

1912.

Present: Pereira J.

YATAWARA DISAWA v. LEKAMALAGE et al.

354—C. R. Kandy, 20,624.

Service Tenures Ordinance—Action to recover damages for non-performance of customary services—Proof of damages—Assessment of Commissioners under the Ordinance.

In an action by the overlord of a nindagama against nilakarayas, who have not commuted under Ordinance No. 4 of 1870, to recover damages for omission to perform the customary services, it is competent to the Court to allow itself to be guided entirely by the assessment of the Commissioners under the Ordinance if the proprietor does not prove that he is entitled to a larger sum than the assessed amount, although the Court may at its discretion require the proprietor to prove the actual amount of damage sustained by him.

THE facts appear from the judgment.

De Sampayo, K.C., for appellant.

J. W. de Silva, for the respondents.

Cur. adv. vult.

November 22, 1912. PEREIRA J.—

The plaintiff is the trustee of the Maha Dewale at Kandy, and the defendants are the paraveni nilakarayas of the dewale, and as such they hold the lands described in the schedule annexed to the

plaint. The defendants have not commuted under Ordinance No. 4 of 1870, and as they omitted to perform the customary services, the plaintiff brought this action to recover the sum of Rs. 98, being damage sustained by the dewale.

The plaintiff led evidence to show that notice was given to the defendants requiring them to perform the services, and that they have failed to do so, and he produced an extract from the Service Tenures Commissioners' register showing the amount at which the value of the services that the defendants were liable to perform has been assessed by the Service Tenures Commissioners, and closed his case. The Commissioner, relying on the decision in case No. 1,755 of the Court of Requests of Kandy, refused practically to be guided by the Service Tenures Commissioners' assessment in estimating the amount that the plaintiff was entitled to as damages. What was held in that case was that the amount entered in a register as payable by a tenant was not conclusive, but that the overlord might prove far more. There is no doubt as to that, and it may also be that if required by the Court the proprietor should prove the nature of the services and the damage actually sustained by him, but the question is, What effect is to be given to sections 12 and 25 of "The Service Tenures Ordinance, 1870"? The latter section provides in unmistakable terms that a proprietor may sue the holder of a paraveni panguwa who has not commuted and who has failed to render the service defined in the register, and the Court in assessing the damage may award, not only the sum for which the services have been assessed by the Commissioners for the purpose of perpetual commutation, but such further sum as it may consider fair and reasonable to cover the actual damage sustained by the proprietor through the default of the nilakaraya. If these words mean anything, they mean that it is quite competent to the Court to allow itself to be guided entirely by the assessment of the Commissioners if the proprietor does not prove that he is entitled to a larger sum. At the same time it is clear that the Court may at its discretion call upon the proprietor to prove the actual damage sustained by him, and refuse to be guided by the register. In the present case I see no reason why the Court should not have allowed itself to be guided by the register. When the plaintiff put the extract from the register in evidence, he made out a *prima facie* case for the sum mentioned in that extract, and in the absence of evidence for the defence showing that that amount was excessive, I think that the Court should have given the plaintiff judgment for it. On the question of jurisdiction no evidence has been led, and I understood from counsel at the argument of this appeal that the services were not to be performed at places outside the jurisdiction of the Court.

I set aside the judgment appealed from and enter judgment for the plaintiff for Rs. 90 and costs.

1912.

PERRERA J.

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Set aside.