

1904.

May 4.

RAMSAY v. PATHUMMA.

*P. C., Kandy, 27,764.*

*Labour Ordinance, No. 11 of 1865, s. 11—Ordinance No. 13 of 1889, s. 5—  
Applicability to Moor woman—Quitting service without notice.*

A Moor woman, whose name was on the check-roll of an estate and who received advances of rice and wages, is not liable to be punished, as an Indian cooly, for quitting service, under section 11 of Ordinance No. 11 of 1865. <sup>e</sup>

THE accused was prosecuted for having quitted the service of Mr. Ramsay, the superintendent of Bopitiya estate, in breach of section 11 of Ordinance No. 11 of 1865. On proof that

the accused was a Moor woman, the Magistrate held that she was not bound by Ordinance No. 11 of 1865 and acquitted the accused.

1904.  
May 4.

The complainant appealed.

*Van Langenberg*, for appellant.

4th May, 1904. SAMPAYO, A.J.—

The accused Pathumma, who was a cooly woman employed in Bopitiya estate, was charged with having on the 15th July, 1903, quitted the service of the complainant, Mr. Ramsay, the superintendent of Bopitiya estate, in breach of section 11' of the Ordinance No. 11 of 1865. There was no express contract of service proved, but the complainant relied on the presumption created by section 5 of Ordinance No. 13 of 1889. It is proved that the accused's name was on the check-roll, that she received wages up to April and for part of May, and also received advance of rice. But it is also proved that the accused is a Moor by nationality and religion, though the evidence is not very satisfactory as to whether she came to Ceylon from India or whether she was a native of Ceylon. The woman herself said she was born at Atturugala, apparently some place in Ceylon. An extract from the birth register of Kumbalgam palata, Kegalla District, was produced showing that one Pathumma was born on 7th September, 1877, of Moorish parents, who then resided at Mandirikatuwabadda in Alpitiya. But there was no evidence of identity, nor has the Magistrate pronounced any opinion on the evidence as to the accused's place of birth, or as to her having come from India. She, however, has admittedly been in Ceylon for a great many years, and was married to a Moorman, who was a man of Gampola and died there last year. The Magistrate, following the decision in *Arumugam Cangany v. Saibo* (3 *Browne*, 110), acquitted the accused, as according to that decision she was not an Indian cooly, and the presumption created by the above Ordinance, No. 13 of 1889 as to the contract of service did not apply to her. Mr. Van Langenberg, for the complainant, appellant, argued the general question, and also sought to distinguish this case from the case cited on the ground that here there was evidence, which was absent in that case, that the accused came from India. Are Moormen, though they come from India, commonly known in Ceylon as Indian coolies? I think not. There is a large number of Moors from India who are employed as coolies in the wharf and stores in Colombo and elsewhere, but no one thinks of calling them Indian coolies. They are commonly known as "Coast Moormen".

1904. the case cited, says, " Moorman is a term that is well understood  
May 4. in Ceylon, and as understood describes a class of persons quite  
SAMPAYO, distinct from those commonly known as Indian coolies ". I do not  
A.J. read this decision as proceeding upon any distinction as to the  
place of origin of the person charged. In the course of the  
judgment the remark is made that there was no proof in that case  
that the kangany or his gang answered to the description of  
Indian coolies. But in this case it is interesting to notice that the  
Kangany Pitche, under whom the accused worked, is a Moorman,  
and so apparently are some at least of his other coolies. The  
Magistrate, who would have held that the accused was an Indian  
cooly but for the above authority, says that a very large number  
of Moormen are now employed as labourers on estates. That may  
be so, but if such was the case when the Ordinance was passed the  
Legislature would have used more definite terms if Moormen  
were intended to be included; and if such was not the case then,  
there is the more reason for saying that none other than the  
ordinary Tamil coolies were contemplated at all. However that  
may be, I follow the above decision, with which I may say I agree,  
and I affirm the judgment of acquittal.

---