1915.

Present : Shaw J.

DUNLOP *v.* COOPAN.

1,739—P. C. Avissawella, 20,949.

Labour Ordinance—Notice of intention to quit service given through the post—Notice good as from the day letter is delivered at the place of business of employer.

Where a cooly gives notice of his intention to quit service, to his master, by post, the notice is good as from the date that the letter was delivered to the complainant.

A notice delivered at the usual place of business of the employer must be taken to have been received by him on that day.

THE facts are set out in the judgment of the Police Magistrate (N. E. Ernst, Esq.):—

The accused is a cooly employed under complainant under a verbal contract of hire and service for the period of one month. He quitted complainant's service on August 4, 1915. Mr. Rajanayagam, the proctor for accused, appears to have given notice on behalf of accused and 79 others.

The registered letter containing the notices was posted on July 3. Receipt D 1 from the post office was produced in proof of this.

The postmark on the envelope produced by complainant shows that the letter left the Avissawella Post Office on July 4, and on the same day complainant received a notice from the post office.

The notice was signed and returned by complainant, and in the ordinary course of business it should have reached him on July 5.

As a matter of fact, he was away from the estate on the 5th, and the letter reached him on July 6.

The tappal is brought to the estate only once a day, and registered letters are not delivered on Sundays.

The notice from the post office reached complainant only on the 4th, and it is clear that in the ordinary course of business he could not have received the letter from Mr. Rajanayagam before July 5.

Therefore, according to complainant, the accused should have left the estate on August 5 or 6 instead of on the 4th.

It was alleged that complainant asked the accused and his coolies on July 5 to cancel their notices. This was denied by complainant, and the evidence led by accused on this point was not at all satisfactory. I am satisfied that complainant received the notice on July 6.

The accused, on instructions from his proctor, left on August 4.

The proctor for accused contended that the notice should be computed from the date of its being posted, and that accused might have left the estate on August 3 or 4, as the notice was posted on July 3.

He cited *5 S. C. C. 143 and 3 Br. 14.*

The first decision quoted does not apply. There is nothing to show that the notice was posted. The notice appears to have been received by the complainant in that case on March 19 or 21. In the second case, the superintendent, though he was aware that the registered letter was lying at the post office for him, refused to receive it. In that case the accused was certainly justified in acting as he did.

In this case, however, it has been clearly proved that complainant could not have received the letter in the ordinary course of business till July 5.

There is nothing to show that he refused to accept the letter. In the case reported in *Koch's S. C. Decisions 31*, it has been held that notice to terminate an engagement with a superintendent of an estate must be computed from the time such notice reaches the superintendent, and not from the date of its being posted. The notice may be delayed in reaching him, or it may never reach him at all, and it is only fair that he should have a full month's time to engage other labourers.

The only other point raised was whether this prosecution was in order, as on the date the case was filed it was alleged that accused was not employed under complainant.

The offence was committed on August 4, and according to my finding the contract of service had not expired on that date.

The accused was still employed under complainant, and he should not have left the estate till August 5.

The offence was committed while the contract of service was still in force, and proceedings might have been instituted at any time within three years of the date of commission of the offence (*vide* section 4A of Ordinance No. 13 of 1889).

Rs. 10, or in default one week's rigorous imprisonment.

Balasingham, for the accused, appellant.—The notice of the intention of the accused to quit service was posted on July 3, and in the ordinary course the letter should have reached the estate on the 4th. The complainant received information from the post office on the 4th that the letter was lying there to his address. It was his fault if he did not send for the letter within office hours. The date on which a notice like this takes effect is the date on which the letter would have reached the addressee in the ordinary course of business, and not on the date on which the letter actually reached the addressee. If the addressee is not in his station, it may not reach him for weeks together. Counsel cited *4 Com. B. 45, (1870) W. N. 119, 16 M. & W. 124, 7 M. & W. 515, 18 Q. B. R. 388, 3 Br. 14, 5 S. C. C. 143.* The sentence is excessive for a technical offence.

Koch, for the respondent, argued on the facts (not called upon for a reply on the point of law).

1915.

Dunlop v. Cooper

November 23, 1915. SHAW J.—

In this case the accused, who was an estate cooly, was charged with absenting himself from work contrary to the terms of the Labour Ordinance, and was found guilty and fined a sum of Rs. 10. It appears that the accused and some 70 or more other labourers gave notice to quit the employment by a letter from a proctor, which was posted and registered on July 3. The notice was for the termination of the labourers' agreement on August 4. The letter was not delivered to the complainant on the day following the day it was posted. That day was a Sunday, and apparently registered letters are not delivered, at any rate in this district, on a Sunday. It was, however, delivered to the complainant at the estate on Monday, the 5th, but it was not opened by him on that date, because he was absent from the estate, and did not get it until his return on the 6th. On August 4 the accused and the other labourers left the employment, believing their notice to have expired on that date. The complainant tried to make them stay until the 6th, asserting that their notice was not good except at the expiration of a month from the time he actually received the notice, which was on July 6. The Labour Ordinance contains no provision as to the method of service of notice to quit, and no special form of notice is required by the Ordinance, but it has to be a month's notice, which means a calendar month's notice. If the accused and the other coolies chose to avail themselves of the post, which is indeed the ordinary method here of giving notice, still their notice is only good as from the date that the letter was delivered to the complainant. In the present case it was delivered at the estate, the usual place of business of the estate, addressed to the superintendent, on July 5. That notice was, in my opinion, good from that day, because a notice delivered at the usual place of business of the employer must be taken to have been received by him on that day. Therefore, the labourers, including the accused, had no right to leave their work till August 5. They were wrong as to one day, just as the complainant was wrong in his contention that they ought to have remained still further. I agree with the Magistrate that the offence is an absolutely technical one. The labourers were acting under the advice of their proctor, which appears to have been in this particular case wrong. Probably the proctor was unaware, in consequence of the letter being registered, that it would not be delivered until two days after it was posted. Had he not registered the letter, it is quite clear that the accused would have been entitled to leave the estate as he did on the 4th, and it is not surprising that he thought that he could have left on that day, as in an ordinary case. The Magistrate has inflicted a fine of Rs. 10. I think, myself, that a mere nominal fine is all that is necessary for the technical offence that has been committed. Whilst affirming the conviction, I reduce the penalty to a fine of Re. 1.

Sentence varied.