

1947

Present : Canekeratne J.

MARIMUTTU, Appellant, and WRIGHT, Respondent.

1,285—M.C. Hatton, 8,831.

Criminal trespass—Master and servant—Misconduct of Indian estate labourer—Ground for dismissal without notice—Refusal of labourer to quit estate after dismissal—Estate Labour (Indian) Ordinance (Cap. 112), ss. 4, 5—Penal Code, ss. 427, 433.

Where the accused, an Indian estate labourer, refused to attend work in consequence of a strike declared by a political association and, though his services were properly dispensed with, continued to remain thereafter on the estate in disobedience of the order of the Superintendent and in circumstances disclosing intention to annoy—

Held, that the accused was guilty of the offence of criminal trespass.

A PPEAL aganist a conviction from the Magistrate's Court, Hatton.

N. E. Weerasooria, K.C. (with him *P. Malalgoda*), for the accused, appellant.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen, K.C.*), for the complainant, respondent.

Cur. adv. vult.

March 14, 1947. CANAKERATNE J.—

The appellant was, according to the evidence, an Indian immigrant labourer employed on Moray Group at the material time; usually he did work as a labourer at a daily wage, at times he was engaged to clear a particular patch of ground of weeds during a month. In June, 1946, he had to clear a patch, 5 acres in extent, of weeds. A political association, called the Ceylon Indian Congress, conceived itself to be justified in inducing the immigrant labourers in Dickoya District, where this estate was, to refrain from performing their contractual obligations. A strike, or according to the language of the witnesses "a hartal", was declared on June 17, 1946, not for the purpose of obtaining redress in a trade dispute, but with other objects; most of the labourers did not come for work for a number of days commencing from the 18th.

The Magistrate found that the Superintendent of the estate informed the appellant and others on the 17th that if labourers, who went on strike on the 18th, did not turn up for work on June 20, they will be taken to have refused to perform their work and will be given discharge tickets. The appellant did not present himself at the mustering place on the morning of June 20, and his name was struck off the estate register. His discharge ticket was written out the same day. The Superintendent offered to pay him and the other dismissed labourers on the 28th. The ticket was offered to him on July 10, 12, 16 and 24; he was also asked to leave the estate on July 12, 16, 22 and 24 but he refused to leave and remained in occupation of a line room to the annoyance, as alleged, of the Superintendent. Complaint was filed in Court about July 22.

One contention advanced before the Magistrate was that as a month's notice was not given, there was no termination of the contract. The findings of the Magistrate were that as there was misconduct on the part of the accused the contract was terminated lawfully and that by remaining on the estate after July 13 the accused was guilty of the offence with which he was charged. The Magistrate convicted the accused on September 19, 1946, and sentenced him to 3 months' rigorous imprisonment.

The appellant's counsel contends that there was no discontinuance of the services of the accused and that it cannot be said that he intended to annoy the Superintendent as he was not unlawfully on the estate; alternatively it is argued that he mistakenly assumed he was lawfully on the estate and is not guilty of any offence. He referred in this connection to sections 4 and 5 of Ch. 112 of the Legislative Enactments (Estate Labour, Indian, Ord.) and to the cases reported at page 291 of 6 *Ceylon Weekly Reporter* and page 245 of 4 *Ceylon Weekly Reporter*. Both these cases referred to a charge under section 11 of Ordinance No. 11 of 1865 which made misconduct, desertion, &c., by a servant or an estate labourer¹ a criminal offence. On the facts established in the former case there

¹ When this section was read with the section corresponding to sections 2 and 4 of Ch. 112.

was room to think that the accused *bona fide* thought that the matter of accounts had been sufficiently discussed and thus there was no necessity to go to the place specified by the Superintendent ; in latter case concerns an estate labourer who was attending to his ordinary work and at the same time was engaged in weeding a plot of ground. These cases would not advance the position of the accused in this case.

The duration of a contract of service is, as a general rule, fixed by the agreement of the parties or by usage ; where the period so fixed is a month, if the servant continues to serve the master after the expiry of the first month, the hiring will be considered to be continued by the silence of both parties till the end of the next month, the necessity being at the same time imposed on those who do not wish to continue the services after the expiry of the term of hiring of either giving timely notice or else of continuing liable in damages, for the parties contemplate the possible continuance of the hiring even though it was for a month¹ ; thus the engagement of domestic or menial servants is determinable by either party at any time on giving a month's notice² and by the master on paying or tendering a month's wage in lieu thereof³.

The next question relates to misconduct. Continued good conduct by the servant seems to be a condition, either express or implied, of the continuity of service, the breach of which entitles the master to end the employment. By a breach of this condition the servant acts in a manner incompatible with the due and faithful discharge of his duty. It is well settled that a master may dismiss his servant for many reasons, such as wilful disobedience of lawful commands, substantial negligence, misconduct, dishonesty and the like. Such matters may be said to constitute such a breach of duty by the servant as to preclude the further satisfactory continuance of the relationship and to justify the master in electing to treat the contract as repudiated by the servant.

The appellant had by June 17 cleared an extent of 3 acres of weeds : his conduct on the 20th made it clear that he would do no more weeding till the political body ordered him to attend to his work ; while he remained inactive the rank weeds would continue to grow. Thus he put it out of his power to complete the weeding of his patch by the end of the month.

It seems that the strike was called off about July 10, and the accused appeared on July 12 at the place used then as the office and applied to be re-employed on the estate but the Superintendent refused to accept his further services. The question in a case is whether the acts and conduct of a party evince an intention no longer to be bound by the contract⁴. A deliberate breach of a single provision of a contract may, under special circumstances and particularly if the provision be important, amount to a repudiation of the whole bargain (*Withers v. Reynold*⁵).

¹ cf. *Voet* 19-2-10
van Leeuwen Censura Forensis 1-4-22-6, 15.
cf. *Service Contracts Ord.* (Ch. 59) Sec. 3.

² As regards servants and Indian estate labourers, one month's previous notice of intention is necessary, Ch. 59, sec. 3 and Ch. 112, Sec. 5.

³ cf. Ch. 59, sec. 4 (i).

⁴ *General Billposting Co. v. Atkinson*, (1909) A.C. p. 118.

⁵ (1831) 2 Barn & Ad. 882, 109 Eng. Reports. 1370.

There was evidence upon which the Magistrate could properly find that the appellant had wrongfully repudiated his contractual obligation ; his services were properly dispensed with. No direct authority was cited to show that a master cannot dismiss an Indian estate labourer for misconduct.²

The intention has to be gathered from the circumstances of a case. The Magistrate considered the conduct of the accused, especially his original refusal to accept the discharge ticket, his offer to accept it if the Superintendent obtained it from the Labour Commissioner's Office, his subsequent refusal to take it when tendered by the Superintendent and his remaining in occupation of the line room in direct disobedience of the order of the Superintendent ; he drew the inference that the intention of the appellant was to cause annoyance to the complainant ; that inference seems to be a correct one.

I substitute for the sentence imposed by the Magistrate one of rigorous imprisonment for five weeks and a fine of Rs. 50 : in default of payment of the fine the accused will undergo one month's rigorous imprisonment.

Conviction affirmed.

Sentence altered.

