1913.

Present: Lascelles C.J.

MARTIN *et al. v.* HATANA *et al.*

422—C. R. Kegalla, 9,574.

Obligations of a panguwa of a nindagama to render services—Indivisible obligation.

The obligation of the tenants of a panguwa of a nindagama to render services is in the nature of an indivisible obligation, and therefore the liability to pay the commuted dues is also indivisible.

THE facts appear sufficiently from the judgment.

Bawa, K.C., for defendants, appellants.

H. Jayewardene, for plaintiffs, respondents.

Cur. adv. vult.

January 23, 1913. LASCELLES C.J.—

This is an appeal from a judgment of the Commissioner of Requests of Kegalla awarding the plaintiffs Rs. 25.40 as damages for the value of services due by the defendants as the proprietors of a nindagama known as the Bandaragama Nindagama. The liabilities of the defendants as tenants of the nindagama are, as the Commissioner points out, *res judicata* by reason of the judgment in C. R. Kegalla, 7,454, to which all the defendants but the fourteenth defendant, who is the successor in title of some of the defendants, were parties.

In the petition of appeal and on the arguments points are raised which are outside the issues. No question was raised in the issues as to notice, but, as a matter of fact, there is some evidence of notice, and, as Wendt J. observed in C. R. No. 7,454, slight evidence of notice is sufficient.

Then the question of damages is raised. But no issue was framed on this point, and the case appears to have gone to trial on the footing that Rs. 25.40, the sum for which the services had been assessed by the Commissioner for the purpose of perpetual commutation, was a reasonable figure. This is an amount which it was competent for the Court to award as damages under section 25 of Ordinance No. 4 of 1870. The question whether the services are divisible was raised in the answer of the fourteenth defendant and in the third issue. The position of the fourteenth defendant is that

if the defendants are liable, his company is not liable to pay more than what is proportionate to the share of land owned by his company.

On this point we have been referred to the decision of this Court in C. R. Ratnapura, No. 284,[1] where it was held that each of the nilakarayas of a panguwa was liable only for a share of the service which is proportionate to his share in the panguwa. A few months later this decision appears to have been followed in C. R. Kandy, 4,533.[2] But these decisions, as to the soundness of which I confess that I have considerable doubts, do not appear to have been followed in recent years. In *Asmadale v. Weerasuriya* [3] my brother Pereira held that the obligation of the tenants of a panguwa of a nindagama to render services is in the nature of an indivisible obligation, and therefore the liability to pay the commuted dues is also indivisible. In *Ratwatte v. Polambegoda*,[4] the question whether the liability of the tenants was or was not joint and several was in issue. The Commissioner of Requests held that the panguwa was the unit of contribution, and that the liability was joint and several. Lawrie J. in his judgment did not expressly deal with this point, but the inference I think is that he concurred in the proposition of law laid down by the Commissioner.

In view of these authorities, which represent the view commonly held as to the obligation of the tenants of a panguwa, and on account of the practical difficulty of distributing the liability, I think that the decision in C. R. Ratnapura, No. 284, is one which might properly be reconsidered by a Collective Court when the question comes up in a suitable form. But in the present case it is not necessary to take this course. The action is one for damages under section 25 of Ordinance No. 4 of 1870, a section which clearly enables the proprietor to sue the holders of the panguwa collectively. I fail to see that under this section it is open for one of the tenants to claim that his liability should be restricted to an amount of damages which is proportionate to his holding in the panguwa. To allow this claim would be inequitable to the proprietor, for the proportionate share of each tenant could not be ascertained without a survey and probably a valuation, the costs of which, in cases like the present, would far exceed the whole amount of damages. Whatever may be the law as to the divisibility of the liability to render services or to pay the commutation for services, I think that when it comes to recovering damages, in a case where the liability has not been apportioned, the damages are recoverable from the tenants jointly.

The appeal, I think, should be dismissed with costs.

Appeal dismissed.

[1] *Ram. 1877, 131.*

[2] *Ram. 1877, 895.*

[3] *3 Bal. 51.*

[4] *5 N. L. R. 143.*