

Present: Mr. Justice Middleton.

1906.  
October 24.

RAMASAMY KANGANY v. RAMEN.

P. C., Kegalle, 5,255.

*Desertion from one estate—Employment in another estate—Going back to original estate to avoid punishment—Desertion—Reasonable cause—Criminal responsibility—Ordinance No. 11 of 1865, s. 11.*

R, an Indian cooly, deserted from Allagolla estate and took service in Knavesmire estate. On being prosecuted by the Superintendent of Allagolla for an offence under section 11 of Ordinance No. 11 of 1865, he consented to go back to Allagolla to avoid being sent to jail. He was accordingly discharged by the Magistrate and went back to Allagolla. He was thereupon charged by the Superintendent of Knavesmire with quitting service without leave or reasonable cause under section 11 of Ordinance No. 11 of 1865, and was convicted.

Held, that, as the accused returned to Allagolla through fear of being punished by the Magistrate, he had reasonable cause for not returning to Knavesmire, and that he was therefore not liable to be punished for quitting the service of the Superintendent of Knavesmire estate under section 11 of Ordinance No. 11 of 1865, and that the conviction was wrong.

THE accused was charged with, and convicted of, an offence under section 11 of Ordinance No. 11 of 1865 in that "he, being an agricultural labourer under a verbal contract of service for the period of one month, renewable from month to month, quitted the service of his employer Mr. Hawkins, Superintendent of Knavesmire estate, without leave or reasonable cause."

The accused, who was an Indian cooly, was employed in Allagolla estate. He gave notice and quitted the estate on 11th March, 1906,

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The notice was found to be insufficient, and he was charged by Mr. A. F. Murray, the Superintendent of Allagolla, with quitting service under section 11 of Ordinance No. 11 of 1865, and was arrested on a warrant. When produced before the Magistrate the accused consented to go back to Allagolla; on that understanding he was discharged by the Magistrate, and he accordingly went back to Allagolla.

The accused was thereupon charged by Mr. E. Hawkins, the Superintendent of Knavesmire, with quitting his service under section 11 of Ordinance No. 11 of 1865. Mr. Hawkins deposed that the accused came with a tundu dated 22nd April, 1906, from Mr. Hermann; that he wrote to Mr. Hermann and paid the tundu and employed the accused from 7th July; and that the accused left his service on 15th July, without notice or reasonable cause.

The acting Police Magistrate (J. R. Molligoda, Esq.) convicted the accused and fined him Rs. 50.

The accused appealed.

*H. A. Jayewardene*, for the appellant.—The contract of service with Mr. Hawkins is bad, as the previous contract with Mr. Murray had not been legally determined and was still subsisting, *Dunbar v. Robson* (1). As the accused was obliged to go back to Allagolla to avoid being convicted and sent to jail, he cannot be said to have wilfully deserted Knavesmire; he had sufficient cause for quitting service (see Vanderstraaten's Reports (1871), p. 178).

The accused left Allagolla in the *bona fide* belief that he was entitled to leave, but the notice was held to be insufficient and he was held liable to conviction.

*Bawa*, for the respondent.—The accused deliberately entered into a contract with Knavesmire estate, and he must be held responsible for his own act. He cannot be allowed to take advantage of his own wrong and thus avoid criminal responsibility. According to the contention on behalf of the accused, if a cooly once quits an estate without leave or reasonable cause, he is for ever thereafter debarred from entering into a valid contract with any other estate. The doctrine laid down in *Dunbar v. Robson* (1) cannot be carried to that extent. Besides, that case was one by one Superintendent against another for recovery of double advances under section 20 of Ordinance No. 13 of 1899; the criminal liability of a cooly who enters into two contracts of service was not discussed or decided there.

*Cur. adv. vult.*

(1) (1905) 5 *Tambayah* 58.

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This case has been considerably delayed by a search for the record in P. C. 5,972 of Kandy, which apparently was attached to the record in the present case all the time.

The appeal is from a conviction under section 11 of Ordinance No. 11 of 1865 for quitting service without leave or reasonable cause on the grounds that the accused, a cooly, (a) was not in the service of the complainant at the time when he is said to have left it; (b) that if he was, he left it owing to reasonable cause.

The facts appear to be that the accused had been a cooly on Allagolla estate, which he left on 11th March, 1906, after apparently giving a defective notice. He appears then to have gone subsequently to Knavesmire estate and taken service there as a monthly labourer upon a tundu from another estate on or about 22nd April and began work on the 2nd May. On the 15th July the accused left Knavesmire without the actual leave of the Superintendent, but the accused says, and it appears to be true, that he merely went to Kandy to answer a charge of assault made against him in the Police Court there. At Kandy he was arrested on a warrant charging him with desertion from Allagolla, and to avoid being sent to jail he says he agreed to go back to Allagolla and the Magistrate discharged him, upon which he returned to service at Allagolla.

I think the Full Court case relied upon by counsel for the accused (1) must bind my decision in this case, which is practically on all fours with that. There Chief Justice Creasy is reported to have said: "If the defendants returned to Valikande through a well-grounded belief that they would be punished if they did not do so, then such a return cannot be treated as a desertion from Medagoda."

Here I have no doubt from the record in P. C., Kandy, No. 5,972, that the accused agreed to go back to Allagolla because he was afraid of being punished by the Magistrate, who would undoubtedly have done so if he had not consented, whereupon he was warned by the Magistrate and discharged. It must be said, therefore, that he had reasonable cause for not returning to Knavesmire, which will absolve him from criminal responsibility.

The fact that the reasonable cause arises as a remote and possible consequence of his first offence does not appear to me, without authority for saying so, to affect the question.

The accused is charged with and found guilty of quitting the service of his employer, and therefore his absenting himself without leave for the day from the estate, if he did so, does not fall within

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Under these circumstances I must therefore set aside the conviction of the accused and acquit him. It will not be necessary, therefore, to consider the question of an alleged illegal incapacity to serve two masters.

