

DESPATCH

NO. 25232

25232

REC 15 JUL 07

1907

(Subject)

Made and sent to...

... by ...

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Subsequent Paper

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(Ind. ...)

My ...

I regret the delay that has occurred in

submitting the report called for in your letter of

September 20, 1957, and the fact that the

report is being prepared.

I am sorry that I have not been able to

submit the report to you earlier than this

morning, and I am sure that you will

understand the reasons for this further

delay, but I feel that I shall be able to

deal with the whole matter when I see you

next week.

In the meantime I submit this matter which

-ere

for the Colonies.

were prepared by the Crown Advocate on the receipt of
Your Lordship's despatch under reply.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

Humble servant

A handwritten signature in dark ink, appearing to be "M. J. [unclear]", written in a cursive style.

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they engaged to serve for one or two years but did not recognise that such contracts imposed any obligation upon them to continue in that service for the time agreed on for a longer period than they pleased to serve. It frequently happened that as soon as a servant's services became of any value to his master he left his employment and either returned to his village or went to work for some other employer.

That the law gave no assistance to the employer. The utility of an employer whose crops have rotted up the ground owing to the servants having left him when he required their services for getting in his harvest, adding to the loss which he has already sustained further loss of time and money in obtaining a judgment for damages against a native where worldly possessions are nil is obvious.

In the face of these facts and of the fact that it has been recognised both in Cape Colony and in the Transvaal (I regret that when writing on this matter before I omitted to state that the Transvaal law was taken from the Cape Act and the Ordinance under consideration is therefore founded on the law of both these Colonies) that the ordinary law relating to contracts is quite unsuitable in a country where the labour must be supplied by the non-native of the country. His Excellency had to determine whether he was justified in refusing the request of the Settlers to make some alteration in the law in order that an attempt at least might be made to remove the difficulties under which they were then working, and as he was unable to find any sufficient justification in refusing the request and was satisfied that some alteration in the law was necessary he instructed me to draft an Ordinance which would enable Magistrates to order that persons who had entered into

a contract of service should fulfil their contracts if no sufficient reason existed to allow the contract to be terminated and which would at the same time make provision which would safeguard the interests of the native servants.

R. M. Coombe

GROWN ADVISOR

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ENCLOSURE
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No: 16 JUL 07

WITH REFERENCE to the general policy and scope of the
Master & Servants Ordinance 1906.

The object of the Ordinance is to supplement the
existing law relating to contracts of service by making
provisions which will enable Magistrates to insist on the
carrying out of such contracts where, in the opinion of the
Magistrate the contract is one that should be enforced
and where the existing law does not provide any compensa-
tion to the injured party if the contract is not carried
out.

It is not the intention of the Ordinance that the
provisions of the Ordinance should take the place of the
existing law but that they should be added in aid in
order that justice may be done between parties, in cases
in which no justice could be done under the existing law.
(Section 10 (1))

The first part of the Ordinance deals with the
formation and interpretation of contracts.
Section 2 provides that all foreign contracts and all other
contracts for a longer period than one month shall be in
writing, and section 3 requires that in cases where one of
the contracting parties is unable to read a written
contract shall be attested by a Magistrate whose duty it is
to explain the effect of the contract to such person. These
provisions insure that a native who enters into a contract
to leave the Protectorate or to serve for a longer than
one month understands what he is contracting to do.
Section 4 requires that the contract shall specify the
nature and duration of the service, the place where the
service is to be performed and the remuneration to be paid.

so that there should be no room for any misunderstanding on the principal terms of the contract.

Section 7. The powers conferred upon the ~~officer~~ by ~~section 7~~ in effect empower them to prohibit persons from being taken out of the Protectorate for service.

Section 8. Imposes penalties on persons who are concerned in taking a native out of the Protectorate for service where there is no proper contract of service.

The exception made in the case of a domestic servant was inserted in order to protect the officer resident of the Protectorate who may take his personal servant with him when visiting Uganda, Zanzibar or other places out of the Protectorate.

Section 10. It was desirable that the maximum period over which a contract of service may extend should be laid down.

The ~~Age~~ Act (No. 12 of 1924) and the ~~Contract~~ Law (No. 13 of 1920) both provide that a contract of service shall not extend for a longer period than 5 years.

It was considered that five years was an unnecessarily long period and I therefore substituted three years for five, the same period as is provided for in the ~~Wald~~ East Ordinance and which I had to assume was approved by His Majesty's Secretary of State. It must be borne in mind that it must often happen that the native when first engaged is entirely ignorant of the work which he has to perform and that his services only become of any value to his employer after he has been taught to perform the work which he is required to do. I would submit that it is only fair that the person who has spent time and trouble in teaching his servant should be allowed to have the benefit of his servista for some time.

Section 13 provides that when not otherwise expressed the wages of the employed shall be payable in money, but any agreement for payment in kind shall be valid

The latter part of this provision was not inserted without consideration, I assumed, and I believe rightly, that there are many natives in the Protectorate who are absolutely ignorant of the value of the rupee and who would not stir a finger for the value of a cow to be paid in rupees but who would be perfectly willing to work for a stated period if he was promised a cow, sheep or any other thing which has some value to him. In the country becoming developed the natives will learn the value of money but until that time comes I do not consider that any evil will arise from allowing persons who have no knowledge of the value of money to earn by their labours that which has to them some value and which they want. In considering this matter it must be remembered that every contract for a period exceeding one month has to be attested by a Magistrate whose duty it is to see that a native does not enter in a contract the terms of which are inequitable.

The second part of the Ordinance deals with the powers of Magistrates in dealing with disputes arising out of and the misconduct of the parties in relation to contracts of service.

Jurisdiction in these matters is given to Magistrates of the 1st and 2nd class only and the powers are conferred upon these Magistrates because it must be assumed that they have proved themselves to possess Magisterial qualifications as otherwise there can be no ^{justification} ~~ground~~ for giving them the wider powers which have been given to them under other Ordinances.

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Whether or not the object of the Ordinance in question is to be attained must depend entirely on the manner in which the law is administered.

In drafting the Ordinance I assumed that these Magistrates were persons with whom discretionary power could be with safety placed, and in I say so in making that assumption I would admit that some of the maximum penalties which can be imposed on persons guilty of misconduct will be found to be too severe.

With regard to the particular provision to which Excellency's attention has been called and which in particular call for an explanation.

1. Section 19 (b) under which it is said a servant may be awarded three months' imprisonment for a breach of contract is taken verbatim from the Gold Coast "Master & Servants Ordinance 1883" which was I imagine, approved by His Majesty's Secretary of State.

The purpose of the provision is not to enable a Magistrate to impose the punishment of three months' imprisonment for a breach of contract but to impose that penalty for the refusal or neglect to obey an order of the Court. The object of the provision in question is so obvious that I cannot think that there is any real ground to suppose that a Magistrate will purposefully require a native to find security which he cannot obtain in order that he may be able to send him to gaol for three months.

2. Section 21. The objects of this section and section 22 are twofold.

- (a) To remove every possible excuse for persons taking into their own hands the punishment of their servants.

- (b) Because without this section the whole object of the Ordinance would be defeated.

It would not take a native long to discover that if he wanted to get away from an employment of which he was tired that he had only to weary his master by committing the acts which are enumerated in this section and that his master would be only too glad to get rid of him and that he (the servant) would escape without punishment.

The sections imposes a maximum penalty. If a servant absents himself from his work without lawful cause for a month and at a time when he knows that his services are much wanted by his master a fine of a month's wages is not excessive and if he neglects to pay the fine a month's imprisonment would not be excessive punishment. I do not think that there is anything in the Ordinances to induce the Magistrates to assume that they ought to impose the maximum penalties in every case.

3. Section 14. Ordering the period of imprisonment to be added to the term of the contract.

This is the law not only in the Transvaal but also in Cape Colony and I would submit that there is a thing inequitable in requiring a person who has engaged to serve for twelve months to serve for that period and that if through his absence he spends two months in gaol that that period shall not count towards his period of service.

4. If section 16 enabled a Magistrate to order a servant to make compensation for damage caused by him to the property of his employer, with imprisonment in default of payment I could not attempt to justify such a provision as it would police a servant who had destroyed his master's property might be ordered to pay for the damage done. The provisions of this section do come into operation until the servant has been convicted of an offence under sections 21 or 22, and when that fact is appreciated I think it must

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be admitted that the provision is a useful one and is in the interest not only of the master but also of the servant. Take for instance the case where a servant becomes intoxicated during working hours and in consequence of his state does damage to his master's property. The servant could be punished for the offence of being intoxicated during working hours and would also be liable in damages for the injury done to his master's property. Section 26 is intended to meet such a case and enables a Magistrate to deal with the whole matter at once and if he is satisfied that the servant can afford to compensate his master for the damage to his property to withhold the punishment which he would award for the offence on the condition that the servant makes compensation by payment either in a lump sum or in such instalments as the Magistrate considers equitable.

H. M. Cooper

CROSS ADVOCATE.

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REC 16 JUL 07

MINUTE PAPER.

WITH REFERENCE TO the Master & Servants Ordinance 1906.

Protective Commissioner

With regard first to the reasons why His Majesty's Commissioner considered that it was advisable to make some alteration in the law relating to contracts of service.

For some time prior to April 1906 frequent complaints were made by Settlers to the effect that they were seriously handicapped in their work of developing their land-holdings owing to the fact that the natives employed by them, regardless of contracts entered into by them left their service if and when they felt inclined; and early in 1906 the Manager of the Uganda Railway informed His Majesty's Commissioner that unless the natives of the Protectorate could be induced to fulfil the contracts of service which they had entered into he would be compelled to import Indian labour to replace the native labour which was then employed on the Railway. In consequence of these complaints His Majesty's Commissioner caused enquiries to be made into the subject of these complaints and as a result of the enquiries he was satisfied

That the Settlers complaints were well founded and that not only was real damage done to individual Settlers but that the general development of the country was hindered by reason that natives leave their employment when they please and generally at that time of the year when their services are most required by their employers.

Natives willingly entered into contracts under which