

No. 4.—1870.

An Ordinance to define the Services due by the Pravéni Tenants of Wiháragama, Déwálagama, and Nindagama Lands, and to provide for the Commutation of those Services.

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WHEREAS by an Order of His late Majesty King William the Fourth in Council, bearing date the twelfth day of April, 1832, the liability of the Native and Indian inhabitants of this Island to render various services to the Government in respect of the tenure of their lands or in respect of their caste or otherwise was abolished, but it was thereby provided that nothing therein contained should be construed to affect the services which the Tenants of any lands in any Royal Villages in the Kandyan Provinces were bound to render so long as they continued Tenants of such lands upon such tenures, or the services which the Tenants of any lands in any Temple Villages in the said Kandyan Provinces were bound to render to any Temple so long as they continued Tenants of such lands, or the services which the Tenants of lands in any other Villages in the said Kandyan Provinces were bound to render to the Proprietors of such Villages so long as they continued Tenants of such lands. And whereas the enforcement of services for lands in the Royal Villages has been long since abandoned by the Government, and there is much in the nature of the services which are still retained, which is repugnant to the constitution of the Colony, and which tends to check its advancement and improvement, and it is desirable

Preamble.

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to take steps to encourage their commutation: **IT IS HEREBY ENACTED BY THE GOVERNOR OF CEYLON**, with the advice and consent of the Legislative Council, as follows :

Short title.

1. THIS Ordinance may be cited for all purposes as "*The Service Tenure's Ordinance, 1870.*"

Commencement of Ordinance.

2. THAT this Ordinance shall come into operation on such day as the Governor shall, by Proclamation, appoint.

Interpretation clause.

3. THE following words and expressions in this Ordinance shall have the meaning hereby assigned to them, unless there be something in the subject or context repugnant to such construction :—

The word "Temple" shall include Wihára and Déwála.

The expression "Pravéni Pangu" shall mean an allotment or share of land in a Temple or Nindagama Village held in perpetuity by one or more holders, subject to the performance of certain services to the Temple or Nindagama Proprietor.

The expression "Máruwena Pangu" shall mean an allotment or share of land in a Temple or Nindagama Village held by one or more Tenants-at-will.

The expression "Wiháragama Proprietor" or "Déwálagama Proprietor" shall include the Officer of any Wihára or Déwála respectively entitled to demand services from any Pravéni Nilakárayá or Máruwena Nilakárayá, for and in respect of a Paravéni Pangu or Máruwena Pangu held by him.

The expression "Nindagama Proprietor" shall mean any Proprietor of Nindagama entitled to demand services from any Pravéni Nilakárayá, or Máruwena Nilakárayá, for and in respect of a Pravéni Pangu or Máruwena Pangu held by him.

The expression "Pravéni Nilakárayá" shall mean the holder of a Pravéni Pangu in perpetuity, subject to the performance of certain services to the Temple or Nindagama Proprietor.

The expression "Máruwena Nilakáraya" shall mean the Tenant-at-will of a Máruwena Pangu.

The expression "Government Agent" shall include the Assistant Government Agents of the Revenue Districts into which the Province may be divided, and to which said Revenue Districts, the Village or Villages thereof in which services are to be defined under this Ordinance may belong.

I.—Department and Officers.

Governor to appoint Commissioners to carry this Ordinance into effect.

4. IT shall be lawful for the Governor to appoint one or more persons, not exceeding three in number, to be the Commissioner or Commissioners for each District specified in such appointment, for carrying into effect the provisions of this Ordinance, and for executing the several powers hereby conferred upon him or them, and to appoint such Clerks or other ministerial Officers, as to him may appear necessary, and to direct to be paid out of the Colonial Treasury to such Commissioners, Clerks, and other Officers, or any of them, such reasonable remuneration as to the Governor, with the advice of the Executive Council, shall seem fit. The powers and duties hereby conferred and imposed upon the Commissioners may be exercised and performed by any one of them.

Clerks and other ministerial Officers.

Any one Commissioner competent to act.

Oath.

5. EVERY such Commissioner shall, before proceeding to execute any of the powers and duties hereby conferred and imposed upon him, take and subscribe the Oath of Allegiance and the Official Oath.

Commissioner not to be purchaser of land.

6. NO such Commissioner, Clerk, or other Officer, shall be capable, whilst such Commission is being held, of being a purchaser, either in his own name or in the name or names of any other person, of any lands belonging to any Temple or Nindagama Proprietor or Pravéni Pangukáráyá.

Proceedings of Commissioners to be with open doors.

7. THE proceedings of the Commissioners in the investigation of any claims and in the settlement of any disputes, in virtue of the provisions of this Ordinance, shall be carried on, and the decisions and orders of such Commissioners shall be reduced to writing, and shall be pronounced and declared with open doors.

II.—Investigation and Settlement of Claims.

8. SO soon as reasonably may be after this Ordinance shall come into operation, the Commissioners appointed by virtue hereof for any District shall cause notice to be published in any Village in such District specified in the notice, calling upon the Headmen of such Village or District, and upon the Wiháragama, Déwálagama, and Nindagama Proprietors of all Pravéni or Máruwena Pangu in such Village to produce or forward to them at such times and places as they shall appoint, a list of all the Pravéni or Máruwena Pangu held by such Proprietors, with an enumeration of the services in detail of the Pravéni Pangu, setting forth the names (so far as the same can be ascertained) of the Proprietors and holders, and the nature and extent of the services due for each Pravéni Pangu. PROVIDED that it shall be lawful for any Proprietor, instead of producing or transmitting such lists, to state verbally to such Commissioners the particulars of his claim; and it shall be the duty of such Commissioners thereupon to take down in writing such particulars, and to require such person to sign the same, or, in case of inability, the same shall be signed by the Commissioner by whom such claim has been reduced to writing.

9. IT shall be the duty of the Commissioners, within a reasonable time after the expiration of the time fixed in such notice for the receipt of the lists from the Wiháragama, Déwálagama, and Nindagama Proprietors, to cause further notice to be published in such Village of their intention to enquire, on a day to be named in such notice, into the nature of the tenure of each Pangu therein subject to service, whether it be Pravéni or Máruwena, and into all claims for services in respect of the Pravéni Pangu in such Village, and calling upon all Proprietors and Nilakárayás and persons claiming interest in the Pangu in such Village, for or in respect of which services may be due, whether as Pravéni Nilakárayás or by Máruwena Nilakárayás, to appear before them at the place and on the day and days named in such notice, with a view to such enquiry. It shall further be the duty of the Commissioners to cause personal notice to be served on all Proprietors and Nilakárayás, of such intention, and if personal notice cannot be served owing to the absence of any of them from such Village or District, then to cause notice to be left at the known place of abode, and, if practicable, with some adult member of his family. The Commissioners shall also serve on the holders of each Pangu, with such notice, a copy of particulars touching such Pangu furnished by the Proprietors and Headmen.

10. ON the day appointed in such notice the Commissioners shall enter into their enquiries, and shall then, or on such other early day as they shall then and there from time to time publicly appoint, shall hear, try, and determine as follows:—

- (1.) The tenure of each Pangu subject to service in the Village, whether it be Pravéni or Máruwena;
- (2.) The names, so far as the same can be ascertained, of the Proprietors and Holders of each Pravéni Pangu;
- (3.) The nature and extent of the services due for each Pravéni Pangu;
- (4.) The annual amount of money payment for which such services may be fairly commuted at the time the Registries are made.

And their determination shall be final and conclusive in that or any future proceeding, whether before the said Commissioners or any other judicial tribunal, as to the tenure of the Pangu in such Village, whether it be Pravéni or Máruwena, the nature of the service due for and in respect of each Pravéni Pangu, and the annual amount of money payment for which the services due for each Pravéni Pangu may be fairly commuted at the time those Registries are made.

11. SO soon as the Commissioners shall complete their enquiry into the claims in any Village, they shall cause to be numbered and entered in a Book of Registry, a list of Pravéni Pangu in such Village; and shall further cause to be entered the names, so far as the same can be ascertained, of the proprietors and tenants of each Pangu, the nature and extent of the services due for such Pangu, and the annual amount of money payment for which such services may be fairly commuted at the time the Registry is made, and shall duly sign such Registry, and transmit the same to the Kachchéri of the District. It shall be the duty of the Government Agent to cause all these Registries to be safely kept and preserved in such Kachchéri, and to grant inspection and certified copies thereof on the application (written on a stamp of two shillings) of parties interested in such enquiry. And Registries and certified

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Commissioners to call upon Headmen and Temple and Nindagama proprietors for lists of Panguwas held by them.

Notice by Commissioners that they will enquire into claims, and calling upon all parties interested to appear.

Personal Notice.

Copy of particulars.

Commissioners to enquire into claims.

Their determination shall be final.

Registries of claims.

Inspection and certified copies.

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copies, signed by the Government Agent, shall form thereafter the best evidence of the tenure of each Pangu, of the nature and extent of the services due for such Pangu, and the annual amount of money payment for which such services may be fairly commuted at the time the Registry is made.

Joinder of all the Proprietors and Holders not necessary.

12. IT shall not be necessary for the validity of any proceeding for the investigation and settlement of claims under this Ordinance, that all the Holders and all the Proprietors shall have joined or should be named therein. The finding of the Commissioners shall be binding and conclusive as respects only the services due for and in respect of the Pangu and the money value of such services, but shall not affect the liability of holders to perform service as between themselves, or the right of Proprietors as between themselves to exact such services or their value, in case the services shall have been declared commuted.

Commissioners may limit time and area within which service is to be rendered.

13. IT shall be lawful for the Commissioners in defining the services to limit the time and area within which personal services may be exacted, and an entry of such limitation when made shall in all cases be entered in the Registry.

III.—Commutation.

Application to commute to be made to Commissioners pending Commission, or to the Agent at close of Commission.

14. IF any Pravéni Nilakárayá shall be desirous of commuting any service as aforesaid for a money payment, he shall, during the pendency of the Commission (and the Commission shall be held to be pending until the Governor shall declare it to be at an end by notice in the *Government Gazette*), transmit to the Commissioners, and, after the close of the Commission, to the Government Agent of the District in which the Pravéni Pangu is situated, an application in writing to that effect, which application shall set forth the name of the party making it, the name and number of the Pangu in respect of which such service may be due, and the name of the Village in which the same is situated. If there be more than one Pravéni Nilakárayá in any Pravéni Pangu, the application to commute must be made or acquiesced in by a majority of the entire number of Nilakárayás who shall have attained the age of sixteen years. The Commissioners or the Government Agent to whom such application shall be made shall issue a notice to the Proprietor of the Pangu, informing him that, on a day to be named in such notice, the application will be considered and determined upon. A copy of the application must be served with the notice.

The Commissioners or Agent to ascertain summarily whether all Nilakárayás have joined, and the value of the services.

15. ON the returnable day of the said notice, the Commissioners or Government Agent to whom such application shall be made, shall proceed summarily to ascertain whether the Nilakárayás of the Pangu who shall have attained the age of sixteen years have all joined or acquiesced in the application, and (if three years shall have expired since the date of the Registry of the Pangu) whether the services may still be fairly commuted at the amount fixed in the Registry, or whether they have risen or fallen in value, and to what extent. Having satisfied themselves or himself on this point, they shall proceed to order that the services for and in respect of the land shall stand commuted (if three years shall not have expired since the date of the Registry) for the annual money payment appearing in such Registry, or (if three years shall have expired since such date) for the same or such other sum as to the said Commissioner or Government Agent may consider just or reasonable. The order so made under this section shall be final and conclusive and binding upon all the Proprietors and Nilakárayás, (even though they may not be parties to the application, in that or any future proceeding, whether before the said Commissioners, Government Agent, or any judicial tribunal,) as to the liability of the Nilakárayás to pay commuted dues and not to render services for such Pangu, and all right to service from the Nilakárayás of such Pangu shall thereupon for ever cease and be at an end, and the said Nilakárayás shall be thenceforth liable to pay to the Proprietors, in equal half-yearly instalments, the dates whereof shall be fixed by the Commissioners or Court, the annual amount of money payment due for and in respect of the said services: and such commuted dues shall thenceforth be deemed to be a head rent due to the Proprietor for and in respect of the Pangu, and shall be recoverable in the manner hereinafter prescribed.

Order to commute and for the sum named shall be final.

Commuted dues to be thenceforth deemed head rent.

Entry of commutation in Registries.

Inspection, entries, and certified copies of Registries.

16. THE Commissioners (if the Commission shall be still pending), or (if the commutation shall be ordered by the Government Agent) the Government Agent shall make an entry of the commutation, and of the terms thereof, in the Registers of the Commission. And the Government Agent shall allow inspection of such entries and certified copies thereof, on the application (written on a stamped paper of two

shillings) of parties interested therein, and such entries or certified copies thereof shall form thereafter the best evidence of the liability of the Nilakarayás of the said Pangu to pay commuted dues, and not to render services for such Pangu.

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17. NO commutation of any Nindagama Pangu, liable to pay tythe to Government, shall have the effect of relieving the Pangu from its liability for such tythe as a primary charge thereon. PROVIDED always that no Pravéni Nilakarayá shall be liable to pay both tythe to the Government and the whole of the commuted dues to the Proprietor. AND PROVIDED also that in cases in which the service and the tythe have both been commuted, it shall be competent to the Nindagama Proprietor, should he desire to do so, to transfer to the holder the payment of the tythe to Government, retaining only the difference, if any, between the commuted tythe and the commuted services.

Provision for the payment of tythe to Government, where such tythe is due for any Pangu commuted.

V.—General Provisions.

18. IN the execution of the powers vested in such Commissioners or the Government Agent by virtue of this Ordinance, they shall be guided by equity and good conscience only, and by the best evidence that can or may be procured, although not such as would be required or be admissible in ordinary cases; nor shall they be bound by the strict rules of law in any case, or by any technicalities or legal forms whatever: and it shall be lawful for the said Commissioners or Government Agent, if they think proper, to examine on oath the parties, or any of them, making or opposing any claim investigated or inquired into by such Commissioners, touching any of the matters in dispute.

Commissioners and Government Agent to be guided by equity—and not bound by the strict rules of law.

And may examine the parties on oath.

19. IT shall be lawful to and for the said Commissioners and Government Agent, from time to time as they shall see occasion, by any writing under their hands, to summon and require any person to appear before them at any time and place in such writing to be appointed, to testify the truth touching any claim or any matter in dispute between any Proprietors and Tenants, or otherwise relating to the execution of the powers given by this Ordinance, and to produce in evidence all deeds, instruments, surveys, or writings in the possession or control of any such person, in so far as the same shall be necessary for the due investigation of any such claim or dispute, or for enabling the said Commissioners, and Government Agent duly to execute the powers given by this Ordinance; and to cause a copy of such writing to be served on such person required to give evidence or to produce such deeds, instruments, surveys, or writings, or to be left at his usual and last place of abode; and every person so summoned who shall not appear before such Commissioners or Government Agent pursuant to such summons (without assigning some reasonable excuse for not appearing), or appearing, shall without sufficient cause refuse to be sworn or examined on oath (which such Commissioners or Government Agent are hereby empowered and required to administer), or shall without sufficient cause refuse or wilfully neglect to produce any such deeds, instruments, surveys, or writings, shall for every such neglect or refusal, forfeit and pay such sum of money, not exceeding Five pounds sterling, as such Commissioners or Government Agent shall think fit and order. And it shall be lawful for the Commissioners or Government Agent in such order to direct payment of any such fine to be made into the Police Court of the District in which such person resides; and if payment should not be made as directed, the said Police Court shall proceed to enforce the same, and the charges relating to the recovery thereof, and to deal with the person liable to make the same in such manner as if the said fine had been imposed by such Court.

Commissioners, &c. to have powers to summon witnesses.

Penalty for not obeying the summons.

20. ALL evidence given before such Commissioners or Government Agent shall be taken down in writing in presence of the witnesses respectively giving the same, and shall at the time of their examination be signed by them, or, in case of their refusal or inability to sign, by the Commissioner or Government Agent by whom the same has been reduced to writing. And if any person shall in any examination, affidavit, or deposition, to be had or taken in pursuance of this Ordinance before any such Commissioners or Government Agent, knowingly and wilfully swear to any matter or thing which shall be false, every such person so offending shall be deemed guilty of perjury, and shall on conviction suffer the like pains and penalties as persons guilty of wilful and corrupt perjury are now subject and liable to.

Evidence to be reduced to writing and signed.

Persons swearing falsely to be deemed guilty of perjury.

21. ALL notices required to be given under this Ordinance shall be published in the Village referred to in them by beat of tom-tom once or oftener, by the affixing of copies on some conspicuous places in the Village, and on the walls of the nearest

Notices, how published.

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Kachchéri and Court-house by being proclaimed once or oftener in the presence of the suitors and others in the Court, and by such other means as may secure the greatest publicity thereto. If the notice is directed to any Proprietor or Nilakárayá, it shall be served personally, or, if personal service cannot be secured, by affixing the same to his last known place of abode.

Adjournments.

22. IT shall be lawful to the Commissioners to adjourn their sittings and enquiries once or oftener if necessary.

Aggrieved persons may apply to the Executive Government for relief.

23. ANY person aggrieved with the determination of the Commissioners under Section 10, or of the Commissioners or Agent under Section 15, shall be entitled to apply to the Governor for relief, at any time within one month after such determination shall be made known to him. It shall be lawful for the Governor, with the advice of the Executive Council, upon such application, to confirm the determination of the Commissioners or Agent, or to alter or modify the same, as to them shall appear right, and to cause his decision to be entered in the Register, and such decision, so entered, shall be deemed the determination as respects the Pangu to which it relates.

Arrears of personal services prescribed in a year.

Arrears of commuted dues in two years.

If no services rendered or commutation paid for ten years, right to claim services or dues lost for ever.

Proviso in case of absence or disability.

24. ARREARS of personal services in cases where the Pravéni Nilakárayá shall not have commuted, shall not be recoverable for any period beyond a year; arrears of commuted dues, where the Pravéni Nilakárayá shall have commuted, shall not be recoverable for any period beyond two years. If no services shall have been rendered, and no commuted dues be paid for ten years, and no action shall have been brought therefor, the right to claim services or commuted dues shall be deemed to have been lost for ever, and the Pangu shall be deemed free thereafter from any liability on the part of the Nilakárayás to render services or pay commuted dues therefor. PROVIDED however that, if at the time of such right of action accruing, the Proprietor shall not be resident within this Island, or, if by reason of his minority or insanity he shall be disabled from instituting such action, the period of prescription of such action shall begin to run, in every such case, from the time when such absence or disability shall have ceased.

Remedy of Proprietor against Tenant neglecting to render services or to pay commutation.

25. IT shall be lawful for any Proprietor to recover damages in any competent Court against the holder or holders of any Pravéni Pangu who shall not have commuted, and who shall have failed to render the services defined in the Registry hereinbefore referred to. In assessing such damages, it shall be competent for the Court to award, not only the sum for which the services shall have been assessed by the Commissioners for the purpose of perpetual commutation, but such further sum as it shall consider fair and reasonable to cover the actual damages sustained by the Proprietor through the default of the Nilakárayá or Nilakárayás to render such personal services at the time when they were due. But it shall not be lawful for any Proprietor to proceed to ejectment against his Pravéni Nilakárayá for default of performing services or paying commuted dues: the value of those services or dues shall be recoverable against such Nilakárayá by seizure and sale of the crop or fruits on the Pangu, or failing these, by the personal property of such Nilakárayá, or failing both, by a sale of the Pangu, subject to the personal services, or commuted dues in lieu thereof, due thereon to the Proprietor. The proceeds of such sale are to be applied in payment of the amount due to the Proprietor, and the balance, if any, shall be paid to the evicted Nilakárayás, unless there should be any puisne incumbrance upon the holding, in which case such balance shall be applied to satisfy such incumbrance.

Passed in Council, the Twelfth day of January, One thousand Eight hundred and Seventy.

JAMES SWAN,
Clerk to the Council.

Assented to by His Excellency the Governor, the Twelfth day of January, One thousand Eight hundred and Seventy, and published by his Order.

HENRY T. IRVING,
Colonial Secretary.