

MACKENZIE v. LEDA.

P. C., Avisavélla, 21,053.

1896.  
October 26  
and  
November 10.

*Master and servant—Labourer under written contract of service—Quitting service—Ordinance No. 13 of 1889, s. 7.*

The provisions of section 7\* of Ordinance No. 13 of 1889 apply not only to monthly labourers as defined by that Ordinance, but to those who, under written agreement, have contracted to serve for a longer time.

THE facts of the case appear in the judgment.

*Van Langenberg*, for appellant.

*Drieberg*, for respondent.

10th November, 1896. LAWRIE, J.—

The accused was a kangany who had entered into a written contract to serve the superintendent of Erracht estate for a term of three years from 20th December, 1895, in consideration of an advance of money made by the superintendent, and it was specially agreed in that written contract that one month or more pay in every three months should be deducted in lieu of the advance. On the 1st August the accused quitted service without previous warning. When he was prosecuted under section 11 of Ordinance No. 11 of 1865, he pleaded that he had reasonable cause for quitting service, because the monthly wages earned by him in May had not been paid before the end of July. That this was the fact was proved by the superintendent, who said three months' wages were due to the accused at the time he left the estate, and in answer to the Magistrate the superintendent said the whole of May, June, and July wages were due to the accused when he left the estate. Now it is quite clear that if the accused had been a monthly labourer on a verbal contract he would not have been liable to punishment on leaving the estate when more than sixty days had elapsed from the expiry of a month during which the wages were earned. The Magistrate acquitted the accused. Against that acquittal the Attorney-General has appealed. In appeal it was urged that section 7 of Ordinance No. 13 of 1889 does not apply

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\* Section 7 of Ordinance No. 13 of 1889 :—No labourer shall be liable to punishment for neglecting or refusing to work, or for quitting service without leave or reasonable cause, or for disobedience or for neglect of duty, if at the time of such alleged offence the monthly wages earned by him shall not have been paid in full within the period specified in sub-section 1 of section 6.

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to servants under written contract. I am unable to read the Ordinance in that way. It is I think plain that the 11th section of the principal Ordinance applies equally to monthly servants on verbal contracts and to servants engaged on written contracts for periods longer than a month; the latter equally with the former are punishable if they quit the service of their employer without leave or reasonable cause before the end of his term of service or previous warning as required by the 3rd clause of that Ordinance, or for such longer period as may be specially stipulated in his contract. Then the Ordinance No. 13 of 1889, section 4, provides "that all the provisions—pains, penalties, &c.—enacted in the principal Ordinance, so far as they are applicable to monthly servants or their employers, shall extend to labourers under the Ordinance No. 13 of 1889—every act or default . . . . . which is made punishable by the principal Ordinance if made or committed in respect of or in relation to monthly servants or their employers shall in the like manner be punishable if done or committed in respect of or in relation to labourers and employers under this Ordinance." It is enacted by the 7th section of the Ordinance of 1889, "that no labourer shall be liable to punishment for quitting service if at the time of such alleged offence the monthly wages earned by him shall not have been paid in full within sixty days from the expiration of the month during which such wages have been earned." The definition of labourer in this Ordinance is, every labourer and kangany (commonly known as Indian coolies) employed on an estate in other than domestic labour." I read these enactments as making one law for the punishment of Indian coolies quitting service, applicable alike to monthly labourers and to those who have contracted to serve for a longer time. The punishment is the same, and the defences pleadable are the same. For these reasons I am of opinion that the accused was rightly acquitted, and I affirm the order.