th, shows clearly that a cooly can, at any time and on any day of his monthly service, give a valid notice of his intention to leave 'at the expiry of a month from the day of giving such notice.'"<sup>1</sup>

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The other question involved in the case is somewhat more difficult. The notice having been given on June 11, when did the calendar month expire? As was said by Brett L.J., in *Migotti v. Colville*,<sup>2</sup> a "calendar month" is a legal and technical term, and in computing time by calendar months, the time must be reckoned by looking at the calendar, and not by counting days. The space of time from a day in one month to the day numerically corresponding to that day in the following month is a calendar month. But in pursuance of the general rule with regard to computation of time as well as the positive enactment of section 9 (1) of the Interpretation Ordinance, 1901, the day "from" which the time runs must be excluded, and the day for the act to be done must be included. Thus, where a calendar month's notice of action was necessary, a notice given on April 28 was held to expire on May 28, and the action to have been properly commenced on May 29 (*Freeman v. Read* <sup>3</sup>). In that case Blackburn J. observed: "It has been well settled that the calendar month required by the Statute begins at midnight on the day on which the notice was given, and generally it ends at midnight of the day with the corresponding number of the next ensuing month in the calendar." Applying these principles to the present case, June 11, on which notice was given, being excluded, I conclude that the calendar month expired at midnight of July 11. The accused having left in the morning of July 11, he must be held to have left one day too soon. See also *Dunlop v. Coopan*.<sup>4</sup> Mr. J. S. Jayawardene, for the accused, however, referring to *Migotti v. Colville* (*supra*), contended that one more day must be excluded in the computation. That was a case in which the plaintiff had been convicted and sentenced to one calendar month's imprisonment on October 31, and to a further term of fourteen days, to commence at the expiration of the calendar month's imprisonment, and having been detained in prison till 9 A.M. on December 14, he brought the action for illegal detention from December 13 to December 14, his contention being that he was entitled to be released on December 13, but the Court held that the plaintiff's second period of imprisonment expired only on December 14, and affirmed the dismissal of his action. The passage on which Mr. Jayawardene relies is in the judgment of Bramwell L.J., who said, "one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month less one." This expression

<sup>1</sup> *Grenier* (1873) at page 42.

<sup>2</sup> 48 L. J. C. P. 695.

<sup>3</sup> (1863) 4 B. & S. 174.

<sup>4</sup> (1915) 18 N. L. R. 440.

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“less one” is, however, easily explainable. The rule as to the exclusion of the first day in a period of time is a general rule only, and may be altered by any particular circumstance governing a case, and an imprisonment case is an exceptional case of that kind. The first day of imprisonment must be counted in favour of the prisoner. That day is indivisible, and the prisoner is presumed to have been imprisoned the whole of that day, and consequently the calendar month would be computed from that day inclusive to the numerically corresponding day of the following month less one day. The decision in *Migotti v. Colville* does not support Mr. Jayawardene’s contention.

Although the questions of law only were referred to this Bench, counsel on both sides have agreed that we should at the same time deal with the appeal. For the reasons above given, the conviction should, I think, be affirmed, but, in my opinion, the sentence of imprisonment is inappropriate. The accused, in leaving on July 11, acted quite *bona fide*, and may well be excused for misinterpreting the law, which has required to be referred to two Judges of this Court for decision. I would set aside the sentence of imprisonment. If necessary, I would impose a nominal fine, but as I find from the record that the accused suffered four or five days’ imprisonment pending this appeal, I think there is no need to sentence him to any further punishment.

SCHNEIDER A.J.—

I agree with my brother De Sampayo in regard to the points of law discussed and decided in his judgment, and also as to the conviction and sentence of the appellant. But I desire to add that the decision of the law in this appeal does not touch my decision in the case referred to from the Police Court of Nuwara Eliya, because that decision was founded on the fact that the accused had quitted his master’s employ before the expiration of the month, whether the month was reckoned by broken periods or otherwise.

My remarks in that case, that the month should be reckoned as from the first to the last day of a month according to the calendar, are no more than *obiter dicta*, but they are obviously misleading. In making them I had overlooked the clear indications in section 3 and 4 of the Ordinance, that the broken period of one calendar month was to be reckoned with the broken period of another calendar month in calculating the month’s notice.

But for these indications, I would adhere to the opinion I had then expressed.

*Varied.*