

Present: Schneider A.J.

1919.

SILVA v. RODRIGO.

57—C. R. Colombo, 65,593.

Cattle trespass—Jurisdiction of Village Tribunals—Not exclusive.

Section 49 A of the Village Communities Ordinance confers jurisdiction upon Village Tribunals in cases of cattle trespass only when the summary procedure prescribed in sections 7, 8, and 9 of the Cattle Trespass Ordinance, 1886, is followed. Those provisions do not deprive a person of his ordinary remedies to bring an action to recover damages in any other Court.

THE facts appear from the judgment.

L. M. D. de Silva, for plaintiff, appellant.—The Court of Requests has jurisdiction. It is true that section 49 A of Ordinance No. 24 of 1889 confers jurisdiction on Village Tribunals in cases of cattle trespass even where the damage exceeds Rs. 20. But this jurisdiction in excess of Rs. 20 is limited to cases where the procedure prescribed under sections 7, 8, and 9 of the Cattle Trespass Ordinance has been adopted.

The summary procedure under sections 7, 8, and 9 of the Cattle Trespass Ordinance does not take away the old common law remedy from a party aggrieved. Section 10 of that Ordinance conserves the old common law remedy. See 19 *N. L. R.* 399.

Here the plaintiff has not adopted the procedure under sections 7, 8, and 9. His action is based on his common law rights. The Village Tribunal has no jurisdiction, and the action was properly instituted in the Court of Requests.

June 6, 1919. SCHNEIDER A.J.—

In this case the plaintiff appeals from a judgment dismissing his action, in which he claimed a sum of Rs. 30 as damages caused by the defendant's cattle straying into his land and destroying certain rubber plants. The learned Commissioner dismissed plaintiff's action on the ground that section 49 A of the Village Communities Ordinance, 1889, conferred jurisdiction upon Village Tribunals in cases of cattle trespass even where the damage claimed was beyond the ordinary jurisdiction of such Village Tribunal, and that section 34 of that Ordinance renders the jurisdiction of Village Tribunals exclusive. He therefore thought that the plaintiff should have brought his action in the Village Tribunal. The reason he has given for dismissing plaintiff's action is clearly wrong. Section 49 A confers jurisdiction upon Village Tribunals in cases of cattle trespass where the damages claimed are those payable under sections 7, 8, and 9 of the Cattle Trespass Ordinance, 1886. Those sections

1919.

SCHNEIDER

A.J.

*Silva v.
Rodrigo*

of the Cattle Trespass Ordinance refer to a summary procedure especially provided in cases of cattle trespass. Those provisions do not deprive a person of his ordinary remedies to bring an action to recover damages for loss suffered by trespassing cattle. The Court of Requests, therefore, had jurisdiction to entertain and try this action. I set aside the judgment appealed from, and remit the case for trial upon proper issues. The plaintiff-appellant will have the costs of the trial in the lower Court, which costs the Commissioner is requested to fix. The plaintiff appellant will also have the costs of this appeal.

Sent back.