ALWIS *v.* CARPEN.

1896.
January 22 and February 4.

P. C., Kegalla, 14,561.

Master and servant—Cooly employed on breaking metal—Work by the job—Desertion.

A cooly employed by the Public Works Department to break metal, whose pay depended on the quantity of the metal he broke, is liable to punishment for desertion under Ordinance No. 11 of 1865.

Suppaiya v. Virappen Kangani et al. (*8 S. C. C. 53*) distinguished.

THE facts of the case are sufficiently stated in the judgment of Lawrie, J. It was argued on 22nd January, 1896.

Sampayo, for accused, appellant.

Cur. adv. vult.

4th February, 1896. LAWRIE, J.—

The accused is a road cooly under the Public Works Department. In October last he was employed in breaking road metal, and so long as he was so employed the amount of his pay depended on the quantity of metal he broke—so much a yard or cube. He left without notice. He was tried for desertion and sentenced to five weeks' imprisonment.

It is contended by the accused that while he was employed to break stones at so much a cube, he was not a monthly servant because he was performing work by the job.

The only decision of this Court to which I have been referred as analogous to this is that reported in *8 S. C. C. 53*, where Burnside, C.J., held that a cooly employed on a weeding contract was on job work, and that because that cooly was not paid a monthly wage at a daily rate, but was paid monthly at any daily wage he might earn, therefore he was free to work or not as he chose. If this case was on all fours with that, I could follow it. But I think it is not identical. I hold that this accused was bound by contract to serve his employer from month to month at the ordinary work at the usual wages of Public Works coolies, and that the District Engineer was bound to give him work and to pay him.

I am not of the opinion that a cooly is entitled to pay if he does not work. It is reasonable, and I think lawful, for employers of labour to have a check on their labourers, so that a fair day's pay shall not be given for a bad day's work.

Here there was plenty of work for the cooly to do, but it was solitary work, and the check to prevent the day being spent in

1896. *February 4.*

LAWRIE, J.

idleness was, that the day's pay depended on the man's activity. I do not think that that made it a job.

In this case the cooly did not contract to perform any defined job; he contracted to work on labour incident to the routine of Public Works employment.

I have said enough, however, to show that this is not altogether a clear case. The cooly may be excused if he thought he was not under the Ordinance.

I think he was rightly convicted, but I cannot punish him severely.

The law is somewhat obscure. I affirm the conviction, but I reduce the sentence to one week's simple imprisonment.