1939 *Present :* **Hearne S.P.J.**

MEDHANKARA ISTAWEERA *v.* SUPPRAMANIAM CHETTIAR *et al.*

88—C. R. Kegalla, 11,571.

Service Tenures Ordinance, s. 25 (Cap. 323)—Claim for services from paraveni nilakarayas—Value of services at present time—Register to be related to the time it was made.

The value of customary services due by a paraveni nilakaraya should be calculated as at the present time.

The amount of money payment for which services may be commuted as given in the register must be related to the time the registers are made.

***Yatawara Dissawa v. Lekamalage et al.* (16 N. L. R. 14) referred to.**

APPEAL from a judgment of the Commissioner of Requests, Kegalla.

E. A. P. Wijeratne, for plaintiff, appellant.

Cyril E. S. Perera (with him *S. C. E. Rodrigo*), for defendants, respondents.

August 23, 1939. HEARNE S.P.J.—

The plaintiff, as the incumbent of Bisowela Vihare, sued the defendants as the paraveni nilakarayas for Rs. 151.50 being half share of the services due by them to the temple. Judgment was entered for Rs. 30 and the plaintiff has appealed.

In the argument addressed to me by Counsel for the appellant it was said that the Commissioner had before him evidence that the defendants received as income from the temple land Rs. 50 to Rs. 60 only as their half share, and that he accordingly related the money value of the services due by the defendants to the income derived by them. For these reasons this Court was pressed to send the case back to the Commissioner of Requests with directions that he should calculate the amount due only by assessing the actual cost of supplying meals to the incumbent and of repairing the Vihare.

This argument by Counsel is strangely at variance with the petition of appeal in which it is asserted that "according to the assessment placed by the learned Commissioner of Requests a sum of Rs. 60 a year would suffice to provide the daily meals of the chief priest and for the annual repairs to the Vihare" but, the petition continues "the learned Commissioner has not taken into consideration that in the event of non-performance of the services, the appellant is compelled to engage the services of a servant to prepare his meals . . . . ".

It is to be noted in the first place that a fresh point was taken in the petition which was not taken in the Court of the Commissioner, viz., that in valuing the cost of meals not supplied the wages of a servant are to be taken into account (it was not, I may add, mentioned in the argument on appeal) and in the second place that Counsel for appellant asked this Court to send the case back to the Commissioner of Requests in order that he might do what according to the petition he has already done.

I have read the judgment of the Commissioner with care. There are in it undoubtedly expressions which indicate that it would be inequitable to adjudge the defendants liable to pay a bigger sum than they receive as income, but it is also clear to me, as the petition itself asserts, that he attempted to place a money value on the services which the defendants were liable to perform. Taking into account the fact that "the cost of feeding a priest has gone up", and "viewing the matter in the light of present circumstances", he thought the claim of "the priest was highly exaggerated", and fixed Rs. 30 as the equivalent of annual services in respect of a half share of the land in question. The appeal, as it was argued before me, appears to have proceeded on a misconception which was not, as I have indicated, shared by the proctor who drafted the petition.

In replying to the arguments of Counsel for the appellant, Counsel for the respondents referred to the word "perpetual" in section 25 of Ordinance No. 4 of 1870 (Vol. 6, Legislative Enactments, Cap. 323, p. 666). He argued that the use of that word indicated that once the commutation of services due under the Ordinance dealing with Service Tenures (4 of 1870) had been fixed in accordance with the provisions of the Ordinance, such commutation was a constant and was not liable to be changed;

that, as according to the Register of Paraveni Pangus relative to the property in question, the annual commutation was Rs. 28, the defendants' half share could not amount to more than Rs. 14. This is clearly opposed to what is laid down by the Ordinance, viz., that the annual amount of money payment for which services may be commuted must be related to the time the registers are made. The registers are a guide and no more than a guide, though they may, in the absence of *evidence*, provide the only basis of assessment.' *Yatawara Dissawa v. Lekamalagè et. al.* '

The arguments addressed to me by Counsel for both the appellant and respondents are in my opinion alike misleading. The Commissioner of Requests took the proper view in calculating the value of the customary services at the present time. His conclusion involves a question of fact with which, on the evidence adduced, I would not interfere.

In the circumstances I dismiss the appeal and order that each party shall bear his or their own costs of the appeal.

Appeal dismissed.