

## REVISIONAL CRIMINAL.

1918  
January, 8.

*Before Justice Sir George Knox.*

EMPEROR. v. BAKHTAWAR.\*

*Act No. XIII of 1859 (Workman's Breach of Contract Act), section 2—Advance given by employer on agreement by workman to work for him for a certain specified period—Breach of agreement.*

A workman living in Cawnpore took an advance of Rs. 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month. *Held* that such a contract contained nothing repugnant to Act No. XIII of 1859 and was capable of being enforced under the provisions of sections 2 and 3 of that Act. *Lucas v. Rajai Singh*(1) followed.

IN this case one Bakhtawar, a workman living in Cawnpore, where Act No. XIII of 1859 is in force, entered into an agreement with his employer, having received an advance of Rs. 10, to work for him for ten months, and that one rupee should be deducted from his wages each month. Bakhtawar worked a short time, and then refused to go on working. Proceedings were taken against him under Act No. XIII of 1859, and the Joint Magistrate of Cawnpore took action under section 3 and ordered Bakhtawar to perform his contract on a bond for Rs. 50 with one surety in Rs. 50, or in default to undergo two weeks' rigorous imprisonment. The Sessions Judge disagreeing with the decision of the Magistrate referred the case for the orders of the High Court.

KNOX, J.—The learned Sessions Judge of Cawnpore has reported this case for orders. The case is thus stated by him:—One Bakhtawar, a workman already in the service of a master, whose name is not given, took an advance of Rs. 10 and promised to work for ten months on the understanding that one rupee was to be deducted each month from his wages. He worked for a very small portion of the time and then refused to go on working. The Joint Magistrate of Cawnpore directed him to perform the contract on a bond of Rs. 50 with one surety in Rs. 50 or in default to undergo two weeks' rigorous imprisonment. The learned Sessions Judge considers it absurd to allow an employer to tie down a servant to work with him for ten months on a mere advance of a sum amounting to Re. 1 for each month of the service. But he

\* Criminal Reference No. 14 of 1918.

(1) Criminal Revision No. 235 of 1910, decided on the 21st of July 1910.

apparently feels that the language of the Act is too strong for his view unless it can be held that there is some lawful or reasonable excuse for refusal to perform the contract. In his referring order he says that Bakhtawar, so he is told, is perfectly willing to pay back the Rs. 10 and considers that an offer on Bakhtawar's part to pay back the Rs. 10 would constitute a reasonable excuse for refusing performance of the contract. Further, the learned Judge says that it is not clear whether there was any evidence of such an offer by the appellant, as the record is summary, and suggests that the High Court will be prepared to hold that any excuse is a reasonable excuse under section 2 of Act XIII of 1859 for not performing an unreasonable contract. Apparently the case of *C. J. Lucas v. Ramai Singh* (1),\* decided on the 21st July, 1910, was never brought to the notice of the learned Judge. The difficulties which occurred to the learned Judge were put forward in that case and considered. That was a Division Bench case, and I am bound by the ruling. Over and above that I am not prepared to hold that such a contract is unreasonable or

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\* (1) JUDGEMENT—The parties to this application entered into an agreement, dated the 27th of March, 1906. The agreement was, as it purports to be, under Act XIII of 1859. This Act has been in existence in the town of Mirzapur, from which the case comes, for a number of years, and is so well known in the factories of Mirzapur that we need not be under any apprehension that persons who enter into contract under it are ignorant of the law or do not know the nature of the contract into which they are entering. We have examined that contract, and, in spite of what the learned Judge says, we are satisfied that it is a contract that is contemplated under Act XIII of 1859. The learned Judge has quite misunderstood the provisions of the law and also the terms of the contract, and he has needlessly gone out of his way when he says that the order of the Magistrate before him was silent as to how the balance of the advance was to be paid or how long the appellant was to work for Mr. Lucas. The contract was for a term of 50 months, and as soon as those 50 months have expired and the money advanced under the contract has been re-paid, Ramai Singh is free to enter upon any other work and in any other place that may seem good to him. What the learned Judge writes about Ramai Singh incurring the possibility, under this order of the Magistrate, of having to work for the rest of his life and yet the balance be not re-paid could only be true if Ramai Singh does not pay up the balance that may be due from him. As soon as the fifty months are over Ramai Singh can pay the balance the very next day. Till that time he must carry out the terms of the contract into which he has entered. We are most unwilling to interfere in cases of this kind, but we feel that the terms of

(1) Cr. R. 295 of 1910.

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absurd; the more so when the contract is made and breach of it occurs in a town like Cawnpore, where, unless it is proved to the contrary, every workman knows that there is a law like Act XIII of 1859 and enters into a contract voluntarily and willingly. When a man enters into a contract he must carry out the terms of the contract into which he has entered unless he can show some reasonable excuse. One of the terms of the very same contract can hardly be afterwards held up as reasonable excuse for non-performance. Let the record be returned with this expression of opinion from this Court.

*Record returned.*

the learned Judge's judgement may be so mischievously interpreted that we are compelled to interfere. We set aside the order of the learned District Judge and we restore that of the Magistrate. It has not been shown to us that the terms of the bond are at all beyond the means of Ramai Singh.

Ramai Singh will work from the date the order of this Court is certified to the court below until he has completed fifty months of work from the date of the contract and will pay up the sum of Rs. 19-4. Until he has worked for this period and paid up this sum he will continue to be liable for work. Any period for which he worked in the past and has worked since the 6th of February, 1910, is to be deemed as work under this order and any payments made subsequent to the 6th of February, 1910, and accepted by Mr. Lucas are to be deemed as payments made in liquidation of the sum of Rs. 19-4; otherwise the order of the learned Magistrate will hold good.

## APPELLATE CRIMINAL.

*Before Mr. Justice Piggott.*

EMPEROR v. YUSUF HUSAIN.\*

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 January, 8.

*Act No. I of 1872 (Indian Evidence Act), section 105—Act No. XLV of 1860 (Indian Penal Code), section 97—Right of private defence—Pleadings—Alternative and apparently inconsistent pleas.*

The right of an accused person to defend himself upon a criminal charge can only be limited by the provisions of the statute law.

There is nothing in the law to prevent a man on his trial on a charge of culpable homicide from setting up an alternative defence on some such lines as these:— "First, I was not present at the occurrence referred to by the prosecution witnesses, and they are giving false evidence against me; secondly, even if I fail to persuade the Court of this fact, I can show from the statements of the prosecution witnesses themselves, that if I had caused the death of any person in the manner and under the precise circumstances deposed

\*Criminal Appeal No. 786 of 1917, from an order of F. D. Simpson, Sessions Judge of Allahabad, dated the 10th of September, 1917.