

Present : De Sampayo J.

1920.

VYRAMUTTU v. DISSANAYAKE.

24—C. R. Anuradhapura, 10,122.

*Interpretation of deed—Agreement to pay rent in paddy—Valuation of paddy in deed for purpose of stamping deed—Action to recover value of paddy according to market rate in default of payment of paddy—Stamp Ordinance, s. 25.*

Plaintiff leased to defendant a paddy field for the annual rent of 130 bushels of paddy. For the purpose of regulating the stamps to be affixed to the deed of lease the paddy was valued, in the bond itself, at Re. 1.50 per bushel.

In an action by plaintiff to recover arrears of rent in paddy, or in default damages at Re. 3 a bushel, which was the market rate—

*Held*, that in the circumstances the plaintiff was entitled to claim damages at the market rate, and that section 25 of the Stamp Ordinance, No. 22 of 1909, did not bar the plaintiff from claiming damages according to the market rate.

**T**HE facts appear from the judgment.

The deed in question was as follows :—

This indenture made and entered into at Anuradhapura, in the District of Anuradhapura, North-Central Province, this Twentieth day of October, A.D. One thousand Nine hundred and Sixteen, between Arumugam Vairamuttu, presently of Anuradhapura aforesaid (hereinafter called the lessor) of the one part, and Stephen Dissanayake of Abhayagiriya, in the town of Anuradhapura aforesaid (hereinafter called the lessee), of the other part, witnesseth :

The lessor, in consideration of the rent and covenants hereinafter on the part of the lessee reserved and contained doth hereby let and demise unto the lessee, his heirs, &c., all that divided portion out of land called Abhayagiriya-kele described . . . . . To hold the said premises unto the lessee and his aforewritten for the term of five years, commencing from the date hereof, yielding and paying therefor by way of annual rent one hundred and thirty bushels of good paddy free of chaff and other refuse in half-yearly instalments of sixty-five bushels at the end of each of the two sowing seasons of the year. Provided, and it is hereby expressly declared and agreed, that in case the said portion of land, together with other lands under the Bassawakulama tank, shall not be cultivated, or in case the paddy crops growing on the said land shall be withered and die away in any season of the said term for lack of sufficient water supply, the said rent shall not be payable in respect of the said sowing season (one bushel of paddy being valued at one rupee and cents fifty).

The lessee hereby covenants with the lessor that the lessee shall yield and deliver the said paddy rent in, manner hereinbefore reserved, and shall at the expiration of the said term peaceably and quietly deliver over possession of the said premises to the lessor. Provided, however, and it is hereby agreed that in the event of the lessee failing,

1920.  
 Vyrarnuttu  
 v.  
 Dissanayake

refusing, or neglecting to deliver the said rent in manner hereinbefore reserved, it shall be lawful for the lessor to cancel and determine these presents and forthwith to eject the lessee from the said premises notwithstanding that the said term of five years has not elapsed, and to sue for and recover all arrears of rent then due. The lessor hereby covenants with the lessee that the lessor shall pay and discharge all taxes, rates, assessments, impositions, dues, and charges which are now or may hereafter be levied on or in respect of the said premises during the said term, and that the lessee paying the rent and performing the covenants herein on his part reserved and contained shall and may peaceably and quietly hold and enjoy the said premises during the said term without any interruption, hindrance, or disturbance by the lessor or any persons.

In witness whereof, &c.,  
 Signed, witnessed, and attested.

*J. S. Jayawardene*, for defendant, appellant.

*R. L. Pereira*, for plaintiff, respondent.

July 19, 1920. DE SAMPAYO J.—

This case involves the construction of a deed of lease of a paddy land. By deed dated October 20, 1916, the plaintiff leased the land to the defendant for a period of five years, and it was therein stipulated that the defendant should pay by way of annual rent 130 bushels of paddy in two half-yearly instalments of 65 bushels at the end of each of the two harvests of the year. The plaintiff brought this action in respect of the instalment of rent due at the end of *maha* harvest, 1918–1919, and prayed that the defendant be ordered to deliver to him 65 bushels of paddy and in default of such delivery to pay damages. He estimated his damages at Rs. 3 per bushel, being the rate at which paddy was valued by him. The defendant disputed the correctness of the claim in respect of damages, his contention being that the paddy deliverable was valued in the deed of lease itself at Re. 1.50 per bushel. He relied on the following passage in the deed :—

“ To hold the said premises unto the lessee and his afore-written for the term of five years commencing from the date hereof, yielding and paying therefor by way of annual rent 130 bushels of good paddy free of chaff and other refuse in half-yearly instalments of 65 bushels at the end of each of the two sowing seasons of the year. Provided, and it is hereby declared and agreed, that in case the said portion of land, together with other lands under the Bassawakulama tank shall not be cultivated, or in case the paddy crops growing on the said land be withered and die away in any season of the said term for lack of sufficient water supply the said rent shall not be payable in respect of the said sowing season (one bushel of paddy being valued at one rupee and cents fifty).”

The defendant contends that the last words within the brackets constitute a stipulation that if the paddy were not delivered in kind the assessment of damages should be at the rate of Re. 1.50 per bushel. The notary who attested the deed stated that those words were put in only for the purpose of regulating the stamps to be affixed to the deed, and not for the purpose contended for by the defendant. Perhaps such oral evidence was not admissible to construe the deed, but I think that an independent consideration of the deed leads to the same conclusion. These words have no grammatical connection with what precedes, nor do they have any visible reference to the delivery of paddy. It will be noticed that there is no stipulation that the rent, which is to be in kind, should in case of default be paid in money calculated at the rate of Re. 1.50 per bushel or any other rate. The rent is payable under any circumstances in kind only. The claim in this case is for the paddy deliverable at the end of the *maha* harvest of 1918-1919, and as the defendant failed to deliver that paddy, he must pay to the plaintiff such a sum as would enable the plaintiff to buy the paddy in the market. The market rate would seem to have been even higher than Rs. 3 per bushel, but the Commissioner has allowed that rate. Under the decree the defendant may, if he does not wish to pay in cash, discharge his obligation by delivering the paddy in kind, and I do not think he is entitled to any further relief so far as the stipulations in the deed are concerned.

Reliance was also placed on the provision of section 25 of the Stamp Ordinance, No. 22 of 1909, which runs as follows:—

“Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be ascertained . . . . at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.”

The subject-matter of the lease was the quantity of paddy stipulated for, and if the rate mentioned within the brackets be the valuation of that paddy, the value of the subject-matter of the lease at the date of its execution was, in fact, ascertained, and the deed was stamped accordingly. The instrument was, therefore, operative to its full extent, and the entire quantity of paddy was claimable by the plaintiff. At what rate that paddy should now be valued is a different question. As I have already stated, the paddy should be valued at the market rate prevailing at the time when it should have been delivered, and this is what has been done.

The appeal is dismissed, with costs.

*Appeal dismissed.*

1920.

DE SAMPAYO  
J.

Vyramuttu  
v.  
Dissanayake