

1905.
May 31.

BAINÉ v. NALLATAMBY.

P. C., Pussellawa, 35,884.

Tundu—Labour Ordinance, No. 11 of 1865—Effect of tundu—Renewal of contract of service—Quitting service without notice.

The signing of a *tundu* by an employer of coolies amounts only to an undertaking to discharge them from his employment on receipt of the sum of money specified in the *tundu*.

Opinion of Withers, J., in P.C., *Hatton*, 18,713, 31st January, 1896, questioned.

Query.—Whether the issuing of a *tundu* terminates the contract of service.

Where the wages due to a cooly were tendered on the 29th March and he returned them to the complainant desiring to continue in his service,—

Held, this was a renewal of service, and that the cooly could not quit service on the 4th April without having previously given a month's notice alleging that the wages of January had not been paid.

THE accused, a sub-kangani, was charged with quitting the service of his employer, Mr. A. L. Baines, on 5th April, 1905, without leave or reasonable cause, before the end of his term of service. The Police Magistrate (Mr. W. de Livera) found as follows:—

“ It is in evidence that the accused got a *tundu* from Mr. Baines for himself and his eight coolies who were working on Mr. Baines's estate. The accused brought a cheque for Rs. 279, the amount mentioned in the *tundu*, from one Mr. Vytilingam on 29th March, 1905. Mr. Baines accepted the cheque and gave the accused all the wages due to him and his coolies. The same evening the accused returned the wages and expressed a desire to remain on the estate. Mr. Baines agreed to his remaining. The name of the accused appears on the check-roll, and rice was issued to him.

“ The cheque of Vytilingam was sent by Mr. Baines to the bank, but was returned by the bank, payment having been stopped by Vytilingam.

“ I hold the accused entered into a new contract of hire and service, and on 5th April he could not leave on forthwith notice (on the plea that his wages had not been paid to him though

outstanding for over sixty days). The accused says he remained on the estate, as his wages were not paid in full.

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“ I hold his wages were paid in full ; there was nothing more due to him ; that the accused returned the wages and sought re-employment ; and that Mr. Baines re-employed him on 29th March, 1905. ”

The Magistrate sentenced the accused to one month's imprisonment.

The accused appealed.

Wadsworth, for accused, appellant.—The appeal is on points of law. (1) the superintendent gave the accused a *tundu* on the 29th March that on receipt of Rs. 279 the accused and his coolies would be free. A cheque was produced and was accepted by the superintendent. Mr. Justice Withers held that the issue of the *tundu* terminated the contract of service, or at least suspended it. (*P. C., Hatton, 18,713, Sup. Ct. Min., 31st January, 1896.*) The contract was determined on the 29th March and there is no proof that there was a new contract at any date. The mere fact that the name of the accused appeared in the check-roll, and that accused received advances of rice, would not create a new contract, nor would the fact that accused consented to stay on the estate. As Mr. Justice Withers held, there should be proof that the accused understood fully that there was a new contract.

(2) Even assuming that the contract was not terminated, the accused was at liberty to leave the estate on the 5th April, as at that time the wages earned in January had not been paid for sixty days. (Sections 6 and 7 of Ordinance No. 13 of 1889.) Mr. Baines paid the wages on the 29th March, and the accused returned the amount and Mr. Baines accepted it back. This shows that the wages were due when accused left the estate.

Van Langenberg, for respondent, not called upon.

Cur. Adv. vult.

31st May, 1905. LAYARD, C.J.—

It is argued by appellant's counsel that the issuing of the *tundu* by Mr. Baines in this case terminated the accused's (appellant's) service.

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LAYARD, C.J

I understand a *tundu* only to amount to an undertaking to discharge a labourer or labourers from service on the employer receiving a certain sum of money mentioned in the *tundu*.

A judgment was cited to me in which Mr. Justice Withers appears to have thought otherwise. The issue of a *tundu* by an employer, in his opinion, amounted to a suspension of the contract of service, whereby the labourer's liability under the penal provisions of our law ceases on receipt of the *tundu*. I am unable to appreciate how he arrives at that conclusion, as it appears to me the signing of the *tundu* by the employer amounts only to an undertaking to discharge a labourer from his employment on receipt of the sum of money specified in the *tundu*.

It is quite unnecessary for me to decide that point in this appeal, because there is ample evidence in this case to establish that even if the service was terminated it was renewed.

The point is then raised by appellant's counsel that the January wages had not been paid on the 4th April, the date of the alleged unlawful quitting of service, and, consequently, as sixty days had elapsed from the expiration of the month of January, the appellant is exempt from punishment under section 6 of Ordinance No. 13 of 1889.

The wages due to the 29th March were tendered to the appellant on that day, and he returned them to the complainant. Can he then be allowed on the 4th April to quit the employer's service without giving a month's notice alleging that the wages for January had not been paid? I think not; otherwise all that a labourer would have to do would be to refuse wages or to return them, as in this case, to his employer when tendered within the sixty days rather than to wait until the sixty days elapsed and walk off the employer's estate without giving the statutory notice. The 6th section above-mentioned refers to the case in which there has been a default on the part of the employer to pay the wages and not to the case in which he pays the wages, and the labourer of his own free will, as in this case, repays them to the employer.

I have not forgotten the appellant's statement of his reason for returning the wages, viz., that they were not paid to him in full, and that more was due to him. There is, however, no evidence to show any more was actually due to him; the materials on the record show that according to the check-roll and estate books he was paid in full. The appellant nowhere discloses how much more was due to him or where the accounts are wrong. There is only his bald statement that more was due to him.

The appeal is dismissed and conviction affirmed.