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BHAGWATI
PRASAD
v.
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PRASAD.

opportunity of taking the matter of the partition on review to the Board of Revenue, the highest court of appeal and revision on the revenue side, so that any injustice might, if it existed, be set right. The Board has rejected his application and nothing has been shown to us which goes to prove that the partition was other than just and equitable.

In the circumstances, therefore, we hold that the suit was properly dismissed. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Tudball.

1912

December, 13.

RALLI BROTHERS (APPLICANTS) v. AMBIKA PRASAD (OPPOSITE PARTY).*
Master and servant—Clerk engaged on a monthly salary—Relinquishment of employment without consent of master—Clerk not entitled to salary for broken portion of month in which he left his service.

Held that an office clerk engaged on a monthly salary is not entitled to any salary for the broken portion of a month in the course of which he leaves his service without the consent of his employer. Ridgeway v. Hungerford Market Company (1), Dhumeo Bahara v. Sevenoaks (2) and Ramji Manor v. Little (3) referred to.

ONE Ambika Prasad was a clerk in the service of Messrs. Ralli Brothers on a monthly salary of Rs. 50. He left his service in the middle of a month without the consent of his employers and thereafter sued the firm to recover his salary for the broken portion of the month in which he left. The court of Small Causes at Cawnpore gave him a decrec. Messrs. Ralli Brothers thereupon applied in revision to the High Court.

Mr. A. H. C. Hamilton, for the applicants.

The opposite party was not represented.

TUDBALL, J:—The opposite party to this application was a clerk in the employment of Ralli Brothers on a monthly salary of Rs. 50 per month. He left his service in the middle of the month without the consent of his employers, and he then brought the suit out of which this application has arisen to recover the salary for the broken portion of the month. He gave no previous

*Civil Revision No. 112 of 1912.

(1) (1835) 3 A. and E., 171. (2) (1886) L. L. R., 13 Calc., 80.

(3) (1873) 10 Bom. H.O. Rep., 57.

notice of his intention to resign. The lower court has held that, as he is an office clerk and not a menial servant, the rule as to notice does not apply, and therefore he is entitled to recover the salary claimed. The question is one between master and servant. The plaintiff was engaged on a monthly salary, and he would therefore have been, in the absence of a contract to the contrary, entitled to one month's notice before dismissal. Equally his master was entitled to one month's notice before he left service. The lower court is of opinion that this rule applies only to menial servants. This opinion is by no means correct, and has probably arisen because cases of this description usually arise in regard to menial servants. The English cases on the subject are to be found in Smith's Law of Master and Servant, 5th edition, beginning at page 182. The case of *Ridgeway v. Hungerford Market Company* (1) is the case of a clerk of a public company whose salary was paid quarterly and who was discharged for improper conduct. The judgement in that case runs as follows:—
 “*Turner v. Robinson*, and many other cases have shown that if a party hired for a certain time so conducts himself that he cannot give the consideration for his salary, he shall forfeit the current salary even for the time during which he has served.” See also *Dhumea Behara v. Sevenoaks* (2) and *Ramji Manor v. Little* (3). The same principle applies when the servant refuses to work in the course of one of the periods for which the salary is due. The decision of the court below is incorrect and on the findings the suit should have been dismissed. I grant the application and dismiss the suit with costs in both courts.

Application allowed.

(1) (1835) 3 A. and E., 171.

(2) (1886) I. L. R., 13 Cal., 80.

(3) (1873) 10 Bom. H.C. Rep., 57.

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