

Present : Ennis and Schneider JJ.

1921.

RATWATTE *et al.* v. RAHIMAN.

343—D. C. Kegalla, 5,200.

Rights of paraveni nilakaraya to timber on the panguwa—Service Tenures Ordinance, 1870.

A *ninda* lord has no rights in the timber growing on the land of the *paraveni nilakaraya*.

E. W. Jayawardene, for plaintiffs, appellants.

H. J. C. Pereira (with him *Canakarathne*), for defendants, respondents.

July 15, 1921. ENNIS J.—

The only question in this appeal is whether a *ninda* lord has any rights in the timber growing on the land of the *paraveni nilakaraya*. The only case on the point appears to have been an Avissawella case No. 5,303. We have no report of this case, and only know it by a reference found in the case of *Molligoda Unambuwe v. Punchi Veda*.¹ In the case of *Appuhamy v. Menike*² Shaw J., in mentioning the Avissawella case, expressly stated that the corrections of this decision may be doubtful. In my opinion the terms of the Service Tenures Ordinance, 1870, preclude the possibility of the *ninda* lord having any such right. That Ordinance expressly defines a *paraveni nilakaraya* as the holder of a *paraveni panguwa* in perpetuity, subject to the performance of certain services to the temple or *nindagama* proprietor. Section 25 of the Ordinance provides that neglect to render services shall give rise to an action for damages only. It would seem, then, that the owner of a land in perpetuity could not be prevented from cutting timber whenever he liked when the failure to perform the only obligation to which he was liable did not cause the land to revert to the *ninda* lord. In these circumstances, I would dismiss the appeal, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.

¹ (1875) *Ram.* 226.

² (1917) 19 *N. L. R.* 361.