

## RATWATTE v. POLAMBEGODA.

C.R., Kandy, 8,760.

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*Service Tenures Ordinance, No. 4 of 1870, s. 25—Nindagama land—Services therefor—Assessment of damages.*

Where A. the owner of a *nindagama*, sued jointly and severally four persons as holders of a *pangu* thereof for damages consequent upon their failure to perform certain services due to him,—

*Held, per LAWRIE, A.C.J.*—That the owner of a Kandyan *nindagama* could not summon his tenants to attend him wherever he might be, for example, at Colombo or some other place distant from his *walawwa*; that, though it was competent to the plaintiff to sue the *nilakarayas* jointly and severally, yet it was unreasonable to expect them, especially in the case of females, to perform personally such services as the carrying of arms and fans to Kandy, the running errands on orders, &c., to the plaintiff, who, being a clerk in the Fiscal's service, appeared to have acquired title to the *nindagama* by purchase; that it was his duty to prove by an extract from the Service Tenures Register the amount for which the services were commutable; and that, in the absence of such proof, the plaintiff was entitled to nominal damages only.

PLAINTIFF, alleging himself to be the owner of the Katugaha *nindagama* in Four Korales, Kegalla, and to be resident in Mahaiyawa in Kandy, sued four persons on the footing that they were the holders of certain lands forming a portion of the said *nindagama*; that as such *nilakarayas*, who had not commuted their services in terms of section 14 of Ordinance No. 4 of 1870, they were jointly and severally liable to pay to the plaintiff a sum of Rs. 3 every year, and to perform certain services, to wit, during fifteen days in each month to accompany plaintiff on journeys and to do and perform such work as he may order; and that by reason of their failure to pay him the said sum and perform the said services for the year 1898, the plaintiff had suffered damages in Rs. 48. He prayed that the defendants be jointly and severally condemned to pay to him the said sum.

The first and second defendants only answered. They pleaded that the Court of Requests of Kandy had no jurisdiction to hear the case; that their liability was not joint and several; that plaintiff did not demand their services; and that plaintiff had not suffered the damages claimed.

On the issue as to jurisdiction, it was contended that the plaintiff's *walawwa* (residence) being in Kegalla he could not call on the defendants to go to Kandy. The Commissioner (Mr. W. H. Kindersley) held "The journey of the lord may commence any-  
" where. These services were created in order to enable the

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“ nilames to attend the king in proper state. I, therefore, hold  
“ that this Court has jurisdiction to hear this case. ”

On the issue as to joint and several liability, the Commissioner held in favour of the plaintiff, as follows: “ There may be many  
“ tenants on the *pangu*, but the performance by any tenant of the  
“ service demanded releases at once the others from their liability.  
“ In cases where some tenants hold high and some low land, all  
“ of varying productiveness, the difficulty of exactly apportioning  
“ among the tenants the precise fraction of a man which each  
“ should send is, I think, itself a strong reason to suspect that  
“ such a course was never intended. The *pangu* is the unit and  
“ cannot be subdivided, and it is for the tenants to arrange for the  
“ performance of the service and not for the lord to apportion it.  
“ I hold that the liability is joint and several. ”

As regards the two other issues, the Commissioner found that plaintiff did demand the services and money due, and that the damages suffered by him amounted to Rs. 36.66. He entered judgment for plaintiff accordingly.

*Van Langenberg*, for appellants.

*Bawa*, for respondent.

*Cur. adv. vult.*

8th July, 1901. LAWRIE, A.C.J.—

This action is founded on the 25th section of the Ordinance No. 4 of 1870, which enacts that “ It shall be lawful for any  
“ proprietor to recover damages in any competent Court against  
“ the holders of any *paraveni pangu*, who shall not have commuted  
“ and who shall have failed to render the services defined in the  
“ registry hereinafore referred to.

“ In assessing such damages it shall be competent for the Court  
“ to award not only the sum for which the services shall have  
“ been assessed.....for the purposes of perpetual commutation,  
“ but such further sum as it shall consider fair and reasonable to  
“ cover the actual damages sustained by the proprietor from the  
“ default of the *nilakaraya* to render such personal services at the  
“ time when they were due. ”

This, I think, contemplates that the plaintiff shall prove by an extract from the register what is the amount for which the services may be perpetually commuted, and allege and prove in addition any further damages due.

But here the plaintiff, for some reason, has omitted from the translation of the extract from the register the amount for which the services due by this *pangu* may be commuted: the

Commissioner had not that important fact to guide him in assessing damages. The extract itself has not been produced, but only a translation, which is defective.

Plaintiff claimed Rs. 48 as damages for the non-performance of the services. This sum is an extravagant demand to make from the owner of this small *panguwa*.

The *pangu* ought to furnish a man for half the year. The services were to carry arms and fans and to run errands on orders. This can be done by a boy. The tenants were not obliged to go beyond the ancient kingdom of Kandy.

The plaintiff has given no account of the history of this *nindagama*. The owner at the time of the compilation of the register was Molligoda Ratamahatmaya. I suppose that the present plaintiff acquired the *nindagama* by purchase.

The primary obligation of the tenants was to attend at the *walawwa* of the owner; it is not explained whether there was a *walawwa* at Katugaha, or whether the owner lived at Molligoda or at Leuke.

In the decision in another case of the same nature I held that the owner of a Kandyan *nindagama* could summon his tenants to Kandy, and that if they failed to attend, the Kandy Court had jurisdiction to determine the amount of damages, because it was the place where the failure to do service had occurred. I did not mean to decide that a Kandyan landowner could summon his tenants to attend him wherever he might be; he could not require their attendance in Colombo nor at some *walawwa* distant from the *panguwa*. It was because Kandy was the *caput regni*, the head seat of the Government, to which all men might be summoned, and to which, if summoned, they in the old days were obliged to go with a considerable number of tenants. In the older days it would not have been accounted a hardship for the Katugaha tenants to attend Leuke Nilame in Kandy, and so I think it not very unreasonable to require them to serve under their landlord in Kandy, even though the bank and not the palace be where he serves.

But this is clearly a case where it is unreasonable to expect or to call for personal service. The representative of Alupota Kaluhami is now a clerk in the Fiscal's office at Kurunegala, and in the petition he calls himself John Polambegoda.

The second defendant is a woman, Kalu Menika, who could not perform this service, and whose duty it was to provide a substitute. As for the third and fourth defendants, who are low caste men living in different villages, it is not explained how they came to share the *pangu*. In my opinion the demand on them to

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A.C.J. attend personally and run errands for the plaintiff every month in the year 1898, sometimes at Kandy, sometimes at Leuke, sometimes at Hanguranketa, sometimes at Ratwatta, was absurd and oppressive.

If the plaintiff had furnished a correct extract of the register, I would have given him his damages, the amount appearing as commutation and a little more. As it is, I think he is entitled only to nominal damages, which I assess at Rs. 7.50.

No costs in the Court below; plaintiff to pay the defendant's costs in appeal.

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