

1905.  
September 27.

Present: Sir Charles Peter Layard, Chief Justice.

GORDON BROOKE v. PEERA VEDA.

C. R., Avisawella, 4,326.

*Court of Requests—Appeal on a matter of law—Statement of matter of law in the petition of appeal—Ordinance No. 12 of 1895, s. 13 (1).*

*Held*, that in a case from a Court of Requests where an appeal lies only on a matter of law, under section 13 (1) of Ordinance No. 12 of 1895, such matter of law must be stated in the petition of appeal; and no matter of law, not so stated, can be argued at the hearing of the appeal.

THE facts and arguments sufficiently appear in the judgment.

*Dornhorst, K.C.*, for the defendant, appellant.

*H. A. Jayewardene (B. Koch with him)*, for the plaintiff, respondent.

*Cur. adv. vult.*

27th September, 1905. LAYARD C.J.—

This is an appeal from a judgment of the Commissioner of the Court of Requests of Avisawella in which the appellant has been condemned to pay Rs. 115 as damages sustained by the respondent in consequence of appellant's dog rushing and knocking against plaintiff's bicycle, which made it swerve and strike a passenger walking on the road, in consequence of which the cycle and its rider fell.

The ground of appeal mentioned in the petition of appeal is that the Commissioner, having decided that there is no proof that the dog was vicious or that its owner knew that it was vicious, was wrong in awarding plaintiff damages.

Appellant's counsel very candidly admitted that he could not contend that the judgment was wrong for the reason given in the petition of appeal, and stated that the point of law contained in the petition of appeal was one that he could not support before me.

He however addressed me on a very interesting point of law, not raised in the petition of appeal, which was a very fit question for adjudication.

The respondent's counsel took a preliminary objection, viz., that the appellant's counsel was not at liberty to argue any point of law

not stated in the petition of appeal. He pointed out that section 13 (1) of Ordinance No. 12 of 1895 enacts that there shall be no appeal from any final judgment pronounced by a Commissioner of the Court of Requests in any action for damages unless upon a matter of law. He relied also on a judgment of Justice Withers in *Lienard v. Abdul Rahim* (1) in support of his contention that where an appeal is allowed merely on a point of law, this Court can only hear argument on the matter of law actually stated in the petition of appeal. On the other hand, the appellant's counsel very properly pointed out that that judgment was given in respect of an appeal from a Police Court, and he argues that the provisions of the law (section 340 (2) of the Criminal Procedure Code) under which such an appeal is preferred differ from those of section 13, sub-section (1), of Ordinance No. 12 of 1895, which governs this appeal. It is true that sub-section (2) of section 340 specifically declares that where the appeal is on a matter of law, it shall contain a statement of the matter of law to be argued, and there is no similar provision in the section of the Ordinance No. 2 of 1889 above referred to.

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It appears to me, however, that where the Legislature has provided for no appeal lying unless upon a matter of law, the matter of law to be argued must be distinctly and succinctly stated in the petition of appeal, otherwise it would be sufficient simply to say that the petitioner desired to appeal upon matters of law which will be stated by his counsel at the hearing of the appeal, and there would be nothing on the face of the petition of appeal to show that it came within the exception mentioned in the Ordinance. I think the general principle is that when an appeal is given upon a matter of law, the matter of law to be argued must be stated in the petition of appeal, and an appeal which does not contain a statement of the matter of law to be argued would not be receivable by the Court. Such being the case, the Court it appears to me, can only hear argument on matters of law stated in the petition of appeal. The fact that the Ordinance No. 15 of 1898, section 840, specially provides for the appeal petition containing a statement of the matter of law, to be argued, whilst the Ordinance of 1895, which deals with the Court of Requests, is silent, does not show that the Legislature intended that the principle governing appeals upon matters of law should not be applied to the latter class of appeals.

Holding as I do that I can only hear arguments on the matters of law stated in the petition of appeal preferred under section 13, sub-section (1), of Ordinance No. 12 of 1895, I must dismiss the appeal with costs.

(1) (1899) 4 N. L. R. 25.