

ROWEL MUDALIYAR v. PIERIS *et al.*

*C. R., Chilaw, 2,299.*

*Right of Crown to license use of foreshore of the sea—Competency of Mudaliyár of District to sue for rent for Crown land.*

It is competent for the Crown, by its regularly appointed agents, to grant licenses to fishermen to spread their nets on the seashore or on land belonging to the Crown adjacent to the seashore.

Rent for Crown land cannot be sued for in the name of the Mudaliyár of the District, but in that of the Queen.

THE plaintiff in this case was “A. de Rowel, Mudaliyar, Mudaliyár of the Southern Division, Vaikkal,” who alleged in his plaint that he had been authorized in writing by the Assistant Government Agent for the District of Chilaw to represent the Crown in this suit.

He sued the defendants for the recovery of five rupees, in that “they occupied by permission of the Assistant Government Agent for the District of Chilaw from November, 1893, to April, 1894, a portion of land belonging to the Crown, in extent 500 “by 12 yards, and bordering the foreshore, situate at,” &c.

The defendants pleaded, *inter alia*, that they were fishermen by trade, and that they and their ancestors, who were also fisherman, had, “by long usage and ancient custom,” hauled their “fishing nets, boats, tackle, &c., on the land bordering the foreshore “of certain villages, free of payment to, and independent of, the “Crown or other person ; and that the Assistant Government

“ Agent, through his headman, attempted to levy an illegal and unauthorized tax by the issue of licenses to the fishermen who had used the foreshore for the purposes aforesaid,” and that, on petition preferred, His Excellency the Governor had directed the discontinuance of the levy of the fee complained of.

The Commissioner (Mr. Lewis), after hearing evidence, referred to case No. 2,097 D. C., Colombo (*1 S. C. Reports, 11*), and gave judgment for plaintiff for one rupee.

On appeal, *Dornhorst* appeared for defendant appellant.

*Templer, Acting S.-G.*, for plaintiff respondent.

21st February, 1895. LAWRIE, A.C.J.—

I entertain no doubt that it is competent for the Crown, by its regularly appointed agents, to grant licenses to fishermen to spread their nets on the seashore or on land belonging to the Crown adjacent to the shore. It seems to me to be reasonable to make use of such land, but without the express or tacit license from the Crown to occupy the land adjoining the sea, the fishing trade would be impossible. In this case the defendant has been very tenderly dealt with by Mr. Lewis.

The decree against which the defendant appeals is to pay one rupee, and no costs. Holding, as I do, that this bit of land adjoining the seashore is a land at the disposal of the Crown, and that the defendant for some part of the six months in question occupied the land from time to time by stretching his nets there, that he had been informed by the Mudaliyar of the District that he must pay a small rent, and that he had somewhat unwillingly agreed to do so, I shall not disturb this judgment, but I must point out that the Mudaliyar had no title to sue in his own name. The suit ought to have been in the name of Her Majesty the Queen; to her is due this rent; she alone has right to sue for it; but this defect has not occasioned any failure of justice. I affirm the judgment. The Commissioner found no costs to be due to or by either party in the Court below; let that be followed by no costs in appeal.

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