

Present: Ennis J.

1913.

SIMON v. ABEYGOONEWARDENE.

368—C. R. Tangalla, 7,099.

Action in Court of Requests for damages for preventing flow of water—Inability to cultivate fields—Jurisdiction of Court of Requests—Village Tribunal—Ordinance No. 16 of 1906.

No legal tribunal can entertain questions of damages for a breach of an ancient custom of irrigation alleged to exist in places to which the Irrigation Ordinance (No. 16 of 1906) applies, unless and until the existence of that custom has been adjudicated upon under the provisions of the Ordinance and compensation thereunder has been refused.

THE plaintiff, claiming to be owner of a certain field as part of a tract called Yalgama, alleged that the said field had a right to the use of water from certain communal springs during the yala season by "long-established custom and usage," and that the defendant obstructed the flow of water from them during the said season, and claimed Rs. 75 as damages, and prayed for an injunction in the Court of Requests.

The defendant denied that the Yalgama tract was entitled to exclusive use of the spring water during the yala season. The Commissioner of Requests gave judgment for the plaintiff, and held that the alleged custom did exist. The defendant appealed.

Elliott (with him *A. St. V. Jayewardene* and *E. T. de Silva*), for the appellant.—The Court of Requests has no jurisdiction to hear this case. Under Ordinance No. 16 of 1906 the Government Agent and the Village Council have exclusive jurisdiction. The words of section 12 are imperative; section 22 prescribes the procedure for the hearing of complaints of this nature; section 27 ousts the jurisdiction of the ordinary Courts. Counsel cited *Elias Vedarala v. The Attorney-General*.¹

Allan Driberg, for the respondent.—The Ordinance does not oust the jurisdiction of the ordinary Courts. The Legislature could not have intended that the sum of Rs. 30 recoverable under section 29 should represent the sum total of all possible damages which might be suffered as a result of the breach.

Elliott, in reply.—The Village Council alone could adjudicate whether or not there was a breach of the rules. It would be open to the plaintiff, after a decision in his favour in the Village Council, to sue for damages in the ordinary Courts.

Cur. adv. vult.

¹ 1 *Cur. L. R.* 151.

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This was a claim for Rs. 72 damages for preventing the water from certain springs from flowing on the plaintiff's land contrary to the custom and rules prevailing, and so preventing the plaintiff from cultivating his fields. The plaintiff also prayed for a declaration that he was entitled to water from the said springs. The Court of Requests gave judgment for the plaintiff with costs, and the defendant appealed.

It was urged for the first time on appeal that the Court had no jurisdiction to try the case, on the ground that under the Irrigation Ordinance, No. 16 of 1906, the Government Agent and the Village Council had exclusive jurisdiction in the first instance. This was heard as a preliminary point.

The Ordinance provides (sections 8 and 11) for the framing of rules "for the encouragement and extension of paddy cultivation, and the enforcement of ancient customs relating thereto."

Section 12 provides that "whenever an act shall be committed contrary to the said customs or rules, or a complaint shall be made, or a question arise having relation to the matters provided for by this Ordinance, such act, complaint, or question shall be investigated and dealt with in manner provided in chapter IV. or chapter VI., according to the nature of such case."

Chapter IV. provides for prompt action by headmen to prevent injury.

Chapter VI., section 22, prescribes a procedure for the hearing of complaints by the Government Agent and Village Council, and proceeds: "If such Village Council shall, at the close of the inquiry, be of opinion that the party complained against has committed a breach of the rules, or ancient customs, and such opinion shall be concurred in by the Government Agent, the Village Council shall forthwith award and adjudge that the person so offending do pay a penalty not exceeding thirty rupees."

Where there is no Village Council, and the rules have been framed under section 11 by the Government Agent alone, the Government Agent is authorized by section 24 to inquire into breaches of any rules so made by him, and "to hear, try, and determine all questions concerning the same, and to adjudge and award that parties complained against do pay the penalty fixed by section 22 (*i.e.*, thirty rupees) or any penalty prescribed by such rules."

Section 27 provides: "No appeal shall lie to any Court against the decision or award of any such Council, Government Agent, on any plea or pretext whatever, nor shall any information be issued by any Court in respect of any matter of which they or he may take cognizance by virtue of the Ordinance." The section proceeds to authorize the Government Agent to review a decision, and to provide that any person aggrieved after such review shall

have the right to petition the Governor, upon which the Governor in Council may direct further inquiry, or confirm, modify, or reverse such decision.

Section 29 provides that in awarding any penalty it shall be competent for the Village Council or the Government to direct compensation to be paid to the person injured out of any penalty recovered, "on condition that such person, if he shall accept the same, shall not have or maintain any suit for the recovery of damages for the loss or injury sustained by him."

For the appellant it was urged that section 12 was imperative, and required that breaches of the rules and of ancient customs should be brought before the Village Council in the first instance, and section 27 was relied upon as ousting the jurisdiction of the Courts.

For the respondent it was urged that the powers of the Village Council were penal only, that questions of damages could not be decided by them, that the only provision for compensation (section 29) is contingent on the acceptance of the parties, is limited to Rs. 30, and the jurisdiction of the Courts is ousted only when compensation is so accepted. It was further urged that the jurisdiction of the Courts should not be ousted without express provision.

In *Elias Vedarala v. The Attorney-General*¹ a decision of a Village Council was held to bar the Courts from reconsidering in a civil suit the question decided by the Council, Wood Renton J. observing that the word "appeal" in section 27 must be held to include any kind of application to a "legal tribunal for relief." The finding in effect was that the Ordinance provided that the decisions of the Council as regards matters coming within the scope of the Ordinance made the right or relief claimed a *res adjudicata*, an extension of the ordinary rule of Civil Procedure (section 207 of the Civil Procedure Code), under which the existence of a right is a *res adjudicata* only on the passing of a decree, *i.e.*, on a decision in a civil action, and not on a decision in a criminal action. I take the same view as to the effect of the section. The present case is, however, not quite on all fours with that case. The point now before me is whether a legal tribunal can go into any question of an ancient custom of irrigation in a place in which the Ordinance applies where there is no decision of a Village Council, and I have come to the conclusion that it cannot. The express words of section 27 prohibit a Court from issuing an injunction in any matter of which a Village Council may take cognizance under the Ordinance, and a decision of the Village Council is subject to further consideration by the Government Agent and appeal to the Governor in Council. The inability to issue an injunction would render any decision of a legal tribunal in such a case nugatory, and the appeal to the Governor in Council provided in the Ordinance is inconsistent with

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the procedure of legal tribunals. These considerations and the imperative provision of section 12 for the investigation of such matters leave no room for an application in the first instance to the Courts for relief in matters within the cognizance of the Village Tribunal, and limit the jurisdiction of the Courts to the ascertainment of damages after the breach of the custom has been found by the Village Council.

The position then resolves itself into this, that no legal tribunal can entertain questions of damages for a breach of an ancient custom of irrigation alleged to exist in places to which the Ordinance applies, unless and until the existence of that custom has been adjudicated upon under the provisions of the Ordinance and compensation thereunder has been refused.

There seems to be some doubt whether Tangalla has been proclaimed an irrigation district. I send the case back for further inquiry and adjudication on this point.

Sent back.
