1898.
March 7.

RATWATTA *v.* HABANA *et al.*

C. R., Kandy, 4,743.

Kandyan Law—Nindagama—Liability of paraveni nilakarayas to render services to nindagama proprietor—Right of proprietor of nindagama to exact services from paraveni nilakarayas regarding lands which do not form part of the nindagama—Personal services by paraveni nilakarayas.

The paraveni nilakarayas of a nindagama are not bound to cultivate fields which do not form part of the nindagama to which they are attached, but they are bound to render personal services to the proprietor of the nindagama whenever he gives them notice of the time and place he requires their attendance.

Semble, the use of palanquins being now obsolete, except among the priests, the obligation on the part of paraveni nilakarayas to carry palanquins for the proprietor of a nindagama is not enforceable by law.

PLAINTIFF, claiming as purchaser under a deed of transfer of a nindagama, sued the defendants for the recovery of a sum of Rs. 20·50 alleged to be the commuted value of services due by the defendants as paraveni nilakarayas of the nindagama, which services they failed to perform for 1895. These services were stated to be : " Doing all work of cultivation from the time of " ploughing to the time of storing in of the paddy ; collecting " straw ; carrying proprietor's palanquin and luggage when he is " out on a journey ; during pinkamas and devil ceremonies doing

"all necessary work, while receiving food; pounding paddy; "taking a pingo worth a shilling to the proprietor for the new year "and a similar one for the old year; being present at the walawwa. "The services to be within the Kandyan District only, and not to "exceed fifteen days in a month, nor be more than eight days at a "time."

The first defendant filed answer denying that the bare execution of the deed of transfer passed the rights of the nindagama to the transferree, that he ever was a paraveni nilakaraya of this nindagama, and that he is liable to render services to the plaintiff. He claimed the lands as his by purchase, and alleged that he had possessed them ever since, *i.e.*, for eighteen years. He claimed the benefit of section 24 of Ordinance No. 4 of 1870, under which, if no services were rendered for ten years, the right to such services or dues were lost for ever. He also claimed the benefit of the Prescriptive Ordinance, No. 22 of 1871, section 3.

At the trial the following issues were framed :—

(1) Is plaintiff proprietor of the nindagama ?

(2) Is defendant a tenant ?

(3) What damage has plaintiff sustained ?

The Commissioner (Mr. Kindersley) examined only the plaintiff, and then declined to proceed any further with the case in the following terms :—

I decline to go any further into the case of plaintiff. Mr. R. W. Jonklaas objects. He has further witnesses to call, and has certified copy of Mawanella Gansabhawa, No. 1,422, in which these same defendants on 7th October, 1895, consented to pay Re. 1·50 for the services of 1894, which were not performed. Mr. Jonklaas puts in translation of Register A.

I hold it is obvious that if the nindagama confers right to exact services, those services must be performed within the boundaries of the nindagama for which they are due. The iniquity of the idea of exacting a service to be performed any where in the Kandyan District where the plaintiff chooses to reside, which may be 50 miles or more from the nindagama, is absurd. No servitude could ever entail the hardship of a journey of that nature, nor could any Court ever uphold such a servitude. If plaintiff reside on the walawwa of the nindagama in question instead of residing 17 miles from it, he might reasonably claim the tenant's service. As it is he most certainly cannot do so, and I wonder at his impudence in attempting it. The alleged consent of *accused* to commute for 1894 for Re. 1·50 makes no difference to this, whether true or false. It would only tend to show that plaintiff has in this case, if he accepted that commutation, grossly exaggerated the value of the servitude.

I dismiss the action of plaintiff, condemning him to pay to defendants their costs of the action.

The plaintiff appealed.

Wendt, for plaintiff. The Commissioner was premature in stopping the case at this early stage. Plaintiff was entitled to

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lay his evidence before the Court to establish the issues raised. The view which the Commissioner took was a sentimental one. It may be a hardship to the defendants to perform the services anywhere within the Kandyan District, but it was a greater hardship that plaintiff should be defrauded of his just dues.

The nindagama proprietor can reside wherever he pleases, so long as it is within the limits. There are no muttettu fields or walawwa appertaining to this nindagama, so that in the event of a sale of the nindagama the walawwa is the residence of the purchaser in the Kandyan District, and the muttettu fields are the fields in the neighbourhood of his residence.

Van Langenberg, for respondent. The services are due to the overlord and not to the new proprietor (*3 C. L. R. 17*). The plaintiff admittedly owns neither the walawwa nor the muttettu fields. He cannot therefore claim these services as due to him.

7th March, 1898. LAWRIE, J.—

The appeal is dismissed. I vary the judgment as to costs. I find no costs due. The Commissioner stopped this trial prematurely. I assume that the plaintiff could have proved the affirmative of the first and second issues.

The next issue should have been whether the defendant had, when asked, failed to perform the services fixed by the Service Tenures Commissioner as due from the panguwa of which the defendants are in possession. If so, whether damages are due.

The first service is to cultivate a field with paddy. This suggests the existence and the annual cultivation of a muttettu field. I am of the opinion that these ninda tenants are not bound to cultivate a field which does not form part of the nindagama.

I cannot assent to the proposition that the plaintiff is entitled to require the defendant to cultivate a field at Mahaiyawa.

With regard to carrying the palanquin and luggage when the owner is on a journey, part of that seems to be obsolete. No one but a priest is now carried in a palanquin. Luggage is still carried ; the landowner must give notice at what place and what time he requires the tenant's attendance.

Pinkamas and devil-dancing do not take place every day, and the tenant is not in default if he does not receive notice to attend.

The remaining service is to attend the proprietor's walawwa at the old and new year. This, I think, the tenant should do at any walawwa at which the landowner gives notice he will spend the new year. I do not think it is unreasonable to require his attendance at the owner's usual place of residence. In the old

days, when the great families spent much of their time in Kandy in attendance on the king, their tenants from distant villages were bound to attend at the Kandy walawwa on the days fixed for service. These tenants then are not bound to cultivate fields outside the nindagama, but they are bound to do personal service within the Kandyan Province for the plaintiff whenever he gives notice of the time and place he requires their attendance.

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