

Present : Lascelles C.J. and Middleton J.

May 18, 1911

KITNEN KANGANY v. YOUNG.

211—D. C. Kandy, 18,580.

Custom—Head kangany quitting estate is not entitled to receive from estate the debts owing to him from sub-kanganies remaining behind on the estate.

When a head kangany quits an estate leaving his sub-kanganies behind, the head kangany is not entitled in law to receive from the estate the debts due to him from the sub-kanganies after deducting his debt to the estate.

LASCELLES C.J.—I would add that the alleged custom is manifestly unreasonable. The proprietor has no control over the advances made by the head kangany to the sub-kanganies, and he could not equitably be held responsible when the amount of these advances exceeds the head kangany's debt to himself.

THE facts appear from the judgments.

Van Langenberg, for the appellant.

Seneviratne, for the respondent.

Cur. adv. vult.

May 18, 1911 May 18, 1911. LASCELLES C.J.—

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The plaintiff in this case averred that he was appointed head kangany of Woodthorpe estate in succession to one Peria Rengasamy, and that when he took his discharge from the estate, leaving the sub-kanganies behind him, his debt to the estate amounted to Rs. 900, whilst the debts of the sub-kanganies to himself amounted to Rs. 1,475. On these averments the plaintiff, for a first cause of action, claims from the proprietor of the estate the difference between these two sums, namely, Rs. 575, and the District Judge has allowed the claim.

The appellant contends that the facts averred in the plaint give rise to no cause of action, and that the judgment is bad in law.

It is impossible to gather from the plaint the legal ground on which this claim is based, but it appears that the judgment proceeded on the ground of custom and usage. "It is customary," the learned District Judge states, "when a head kangany quits an estate, leaving his sub-kanganies behind, for accounts to be looked into, and if the debts due by the kanganies are in excess of the debt due by the head kangany to the estate, the outgoing head kangany is entitled to receive the excess from the estate."

Now, it may well be that, as a matter of convenience, the course indicated by the learned District Judge is frequently taken, but the question is whether there is a custom having the force of law which gives the head kangany a cause of action against the estate.

Counsel for the respondent was unable to point to any decision in the long series of cases relating to planting matters in which judicial notice had been taken of the alleged custom, and in the record there is absolutely no evidence of the existence of any such custom having the force of law.

I would add that the alleged custom is manifestly unreasonable. The proprietor has no control over the advances made by the head kangany to the sub-kanganies, and he could not equitably be held responsible when the amount of these advances exceeds the head kangany's debt to himself.

The first claim is thus bad in law and fails. As the second claim depends upon the first claim, and the third has been abandoned, this decision disposes of the appeal.....

I would allow the appeal, and dismiss the action with costs here and in the Court below.

MIDDLETON J.—

The question raised in this appeal is whether the plaint on the first claim discloses any cause of action. The first claim rests on a supposed custom having the force of law, that when a head kangany quits an estate, leaving his sub-kanganies behind, his accounts are looked into, and if the debts due by the sub-kanganies are in excess

of the debt due by the head kangany to the estate, the outgoing head kangany is entitled to recover the excess from the estate.

There would no doubt be occasions when the estate would be willing to do as the learned Judge supposes it is customary to do ; but this, I take it, would only be the case of estate advances, and where there might be some immediate prospect of recovering from the sub-kanganies the amounts of their debts. Assuming that the head kangany had made heavy advances independently of the estate to his sub-kanganies, the estate would be under no obligation to pay, nor would it be likely to pay, to the head kanganies the debts due from their debtors, with so slight a prospect of reimbursement.

The mistake the learned District Judge seems to have made is in using the words "entitled to receive." No such custom having the force of law was proved, and no such custom would be likely to exist.

Again, on the second cause of action the plaintiff would only be entitled to succeed if he proved that the money was not due by him when he paid it, if he paid under compulsion. It clearly was due by him in respect to his own coolies, but he says he paid it under protest, because he claimed that the estate owed him a larger sum, on the basis that he was its head kangany. If the first claim fails, the second must, I think, go with it.....

The appeal, in my opinion, should be allowed, and the action dismissed with costs in both Courts.

Appeal allowed.

May 18, 1911

MIDDLETON
J.

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