APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921. *April 5.*

ARJOON VISHNU (ORIGINAL PLAINTIFF), APPLICANT *v.* HORMUSJEE SHAPURJEE SEERVAI (ORIGINAL DEFENDANT), OPPONENT*.

Contract of service—Payment by daily wages—Calculation of pay made at the end of each month—Contract not one of monthly service.

When a person works on a daily wage, the fact that he is not to be paid at the end of each day, but at the end of each month, calculation being made of the days on which he worked and the amount due for those days, does not make the contract one of monthly service.

Parkin v. *South Hetton Coal Company*(1), relied on.

APPLICATION under Extraordinary Jurisdiction praying for reversal of the decree passed by the Full Court of the Court of Small Causes at Bombay.

Suit to recover money.

The plaintiff was employed as a Polisher in a Furniture workshop owned by the defendant. The plaintiff received a daily wage at one rupee per day. The amount of his wages was not paid from day to day, but at the end of the month. He was not paid for Sundays or for days on which he was absent. On these terms the plaintiff worked for twenty-six days, when he struck work leaving without notice. Thereafter he filed a suit to recover wages due for twenty-six days.

The defendant contended that the plaintiff was not a daily labourer but was a monthly servant and that as he left without notice he was not entitled to any pay.

The trial Court held that the plaintiff was not a monthly servant and decreed his claim.

* Civil Extraordinary Application No. 333 of 1920.

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The Full Court however held that the plaintiff was a monthly servant and dismissed the suit.

The plaintiff applied to the High Court.

A. A. Adarkar, for the applicant.

G. N. Thakor, for the opponent.

MACLEOD, C. J. :—This was a suit filed in the Small Cause Court by the plaintiff against the proprietor of Wimbridge & Co. claiming wages which were due to him. The admitted facts are that the plaintiff received a daily wage, the amount he had earned during the month being calculated according to the days on which he worked. Sundays, therefore, and the days on which the plaintiff was absent, were not paid for. The plaintiff's evidence as shown by the record is as follows :—"We are not paid for 'Sundays'. Our wages are one rupee per day. Wages are calculated at that rate, though paid in lump. I am also not paid for days absent. We were asking for more pay. Defendant declined and I left. Some others also left." Then the correspondence was put in which throws no light on the present question, except that in it the plaintiff claimed that he was a daily labourer, and at the end of the defendant's letter of the 3rd of July appear the following words "The story of 'daily workmen' shows more of the legal touch than a statement of the fact." There was no suggestion then, when in the correspondence the plaintiff claimed that he was a daily labourer, that he was a monthly servant.

Then the defendant was called and said : "I say plaintiff is a monthly servant. Plaintiff is not paid for Sundays and for absent days. The pay is paid once a month on that calculation."

The record shows that the defendant closed his case, and the finding was "I find that the plaintiff is not a

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monthly servant and is entitled to his earned wages for twenty-six days. Decree for plaintiff for Rs. 26 and costs."

An application was made to the Full Court. The judgment of the Full Court was as follows :—"We think this plaintiff was a monthly servant. He admits he stayed away of his own accord. Suit dismissed."

On the evidence recorded in the trial Court, it is perfectly clear that there was no contract that the plaintiff should only be paid for the work done by him if he completed a month's service. The contract was that the plaintiff should earn a rupee for every day on which he worked. The fact that he was not paid at the end of each day, but that at the end of each month a calculation was made of the days on which he had worked and the amount due for those days, does not make the contract one of monthly service. We have no indication on the record why the Full Court came to the conclusion that the plaintiff was a monthly servant. From the arguments addressed to us it would appear as if the Full Court had accepted certain statements made at the Bar as evidence, and had accordingly differed from the decision arrived at in the trial Court.

A very similar question was decided in *Parkin* v. *South Hetton Coal Company*[1]. In that case the facts were that the plaintiff was employed as a putter in a colliery, the employment being terminable at any time by fourteen days' notice by either party; his wages depended upon the amount of work done by him upon each day, which was ascertained daily; the wages were payable and were paid fortnightly. The plaintiff, having worked for four days during part of a fortnightly period, refused to continue work without having given notice and was dismissed. The employers refused to pay him any wages for the four days upon which

[1] (1908) 98 L. T. 162.

he had worked, upon the ground that they were forfeited. In an action by the plaintiff to recover wages for the four days, the County Court Judge decided that the wages in respect of each day became due as they were earned and that the plaintiff was entitled to recover. It was held by the Court of Appeal that, as the wages were earned daily, though payable only at the end of each fortnight, the plaintiff was entitled to recover wages for the days upon which he had worked. The question, therefore, was whether there was a daily hiring, so that the wages earned became due as they were earned, or whether there was a fortnightly hiring, in which case the wages would not become due until a fortnight's wages had been earned. Sir Gorell Barnes said:—

"I think that this case turns simply upon the question, what was the contract between the parties? No assistance is to be derived from other cases in which different contracts have been construed. In the present case the County Court Judge has found that 'the wages in respect of each shift became due as they were earned, *toties quoties*, on the completion of each successive shift'. In my opinion that was either a finding of fact or an inference of law from the facts. If it was a finding of fact, we are bound by it; and, if it was an inference of law, I think that it was right. Therefore the workman's wages were earned each day, though not payable until the end of each fortnight, and there was no fortnightly hiring."

Here in this case on the evidence the finding of the trial Court was that the plaintiff's wages were earned each day though not payable till the end of the month; therefore there was a daily hiring and not a monthly hiring. There is no justification, therefore, on the record as it stands for the Full Court to have reversed the decision of the trial Court. If the defendant had wished the Court to consider further evidence, that could only have been done according to law. I think, therefore, this Rule must be made absolute and the decree of the trial Court restored.

As to Application No. 332 of 1920, this was a similar suit by another plaintiff against the same defendant.

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The record was "By consent decree for plaintiff for Rs. 19 and costs." The record ought really to have been "By consent the decision in the other suit is to be taken as governing the decision in this suit." But as the record stood it seemed as if the defendant had consented to the decree being passed against him. The Full Court, presumably for the same reasons as in the other case, reversed the decision of the trial Court. For the reasons which I have already given in Civil Extraordinary Application No. 333 of 1920, we restore the order of the trial Court. Rule will be made absolute in both cases with costs throughout.

SHAH, J.:—I agree.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.
April 8.

HIRALAL RAVCHAND SHAH (ORIGINAL PLAINTIFF), APPELLANT *v.* PARBHULAL SAKHIDAS SHAH AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2†—Agriculturist—Definition—Income derived from fruits of mango trees—Agricultural income.

The term "Agriculturist," as defined in section 2 of the Dekkhan Agriculturists' Relief Act, 1879, includes a person who derives the greater part of his income from the fruits of mango trees, even though he bestows no care or labour on them.

* Second Appeal No. 358 of 1919.

† The material portion of the section runs thus :—

"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.