1932 *Present:* **Macdonell C.J., Garvin S.P.J., and Dalton J.**

THE ATTORNEY-GENERAL *v.* URQUHART.

372—P. C. Panadure, 12,113.

Minimum wage—Minimum rate for working day of eight hours—Estate Wages Board—Power to fix minimum wage—Employer's contract for working day of six hours—Proportional rate of pay—Rate less favourable than minimum rate—Indian Labour Ordinance, No. 27 of 1927, ss. 8 (1) and 11 (1).

Where, under the Indian Labour Ordinance, No. 27 of 1927, the Estate Wages Board has fixed a minimum rate of wages for a working day of eight hours to be paid for time work, the accused, the Superintendent of an estate, engaged labourers on a working day of six hours, to be paid at a proportional rate, computed according to the minimum rate of wages fixed.

Held, (by Macdonell C.J. and Dalton J., Garvin S.P.J. dissenting), that the accused had paid the labourer at a rate of wages less favourable than the minimum rate of wages fixed and that he had offended against the provisions of section 11 (1) of the Ordinance.

Per GARVIN S.P.J.—There is no provision in the Ordinance which requires payment at a higher rate for time work, whenever, by the terms of the agreement, the agreed hours per day are less than eight hours; nor is it possible to interpret the rate of 50 cents per working day of eight hours fixed by the Estate Wages Board as meaning a wage of 50 cents for every working day of eight hours or less.

CASE referred by Garvin S.P.J. to a Bench of three Judges.

The accused was charged with having committed an offence under section 11 (1) of the Indian Labour Ordinance, No. 27 of 1927, in that, being the Superintendent of Perth estate, he paid three labourers, to whom the minimum rate of wages fixed under Chapter I. of the Ordinance was applicable, at a rate of wages less favourable to them than the prescribed minimum rate of wages applicable to each of them. In Notification No. 23, published in the *Government Gazette,* the rates fixed by the Estate Wages Board and approved by the Governor were set out as follows: "On all estates the rate fixed is the minimum rate to be paid for a working day of nine hours (including time not exceeding one hour taken for midday meal) . . . . The following minimum rate of wages have been fixed for the areas specified: Men 50 cents, women 40 cents." Since May, 1931, the working day, in the case of Perth estate, was limited to six hours for which the labourers were paid a wage computed at the rate of six-eighths of 50 cents or six-eighths of 40 cents according as the labourer was an adult male or female.

The defence to the charge was that the wages paid, worked out per hour, amounted to the same or a little more than the amount per hour computed at the minimum rate fixed by the Estate Wages Board and could not be said to be a less favourable rate.

The learned Police Magistrate upheld the defence and acquitted the accused.

Illangakoon, Acting S.-G. (with him *Basnayake, C.C.*), for Crown, appellant —This is an appeal from an acquittal in a prosecution under section 11 (1) of Ordinance No. 27 of 1927. Whether a labourer works for eight hours or less a day the minimum daily wage fixed under the Ordinance must be paid. The Police Magistrate has held that the payment should be according to the time taken in the work at a rate proportional to the rate fixed for an eight-hour working day. The Ordinance contemplates payment for time work and work other than time work. Time work is work paid for on the basis of an eight-hour day. Beyond this period is reckoned as overtime. The Ordinance has to be read and construed with the previous Labour Ordinances, Nos. 11 of 1865, 13 of 1889, and 1 of 1923. The labourers were engaged on a monthly verbal contract of service. Section 4 of Ordinance No. 11 of 1865 draws a distinction between servants paid at daily and monthly rates. The wages have to be computed according to the number of days the servant was able and willing to work (*Colville v. Ramasamy*[1]). The employer was bound to give the labourer six days' work per week and consequently six days' wages. Section 6 (2) of Ordinance No. 13 of 1889 is the Magna Charta of the Indian labourer. The labourer may be engaged to work for a few hours each day but the employer is bound to pay the full wage for an eight-hour working day as laid down in the Ordinance. An employer cannot split up the minimum wage fixed for the working day. No question of time enters into a case where a labourer is engaged on piecework. The unit of the eight-hour day cannot be subdivided. The labourer is provided with a minimum pay for each day. There is no difference between minimum rate of wages and minimum wage. The Estate Wages Boards could merely fix minimum rates of wages with reference to the unit of time, namely, an eight-hour day contemplated by the Ordinance. (*Seabrook & Sons, Ltd. v. Jones*[2].) Under the corresponding English Act, viz., The Agricultural Wages Regulation Act, 1924, committees are empowered to fix rates varying according to many other factors, *e.g.*, age, &c. Section 8 (2) of Ordinance No. 27 of 1927 empowers Estates Wages Boards to fix rates varying according to the class of labour, locality, age, and sex. The unit of money may therefore vary according to these reasons. (Cf. *Wage Systems in Industry : Encyclopoedia Britannica (14th Edition)*, p. 275.) *Jones v. Harris*[3] (variation due to age of worker). There is no distinction drawn between the minimum rates of wages and the minimum wages. (Cf. *Encyclopoedia Britannica (14th Edition)*, *Vol. XV., p. 541, on Minimum Wage.*)

The principle underlying the fixing of minimum rates of wages is to keep the labourer from starvation and enable him to maintain a reasonable standard of living. The whole object of the Ordinance is to fix a minimum wage. The Estates Wages Boards have no power to fix rates for a period exceeding eight hours. The minimum overtime time rate is prescribed by section 3. In contracts between master and servant it is true parties are ordinarily free to contract, but there are certain statutory limitations. (Ball's *Law of Master and Servant, pp. 73 and 74.*) A Court should try and interpret provisions of an Ordinance, though badly drafted, according to the accepted canons of interpretation.

[1] *2 S. C. C. 94.* [2] *(1929) 1 K. B. 335.*

[3] *(1927) 1 K. B. 425 at 431.*

H. V. Perera (with him *G. P. J. Kurukulasuriya*), for accused, respondent. —The Court must be guided by what the Legislature has said, not by what was in its mind when the Ordinance was passed. The Legislature has provided a minimum time rate, viz., a sum of money for which the labourer sells his labour: cf. section 3 (1) of Ordinance No. 27 of 1927. The actual time the labourer gives in service to the employer is what counts. Any extra work is another contract which the labourer enters into voluntarily. Within the terms of the contract of service the labourer is entitled to be paid. Section 3 of Ordinance No. 11 of 1865, merely says that every verbal contract shall be deemed to be renewable monthly. These sections have left untouched the freedom of contract as between master and servant. The working day may be of any length as agreed upon between the parties. There is no provision in the Ordinance that there shall be a *minimum* working day.

The Ordinance of 1889 applies only to Indian labour. Section 5 creates a presumption of a monthly contract renewable from month to month in certain circumstances. The Estate Wages Board can only fix a minimum rate for time work. A minimum wage is necessarily a rate for time work: if there is overtime work, then the labourer is paid so much more: if less, so much less. There is no mention in the Ordinance of a maximum or a minimum day. The Estate Wages Board has fixed a rate of payment depending on hours of actual work. Where parties have not agreed on the working day then the customary working day may be brought in to supplement the contract. Section 6 (1) of Ordinance No. 13 of 1889, is amended by section 18 of Ordinance No. 27 of 1927. Time work is work paid for as agreed upon between the parties.

The Estate Wages Board cannot fix a minimum day. In section 11 the rate means a ratio as express reference is made to time work. *Board of Trade v. Roberts*[1], *France v. Coombes & Co.*[2]. The time rate enables an employer to find out how much is payable for work done. Overtime rate comes in only when the work exceeds eight hours. Section 3 (2) provides for overtime rate. In *Hampton v. Smith*[3] it was held that a man cannot be charged until he has paid the employee money due to him. *Davis v. Glamorgan Coal Co., Ltd.*[4]. The Estate Wages Board can fix a minimum rate only for time work unlike the Wages Boards in England. The Estate Wages Board has no right to fix a minimum limit of time. The rate may vary according to the number of working hours. The English Act gives the Wages Boards much wider powers than in Ceylon. If the rate is fixed for an eight-hour working day then by calculation you can find out the rate for a six-hour working day. Our Ordinance mentions three classes of workers; with regard to each class, the Estate Wages Board can fix one rate only for time work. In the absence of express power as given by the English Act, you cannot distinguish between workers in the same category only. The Estate Wages Board in fixing differing rates have acted *ultra vires*. The Board has no power to fix varying rates. If the Board has no right to fix

[1] *(1916) 85 L. J. K. B. 79.*
[2] *(1928) 2 K. B. 85.*
[3] *(1920) 89 L. J. K. B. 413.*
[4] *(1914) 1 K. B. 674.*

varying rate for different contracts, it acted *ultra vires*. If the Ordinance is badly drafted, the Court must hold against the penal provisions of Ordinance and in favour of the accused, *R. v. Chapman*[1].

November 11, 1932. MACDONELL C.J.—

In this case the accused was charged with the following offence: "that he being an employer of Indian labour on Perth estate, Horana, within the jurisdiction of this Court, did in September, 1931, pay certain labourers employed on the said estate, to wit: Thengaperumal, Vyapury, Marimuttu, Mayandi, and Sangaran, to whom a minimum rate of wages fixed under Chapter I. of Ordinance No. 27 of 1927, was applicable, at a rate of wages less favourable to them than the minimum rate, and thereby committed an offence punishable under section 11 (1) of Ordinance No. 27 of 1927". The Magistrate acquitted the accused and from this acquittal the Attorney-General appeals. The facts were these.

The accused was at all material times Acting Superintendent of Perth estate, one which employs Indian labourers and is situate in the Kalutara District to which Notification No. 23 issued under the Indian Labour Ordinance, No. 27 of 1927, and published in *Government Gzaette* No. 7,676 of November 30, 1928, is applicable. The estate then was bound to pay its labourers according to that Notification, the wording and effect of which will be considered later. For the present it is enough to say that the minimum rate of wages applicable to estates in Kalutara District is 50 cents for men, 40 cents for women, and 30 cents for children. The extract from the check roll for the month of September, 1931, shows that Thangaperumal worked for twenty-four days and received Rs. 9.70 and Mayandi worked for twenty-five days and reveived Rs. 9.37, and Nallamma worked twenty-three days and received Rs. 6.80. In the case of Thangaperumal and Mayandi the average daily pay each received is about 40 cents and 37½ cents, respectively. The system of working on this estate and of payment there seems to be this. Each labourer is given 133 trees for "tapping task", which includes tapping the trees and weeding the block where they grow, work generally starting at 6 A.M. The labourers are expected to finish this work in six hours, that is by 12 noon. A labourer will take about one and a half to two hours in cutting the barks of the 133 trees and the latex will be ready for collection at about 10 A.M. During the two hours interval between 8 and 10 A.M. the labourer is expected to do weeding work. After 10 A.M. he starts collecting the latex and takes it to the Factory and thus finishes his work by 12 noon. Though expected to do weeding work between 8 and 10 A.M. in experience it was found impracticable to get the work done at these hours, hence the labourer is allowed the option of doing that work in the afternoon. The weeding work is done on four days out of the seven in a week and during those four days the labourer actually works twenty-four hours in all, and during the remaining three days, twelve hours in all. This system is described as a monthly contract with these labourers to do work as above for six hours per diem. It does not seem to be the case that they always work six hours each day no more and no less, but it seems agreed that they did work thirty-six hours

[1] *(1931) 100 L. J. K. B. 562.*

in the week and were supposed to be paid three-fourths of the amounts mentioned in the Notification, *i.e.*, three-fourths of 50 cents for men, three-fourths of 40 cents for women. (The finding of the Magistrate on the facts was not very satisfactory but it was accepted by the appellant.)

It must here be stated that by the confession of the prosecution itself this estate was a model estate against which there were no complaints as to the way it treated its labourers, and both the Acting Superintendent—the nominal accused in this matter—and the Superintendent for whom he was acting, are stated to be men entirely competent in their duties with regard to their labourers and likewise thoroughly considerate of them and their interests. If one of them happens to have been made the nominal accused, this has been merely for the purposes of testing the question—has their estate, and others following a similar system, taken a correct view of the law or has it not? Whichever way the case results, no slur will have been cast on either of them or on the estate for which they work.

The payment of Indian labourers is now fixed by Estate Boards appointed by the Governor under section 6 of Ordinance No. 27 of 1927, and an Estate Board when appointed "shall from time to time as occasion may require fix minimum rates of wages for time work performed on estates within its jurisdiction", section 8 (1). Section 10 (1) provides that "A minimum rate of wages or a cancellation or variation thereof shall not take effect until it has been approved by the Governor in Executive Council and published in the *Gazette*. When so published the minimum rate or the cancellation or variation thereof shall be binding on all employers". The particular Notification No. 23, reads as follows:—"On all Estates the rate fixed is the minimum rate to be paid for a working day of nine hours (including time not exceeding one hour taken for the midday meal). . . . The following minimum rates of wages have been fixed for the areas specified, Kalutara Revenue District: Men 50 cents, women 40 cents".

The prosecution contend that this Notification means that a male labourer should be paid 50 cents for each day he works or is able and willing to work, such day not to exceed nine hours including one hour for the midday meal, and that a sum of 50 cents, no less, is what he is to receive for each such day, also that "minimum rates of wages" mean "minimum wage".

The defence contends that the law nowhere says that the employer shall pay the labourer so much per diem or that the labourer's pay is to be reckoned at so much per diem. Rate, in the phrase, rate of wages, means ratio. The Notification has fixed a rate, that is a ratio, and so long as the employer does not pay a labourer less than that ratio, he is not breaking the law and can lawfully make what agreement with the labourer he pleases. The contract made by the respondent was, it is argued, an agreement that the labourer should for the six hours he worked, receive pay at the rate or ratio of 50 cents for eight hours, then that agreement did not transgress the Notification. It was further argued that if what the Notification meant was that the labourer was to receive 50 cents for each day he was working, or able and willing to work, even though he worked for less than the eight working hours which were to

make up a day, then the Notification would be *ultra vires* since the law only allows Estate Boards to fix a minimum rate of wages for time work and this would not be time work. It is necessary to examine the law on the subject.

There are four Ordinances affecting it, the first being Ordinance No. 11 of 1865. The material clauses of Ordinance No. 11 of 1865 are the following. Section 3 enacts that "a verbal contract for the hire of any servant except for work usually performed by the day or by the job or by the journey, shall (unless otherwise expressly stipulated, and notwithstanding that the wages under such contract shall be payable at a daily rate), be deemed and taken in law to be a contract of service for the period of one month, and to be renewable from month to month", and this provision is substantially re-enacted in the Indian Labour Ordinance, No. 13 of 1889, section 5, with the addition, that if the labourer's name is borne on the check roll of an estate—that is, the record showing the work done by labourers under a monthly contract—then again the presumption of a monthly hiring arises. As the Indian labourers in the present case were certainly on the check roll of an estate, then their contract was a monthly one. It is important to notice that the law contemplates wages being payable at a daily rate on a monthly contract. Section 4 of Ordinance No. 11 of 1865 provides for the wages of such monthly labourer being paid monthly and in case of a broken period of service "to the day the service is determined", and continues, "and such wages . . . . shall be computed according to the number of days on which such servant shall have been able and willing to work; or if payable at a monthly rate, shall be in proportion to the number of days on which he shall have been so able and willing as aforesaid". A sub-section added by Ordinance No. 27 of 1927, to this section 4 of Ordinance No. 11 of 1865, and dealing with dismissal for misconduct of a servant employed for a period of time longer than one day, enables the employer "to decline to pay any wages claimed . . . . subsequent to the last preceding period for which such servant was employed". Section 13 of the Ordinance No. 11 of 1865 enables a Court to make a deduction from the wages due to any servant "for such days or time as he shall have been . . . . without the consent of his employer absent from . . . . his work", and presumably this means that if he has been so absent for a portion of a day, the Court could, if so minded, deduct part of his pay for that day. Section 15 of the same Ordinance penalizes any false assertion that a servant has been in employ "for any period of time whatsoever . . . . other than that for which such servant . . . . shall have been so employed". But section 13 is the only place in these Statutes which can possibly contemplate pay for less than a day, and as the length of a day is nowhere defined in them, it seems doubtful whether this idea was present to the legislature when it used the phrases "such days or time," section 13, and "any period of time", section 15, since in this connection section 5 of the Ordinance has to be considered, "every verbal contract for the hire, according to time, of any Journeyman Artificer . . . . shall be deemed to be for the hire of such Artificer for one day, and no longer". This might be considered as contemplating the possibility of work for a time less than a day but section 6 which enables the Artificer to recover

his wages "according to the full period of time" he was serving and section 7 which prevents a contract being made with such for longer than a month unless entered into before a Magistrate, shows that what the legislature was considering in these sections was the protection of the workman from being bound by contract for too long a time, and not any period of work less than a day. That was clearly what it was aiming at. Ordinance No. 13 of 1889, was an amending law regulating the position of Indian labourers. Its section 5 is mainly a repetition of section 4 of Ordinance No. 11 of 1865, as has been said, and the only other section in it material to the present case is section 6. "Where wages are payable at a daily rate, the monthly wages shall be computed according to the number of days on which the labourer was able and willing to work and actually demanded employment, whether the employer was or was not able to provide him with work. Provided that an employer shall not be bound to provide for any labourer more than six days' work in the week." Ordinance No. 1 of 1923, was a further amending law which defined an Indian Immigrant labourer as one who comes to do unskilled work either "under an agreement" or "assisted to come otherwise than by a relative" and classifies unskilled work to include that of a "kangany, sub-kangany or labourer".

The effect of the Labour Ordinances prior to 1927, so far as they are material to the present matter, seems to be this. They provide that normally the contract of an Indian labourer shall be for a month and then from month to month, and they contemplate his wages on such a contract being computed and payable either by the month, or by the day, but they do not contemplate his working for any less period than a day; they seem to establish a day as the minimum unit of time for working and for being paid for working. Day is nowhere defined, its length is left either to custom or to the agreement of employer and labourer, who are also left free to contract as to the amount of wages to be paid.

These Ordinances are to be read and construed as one with Ordinance No. 27 of 1927. This provides for the appointment of Estate Boards who "shall from time to time . . . . fix minimum rates of wages for time work performed on estates within its jurisdiction", section 8 (1), and the "minimum rate of wages" when duly approved and published is to be "binding on all employers", section 10 (1). By section 8 (2) Estate Boards may fix "different minimum rates for labourers working in different localities within their jurisdiction and may fix different rates for different localities". Minimum rates of wages are defined by section 2 to mean "the rates proper in cash or kind or both for an able-bodied unskilled male labourer . . . . for time work". This provision is an important alteration of the previous law. Under that, employer and labourer had complete freedom what wages to agree upon; now the amount can be fixed and regulated by law. By their Notification No. 23 the Estate Boards stated as follows:—"On all estates the rate fixed is the minimum rate to be paid for a working day of nine hours (including time not exceeding one hour taken for the midday meal) . . . . Kalutara Revenue District, males 50 cents, females 40 cents." Section 11 (1) says:—"Any person who employs or pays a labourer to whom a

minimum rate of wages . . . . is applicable at a rate of wages less favourable to the labourer than the minimum rate shall on conviction . . . . be liable to a fine . . . . ."

Before attempting to state what the order contained in the Notification No. 23 means, it is necessary to set out section 3 of Ordinance No. 27 of 1929. This is as follows:—

"3. (1) Where a labourer is employed at work other than time work for a day or a successive number of days within any calendar month, the wages payable to him for that day or successive number of days, shall not be less than the wages payable to such labourer for such period at the minimum rates of wages prescribed under this Ordinance.

(2) In the case of a labourer paid by the day, any period of work performed by such person exceeding nine hours per day (including time not exceeding one hour taken for the midday meal) shall be paid for at overtime rates, and shall be in addition to the minimum rates of wages payable to the labourer for a day's work. Such overtime rates shall not be less per hour than one-eighth of the minimum rates of wages fixed under this Ordinance".

It will be noticed that this is another narrowing of the freedom of contract which the earlier Labour Ordinances had left undisturbed. Under those the employer and labourer could fix what length of working day they choose; the law now seems to contemplate a day of not more than eight working hours, any hour beyond that number to be paid for extra.

Now in interpreting the Notification which is the document on which this case turns, there are two things to be kept in mind, firstly that it is made not under Ordinance No. 27 of 1927 only, but under a series of statutes which must be read together, and secondly that due weight must be given to every word in it.

"On all estates the rate fixed"; the end of the sentence says what that fixed rate is, 50 cents for a man and 40 cents for a woman, being the "minimum rates of wages fixed, for the area specified". What is to be the *quid pro quo* for which this rate of wages is given? The Notification says, "for a working day" of nine hours minus one for the midday meal. Then, taking the Notification as a whole, it seems to say that the pay for a working day of eight hours is to be 50 cents for a man and 40 cents for a woman and since it is a minimum not less than this is to be paid. But the words used must be defined. The Concise Oxford Dictionary says—"Working day, hours of the twenty-four devoted to labour"; the Notification says then that here eight hours of each day are to be devoted to labour. The word "rate" in the same work is defined as "statement of numerical proportion to prevail between two sets of things either or both of which may be unspecified". Here both do seem to be specified. On the one side, a working day of eight hours, on the other 50 cents wages for a man, 40 cents for a woman, in return for the eight hours' work of the working day. Giving due weight to each word in the sentence, it seems to say that the labourer is to give, or to be able and willing to give, not less than eight hours' work each day and to receive if a man not less than 50 cents in return, if a woman, not less than 40 cents in return.

If this Notification is examined along with the earlier Ordinances, then it is to be remarked that they contemplate payment on a monthly contract as here, by the month or by the day. Either method is lawful and previous legislation seems to contemplate no other method of paying the monthly labourer. (Ordinance No. 11 of 1865, section 4, mentions work "by the job or by the journey" but does not legislate with regard to it.) Then the earlier Ordinances and Ordinance No. 27 of 1927, read together give the power to fix by Notification payment of wages by the day. If the Notification has done so, then it had the power to do so unless Ordinance No. 27 of 1927 takes away that power. It is necessary then to examine that Ordinance further.

It speaks in section 2 (1) of "time work" and in section 3 (1) of "work other than time work". The Concise Oxford Dictionary defines time work as work "paid for by time, not piece work"; then it seems to follow that "work other than time work" will be piece work. One can, then, use the phrase "piece work" as being a convenient equivalent of the phrase actually used in section 3 (1) "work other than time work".

The phrase "time work" is a new feature introduced by Ordinance No. 27 of 1927, into legislation which had hitherto spoken only of monthly contracts and payment by the month or day, and the phrase should of course have been defined and related to the previous law, since the statute in which it occurs has to be read with that previous law, and neglect of this elementary rule has occasioned most of the difficulties in this case. I will begin by examining section 3 (1). It provides for a labourer employed on work other than time work—in effect, on piece work—for a day or a successive number of days within any calendar month. This is a clear reference to earlier legislation which is based on a monthly hiring, with payment by the month or by the day. (In the bygoing one may note the looseness of thought of the legislator, since he takes no account of a labourer on piece work for three days with a Sunday between the first and second and a public holiday between the second and third; he has not been employed for "a day" but for more than one, and not for successive days since others have intervened, then it could be argued that to him the sub-section did not apply.) The sub-section then states that the wages payable to this labourer on piece work for the day or successive days he has worked—day will be defined later—shall not be less than the wages he would have received for a day or successive days at the minimum rates; in effect, although the labourer is on piece work, he is to be paid for the day. The Ordinance retains the unit of work and payment for work prescribed by the earlier statutes; a wage calculated at and payable by the day and therefore it would seem to follow that it contemplates wages being fixed by the day. It speaks of wages payable for a day at the minimum rates of wages prescribed. Prescribed for what? Having regard to what has gone before in the section and to the definition of "day" that is to follow and not forgetting that section 8 (1) empowers the fixing of minimum rates of wages "for the time work performed", I would certainly say, prescribed for a day. Such an interpretation agrees with what has gone before in the section and with what comes after and is compatible with the definition of the phrase, time work, quoted to us in argument from the King's English Dictionary,

" work paid for by the day or by the hour ". But the defence says, no, prescribed for each hour worked or specially contracted for. In reply one must point out that in the two other places where the phrase, minimum rates of wages, occurs in this section, it clearly means minimum rates of wages for a day and that only. This section in two out of the three places where it mentions minimum rates of wages contemplates their being prescribed for a day and, if so, it seems difficult to hold that if Notification No. 23 has fixed a rate of wages for a day then in so far as it has done so, it is *ultra vires;* it has done what the section contemplates being done. Section 8 (1) empowers Estate Boards to fix " minimum rates of wages for time work performed ". What does " time work " mean in this Ordinance? The only section that gives any answer to this question is section 3 which contemplates a day of not more than eight hours for which day a minimum rate of wages can be prescribed. You must read the two sections together, and if you find that one of them definitely says in two out of the three places where it uses the phrase minimum rates of wages, that those minimum rates shall be fixed on the basis of a day of eight working hours, it is a strong indication, to say the least, that that is what the legislature meant to permit when in another section it empowered minimum rates to be fixed for time work. If those minimum rates had been fixed as the defence contends, namely, by the hour, one would certainly have expected something in the statute suggesting that wages could legally be fixed by the hour, but the only place in the whole statute where a rate of wages by the hour is mentioned tells strongly the other way, as will be seen. Minimum rates are to be fixed for time work and the only indication the law gives anywhere as to what time work can mean is in section 3 where it clearly mentions a day of eight hours with a minimum rate of wages attached. If that is so, then we have a clear case of the phrase, minimum rates of wages, meaning minimum rates of wages for a day and, if so, then wages for a day. They are what the labourer is to get for his day, they are his wage for that day, and they are a minimum, he is not to get less.

Next one has to examine sub-section (2) of this section. Its main purpose is to define the length of a working day, a thing which earlier Statutes had left undefined, something to be fixed by agreement or custom, and it defines it as one of nine hours including one hour for the midday meal, in effect eight working hours, also it provides for overtime payment to the labourer who has done more than eight working hours. This again is a loosely drawn sub-section. Grammatically the only possible subject to the words " shall be in addition to the minimum rates of wages payable ", &c., are the words " any period of work performed by such person exceeding nine hours per day " which do not make sense even; how can a period of time be added to a sum of money? It is necessary to insert words so as to make it read " which shall be in addition ", in order to give sense to the sub-section, *ut res magis valeat quam pereat.* We will assume such an emendation then, and continue the analysis of the sub-section. " In the case of a labourer paid by the day "; all Indian labourers are normally monthly servants and according to the Statutes prior to Ordinance No. 27 of 1927, payable by the month or the day. Ordinance No. 27 of 1927 does not profess to regulate payment

by the month, then we presume that, unless it is repealing previous legislation as to payment by the day and substituting some other method of payment, it is regulating that payment by the day which has hitherto been the statutory alternative to payment by the month. That is the conclusion one is forced to if one reads this sub-section as one is required, with the earlier legislation on the subject. But we must observe that section 3 has added a new category of labourer, the one "employed at work other than time work" and has provided that he is to be equated with a category of labourer that the law has been familiar with since Ordinance No. 11 of 1865, the labourer paid by the day. One sub-section speaks of the labourer "employed on other than time work", then you would naturally expect the other sub-section to provide for the labourer employed on time work and this, I am satisfied, is what it does. True, it describes him as a "labourer paid by the day" but by the dictionary definition quoted earlier a labourer "paid by the day" is a labourer employed on time work, so there is no contradiction. The draftsman had at the end of the previous sub-section provided that his labourer "on other than time work" should yet be paid by the day, and we may assume him not to have quite forgotten the terminology of earlier legislation which provides for payment by the day, so for his labourer employed on time work, the alternative to his labourer on other than time work, he used the phrase "labourer paid by the day", who is by definition a time worker. Does the law provide for yet a third category, the labourer employed on time work paid by the hour actually worked? It certainly does not do so explicitly, and I can discover nothing in it doing so by implication.

One is now perhaps in a position to say what this sub-section read with the rest of the legislation on the matter enacts. It provides for the case of the labourer employed at work other than time work—the piece worker—and equates him with the labourer paid by the day, and it says that each labourer shall be able and willing to give an eight-hour working day, to receive in exchange a minimum wage fixed by law, and it says that the employer shall pay that minimum wage fixed by law and be entitled in return to require from the labourer an eight-hour working day. That is the "time work" for which the Estate Boards under the powers given them by section 8 (1) and in accordance with the law in general and this section 3 in particular, are empowered to fix a minimum rate, and for which by this Notification No. 23 they have fixed such a rate.

What was the object of mentioning "time work" at all in this Ordinance? Taken in connection with the establishment of an eight-hour working day and of overtime payment the reason is clear; it was to make sure that there was power by law to prevent the employer working his labourer for too many hours each working day; he was to be able to work him for eight hours at a fixed wage and if he wanted to work him for longer, then to pay him more than that fixed wage. But, it is argued, though this may have been the object present to the mind of the legislator, still he has used language allowing the making of contracts with labourers for a less number of hours than eight at a certain rate of wage,

and if so he must be presumed to have had that intention. Whether this is so or not will be clearer when one has examined what the legislator has said on the subject of overtime.

The sub-section has fixed a working day and said that overtime rates are to be paid for any period of work exceeding that working day, in addition to what the worker earns for his working day: the words of the sentence seem quite clear, the overtime rates are to be "in addition to the minimum rate of wages payable . . . . . for a day's work", which can only mean the wage for that day's work. Then the sub-section goes on to define overtime rates, they are to be "not less per hour than one-eighth of the minimum rates of wages fixed under this Ordinance". One must draw attention to the fact that this is the only place in the Ordinance where payment per hour is mentioned. If in this sentence minimum rates of wages mean minimum wages, as those words do seem to mean wherever used in Ordinance No. 27 of 1927, then we can give to this definition of overtime rates, a reasonable meaning. The minimum rate of wages is 50 cents for a working day of eight hours. If a man works an hour extra, he is to receive for that extra hour a sum not less than one-eighth of the 50 cents which he is to receive for his eight hours working day, a reasonable enough rule. The defence saw the difficulty, saw too that this sentence in the sub-section is really destructive of its whole position and said that the words "per hour" must be omitted from the sentence. Clearly, this method of interpreting a statute is not permissible—indeed, it was not persevered with. The sentence must be read as enacted without the omission of inconvenient words, and it means that for an hour overtime a man is to get one-eighth of what he gets for a day. But there is a further difficulty if minimum rates of wages are to be interpreted as the defence desires. If minimum rates of wages in this sentence and elsewhere are to mean rate per hour, then the overtime rates payable would be, not one-eighth of 50 cents but one-eighth of one-eighth of the same, *i.e.*, one-eighth of 6½ cents. These overtime rates are to "be in addition to the minimum rates of wages payable to the labourer for a day's work", and it is claimed for the defence that this condition will be satisfied by the "addition" for the overtime hour worked, of the one-eighth of 6½ cents, since for that overtime hour, he will receive, not the 6½ cents he receives for an ordinary working hour, but 6½ cents plus one-eighth of 6½ cents. Since our currency does not go lower than cents, he would have to work a considerable amount of overtime before he got anything substantial for it "in addition" to what he would have received for an ordinary hour's work. The suggestion is far-fetched, so I am not obliged to suppose that the legislature intended this unless strong reason is brought to show that it did. Besides, the sub-section does not say any such thing. It does not say that overtime rates shall be higher than the rates for an ordinary working day hour—"in addition to" does not mean at a higher proportion than—but that they shall "not be less", and the words shall "be in addition to the minimum rate of wages" simply mean that the overtime earnings are to be extra to, are to be over and above, are to be added to, what the worker earns for his ordinary working day. Moreover, if "in addition to" meant "at a higher rate than", you would have the sub-section contradicting itself, one sentence in it saying that

overtime was to be paid for at not less than a certain rate, and another sentence in it saying that it was to be paid for at more than that rate. By one sentence you could lawfully pay for overtime at a certain rate, "not less than" it, but by the next you should have to pay for it at more than that rate, otherwise you would have broken the law. One is not obliged to suppose such a contradiction even in a sub-section, drafted at this has been, and indeed there is no contradiction, it gives perfectly good sense; overtime earnings are to be over and above what the man earns for his ordinary working day and they are not to be at a less rate than one-eight of what he earns for that ordinary working day.

But the arguments on this sub-section to which the defence was driven, are an integral part of its main contention that by this law you can contract with a labourer for a less number of hours than eight at a minimum rate per hour contracted for. This sub-section was the stumbling block, and the defence was forced, first to propose cutting two words out of the sub-section altogether—two words that in themselves go far to destroy its case—and then, abandoning that attempt, to give to overtime rates a meaning that was not the natural or normal meaning of the words as used in the sub-section and then—though I doubt this was noticed in the argument—to make the sub-section contradict itself which on its natural and normal interpretation it does not. If these arguments were unsound—and they were necessary arguments, the defence could not be established without them—the conclusion follows that the case for the defence is unsound likewise.

The argument for that case was most ably and ingeniously put. It was in part an argument in the alternative; if one position was shown to be difficult of acceptance, another was taken up. But in the main the argument was this:—Rate in the phrase, minimum rates of wages, means ratio. That rate or ratio fixed by the Estates Boards is fixed with reference to a day of eight working hours and from the day of this length you can work out the rate, that is the ratio, for the number of hours worked, so as to ascertain what is actually earned, and the time rate, which is what Ordinance No. 27 of 1927 provides for, enables this to be done. It is this which legalizes the present contract, one for a month, the pay to be reckoned at 37½ cents for the day of the six working hours contracted for. The rate of pay must of course be at the daily rate and not less for the particular part of the day, six hours, for which the labourer works. The contract which the respondents have made is one providing for payment by the day, for services to be remunerated at the daily rate ordered by the Notification, but the labourer is to work only six hours and is to get six-eighths of 50 cents the daily rate for a man, of 40 cents the daily rate for a woman. Then he has been paid at rates not "less favourable . . . . than the minimum rate", and there has been no contravention of the law section 11 (2). It was also argued that the law nowhere says, that the labourer shall get so much pay per day or that pay is to be reckoned on his working a whole day. The Ordinance uses the phrase "time work" as that with reference to which wages shall be fixed, and this means the period, hours, days or weeks, for which he is actually employed. His wages are dependent on the total number of working hours which he actually gives. Time work means time worked, in fact.

One would pause here to inquire what "time" in the phrase "time work" can mean in Ordinance No. 27 of 1927, and one gets the answer through the word "overtime". That clearly is, any time worked beyond eight hours in a day. Then it would seem to follow that "time" is time worked up to eight hours in a day. Then the Ordinance makes "time work performed" to mean work by a labourer for eight hours in a day, or ability and willingness to do so, and for this time work a minimum rate of wages is to be established. The Ordinance might have defined time work differently, but this is how it seems to have defined it.

Now in connection with the argument that time work is time worked, certain significant admissions had to be made. Remarking that in the provision as to overtime in section 3 (2) you get, explicitly, a true rate, *i.e.*, a ratio with both factors expressed, time and money—it is the only place in the Ordinance, as I have said, where pay her hour is mentioned—Mr. Perera admitted that to such a contract as respondent had made, overtime was not applicable at all. The employer was at liberty to make a contract at so much per hour and here he had done so. Then this was not the case of a labourer "paid by the day" and consequently the overtime provisions of section 3 (2) did not apply. By making a contract for ten hours to be worked in a day at the minimum rate per hour, it would be possible legally to avoid the overtime provisions altogether. As I read the Ordinance overtime is an essential part of its intention; when it used the phrase "time work", it did so with the intention to attach the incident of overtime to every contract. But at another time he argued, as has been said, that this would be a contract of "pay by the day", reckoned at 37½ cents per diem, and that if so, the requirement in section 3 (2) that overtime rates shall be "in addition" to minimum rates of wages, would be satisfied by paying the labourer for each hour he worked beyond eight in number 6½ cents plus one-eighth of that 6½ cents. I have discussed this argument above, and will only add that such a meaning does not seem to have been present to the mind of the legislator and that it is not one which can be deduced from the language used. But in this connection, namely section 3 (2) and its provisions as to overtime and length of working day, I would respectfully adopt the argument of Mr. Illangakoon that if the labourer is not to be paid for a whole day of nine hours minus one, if the intention of the law was to allow the employer to contract with him for six hours work at a ratio, then there would be no need for the employer to give him an hour off for the midday meal, a thing which the law expressly requires the employer to do. There may be an answer to this argument but as at present advised I do not see one.

The remaining admission was this, that while in the present case the employer had contracted for a day of six working hours, it would yet have been legal for him to have contracted for a day of two working hours, to be paid for at the minimum rates, *i.e.*, the labourer to receive 13 cents per working day of his contract. But this argument takes no account, it seems to me of the amount 50 cents, set out in the Notification. It would have been quite easy for the Estates Board in that Notification to have said "at the minimum rate of 6½ cents per hour", but it has not, it has said 50 cents, and some meaning must be given to what it has said.

You can give a meaning to what it has said, viz., 50 cents, if you take minimum rates of wages to mean the minimum wage the labourer is to receive per working day, for on that meaning he will receive 50 cents per working day and not less; you give much less meaning to it, you empty it of most, perhaps all, of its content, if you insist that minimum rates of wages must mean ratio. The admission that an agreement for a working day of two hours could be made, is what the argument for respondents has come to. Then a statute, which on any interpretation is passed to secure the Indian labourer something and not less for a wage, a minimum, has satisfied its intention by securing him 13 cents per day or, since the contract might be for a working day of one hour only, 6½ cents per day. These conclusions are surprising and at least compel you to scrutinize very carefully the interpretation by which they are arrived at.

Shortly, a scrutiny of that interpretation results in this. Assuming for the sake of argument that the wording of the law allows Estates Boards to fix the minimum rates of wages at so much per hour, leaving employer and labourer to say how many hours are to be worked, they have not done so. It would have been quite easy to use the words necessary for ordering that the labourer was to be paid at 6½ cents per hour of a day not to exceed eight working hours. To show that they have not fixed the minimum rates of wages at so much per hour, I would again invite attention to section 3 (1) and (2) and ask how the section would construe on the argument for the respondents. The worker paid by the day is to receive not less per hour than the minimum rates of wages fixed, namely, 6½ cents an hour. If he work two hours he will receive twice that amount, if six hours, then six times that amount, if eight hours, eight times that amount, but his wages per day are an uncertain sum until it is known how many hours he has worked. Then the piece worker contemplated in sub-section (1) asks to have his wages calculated for the day he has worked. Sub-section (2) makes it clear beyond argument that he, a piece worker but paid by the day as the section says he must be, is entitled to be paid as for a day of eight working hours; the provisions about overtime do establish that proposition for the piece worker, ill-expressed though the sub-section may be. Then you will have in one and the same section two kinds of worker, paid by the day both of them, yet paid on a different basis—the worker by the day who is also a piece worker getting paid by the day of an eight-hour basis, that is receiving the whole 50 cents, and the worker by the day who is not a piece worker getting paid by the day on a basis other than an eight-hour one, that is by the number of hours he has worked, that is receiving a proportional fraction of the 50 cents. This is an anomaly—an *inelegantia* the Roman lawyers would call it—for which I can find no support in this section or in any other in the law. The respondents saw the force of this, and postulated yet a third category of labourer, other than the worker paid by the day who is a piece worker and other than the worker paid by the day pure and simple, namely, the time worker paid by the hour, and for the creation of this new entity again I can find no support either in this Ordinance or in any other of the laws with which it has to be read.

There was yet the further argument for the respondents to which they were forced by the logic of their position. If the Notification did

establish a daily wage of 50 cents—they denied it did so, but if it did—then the daily wage was *ultra vires*, and they supported this position by reference to certain English Statutes and the cases decided on them. The most important of these was the Agricultural Wages (Regulation) Act 1924 and *Seabrook & Sons v. Jones*[1], decided thereon. That Act gave power by section 2 (1) to Wages Committees to "fix minimum rates of wages for workers employed in Agriculture for time work" with power also to fix them for agricultural workers on piece work, and by section 2 (2) to vary such minimum rates "according as the employment is for a day, week, month or other period, or according to the number of working hours or the conditions of employment or so as to provide for a differential rate in the case of overtime". Section 7 (1) says "any person who employs a worker in agriculture shall in cases to which the minimum rate is applicable pay wages to the worker at a rate not less than the minimum rate and if he fails to do so shall be liable on summary conviction" to a fine, and section 7 (2) is identical in terms with section 11 (2) of Ordinance No. 27 of 1927, and enables an order to be made for payment of the difference between the amount which ought at the minimum rate to have been paid and the amount actually paid. It will be noticed that this Act, like Ordinance No. 27 of 1927, speaks of minimum rates of wages and of time work but it must also be observed that by section 2 (2) it specifically gives power to fix these rates "so as to vary according as the employment is for a day, week, month or other period or according to the number of working hours". Perhaps the draftsman thought that without this sub-section there would be no power to fix wages according to the day, the week or the number of working hours. What would have been the effect of the Act wanting that sub-section it is unnecessary to decide. But the fact that it was thought necessary to insert it rather tells against the argument of the respondent that, since Ordinance No. 27 of 1927, unlike the English Act, gives, no power to provide rates according to the number of working hours, Estate Boards have fixed a rate applicable to every kind of contract "which rate must be one that takes account of the number of hours actually worked"—the argument to us was put in these words. The inference is the other way, namely, that without the power in section 2 (2) of the Act of 1924 to fix rates according to the number of working hours, the Committees contemplated by that Act would not have had the power to fix them on that basis and that since Ordinance No. 27 of 1927 does not give this power to fix rates according to the number of working hours, Estate Boards cannot fix a rate that takes account of the number of hours actually worked but must fix it as the different Ordinances read together empower them to do, namely, by the day, which is what they seem to have done.

Seabrook & Sons v. Jones (*supra*), a case decided under the Act of 1924, was to this effect. Clause 1 of an order issued under that Act prescribed that wages "should not be less than wages at the following minimum rates, male workers 20 years of age and over, 30 shillings per week of 50 hours in summer and 48 in winter". Clause 2 of that order said "Where a whole-time male worker is employed by the week or any longer period, and the hours of work agreed between the worker and the employer in

[1] (*1929*) *1 K. B. 335.*

any week (excluding hours of overtime employment) are less than 50 in summer or 48 in winter, the rate of wages applicable to that worker shall be such as to secure to the worker the wages which would have been payable if the agreed hours had been 50 in summer and 48 in winter as the case may be". It was argued that this clause was *ultra vires* and that in a week in which a public holiday, Good Friday, occurred, it was lawful for the employer to pay at the rate of 30 shillings for fifty hours but paying on a less number of hours, those that the labourer would have worked on the Good Friday being deducted and the pay for the same. In its facts then, *Seabrook & Sons v. Jones* (*supra*) was very close to the present case. Hewart C.J. said as follows, p. 340:—"There is nothing in the Act to say that the committee may fix the rate per hour but not the rate per week; on the contrary, it provides expressly that such minimum rates may be fixed by the committee so as to apply universally to all workers or to any special class of worker or any special area or to any special class in a special area, subject to any exceptions which may be made, and so as to vary, according as the employment is for a day, week, month or other period or so as to provide a differential rate in the case of overtime. The order, with a particular part of which this case has to do, is an order relating to a whole-time male worker employed by the week. Addressing themselves to the task of fixing a minimum rate for such a worker, the committee came to the conclusion that if he is twenty-one years old or older, he ought to have at least 30 shillings a week, that week being normally one of fifty working hours. Then it immediately occurred to their minds that although in practice there was the week, there might be an agreement for what was nominally a week, but which involves less than fifty hours of employment or actual work, and so they provided that, even so, that worker should have his wages at the minimum rate per week secured to him, because in his case the rate of wages applicable to him should be made such as to secure to him the amount of wages which would have been payable if the agreed hours had been fifty. In my opinion there is nothing *ultra vires* in that part of the order"—*sc.* clause 2 set out above—"nor do I think that that part needs to be invoked for the purpose of justifying what was contended here, namely, that the agricultural worker was a male worker of full age employed by the week, and as such was entitled to the minimum wage per week. It matters not that in the particular week there came Good Friday". Avory J. put it thus:—"I am of the same opinion. Once it is admitted that the committee had power to make or fix the rate of wages of 30 shillings per week for male workers of twenty-one years and over, I think it cannot be said that they were acting *ultra vires* in providing that although normally 30 shillings a week was to be paid for fifty hours work in summer and forty-eight hours in winter, if in any particular case the employers chose to agree that the worker need not work the whole of the fifty hours or forty-eight hours, as the case might be, that then, in that case, the man should still be entitled to his 30 shillings for the week. Having come to that conclusion, I can see nothing *ultra vires* in these regulations taken as a whole; and therefore, I agree that the appeal fails". It will be noted that clause 2, set out above, preventing

payment on something less than fifty hours per week because of an agreement to work less, was not relied on, the decision would have been the same without it.

Jones v. Harris[1], a case under this same Act of 1924, was also cited to us, but does not seem to me to carry the present case much further. It dealt with minimum rates of wages varying with the age of the worker, and ruled where the onus lay of proving what that age might be.

Two cases, *Board of Trade v. Roberts*[2] and *France v. Coombes & Son*[3], decided under the Trade Boards Acts 1909 and 1918, were cited to us. Both these cases dealt with workers in certain trades—tailoring and boot making—the regulations as to wages in which contemplated a worker being "engaged during the whole or any part of his time" on work actually connected with his trade, but also being engaged, the same worker, for part of his time on other work, clerical for instance, not directly connected with his trade, and these cases dealt with the adjustment of his pay for the hours he was engaged on each class of work. On the Acts there in question there could be no doubt that minimum rates of wages had to be determined with reference to the hours worked but these cases cited do not decide that under every Statute where the phrase minimum rates of wages occurs it must be so interpreted.

The case *Hampton v. Smith*[4], one brought under the Corn Production Act 1917, which provided for "wages . . . . at a rate not less than the minimum rate as fixed under the Act", seems to decide this, that if an employer engage a worker for a year at a wage of so much a year, equivalent to so much per week, he is not required to pay that worker his proportionate wages week by week; he may pay instalments from time to time, and the balance at the end of the year's hiring, and will commit no offence if on receiving such balance the worker has not received less than wages at the minimum rate. I doubt it throws much light on the present case.

A case much relied on for the respondents here was *Davies v. Glamorgan Coal Co.*[5], since it contained a very lucid explanation by Buckley L.J. of the meaning of "rate". It is unnecessary to set out the facts in that case, but it had been argued that the Coal Mines (Minimum Wage) Act 1912 under which the case was brought did not say that the District Boards contemplated by it were to settle a minimum daily wage but to settle "minimum rates of wages", and it was to this contention that Buckley L.J. was addressing himself in his explanation of the term "rate", and he says "I find that in this Act the minimum rate, the thing which has to be determined for the purposes of the Act is contemplated . . . . as being a daily rate". The two other Lord Justices said nothing about the subject of "rates" and determined the appeal on other grounds. I doubt that this case either is of much importance or assistance in regard to the case now before us; it was not, one may note, referred to in *Seabrook's case* (*supra*).

On the interpretation of the law, which I find myself driven to accept, the accused will then have been guilty of paying the persons mentioned in the charge at a rate of wages less favourable to them than the minimum

[1] (1927) 1 K. B. 425.
[2] 85 L. J. K. B. 79.
[3] (1928) 2 K. B. 81.
[4] 89 L. J. K. B. 413.
[5] (1914) 1 K. B. 674.

rate. If so, then this appeal must be allowed and the case sent back to the Magistrate with the direction to convict and to make order for the payment to the labourers mentioned in the charge of the difference between the amount which ought at the minimum rate to have been paid them and the amount actually paid. As this has been a test case brought on a body of law, one portion of which—Ordinance No. 27 of 1927—was difficult of interpretation, the fine inflicted must be a purely nominal one.

What the effect of this decision may be is beyond my duty to inquire. It may be that it will compel some estates to close down altogether, thereby increasing the amount of unemployment, or at least compel them to dismiss from their employ some of their present labourers, whereby these will be getting "no bread" instead of the three quarter loaf which the contract challenged in this case secures to them and with which, as far as I can judge from the evidence, they seem moderately contented. But these are questions with which I am not concerned. I have done the task imposed upon me when I have construed an ill-drawn piece of legislation according to such light as is given me; per Vaughan J. in *Harrison v. Burwell*[1], "I must in the first place premise that perhaps if we the Judges had been the makers of the law this question had not been; but we are to proceed upon the laws as made, and cannot alter them. This is not a thing of our promotion and this I speak to satisfy such as might object against us".

GARVIN S.P.J.—

The respondent to this appeal was charged with having committed an offence made punishable by section 11 (1) of Ordinance No. 27 of 1927, in that being the Superintendent of an estate known as Perth estate, situated in Horana, he paid three labourers named Thangaperumal, Mayandi, and Nallamma, respectively, to whom minimum rates of wages fixed under Chapter I. of the said Ordinance were applicable, at rates of wages less favourable to them than the prescribed minimum rate of wages applicable to each of them.

In a Notification bearing No. 23 published in the *Government Gazette* No. 7,676 of November 30, 1928, the rates fixed by the Estate Wages Board and approved by the Governor are set out and it appears therefrom that "On all estates the rate fixed is the minimum rate to be paid for a working day of nine hours (including time not exceeding one hour taken for the midday meal)". The rate for an adult male is 50 cents and for a female labourer 40 cents.

Admittedly, the wages paid during the period to which the charges relate work out at less than 50 cents for Thagaperumal and Mayandi who are adult males and less than 40 cents in the case of Nallamma an adult female labourer, for each day in which work was performed. Since May, 1931, in the case of Perth estate, the working day was limited to six hours for which the labourers were paid a wage computed at the rate of six-eighths of 50 cents or six-eighths of 40 cents according as the labourer was an adult male or a female, plus a bonus computed on the mount of latex collected by the labourer in excess of a prescribed minimum. No labourer was required to work longer than six hours.

[1] *2 Ventris 10.*

In every instance the labourer received his wages for six hours and some of them in addition the bonus calculated as above. This arrangement was accepted and has been acquiesced in by the labourers.

The defence to the charge was that the wages paid in every instance worked out per hour amounted to the same or a little more than the amount per hour computed at the minimum rate fixed by the Estate Wages Board and could not therefore be said to be at a less favourable rate.

The Police Magistrate upheld this defence and acquitted the accused. The Attorney-General appeals. This appeal was first listed before me. As the argument proceeded, it became increasingly evident that the matter, because of its great public importance, its difficulty and the desire of both parties to obtain an authoritative decision which would finally settle the law on the point, was one which should be referred to a bench of three Judges. After reference to the Chief Justice, it was duly listed and argued before a bench so constituted and it only remains for me as a member of that bench to examine the point which was very fully and ably argued and set down my reasons for the conclusion at which I have arrived.

A perusal of the evidence upon record discloses a conflict upon certain questions of fact but the Solicitor-General was content to accept the findings of the Magistrate and to invite a decision on the basis of the respondent's allegations as to the facts.

The labourers referred to in the charges are "labourers" within the meaning of Ordinance No. 27 of 1927, in that they are Indian labourers whose names are "borne on an Estate Register". Their names have been entered in the check roll of the estate and they have, I gather, received advances of rice. There being no express stipulation to the contrary, the contract with each of them, it is admitted, must be taken to be a contract for hire and service for a period of one month, renewable from month to month and which must be taken to be so renewed unless one month's previous notice be given by either party to the other of his intention to determine the same at the expiry of a month from the day of giving such notice, *vide* section 5 of Ordinance No. 13 of 1889. But it is a term of the contract that the working day shall be one of six hours and the wage for each such working day 37½ cents in the case of male and 30 cents in the case of female labourers.

Now the law gives to every labourer under monthly contract, though paid at a daily rate, a right so long as he is able and willing to work to six days' work in every week or, if the employer is unable or unwilling to give him work, to six days' pay. This statutory right is admitted and recognized by the employer in the case before us and no question based upon such right or its infringement arises. It is hardly necessary to say that employer and labourer alike are free to make what contract they please so long as it involves no infringement of the law. Prior to the date when Ordinance No. 27 of 1927, came into operation there was nothing in the law to prevent a contract being made for hire and service for a month with a "labourer" and here and throughout this judgment, I use the word labourer in the sense of a labourer within the

meaning of the Ordinances Nos. 13 of 1889 and 27 of 1927—at a wage to be computed at a daily rate of 37½ cents for a working day of six hours.

There is nothing in Ordinance No. 27 of 1927, to which a stipulation that the working day should be one of six hours is obnoxious. Indeed, it would need a very specific declaration to that effect before one can ascribe to the Legislature an intention to interfere with the freedom of contract to the extent that a labourer may not stipulate for a six-hour day or that such a stipulation if made by the parties to a contract of hire and service is to be treated as a nullity.

The only provision of Ordinance No. 27 of 1927, which has a bearing on the question of the contract between employer and labourer is section 11 (1) which is in the following terms :—

> " Any person who employs or pays a labourer to whom a minimum rate of wages fixed under this chapter is applicable at a rate of wages less favourable to the labourer than the minimum rate shall on conviction by a Police Magistrate be liable to a fine not exceeding one hundred rupees for each offence ".

The Ordinance therefore leaves the parties free to make their own contract subject to the limitation that the employer shall not employ or pay the labourer at a rate less favourable to him than the minimum rate.

Since there is no objection to a contract for a six-hour working day the respondent has not offended against section 11 (1) unless it be held that employment or payment at 37½ cents in the case of an adult male labourer and 30 cents in the case of an adult female for a six-hour working day can be said to be at a rate less favourable to the labourer than the prescribed minimum rate of 50 cents for a working day of nine hours (including time not exceeding one hour taken for the midday meal), i.e., of eight working hours. If the word " rate " in the expression " minimum rate of wages " means the ratio proportion or relationship between time worked or time which a labourer has contracted to work on the one side and remuneration on the other, by and in accordance with which the actual amount earned or payable for a period of time which a labourer has worked or contracted to work is to be ascertained, then the respondent has not offended against the provision of section 11 (1). For how can it be said that a male labourer who gives six hours of his time at a rate of 6¼ cents per hour is paid at a rate less favourable to him than a labourer who gives eight hours of his time also at the rate of 6¼ cents per hour ? It may be more favourable to a labourer in the sense that he would earn more by working longer, that he should make a contract for a day of eight hours. But it is at least conceivable that he may prefer a shorter working day with more free time to be spent, possibly to his greater advantage in other occupations, and certainly, as he pleases, earning less per day in the aggregate rather than work longer hours and earn more at the minimum rate.

It was pressed upon us by the Solicitor-General that the object of Ordinance No. 27 of 1927, was to secure for this class of labourer a minimum living wage and that this purpose has been achieved by the

provisions of this Ordinance and the fixation by the Estate Wages Board acting in pursuance of the powers conferred on them of a daily wage varying only with the sex and age of the labourer. This Ordinance, it is said, gives effect to the intention of the Legislature to secure for the worker as has been successfully done in other countries that he shall receive such a wage as is not less than that amount which, after inquiry and consideration a Board representative both of employers and Indian labourers working on estates, fixes as the minimum living wage.

There are provisions in the Ordinance which indicate that it was enacted in the interests of the Indian labourer and was designed to secure for him a "minimum rate of wages" and there is thus created in one's mind a general impression that it was the ultimate object of the Legislature to secure to this class of labourer a minimum living wage. But we are concerned primarily with the language employed by the Legislature from which we must gather its intention and also what provision it has made for carrying out its intention and the method by which it proposes to reach the end in view. If the provisions enacted by it for the purpose of carrying out what we suppose to be its intention should appear to be inadequate for fully carrying that intention into effect, it must be left to the Legislature to make such further provision as it may deem necessary.

The Ordinance provides for the appointment by the Governor of an Estate Wages Board for any revenue district. The Board is to be composed of the Chairman (a public officer nominated by the Governor), and four members of whom two shall be employers of Indian labourers working on estates, the remaining two being selected to represent the labourers. Every Estate Wages Board is empowered from time to time and as occasion may require to fix minimum rates of wages *for time work performed on estates within its jurisdiction.* Provision is made for the notification to the public of the intention of the Board to fix minimum rates of wages or alter them where they have already been fixed.

The decision of the Estate Wages Board has to be communicated to the Chairman of the Board of Indian Immigrant Labour and that Board is empowered to confirm, vary, or cancel such decision, is required to publish the decision and may not confirm, vary, or cancel the same until after the expiration of one month from the date of such notification.

Finally, it is provided that a minimum rate of wages or the cancellation or the variation thereof shall not take effect until it has been approved by the Governor.

Before one can determine what is comprised in the power to fix minimum rates of wages it is necessary to ascertain what is meant by that expression. The Legislature has defined it as follows:—

"*Minimum rates of wages*" means the *rates* proper in cash or kind or both for an able-bodied unskilled male labourer above the age of sixteen years, for an able-bodied unskilled female labourer above the age of fifteen years, or for an able-bodied child of either sex *for time work*—*vide* section 2 (1).

If the words "for time work" be given their proper effect minimum rates must have some relation to time worked or to time which a labourer

is under contract to work. Indeed section 8 (1) in terms requires Estate Wages Boards to fix *minimum* rates of wages for time work performed on estates. Time work is work which is paid for by the time actually occupied by the labourer in doing it or by the time which the labourer has contracted to give to his employer and it is almost impossible to conceive of either a wage or rate of wages for time work which has no relation at all to either of these factors.

Apart from the factors of sex and age, Estate Wages Boards are empowered by section 8 (2) to fix different rates for wages in different districts and for different classes of labourers. It would seem therefore that the "minimum rates of wages" to be fixed may only vary in accordance with the factors of age, sex, locality, and the "class" to which the labourer belongs. Minimum rates for time work once fixed for any district remain constant and in force until cancelled or altered. The minimum rates for the district in which Perth estate is situated have been fixed by the Wages Board and the rates as fixed vary only according as the labourer is a man, woman, or child and have been fixed for a working day of nine hours (including one hour taken for the midday meal).

Thus the combined effect of the Ordinance and the minimum rate fixed under the authority of the Ordinance is that a sum of 50 cents is assured to a labourer for a "working day" consisting of eight working hours. The method by which this end has been secured is by fixing a minimum rate at which the labourer shall be paid.

The greater part of the argument addressed to us turned on the meaning and implication of the words "minimum rates of wages". It was contended on the one hand that in this context and throughout the Ordinance "minimum rate of wages" meant minimum wage and, *per contra,* that both in the Ordinance and in the decision of the Estate Wages Board, the expression meant and could only mean the rate by and in accordance with which the total amount payable to a labourer was to be computed. For the purpose of fixing and expressing a minimum rate of wages for time work the Wages Board necessarily had to select a unit of time worked or agreed to be worked and the unit of money which it decided should correspond to that unit of time. It has selected a "working day" which it has defined and a sum of 50 cents as the amount of money which it deemed to be the minimum which should be paid for such a working day. It is urged on the one side that the two units selected for the purpose of expressing the rate are susceptible of subdivision, even as they are capable of multiplication, for the purpose of ascertaining what is payable to a labourer for time worked or time which he had contracted to work and for which he is entitled to be paid. On the other hand it is contended that the minimum rate so fixed may not be subdivided, that although for the purpose of ascertaining the amount payable for a period of more days than one the unit of money must be multiplied by the number of units of time, it is not permissible to divide the unit of money by the number of working hours in the "working day" contemplated for the purpose of ascertaining the rate at which a labourer has been paid on any day on which work has been performed.

If the latter of these two views is to prevail then it follows that whether the "working day" consists of eight hours or less a labourer is entitled to be paid 50 cents. Two questions naturally suggest themselves—first, has the Wages Board power to fix a minimum wage payable to a time worker for every day upon which he works quite irrespective of the actual time worked or of the time which the labourer had contracted to give his employer and second, whether assuming the existence of such a power the Board has fixed such a minimum wage per day.

In support of this appeal it was urged that the expression "minimum rates of wages" and "minimum wages" were convertible terms and that the power to fix a "minimum rate of wages" was power to fix a minimum wage for time workers. To this I cannot assent. Even the definition clause speaks of the expression "minimum *rates* of wages" as "the *rates* proper in cash or kind or both for an able-bodied unskilled labourer . . . . for time work". And section 8 (1) only empowers Wages Boards to fix minimum *rates* of wages for *time work performed* on estates. It does not authorize such Boards to fix wages for time workers but rates of wages for time work performed on estates.

Section 3 of the Ordinance, which every one engaged in the case agrees is not happily worded, was supposed to bear out the contention that minimum rates of wages and minimum wages were convertible terms. But the language of sub-section (1) of that section makes a clear distinction between the two, for what it says is, that "where a labourer is employed at work other than time work for a day or a successive number of days within any calendar month the *wages* payable to him for that day or successive number of days, shall not be less than the *wages* payable to such labourer for such period at the *minimum rates of wages* prescribed under this Ordinance".

As to sub-section (2) of section 3, all that can be said with any confidence is that it may fairly be gathered that it was the intention of the Legislature that a time worker should be paid extra for any period of work performed exceeding nine hours per day (including time not exceeding one hour taken for the midday meal).

It is not only that the language used shows an appreciation of the difference between rates of wages and wages but that the Legislature has expressly and explicitly stated that unless the context otherwise requires "Minimum rates of wages" shall mean "*rates* proper . . . . *for time work*". There is nothing in the context which requires or justifies the interpretation of the term "minimum rates of wages" in section 8 (1) as "minimum wages". Indeed, if proper effect be given to the all important words "for time work" the matter is concluded for what is a "wage for time work" but the rate at which time worked or agreed to be worked is to be remunerated. The power conferred is power to fix "minimum rates of wages for time work" not power to fix "wages for time workers" which need have no relation to the time actually worked or to the time specified in the contract of employment.

It is evident that the Legislature, assuming that its object was to secure for these labourers a minimum living wage, decided to reach the end in view through the medium of a minimum rate of wages. In this,

it is not singular, for such of the Acts of the British Parliament as were referred to in the course of argument have attempted to reach the same end by the same means.

The Agricultural Wages (Regulation) Act 1924, which there is good reason to believe was the model upon which Ordinance No. 27 of 1927, was based expressly directs as follows:—

> "In fixing *minimum rates of wages* a committee shall, *so far as practicable,* secure for able-bodied men such wages as in the opinion of the committee are adequate to promote efficiency and to enable a man in an ordinary case to maintain himself and his family in accordance with such standard of comfort as may be reasonable in relation to the nature of his employment"—*vide* section 2, sub-section (4).

There is in this provision a clear indication that the object in view was to secure to a labourer a living wage and that the means by which that object was to be attained was by the fixation of minimum rates of wages for time work. There is no similar provision to the one quoted above in our Ordinance but it seems clear that our Legislature has also decided to attempt to reach the object in view through the medium of minimum rates for time work.

If therefore all that an Estate Wages Board may do is to fix "minimum rates of wages for time work" and not a wage for time workers, within what limits and in accordance with what factors may those rates vary? As a result of the combined effect of the definition clause and section 8 (2) of the Ordinance it would seem that such minimum rates may, as has been said earlier, only vary in accordance with the age and sex of the labourer, the locality in which he is employed and with the "class of the labourer". These are the factors in relation to which the rate may vary but the rates in terms of the definition clause and by section 8 (1) must be rates "for time work". In short what the Legislature has said to Estate Wages Boards is that they may fix minimum rates of wages for time work variable only in accordance with the age, sex, locality, and "class" of the labourer. It is by no means clear what is meant by "class of labourer" or whether it implies anything more than a classification based on sex and age. But whatever it may mean, once the minimum rates of wages for an adult male, an adult female and a child "for time work" have been fixed the powers of the Board are at an end except in so far as they may cancel or alter that rate. Inasmuch as the Board is required to fix a minimum rate for time work the rate as has been observed earlier must have some relation to time worked or time for which the labourer has agreed to work.

The minimum rates though they may vary in accordance with these factors must in each case have a definite relationship to time worked or time which the labourer has agreed to work and therefore must be expressed in units of time and money. But whatever unit of time may be selected the rate is merely the relationship between time work and remuneration in money. Nowhere is it said that an Estate Wages Board may say to the labourer you shall work for eight hours a day or any other period or to the employer you shall employ a labourer for

eight hours a day or pay him as if you had employed him for eight hours notwithstanding that you have only engaged him and he has only worked for six hours.

It is worthy of note that in the Agricultural Wages (Regulation) Act 1924, (*14 & 15 Geo. V. c. 37*) after stating that the committee shall fix minimum rates of wages for workers employed in agriculture for time work the Act proceeds as follows :—

> Section 2 (2).—"Any such minimum rates may be fixed by the Committee so as to apply universally to all workers employed in agriculture in the county for which the Committee act or to any special areas in the county, or to any special class in any special area subject in each case to any exceptions which may be made by the Committee for employment of any special character, *and so as to vary* according as the employment is for a day, week, month or other period, or according to the number of working hours or the conditions of the employment or so as to provide for a differential rate in the case of overtime."

The expression "Employment" in the act unless the context otherwise requires means employment under a contract of service or apprenticeship.

Thus power has been conferred on the Committee to fix minimum rates "so as to vary according as the employment"—*i.e.*, the period of employment under a contract of service—"is for a day, week, month or other period, or according to the number of working hours . . . ." It is said that all this and apparently even more is implicit in the power to fix minimum rates of wages vested by our Ordinance in Estate Wages Boards since these Boards, it is contended, have the power to fix a wage payable to a labourer for any period irrespective of whether the number of hours the labourer works or is under contract to work is the same or less than the hours specified by the Board when fixing the rate.

But inasmuch as in the English Act, power having been conferred on the committee by section 2 (1) to fix minimum rates of wages for time work, it was nevertheless thought necessary to supplement what had been said in that clause by a further provision, section 2 (2), specially vesting in the committee power, *inter alia*, to fix rates so as to vary according as the employment is for a day, week, month or other period, or according to the number of working hours, it might fairly be presumed (*a*) that the power to fix minimum rates for time work conferred by section 2 (1) was not deemed sufficient of itself to secure to the labourer a living wage and (*b*) that power to fix minimum rates of wages for time work means power to fix the relationship between work which is paid for by the time and remuneration in accordance with which the amount earned for a period of time work is to be computed. Power to fix such time rates when supplemented by power to fix rates "so as to vary according to the period of the contract of employment or according to the number of working hours" enables the Committee through the medium of varying rates to secure for the labourer a living wage as enjoined by section 2 (4) of the Act.

Here I would repeat that the rates to be fixed by Estate Wages Boards may only vary according to the sex and age of the labourer, the locality in which he works, and the "class of the labourer".

In an order of the Agricultural Wages Board dated October 25, 1927, are embodied certain rules made by a Wages Committee in exercise of the power conferred by the Act of 1924 and, among them, are the following:—

> Clause 1.—The wages payable for employment in summer and winter (as hereinafter defined) shall be not less than wages at the following minimum rates (*a*) male workers twenty-one years of age and over 30 shillings per week of fifty hours in summer and forty-eight hours in winter.
>
> Clause 2.—Where a whole-time male worker is employed by the week or any longer period and the hours of work agreed between the worker and the employer in any week (excluding hours of overtime employment), are less than fifty in summer and forty-eight in winter, the *rate* of wages applicable shall be such as to secure to the worker the wages which would have been payable if the agreed hours had been fifty in summer and forty-eight in winter.

The first of those clauses is clearly referable to the power to fix minimum rates "so as to vary according as the employment (*i.e.*, the contract of employment) is for a day, week, or month, &c."; the second is made in exercise of the power to fix rates so as to vary according to the number of working hours. As the combined effect of the two clauses, there is assured to a labourer a wage of 30 shillings per contract week, computed at the minimum rate of 30 shillings for fifty hours where the agreed hours are fifty, and computed at a higher rate where the agreed hours are less than fifty. In both these clauses and in clause 2 in particular the distinction between "rates" and "wages" is clearly marked and maintained and the object aimed at which is expressed to be to secure for the labourer a minimum wage has been reached through the medium of varying minimum rates.

The case of *Seabrook & Sons, Ltd. v. Jones*[1] turned upon the effect of these two clauses. "The appellants", I quote from the head note, "employed one T as an agricultural labourer by the week of fifty hours at 30 shillings per week. On Good Friday, T, according to custom, was not required by the appellants to work, and, in consequence, they refused at the end of the week to pay him his full weekly wages, deducting the portion appropriate to that day, but gave him, according to their custom, a small bonus instead". It was held that T was entitled to be paid 30 shillings for the Good Friday week.

As there appeared to be some question as to the terms of the contract between the appellants and T, I quote further from the report—"No written agreement as to service, hours of work, rates of pay, or other matters was entered into, but Twinn worked and was paid in accordance with the appellants' customary hours of work and rates of pay. During a normal week from Saturday to Saturday (in summer), Twinn was required by the appellants in accordance with the custom of their

[1] (*1929*) *1 K. B. D. 335.*

business to work fifty hours . . . . The appellants paid him by the week 30 shillings, less 9 pence national health insurance, being *at the rate of* 7 1/5 pence *per hour.* On March 30, 1928, the appellants posted a notice, which was seen by Twinn, as follows: "Good Friday, April 6, ... Employees will not be required on this day and work cannot be found for them."

The Justices held that a valid variation of the contract had been constituted by the notice and its acceptance and held that clause 2 of the Order applied and alternatively that if it did not constitute a valid variation of the contract clause I applied—the labourer in either case was entitled to 30 shillings.

Lord Hewart who held both parts of the Order to be *intra vires* made the following observations:—

> "Addressing themselves to the task of fixing a minimum rate for such a worker, the committee came to the conclusion that if he is twenty-one years old or older, he ought to have at least 30 shillings a week, that week being normally one of fifty working hours. Then it immediately occurred to their minds that although in practice that was the week, there might be an agreement for what was nominally a week, but which involved less than fifty hours of employment or actual work, and so they provided that, even so, the worker should have his wages at the minimum rate per week secured to him, because in his case *the rate of wages applicable to him should be made such as to secure to him the amount of wages* which would have been payable if the agreed hours had been fifty. In my opinion there is nothing *ultra vires* in that part of the order. Nor do I think that that part needs to be invoked for the purpose of justifying what was contended here, namely, that the agricultural worker was a male worker of full age employed by the week, and as such was entitled to the minimum wage per week. It matters not that in the particular week there came Good Friday".

The agreement was for a fifty hour week and not a "nominal week". Evidently the Lord Chief Justice did not think that a valid variation of that agreement had been constituted by the notice that there would be no work on Good Friday.

Avory J. who concurred affirms the validity of both parts of the order and in that view the labourer would of course be entitled to 30 shillings for the week whether a valid variation of the agreement had been constituted or not.

The point I desire to emphasize is that the first part of the Order by which a minimum rate for a week of fifty hours was fixed was not deemed a bar to an agreement for a week of less hours than fifty and the next is the recognition of the necessity to provide for the case of such a "nominal week" by means of a varying rate.

The case of *Seabrook & Sons, Ltd. v. Jones* (*supra*), and the provisions of the Agricultural Wages (Regulation) Act 1924 (which it appears to me was the model for our Ordinance No. 27 of 1927), and the Order made

by the committee, in pursuance of the powers conferred on them, to which reference has been made, all point to the following conclusions:—

(1) The object of the Agricultural Wages (Regulation) Act was to secure to a worker a minimum wage.

(2) This object was reached through the medium of minimum rates of wages for time work.

(3) Minimum rates of wages for time work mean minimum rates of wages measured in time.

(4) Minimum rates of wages must have reference to the time worked and the time the worker has agreed to work.

(5) Unlike in Ceylon the committees appointed under the Agricultural Wages (Regulation) Act 1924, have power to fix minimum rates of wages which may vary according as the contract of employment is for a day, a week, a month or any other period, or according to the number of hours worked.

(6) The fixation of a minimum rate of 30 shillings per week of fifty hours is not a bar to a contract for a week of less than fifty hours and does not where such an agreement has been made compel an employer to pay the labourer more than the amount due for the agreed number of hours estimated on the basis of 30 shillings for fifty hours.

(7) These committees unlike Estate Wages Boards, are empowered to provide for the case of a week or other contract period where the agreed hours are less than the customary working hours by rates which may vary according to the number of working hours so as to yield the same wage as if the agreed hours were those contemplated or specified in the order fixing the minimum rate.

(8) Power to fix a "minimum rate of wages" for time work does not of itself include power to fix a wage payable per day irrespective of the time worked or the time which the labourer has agreed to work.

The powers of Estate Wages Boards constituted under the provisions of Ordinance No. 27 of 1927, are not co-extensive with the powers committed by the Agricultural Wages (Regulation) Act 1924, to committees appointed thereunder and are limited to the fixation of minimum rates of wages for time work in accordance with which the wage payable for a period of time worked or agreed to be worked is to be ascertained and does not include power to fix a daily wage payable irrespective of the hours worked or agreed to be worked.

The Legislature has not expressly and explicitly conferred upon Estate Wages Boards a power to fix a minimum wage for labourers employed at time work to be paid for every day on which a labourer works or for any part thereof regardless of the time worked or the time the labourer is bound by his contract to work, and there is nothing in the Ordinance which can in my opinion fairly be said to vest such a power in these Boards in express terms or by necessary implication.

At the time when this Ordinance was enacted the tide of Ceylon's prosperity had not begun to ebb and there was no reason to suppose that any employer would require of a labourer less than as many hours work per day as a labourer could reasonably be expected to work. It is quite conceivable therefore, that while provision has been made to

ensure that a labourer should earn a reasonable wage per day of eight hours work and that any work in excess of this period should be paid for at overtime rates, the case of an employer requiring less than eight hours of a labourers time was neither foreseen nor contemplated; if it was contemplated it has not been provided for. But since 1927, the tide of prosperity has turned and this Island has for the last two years and longer been and still is experiencing the hardships of financial depression. Employers are faced with the dismissal of a portion of their labourers or the reduction of the working hours as an alternative to closing down altogether. To the labourers the question is whether all or a number of them are to have their contracts determined or whether all of them should accept the shorter working day and less wages. Entirely new and unforeseen circumstances have resulted in an adjustment to meet the changed circumstances by which employer and labourer have endeavoured to find a solution in a contract for a working day of six hours. Is the employer nevertheless bound to pay the labourer as for an eight hour day? If he is, then employers and labourers have sought in vain for a solution.

Admittedly these are contracts for a month, the obligation imposed on the labourer being that he shall work six hours on each working day and on the employer that he shall give the labourer work on each of the six working days in each week or alternatively to pay him the wage which he would have earned for each day on which he was able and willing to work and offered to do so. The wages earned are payable monthly. After careful consideration of the Ordinances relating to master and servant prior to Ordinance No. 27 of 1927, I am unable to see that there is anything in such a contract which is obnoxious to its provisions. Nor is there anything in Ordinance No. 27 of 1927, which expressly forbids such a contract except upon condition that the labourer shall be paid as for eight hours at the minimum rate of wages prescribed. Can it fairly be said that it does so for the reason that it has vested in Estate Wages Boards the power to fix minimum rates of wages for time work? To that question also the answer it seems to me must be in the negative unless power to fix minimum rates of wages for time work be construed to mean power to fix wages for time workers which have no relation to time worked or agreed to be worked. This to my mind is not a possible interpretation.

But, whatever its powers may be, has the Estate Wages Board fixed a minimum daily wage payable to a labourer for every day on which he works whether the time worked or agreed to be worked be eight hours or less? In the Notification earlier referred to it is declared that "on all estates the rate fixed is the minimum rate for a working day of nine hours (including time not exceeding one hour taken for the midday meal)". What is meant by a "working day of nine hours including time not exceeding one hour taken for meals"? It has been interpreted by the accused as a day of eight working hours in the sense of a day in which the time worked or agreed to be worked is eight hours. It seems to me it is only susceptible of that meaning. Had the Estate Wages Board fixed a wage for a "working day" it would have become necessary to inquire whether what was meant was the contract working day, the customary working

day or possibly even a day on which work is performed, as distinguished from the Sabbath. But where, as here, the words working day are followed by the words of definition "of nine hours (including time not exceeding one hour for meals)" the expression which has reference to eight working hours can only, it seems to me, mean a day of eight hours worked or of eight hours which the labourer has agreed to work.

The expression "a working day of eight hours" *mutatis mutandis* is not distinguishable from the expression "a week of fifty hours" in clause 1 of the Order made under the authority of the Agricultural Wages (Regulation) Act, 1924. That clause is not of itself a bar to a contract for a week of less than fifty hours nor does it place an employer under a duty to pay the same wage for a week of less than fifty hours. Unlike the committees created under the authority of the Act just referred to, the Estate Wages Board for this district has not—always assuming they had the power to do so—provided for the case of a working day of less than eight hours by directing that in such a case the labourer shall be paid at a rate which will secure to the labourer the same wage as would be payable if the agreed hours were less than eight per day.

The Board has not said that 50 cents shall be payable for a working day of eight hours or less.

A labourer is only entitled to his wage when he has earned it by work or has offered in fulfilment of his part of the contract to perform work for the whole of the agreed "working day". A labourer who after working a few hours, for example, four hours, falls ill and is unable to continue is entitled to be paid for four hours at the minimum rate and no more. How can it be said that a labourer who has only agreed to work for six hours and who only works for six hours or less has become entitled to be paid 50 cents as for eight hours, when all that the Wages Board has said is that he is entitled to be paid at a minimum rate of 50 cents for a working day of eight hours and has not said that he shall, in the event of the agreed working day being less than eight hours, be paid at a rate which will secure to him a daily wage of 50 cents?

If such was the intention of the Legislature there could have been no difficulty in stating that Indian labourers employed on estates on monthly contract shall be paid at such minimum rates of wages per day of eight hours, whether the agreed hours of work be eight hours or less, as the Estate Wages Board may fix. But it has not said so nor has it in my opinion conferred powers to do so on Estate Wages Boards when they authorized them to fix minimum rates of wages *for time work*. The Estate Wages Board for the district in which Perth estate is situated has fixed a minimum rate of 50 cents for a working day of eight hours but it has not said that where the agreed working day is less than eight hours the labourer shall be paid at such a rate as will secure to him a sum of 50 cents per day nor has it said that a male adult labourer shall be paid 50 cents for a working day of eight hours or less.

This is a criminal prosecution for the alleged breach of a statutory duty to pay the labourers referred to as for eight hours per day notwithstanding that they only worked for six hours and were only under agreement to work for six hours. Unless the Legislature and the subordinate authority, *i.e.*, the Estate Wages Board constituted by the Legislature,

have imposed such a duty clearly and unambiguously the accused is entitled to be acquitted. Indications of an intention in the mind of the Legislature to secure for labourers a minimum wage will not suffice unless upon a fair interpretation of the language it has used it clearly appears that the particular duty alleged has been imposed on the employer. The objects and intentions of the Legislature are sometimes only partially and imperfectly carried into effect by the Statutes enacted for the purpose. At other times a Statute is in all respects adequate but the subordinate legislation passed under the authority of the Statute proves to be insufficient to carry its objects fully into effect.

Our legislation relating to Indian labourers and Ordinance No. 27 of 1927 shows that the Legislature has secured to those labourers that time work should be paid for at the minimum rates fixed by the Wages Boards and that time worked over eight hours shall be paid for at overtime rates. But I am unable to find any provision which requires payment at a higher rate for time work whenever by the terms of the agreement the agreed hours per day are less than eight hours nor is it in my judgment possible to interpret the rate of 50 cents per working day of eight hours fixed by the Estate Wages Board as meaning a wage of 50 cents for every working day of eight hours or less.

In the absence of a statutory provision which makes it an implied term of every monthly contract of hire and service with an Indian labourer that the working hours shall be eight per day or alternatively of a statutory obligation to pay such labourers for a working day of less than eight hours at such rates as will secure to them the wage which would have been payable had the agreed hours been eight, an employer cannot be convicted of paying male labourers employed by him at a rate less favourable than the rate prescribed by the Board so long as he pays them for the number of hours worked or agreed to be worked, whichever is the greater, wages computed at the rate of 50 cents for eight hours which amounts to 37½ cents for an agreed working day of six hours. In this instance both the agreed hours and the hours worked were six and the wage paid 37½ cents and in some instances a little more. The position in regard to the female labourer is exactly similar.

This appeal should therefore be dismissed.

DALTON J.—

This appeal depends upon the construction of the provisions of the Indian Labour Ordinance, 1927, which has to be read and construed as one with Ordinance No. 11 of 1865 (Contracts of Hire and Service), Ordinance No. 13 of 1889 (Contracts of Hire and Service; Indian Coolies), and Ordinance No. 1 of 1923 (Contracts of Hire and Service; Indian Immigrant Labourers.) The question to be decided is whether since the three labourers in question are monthly servants payable at a daily rate, they are entitled and required to be paid a minimum wage at the rate fixed for their respective class for the twenty-four days on which they worked in the month of September, 1931, irrespective of the hours during which they worked on those days under eight hours. The Magistrate has held that they were entitled to be paid for work done according to the time taken in the work, at a rate proportional to the rate fixed for a day of nine

hours (including one hour taken for the midday meal), and that the minimum rate of wages fixed is not a minimum wage to be paid without reference to the hours actually employed on the work. He accordingly found that no offence had been committed under section 11 of the Ordinance.

It is contended by the Acting Solicitor-General for the appellant that the decision of the lower Court is wrong. He accepts the finding of the Magistrate against the evidence of the labourers, that, in fact, they did not work more than six hours on any day during the month in question, and there is no dispute that they were in fact employed on time work. He contends, however, that the rates fixed by the Estate Wages Board and approved of under the Ordinance (27 of 1927) are minimum daily wages to be paid for every day they worked without any deduction, in other words, that they were entitled to have their wages computed according to the days they worked (subject to any overtime after nine hours) and not according to the hours they worked during the day. Whilst supporting the judgment of the Magistrate and the reasoning upon which he based his conclusion, Mr. Perera, however, argued that the agreement entered into between the employers and labourers was one for a six-hour day, that there is nothing in the Ordinance to prohibit such an agreement, and that the minimum rate of wages fixed by the Wages Board being for an eight-hour work day, taking that as a proportional rate only, the labourers are entitled under their agreement to wages at the rate of six-eighths of the rate fixed by the Wages Board, at which rate they have in fact been paid.

It is not contested that the labourers are engaged on a monthly contract, the wages being payable monthly at a daily rate. Under the provisions of Ordinance No. 11 of 1865, in the case of such a contract unless the wages are payable at a monthly rate, they are to be computed according to the number of days on which the labourer shall have been able and willing to work. That requirement was amplified by Ordinance No. 13 of 1889. Section 5 imports certain conditions to be implied in such a verbal contract notwithstanding that the wages are payable at a daily rate, whilst section 6 (2) enacts that the monthly wages shall be computed according to the number of days the labourer was able and willing to work and demanded employment, whether the employer was or was not able to provide him with work. It is here expressly enacted, however, that the employer shall not be bound to provide for any labourer more than six days' work in the week. Prior to the enactment of the Ordinance No. 27 of 1927 therefore these particular labourers under their contract would be entitled to twenty-four days' work each month to be paid for at a daily rate whether work was provided or not, provided they were able and willing to work. The amount of the daily wages was, however, up to that time entirely a matter of agreement between the employer and labourer.

Ordinance No. 27 of 1927, which is to be read and construed with these previous Ordinances, provides for the appointment of Estates Wages Boards with power to fix minimum rates of wages for time work performed on estates within their jurisdiction. Time work is not defined in the Ordinance, but I do not think there is any difficulty as to its meaning. Its ordinary and general meaning is work done and paid for by measure of time, as opposed to piecework which is work done and paid for by the measure of quantity or by previous estimation and agreement. The term "minimum rates of wages" is defined as the rates proper in cash or kind or both for an able-bodied unskilled male labourer above the age of sixteen years, for an able-bodied unskilled female labourer above the age of fifteen years, or for an able-bodied child of either sex for time work. Different minimum rates may be fixed for labourers in different localities, and for different classes of labourers. The Ordinance in section 11 goes on to enact that any person who employs or pays a labourer, to whom a minimum rate of wages applies, at a rate of wages less favourable to the labourer than the minimum rate shall be liable to a penalty.

On November 27, 1928 (exhibit P 1), the appropriate Board fixed minimum rates of wages (in addition to certain issues of rice) applicable to the estate on which these three labourers were working. The relevant portions of the schedule in the order approved under section 10 of the Ordinance were in the following terms:—

1. On all estates the rate fixed is the minimum rate to be paid for a working day of nine hours (including time not exceeding one hour taken for the midday meal).

. . . . . .

4. The following minimum rates of wages have been fixed for the areas specified:—

	Men cents.	Women cents.	Children cents.
Kalutara Revenue District ..	50 ..	40 ..	30

With the passing of Ordinance No. 27 of 1927, and on the approval of this order, the position of the labourers to whom it was applicable in respect of their work and wages, was, so it seems to me, as follows: they are monthly labourers, their wages being payable monthly at a daily rate, being computed according to the number of days they are able and willing to work. They are entitled to have work for at least twenty-four days in each month to be paid at the daily rate for those twenty-four days whether work was provided or not. A working day is fixed at nine hours, which includes one hour taken for the midday meal, and a minimum rate of wages is fixed, for the different classes, in a certain sum for that working day. If the employer pays him less than the minimum rate of wages so fixed, he is liable to a penalty under the Ordinance. The intention, it seems to me, in the Ordinances when read together is clear,

monthly contract, work to be paid at a daily rate, guaranteed number of days' work, and a minimum wage for a day's work. Under the order the rate of minimum wage is fixed, and the work day is also fixed at eight hours.

From the evidence led in this case it would seem that up to about April, 1931, no difficulty arose in finding work for labourers for an eight-hour working day and paying them at the minimum rate fixed for the day's work. At times, it is stated, much more than the minimum rates were paid. When prices fell, however, difficulties arose, and it appears to have been thought that labourers could be retained to work on the estate, if they agreed, for a shorter day than an eight-hour day, and if such an agreement was entered into by them, they were entitled to be paid wages for the hours, which it was agreed should comprise a work day, at rates proportional to the minimum rate fixed for an eight-hour day. In this case under appeal, on the footing that they worked only six hours a day, they have been paid six-eighths of the minimum rates of wages fixed by the Board, which, it is urged, is a compliance with the requirements of the law.

At this point I would state that I can find no evidence to show that the three labourers in question entered into any agreement with their employer that they would work for six hours only a day. The evidence is clear that no record is, in fact, kept of the hours for which any labourer works on any day, the time being arrived at, according to the Superintendent, on a calculation of the amount of latex brought in, coupled with mere suppositions as to when the work is commenced and when it is finished. Although the Solicitor-General does not question the Magistrate's finding that they did not work more than six hours on any day in September, the evidence on this question is, in my opinion, most unsatisfactory and quite inconclusive. All the Superintendent states on the question of an agreement is in the following terms:—

> "I went and talked to people in the various estates. They agreed to get 6/8 of the minimum wage; they suggested this rate and I accepted it; they went on accepting this rate before I went to England. I started paying 6/8 in May. I started this in the interests of labourers".

The accused, who was the acting Superintendent from June to December, 1931, merely states that he carried on that system which the Superintendent explained to him when he took over.

In support of the Magistrate's judgment, it is first of all urged that the Estates Wages Board was acting *ultra vires* in providing for a working day of eight hours, but the power to fix a minimum rate of wages for time work seems to me necessarily to include power to fix the time to which the rate of wage fixed is applicable. It will be seen from the case of *Seabrook & Sons, Ltd. v. Jones*[1] to which I again refer later, that the committee under the Agricultural Wages (Regulation) Act, 1924, had power, in fixing minimum rates of wages per week for agricultural labourers, to direct that a week should in summer consist of fifty hours,

[1] *(1929) 1 K. B. 335.*

and in winter of forty-eight hours. It does not appear that on this particular point it was suggested they were acting *ultra vires* of their authority. There was an argument before us that the committees under the Act have wider powers than the Estate Boards under the Ordinance, but on the question of deciding what is a working day or working week in respect of the minimum rate of wages, their powers appear to me no greater than the powers of the Estate Wages Board. In any event in the case of the Ordinance, it is to be noted there is, in addition, a provision for the payment of overtime rates, for the calculation of which it is laid down that the day's work, apart from overtime, shall be nine hours including time not exceeding one hour taken for the midday meal.

It was next urged that what the Estate Wages Board has done in fixing a minimum rate of wages in the schedule to the order (P 1) is to fix a ratio for payment for time work, according to time actually worked, under any agreement entered into between the parties, and that there is no provision of the law which would prohibit an agreement for a six-hour working day, if employers and labourers consent to enter into such an agreement. I have already stated that I can find no such agreement here, but even had the employer agreed to less than eight hours' work being done under the Ordinance, in my opinion, the labourer is still entitled to be paid the minimum wage for eight hours at the rate fixed for his or her class. The force of Counsel's argument that the rate fixed is a ratio for payment according to hours worked was also somewhat diminished by his admission that if the labourers in this case had worked for less than six hours for which the employer paid them, they would nevertheless be entitled to be paid for the six hours. The purport of these Ordinances read together and very shortly put, is to assist estate employers of labour to obtain an adequate and regular supply of labour on settled terms, and to guarantee to labourers able and willing to work a definite amount of work per month, for which they are to be paid regular wages at a daily rate not less than a certain sum (which of course may be varied from time to time) for a day's work of a definite number or hours. It does not seem to me that, having regard to the provision of the law, there is room here for the position for which counsel contends. The rates fixed, under the approved order, are a minimum wage to be paid to the labourers according to their class for an eight-hour day without any deduction. Although section 3 of the Ordinance undoubtedly offers some difficulties in interpretation, I can find nothing in it to suggest to me that my view is incorrect. On the other hand, allowing for the correction of a grammatical error in the section, my considered view of it rather goes to confirm the conclusion to which I have come, as to the plain intention of the Ordinance and the order. The Ordinance has in great part been based upon the Agricultural Wages (Regulation) Act, 1924. Section 3, however, is new, but the whole Ordinance must be read together: Sub-section (1) of the section applies to labourers employed at work other than time work for a day or a successive number of days, and directs that for that day or successive number of days his wages are

to be not less than the wages payable to the labourer for such period at the minimum rates prescribed. If the words " or part of a day " followed " a day ", then there might be something to support Mr. Perera's argument although even that addition does not remove all difficulties, but the day being a working day of eight hours, I can find nothing in the sub-section inconsistent with the conclusion to which I have come.

Sub-section (2) is undoubtedly badly drafted, and some words as " such payment " must be read into the fourth line between " and " and " shall " to make it grammatical. The use of bad grammar does not, however, necessarily make a sentence unintelligible, and fortunately there is no dispute as to the meaning of the Legislature in that particular respect. The sub-section provides for the payment of overtime work in the case of daily paid labourers. Any period of work exceeding nine hours, including an hour for the midday meal, is to be paid for at overtime rates. Payment for overtime is, of course, to be in addition to the minimum rates payable for a day's work, and it is provided that overtime rates are to be not less per hour than one-eighth of the minimum rate of wages fixed under the Ordinance. The amount earned for overtime work is required to be calculated per hour, using the rate fixed for an eight-hour work day as a basis for calculation, but I am unable to read into that provision any intention or requirement that payment of wages for the day's work apart from overtime is to be calculated according to the hours worked on the same basis. If that was the intention of the Legislature, nothing would have been easier than to provide for it. I am unable to find in either sub-section of section 3 anything which, in my opinion, can be said to support Counsel's contention, or which is other than consistent with my view of the Ordinance as a whole.

In the course of the argument certain English cases were cited both by the Solicitor-General and Mr. Perera in support of their respective cases, to which I will refer.

The case of *Seabrook & Sons, Ltd. v. Jones* (*supra*) was one arising under the Agricultural Wages (Regulation) Act, 1924, and an order thereunder, an for that reason is of considerable assistance on the question in this appeal. Lord Hewart in his judgment points out that the Act provides that the minimum rates of wages may be fixed so as to apply universally to all workers who come within the provisions of the Act, or to any special class of workers, or any special area, or to any special class in any special area, and so as to vary according as the employment is for a day, week, month, or other period, or so as to provide a differential rate in the case of overtime. Although somewhat different terminology is on occasion used in the Ordinance, due no doubt to the fact that local conditions are much less complex than in agriculture in England, I see no material difference between the powers of the Agricultural Wages Committee under section 2 of the Act and those of an Estate Wages Board under the Ordinance. The former are perhaps set out in more detail in the Act, but they do not seem to amount to much more than is provided in the

Ordinance on this point. I have already dealt with the meaning of the term "time work". The Act does, it is true, provide in express terms that a committee shall, as far as is practicable, secure for able-bodied men wages as in the opinion of the committee are adequate to promote efficiency and to enable a man in an ordinary case to maintain himself and his family in accordance with such standard of comfort as may be reasonable to the nature of his occupation, but the promotion of efficiency and the payment of an adequate living wage are matters which, in the interests of both employer and labourer, any committee doubtless would and should take into consideration without any special direction to that effect. Although there is no such direct provision in Ordinance No. 27 of 1927, I have already indicated the purport of this and the other Ordinances with which it has to be read.

Lord Hewart goes on to point out that a committee addressing itself to its task came to the conclusion that a worker ought to have at least 30 shillings a week, that week being normally one of fifty hours. Applying the rates fixed to the case before him, although in fact the worker had not actually worked fifty hours during the week, owing to Good Friday falling within the week, Lord Hewart states that the worker being an agricultural worker of full age employed by the week, he "was entitled to the minimum wage per week". The Justices had held that the worker was entitled, under the Act and order framed thereunder, to receive the full minimum wage of 30 shillings less national health insurance in respect of the Good Friday week, whether he worked for the whole fifty hours or for a shorter time, and it was held that they were correct. The argument that he was entitled only to payment for the hours he had worked during the week at a rate proportional to the minimum rate fixed, even if he had agreed to do so, was rejected. Avery J. put his conclusion very shortly in the following way:—

> "Once it is admitted the committee had power to make or fix the rate of wages of 30 shillings per week for male workers of twenty-one years and over, I think it cannot be said that they were acting *ultra vires* in providing that although normally 30 shillings a week was to be paid for fifty hours' work in summer and forty-eight hours in winter, if in any particular the employers chose to agree that the worker need not work the whole of the fifty or forty-eight hours, as the case may be, that then, in that case the man should still be entitled to his 30 shillings for the week".

This conclusion was come to without in any way invoking clause 2 of the order, upon which Mr. Perera relied to show that the case could not be relied upon by the appellant.

This view taken in *Seabrook & Sons, Ltd.v.Jones* (*supra*) as to the meaning of the words "minimum rates of wages" in the order is supported by the earlier case of *Jones v. Harris*[1]. The question there was as to the onus of proof in the case of a prosecution under the Act for the payment of wages at a rate less than the minimum rate. The rates per week varied according to the age of the workers. It was held that the prosecution had to

[1] *(1927) 1 K. B. 425.*

make out a *primâ facie* case, showing (*a*) the relation of employer and employed, (*b*) that there was a working in agriculture, and (*c*) the age of the person alleged to have been underpaid. The onus under the Act is then upon the employer to prove that he has paid wages at not less than the minimum rate. There was no onus on the prosecution to prove the number of hours the worker had actually worked, since that fact was not relevant as it must have been relevant had he been entitled to be paid, under the order only, for the number of hours he had actually worked.

In support of counsel's contention that the word "rate" as used by the Estates Wages Board in the expression "minimum rate of wage" meant the rate per hour of a normal working day of eight hours, we were referred to the judgment of Buckley J. in *Davies v. Glamorgan Coal Company, Ltd.*[1] The question arising there related to the standard rate of day pay for a collier working at piecework, under the Coal Mines (Minimum Wage) Act, 1912. In my opinion it affords no assistance in the case before us. The various duties which come within the remunerative part of the collier's work are all paid for separately, and it must be not an easy task in arriving at the week's wages due for coal that has been got. It is quite clear, however, that the question as to how the rate of the actual earnings of the workmen was to be ascertained was not before the Court, the only points that arose for decision being whether rules 6 and 7 (1) made under the Act were *ultra vires*. It was held that they were not *ultra vires*. Vaughan Williams L.J. expressly refrained from expressing any opinion as to how the rate of the actual earnings was to be ascertained, since he states it was not before them. Buckley L.J., however, in his judgment considered it necessary to consider the meaning of the term "rate", as, he says, it affected his judgment on the points to be decided. He defines the term, having regard to the special scheme of the Act to which I have already referred, and he points out that in this particular industry a workman has to do various classes of work which are paid for at different rates. He was clearly dealing with the meaning of the term, as used in what may be called a very special and no doubt complicated case, and it seems to me to give no assistance in answering the question before us. It is to be noted also that it was not referred to in *Seabrook & Sons, Ltd. v. Jones* (*supra*) as giving any assistance on the questions to be decided in that case.

The case of *Board of Trade v. Roberts and another*[2] is one arising under the Trade Boards Act, 1909. In an order under that Act the Board of Trade made minimum wages obligatory for certain branches of the tailoring trade, and provided that the rates were to apply to all male workers who were "engaged during the whole or any part of their time" in any branch of the tailoring trade, but not to persons engaged as clerks or messengers. The worker in question during part of his time did a certain amount of tailoring work, but at other times he was an errand boy and made himself generally useful. The question to be decided was whether the fact that he was engaged for some part of the time in tailoring work entitled him to be paid either for the whole time or for part of the time at the minimum rate of wage prescribed by the order. In answering this question Lord Reading says:

[1] (1914) 1 K. B. 674.

[2] 85 L. J. K. B. 79.

> "Once you arrive at the conclusion from reference to the act and the order that the intention is that he should be paid not less than the minimum rate for the time in which he is engaged in the tailoring trade, whatever work he may be doing at other times, it seems to me that there is little, if any, difficulty in arriving at a solution of the problem. In my judgment this order means that if he is engaged for a part of the time . . . . in work in the tailoring trade, he is to be paid for that substantial part of the time at the prescribed minimum rate per hour".

The terms of the order, in the use of the words "engaged during the whole or part of the time", differ of course in a most essential respect from the provisions of the Ordinance and the order made by the Estate Wages Board. I do not see that this decision as to the meaning of the order gives any assistance in answering the questions we are called upon to consider.

The case of *Hampton v. Smith*[1] seems also to me to have no bearing on the questions before us. That case arose under the Corn Production Act, 1917, which was repealed in 1921 by *11 & 12 Geo. V. c. 48.* That latter act provided in section 4 for the establishment of voluntary joint councils of employers and workmen in agriculture for the purpose of dealing with wages, or hours, or conditions of employment, but that section was repealed and replaced by the Agricultural Wages (Regulation) Act, 1924, upon which Ordinance No. 27 of 1917 is based.

The case of *France v. J. Coombes & Co.*[2], if it is of any use in the case before us, may almost be said to support appellant's contention. At any rate the orders under the Trade Boards Act, 1918, which the Court was called upon to construe, provide amongst other things that the workers in question were to be paid wages for a forty-eight-hour week at the rates fixed, but "subject to a proportionate reduction according as the number of hours of employment in any week is less than forty-eight". That clearly contemplates, as pointed out by Scrutton L.J., that if a workman is working for, say, twenty-four hours, his guaranteed wages are to be half only of the rates mentioned. There is no such provision in Ordinance No. 27 of 1927, or the orders approved thereunder, and as I have already pointed out, nothing would have been easier to say so, if the Legislature had so wished.

There is just one other matter, to which I would wish to refer, in view of certain matters mentioned in the course of the case. This Court has, of course, to interpret the law as it finds it. If one is satisfied as to the correct construction of any Ordinance, what may follow as a result of the enactments of the Legislature so construed, is not a matter that concerns the Court in the performance of its judicial duties. Any suggestion therefore that the allowance of this appeal may result in some estates being unable to continue working on an economic basis and may be to the detriment of both employers and labourers, resulting in the discharge of large bodies of labourers on the footing that the first are unable to pay the minimum wage fixed, cannot enter into the purview of the Court in

[1] *89 L. J. K. B. 413.* [2] *(1928) 2 K. B. 81.*

deciding the legal questions that have arisen in this case. The minimum rates fixed by the order of November 27, 1928, have, we are told, been varied by a later order of December 17, 1931, These latter matters, however, raise questions of policy which are entirely outside the province of this Court in deciding questions of law such as this. If this decision as to the meaning of the law we are called upon to construe and the allowance of this appeal should tend to the unfortunate result that some would seem to anticipate, the remedy is not within the power of this Court to supply. It lies elsewhere.

For the reasons given I am satisfied that the appeal must be allowed and the case be sent back to the Magistrate for a conviction under section 11 of the Ordinance to be entered. Under the circumstances, it being a test case, it is obviously a case for only a nominal penalty. The Magistrate, however, must also ascertain what sum, if any, is due to the labourers under sub-section (2) of section 11 of the Ordinance, and make the necessary order in respect of that sum when ascertained.

Appeal allowed.