

REX v. JOEL SALE.

1910. June 28. MAASDORP, C.J., and FAWKES and
WARD, JJ.

Master and servant.—Desertion of service.—Review.—Proof of contract of service.—Sec. 31 of Ordinance 7 of 1904.

A magistrate has no power to convict a coloured person of desertion of service where the contract of service is oral, and is proved to have been entered into for a definite period exceeding one year.

The accused had been convicted by the detached Assistant Resident Magistrate of Vredefort of a contravention of sec. 37, sub-sec. 11, of Ordinance 7 of 1904, in that he, being a coloured servant, had without lawful cause deserted from his master's service. He had been sentenced to pay a fine of £2 or in default to imprisonment for six weeks with hard labour.

The case came up for review.

WARD, J.: In this case the contract entered into was a verbal one for two years. Sec. 31 of the Ordinance, however, enacts that "No oral contract shall be entered into for a longer period than one year." The contract is therefore forbidden by the statute and invalid. Sec. 5 of the Ordinance does not help this case, for that section raises a presumption of a monthly hiring only when such hiring is not "expressly specified and limited."

The conviction and sentence must be quashed.

I may add that the papers have been sent to the Attorney-General, and he does not support the conviction.

Our law of master and servant seems to have come to us (via the Cape) from Ceylon, where a similar law has for very many years been in force as regards Indian and Cingalese coolies in plantations in that island, and the case of *Allagan v. Allagey*

(Pereira and Fernando's Ceylon Reports, 1892, at p. 42) seems to be on all fours with the present one.

MAASDORP, C.J., and FAWKES, J., concurred.

[The following words were used by BURNSIDE, C.J., in the course of a considered judgment delivered in the case cited: "The 8th section of the Labour Ordinance (13 of 1889) invalidates all contracts of service for longer than one month entered into with labourers, which are not in writing and executed with particular formalities; and it was contended that the contract which the parties in this case intended to make having been invalidated for want of writing and the due formalities, it must be presumed that another contract, *i.e.* one of monthly service under the Ordinance, was created. I cannot assent to that proposition; it is not tenable, and I do not think it would be seriously urged. . . . Once admit that there is sufficient proof of an intention to contract for one year, and no presumption can arise that another contract for a shorter period was created contrary to the intention of the contractors."—REPORTER.]

