

REX v. MGAPA NKUBENE.

1910. April 30. WARD, J.

Master and servant.—Disobedience.—Contract of service.—Want of mutuality.

A contract of service purporting to bind a servant "to work at 9d. a day at any time he was called," *held* to be void.
October and Others v. Rowe (15 S.C. 110) followed.

The accused had been charged before the special justice of the peace, Memel, with contravening sub-sec. 5 of sec. 37 of Ordinance 7 of 1904, in that he had refused to obey an order of his master. He had been convicted and sentenced to a fine of 20s., or in default to imprisonment with hard labour for twenty days.

The facts appear to be that the accused had entered into a contract of service by which he was to work for six months at 10s. a month, and after the completion of that period he was to work at the rate of 9d. a day at any time he was called. The accused finished the six months on the 12th April; he failed to comply with an order to come and work on the 19th.

The case came up for review.

WARD, J.: From the evidence it appears that the contract between the accused and his employer was that the accused was "to work at 9d. a day at any time he was called." There is no reciprocal obligation, apparently, to give the accused any employment, and the contract is void for want of mutuality, or rather there is no contract. DE VILLIERS, C.J., in *October and Others v. Rowe* (15 S.C. at p. 113) says: "The men undertook to work for their master, but he did not undertake to provide them with work so long as the service continued. . . . Whatever the nature of the contract might be, it was not a contract of service, which is the only kind of contract which would impose a criminal liability on the appellants. . . . The

want of mutuality does not raise merely the question of consideration, but it goes to the root of the relation of master and servant."

The conviction and sentence are quashed, and the fine which has been paid must be returned to the accused.

