

1912

Present : Jayetilleke J.

WEERASINGHE *v.* PERERA *et al.*

89—C. R. Colombo, 75,140.

Servitude—Right to thresh paddy—Prescriptive user.

The right to thresh paddy on another's land is a servitude, which can be acquired by prescriptive user.

What is prescribed by long user is not the ground on which the paddy is threshed but the incorporeal right of servitude.

Tikiri Appu v. Dingirirala (36 N. L. R. 267) followed.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

L. A. Rajapakse, for plaintiff, appellant.

No appearance for defendants, respondents.

Cur. adv. vult.

July 7, 1942. JAYETILEKE J.—

This is an action for a declaration of title to lot X in plan 2. The plaintiff claimed it as part of his field called Kiripellagaha Cumbura. The defendants claimed it as part of their high land Kiripellagahawatta. The plaintiff alleged that when he purchased the field in the year 1905 there was a threshing floor on lot X and that he threshed his paddy there ever since his purchase. The defendants alleged that a small portion of lot X was used as a threshing floor by the owners of the field adjoining their land with the consent of their father and his predecessors in title.

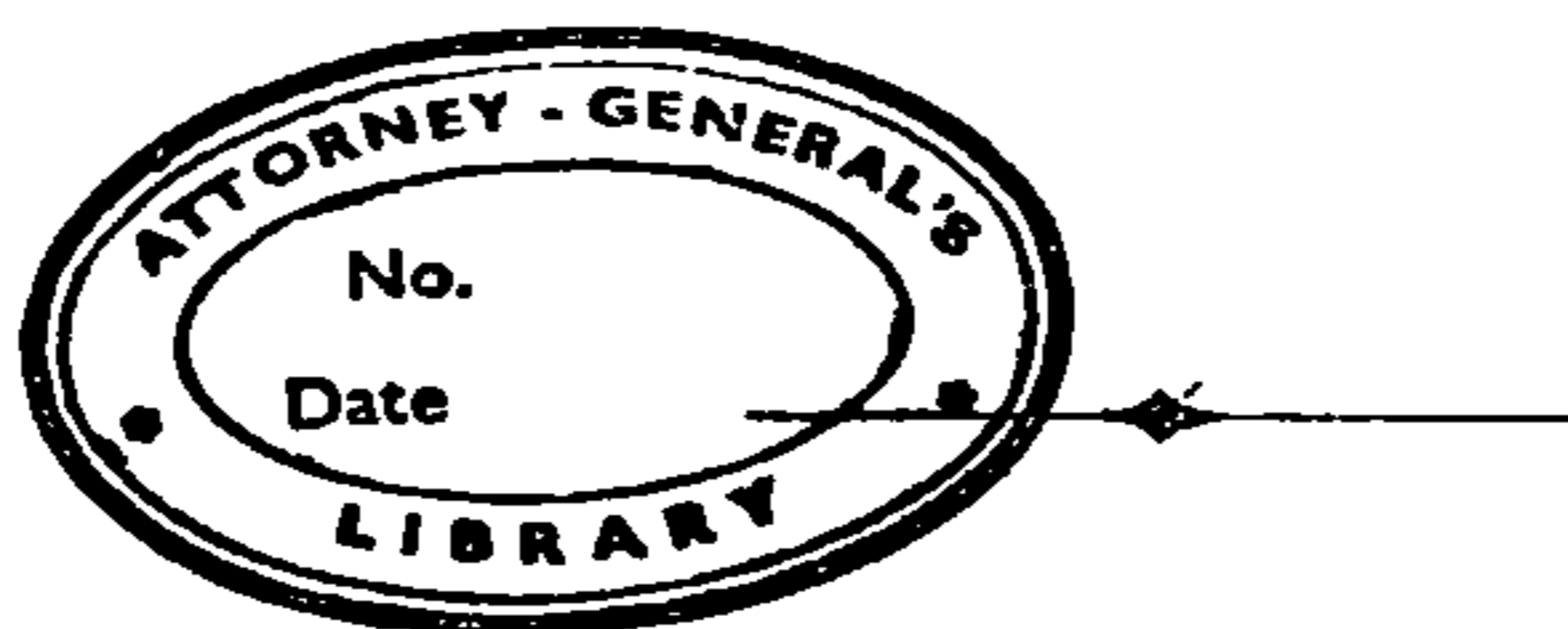
The learned Commissioner has delivered a well-considered judgment, in which he has held that lot X forms part of the defendants' land and that the plaintiff has acquired by prescription the right to thresh his paddy on a portion of it. I entirely agree with his findings on the facts.

Counsel for the plaintiff contends that, as the plaintiff had put lot X to the only use to which it could have been put, namely, to thresh paddy on it, he is entitled to claim it by prescription. I do not think his contention is sound either on the law or on the facts.

The right to thresh paddy on another's land is a servitude which can be acquired by prescriptive user. See *Tikiri Appu v. Dingirirala*¹. What is prescribed for by long user is not the ground on which paddy is threshed but the incorporeal right of servitude.

The evidence led by the defendants shows that the plaintiff was not the only person who threshed paddy on lot X and the Commissioner has found that a portion of lot X was possessed by the defendants' lessees. I dismiss the appeal.

Appeal dismissed.



¹ 36 N. L. R. 267.