

Present : Schneider J.

1920.

CHARLES v. BABA et al.

62—C. R. Balapitiya, 12,978.

*Agreement to pay sixteen bushels of paddy for use of certain paddy field—
No notarial writing—Action to recover value of paddy—Ordinance
No. 21 of 1887.*

Plaintiff alleged that defendant had the use and occupation of a certain paddy field promising to deliver to him sixteen bags of paddy or their value Rs. 80.

Held, that as the consideration was not a share of the crop, but a certain quantity of paddy independent of what the crop should be, the action was not maintainable in the absence of a notarially executed agreement.

Croos-Dabrera (with him *Balasingham*), for defendants, appellants, relied on *De Silva v. Thelenis*.¹

J. S. Jayawardene (with him *Jayawickreme*), for plaintiff, respondent.

August 23, 1920. SCHNEIDER J.—

In this action the plaintiff sought to recover from the defendants a sum of Rs. 80, alleging that the defendants had the use and occupation of certain paddy fields from the plaintiff, promising and undertaking to deliver to the plaintiff, sixteen bags of paddy or their value Rs. 80. The defendants denied the agreement, and also plaintiff's right to the field. The issue framed and tried was "can plaintiff maintain this action." The meaning of this issue was that the agreement upon which the plaintiff sued was not embodied in a notarially executed document as required by Ordinance No. 7 of 1840. The learned Commissioner has given judgment for plaintiff as prayed for, and disposed of this issue with the remark that it was a frivolous one and should not have been raised. He thought that the agreement upon which the plaintiff founded his action came within the provisions of section 1 of Ordinance No. 21 of 1887. This view is not correct. The contracts or agreements contemplated in that section are those where the consideration is that the cultivator shall give to the owner of the land a share of the crop or produce thereof. It is quite clear that in this case the consideration was not a share of the crop, but a certain quantity of paddy or its value independently of what the crop might be. This case is entirely within the *ratio decidendi* of the case of *De Silva v. Thelenis*.¹

I therefore allow the appeal, with costs, and dismiss plaintiff's action, with costs.

Appeal allowed.