

PENTZ vs. SAUL SOLOMON & Co.

Act No. 18 of 1873, § 2, sub-sect. 2.—Termination of contract of service.

P., a servant of S., a printer, got leave to quit his service without notice, provided he did not go into any other printing office. Subsequently he was found with another printer and threatened with prosecution by S. unless he returned to him. He returned to S.'s office and remained there to the end of the week, when he left without notice. He was prosecuted by S. before the Resident Magistrate under Act No. 18 of 1873, § 2, sub-sect. 2, and was convicted. Held, on appeal, that the permission to quit without notice had terminated the relations of master and servant between S. and P., that P.'s subsequent return did not create them afresh, and that therefore he could not be prosecuted under the said Act.

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This was an appeal from the decision of the Resident Magistrate of Cape Town. The facts of the case are sufficiently set forth in the judgment of the CHIEF JUSTICE.

Leonard, for appellant.

Innes, for respondent.

Cur. adv. vult.

Postea (March 2nd),—

DE VILLIERS, C.J.:—The defendant in this case was brought before the Resident Magistrate of Cape Town on a charge of absenting himself without leave from the premises of his masters Saul Solomon & Co. The evidence as to the hiring is rather conflicting. The hiring was a fortnightly one according to the prosecutors' evidence. Mr. Dawes says that when he first engaged the defendant, it was upon the distinct understanding that it was to be a fortnightly hiring. The defendant remained in the service of the prosecutors for about three years, and then left. He was re-engaged by Mr. Seabrook, not by Mr. Dawes, and

nothing was then said as to whether the hiring was to be a weekly or a fortnightly one; but I think it may be fairly taken that the defendant understood he was to be taken back upon the terms on which he was originally engaged, viz., that it was to be a fortnightly hiring. Assuming this to be the case, the question arises whether the defendant can be said to have absented himself without leave from the premises of his master, considering that he had obtained permission on the 10th February to leave the premises without any notice. On the 10th of February the defendant asked Mr. Dawes whether he might be allowed to leave without notice. Dawes said he might, upon the distinct understanding that he did not go into any other printing office, and there the relation of master and servant ceased altogether. Three days afterwards the defendant was found in another printing office. Upon this Dawes threatened to prosecute the defendant if he did not go back. The defendant went back, and remained until the end of the week, but the relation of master and servant had not then begun again. He had obtained leave to go, and there was no fresh engagement, because he went back, not for the purpose of letting his services again, but for the purpose of completing his engagement, the relations between master and servant having ceased on the 10th of February. It therefore appears that there was no fresh engagement after the defendant came back, and that being the case there was no bounden duty on the part of the defendant to remain in the service. It may be that the prosecutors in this case have a civil action against the defendant, but the question is whether they can prosecute under the Master and Servants Act, and I am of opinion that they cannot do so. This conviction must therefore be quashed.

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DWYER, J., and STOCKENSTRÖM, J., concurred.

[Appellant's Attorney, W. BUCHANAN.
Respondents' Attorney, REDELINGHUYTS & WESSELS.]
