1920.

Present : Bertram C.J.

SMALL *v.* KARNELIS.

662—P. C. Ratnapura, 15,801.

Labour Ordinance, No. 11 of 1865, s. 19—Employment of cooly belonging to another estate for one day.

To establish a breach of section 19 of Ordinance No. 11 of 1865, it is not necessary to show that a person who employed a cooly, who is under a contract to serve another, did so with the intention of depriving the other employer permanently of the cooly; even employment for a day was held to be an offence.

THE facts appear sufficiently from the judgment.

Ælian Pereira, for the appellant.

Bartholomeusz, for the respondent.

September 10, 1920. BERTRAM C.J.—

A point of law was raised in this case. Two coolies, who belong to one estate, were found employed for one day on a neighbouring estate upon what was the ordinary work of that estate, namely cinchona barking. The Magistrate has fined the person who was in charge of the estate on that day Rs. 100, or, in default, two months rigorous imprisonment. For the appellant my attention was directed to the case of *Maddock v. Meydeen*,[1] where Wendt J. suggested that, in order to support a conviction under section 19 for taking a labourer into service, it was necessary to show an intention to deprive the neighbouring employer permanently of the servant. That was an *obiter dictum*. It appears on a careful examination of Wendt J.'s judgment in that case that what he intended to say was that the taking of a man into one's employment on fitful and isolated occasions for odd jobs would not necessarily amount to a taking of a man into one's service within the meaning of that section. I think that the law has been more exactly explained by Grenier J. in *Taylor v. Carlina Hamy*,[2] and it seems to me that the facts of this case come rather within the principles there enunciated. At the same time, I think that the penalty imposed must be reduced. The fine is reduced to Rs. 50, or, in default, to one month's simple imprisonment.

Sentence varied.

[1] *(1917) 1 Leader L. R. 54.*

[2] *(1910) 5 Bal., Notes of Cases 25.*