

1907.
June 14

Present: Mr. Justice Middleton.

NORTHWAY v. VAN CUYLENBERG.
P. C., Kandy, 9,317.

Quitting service without notice—Reasonable cause—Assault and abuse by mistress—Ordinance No. 16 of 1905, s. 2.

Where in a prosecution, under section 2 of Ordinance No. 16 of 1905, of a servant for quitting service without notice or reasonable cause, it appeared that the mistress had slapped and abused the servant and had told her that she would spoil her register book—

Held, that the servant had reasonable cause for quitting service and was not liable to be convicted under the above Ordinance.

THE accused, who was a nurse, was charged with quitting the service of the complainant without notice or reasonable cause under section 2 of Ordinance No. 16 of 1905, and was convicted by the Magistrate (T. B. Russel, Esq.) and sentenced to pay a fine of Rs. 25, or, in default, to undergo one month's rigorous imprisonment.

The accused appealed.

G. Koch, for accused, appellant.—The appeal is on the law. The accused was a nurse or governess, and so is not a domestic servant and punishable under Ordinance No. 11 of 1865. (MIDDLETON J.—Can you argue this, seeing that the accused has been registered under the Ordinance?) If the Court holds against me on this point, I will not press it further. The next point is that the accepted facts show that the accused had reasonable cause for leaving without

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notice. She has been slapped and abused, and it is submitted that any assault by a master is reasonable cause. The relation of master and servant is purely contractual. In return for a stated wage the servant agrees to perform certain duties, but cannot be intended to give the master the right, during the subsistence of the contract, of committing any assault. (*Encyclopædia of the Laws of England*, vol. 8, p. 236.) It has been held that an assault by a master is reasonable cause for quitting without notice, *Ramanathan* (1877), p. 129; 2 *Grenier* (1873), p. 85; P. C., Pañadure, No. 14.977;¹ *Kiribanda v. Nagamma*.² In *Winstone v. Linn*³ it was held that the rights of a master over his servant did not extend to personal correction.

Cur. adv. vult.

14th June, 1907. MIDDLETON J.—

In this case the appellant, who is a Burgher young woman occupying the position of a nurse and registered as a domestic servant under Ordinance No. 28 of 1871, was convicted under section 2 of Ordinance No. 16 of 1905 of quitting service without notice or reasonable cause and fined Rs. 25. For her it is argued that reasonable cause existed, inasmuch as she was at least on one occasion slapped by her mistress, abused in disgusting language, and told to go.

The circumstances under which the defendant left her mistress's service were not favourable, inasmuch as on the same night she quitted the bungalow, another servant disappeared, and with them their mistress's purse containing Rs. 15 and some blank cheques from a cheque book and also the appellant's pocket register. The appellant admits taking her register, which her mistress accuses her of stealing, saying it was at the bottom of her box. The fact that she must have searched through that box of the complainant to get the register, and that nothing is missing from it, apparently shows that the appellant took no advantage of her opportunity on that occasion, and together with the good character received from her last employer lead to the belief that the charge of stealing the purse and cheques which was preferred against her and dismissed was equally untrue, and that she merely took advantage of the other servant's departure to get him to carry her things for her. It is of course quite possible that the disappearance of the things alleged to be stolen may be accounted for by the fact that they were taken by the boy without the girl's knowledge.

Cases reported in 2 *Grenier* (1873), p. 85; *Ramanathan* (1877), p. 129; *Kiribanda v. Nagamma*;² *Winstone v. Linn*,³ and the

¹ S.C. Min., June 18, 1896.

² S.C. Min., September 15, 1898.

³ (1823) 1 B. & C. 460.

Encyclopædia of the Laws of England, vol. 8, p. 236, were referred to by Counsel for the appellant. In *Kiribanda v. Nagamma*¹ the defendant was given two cuts and told to go, and Lawrie J. held that in quitting service under these circumstances the cooly had reasonable cause.

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The complainant here admits slapping the accused on one occasion, abusing or scolding her, but not using the filthy language attributed to her, and says that she may have told accused she would spoil her book, and accuses her of stealing her register book, to which the accused had a right.

In my opinion the evidence shows that it was time, as Lawrie J. said, the accused left the complainant's service, and I hold that she had reasonable cause to do so without notice.

I therefore set aside the conviction and acquit the accused.

Appeal allowed: accused acquitted.
