

1960

Present : Sansoni, J.

M. CORNELIS SINGHO *et al.*, Appellants, and V. P. S. PERERA *et al.*,
Respondents

S. C. 368—C. R. Avissawella, 1132

Servitude—Right of using a foot-path—Scope.

The right of using a foot-path does not include the right to take a vehicle over that path. It is nothing more than the right of being able to come and go on foot. The presence, therefore, of stiles at either end of the servient land cannot be said to impede the free use of the path by those who have the right to use it.

APPEAL, with application in revision, from a judgment of the Court of Requests, Avissawella.

S. B. Lekamge, for Plaintiffs-Appellants.

W. Wimalachandra, with *M. T. M. Sivardeen*, for 1st to 3rd Defendants-Respondents.

Cur. adv. vult.

November 28, 1960. SANSONI, J.—

There is no right of appeal in this case, but as an application in revision has also been filed I have heard counsel on the merits.

The question is whether the learned Commissioner was right in saying that the defendants, over whose land the plaintiffs have been granted a foot-path, should be allowed to retain a stile at either end where the path enters their land ; he thought that the stiles were necessary for the protection of the defendants' land. Mr. Lekamge has urged that the order is wrong because a person entitled to a foot-path also has a right to use a bicycle or a wheel-barrow over that path, and the stiles will prevent the use of such vehicles. He relied on the observations of de Kretser, J. in *Jayasekera Hamine v. Agida Hamine*¹.

Having considered the matter myself, I do not think that the right of using a foot-path includes the right to take a vehicle over that path. I think it is nothing more than the right of being able to come and go on foot. According to Voet 8-3-1, the servitude known as 'iter', or foot-passage, in Roman Law included the right to go on horseback or even to be carried in a sedan-chair or litter ; but in modern usage the right was only to come and go on foot. The right to go on horseback (commonly termed bridle-path) was a different servitude. Grotius agrees with Voet : see Grotius' Introduction 2-35-2 & 3. Van Leeuwen in his Roman-Dutch Law 2-21-2 & 3 follows Grotius.

It cannot be suggested that the presence of the stiles impedes the free use of the path by those who have the right to use it, for they are a common feature in our villages.

I therefore dismiss the appeal and the application in revision with costs.

Appeal and Application dismissed.

¹ (1944) 46 N. L. R. 38.