DIAS *v.* THE ASSISTANT GOVERNMENT AGENT OF MATARA.

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D. C., Matara, 9,302.

Ordinance No. 1 of 1897—Notice calling for claims—Irregularity in publication—Reference to Court—Appearance of claimant in Court and filing of statement of claim—Jurisdiction of Court—Waiver of irregularities.

Where the notice calling for claims under section 1 of the Ordinance No. 1 of 1897, dated 15th June, was not published in the *Government Gazette* until 9th July, so that instead of the full period of three months being given for claimants to come in, the period of three months less twenty-four days was given, and the Government Agent referred to Court a claim made to him and not admitted by him, and the claimant duly made in Court his statement of claim,—

Held, per BONSER, C.J.—In view of the stringent provisions of the Ordinance and the perilous consequences which follow on the publication of a notice under it, no irregularity can be waived or condoned by the fact of the claimant appearing in Court and making his statement of claim.

Per WITHERS, J.—The time for which the notice is to run is of the very essence of the notice, and non-observance of the requirements regarding it renders subsequent proceedings of no effect.

THE proceedings in this case were based on a reference made under section 5 of the Ordinance No. 1 of 1897.

It was as follows :—

" In the matter of the land commonly known as Munupurehena, &c., situate in the village of Talahagama in the Matara-Gangaboda pattu, in the Southern Province.

" The notice required by section 1 of the Ordinance No. 1 of " 1897 having been duly given on the 15th June, 1897, and " published in the *Government Gazette* of the 9th July, 1897, in " respect of the land commonly called Munupurehena, &c., as " described in the annexed plan 4,727/J 504, and containing in extent " 35 acres and 23 perches, and a claim having been made thereto by " Messrs. E. Dias and C. J. R. Le Mesurier, and due inquiry " having been made by me, J. P. Lewis, Special Officer appointed " under Ordinance No. 1 of 1897, of the Matara District of the " Southern Province, into the said claim ; and whereas I do not " admit the said claim of the said E. Dias and C. J. R. Le Mesurier, " and I have failed to enter into any agreement with the said E. Dias " and C. J. R. Le Mesurier in respect thereof, such claim is there- " fore referred by me, under the powers vested in me by sections 5 " and 6 of the said Ordinance, to the District Judge of Matara.

" Matara, December 30, 1897.

" J. P. LEWIS,
" Special Officer."

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Thereupon, on the 2nd day of March, 1898, E. Dias filed his statement of claim, and prayed that he may be declared owner of the said lands, and that his title be upheld as against the Crown, &c.

The case came on for hearing before Mr. J. Casie Chitty, District Judge, and it was contended for plaintiff that the reference was not made by the Special Officer contemplated by section 28 as the Special Officer "for the whole Island," but by a Special Officer for the Matara District; that the land in question was not stated in the reference to be forest, chena, waste, or unoccupied land; that the notice published in the *Gazette* of 9th July, 1897, setting forth the 15th of June, 1897, as the date of the notice, was irregular, as it curtailed the three months' notice by twenty-four days; and that on the face of the reference there appeared only one publication of the notice in the *Gazette* instead of six publications.

The District Judge ruled that three of the foregoing objections were amendable, but that the objection relating to the short notice in the *Gazette* was fatal. He therefore dismissed the reference as irregular and invalid, and ordered that each party bear his own costs.

The Assistant Government Agent appealed.

Ramanathan, S.-G., appeared for him.

The end and aim of the Ordinance No. 1 of 1897 is "speedy "adjudication" of claims, as expressed in the preamble of that Ordinance. If, after publication of notice under section 1, a claimant appeared and an inquiry followed, and his claim was not admitted by the Government Agent, but a reference was made to the District Judge under section 5, and thereafter the District Judge served notice on the claimant to appear and make a written statement as against the Government Agent under section 7, and the claimant came into Court in pursuance of such notice, it was no longer permissible for him to take exception to any irregularity in the proceedings had before the Government Agent, as section 16 casts an imperative duty on the District Judge of examining the claimant and his witnesses on the day fixed for the hearing of the reference. The precise words of section 16 are: "on the day "fixed for the hearing of the reference ..... the District Judge "..... shall proceed to examine the claimant or his agent ..... "and the witnesses of the parties, and upon such examination "..... shall proceed to pass such order on the case as he may "consider just and proper." These words clearly show that, after

appearing before the District Judge in response to his notice, time should not be wasted in the discussion of technical objections or irregularities of procedure, but the Court should proceed at once to consider the merits of the case. The imperative words of section 16 were not to be found in the Land Acquisition Ordinance, No. 3 of 1876. In the latter Ordinance, section 32 provides that the proceedings before the District Court " shall be subject, " so far as the same can be made applicable, to the rules, practice, " and procedure provided for or observed at the time of such " proceeding in ordinary civil suits ;" whereas in section 13 of the Ordinance No. 1 of 1897 it is provided that the Civil Procedure Code should regulate the proceedings, " except as in this Ordinance " provided." These last-quoted words in Ordinance No. 1 of 1897 necessitate a rigid interpretation of section 16 that " on the " day fixed for the hearing of the reference the District Judge " shall proceed to hear the claimants." Even in the case of the Land Acquisition Ordinance, which did not contemplate speedy adjudication of claims, and which was more elastic in its terms, BURNSIDE, Chief Justice, was not prepared to say whether the District Court could exercise jurisdiction under that Ordinance before allegation and proof that everything required to be done preliminary to the reference had been done, and he decided only that, if it appeared on the face of the libel of reference that a material ingredient of procedure was not followed, the reference should be considered bad, on the principle that what was alleged must be proved (*8 S. C. C. 188*). As the Ordinance No. 1 of 1897 was designed to bring the claimant into Court as plaintiff, the proceedings before the Court must be taken to commence from his statement of claim and not from the reference, which is merely auxiliary to the main scheme of the Ordinance that the merits of the claim should be speedily considered and settled upon the allegations made in the statement of claim ; and clause 2 of section 1 of the Ordinance No. 1 of 1897 nowhere enjoins that the publication in the *Gazette* should be on or before the date of the notice, but only that there should be six publications. Clause 1 of that section provides that the Government Agent should declare by a notice that, if no claim was made within three months from the date of such notice, the land would be deemed the property of the Crown. There is ample proof that the Government Agent made such a declaration, because the notice bore on its face its date, namely, the 15th of June, 1897. The exact words of the notice were : " Take notice, that unless within " three months from the 15th day of June, 1897, being the date " of this notice, the persons who claim," &c. The Government

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Agent having made his declaration by such notice, in his own office, to those present there, was obliged by clause 2 of section 2 to " advertise " the notice in the neighbourhood of the land by beat of drum, and to " publish " the notice in three languages six times at least in the *Gazette* and once at least in any two of the newspapers of the Island. Such advertisement and publishing need not be contemporaneous or antecedent to the " declaration " referred to in clause 1. The declaration, advertisement by drum, and publishing in the *Gazette* and newspapers were three forms of publication, and the Ordinance provided that the production of the *Gazette* containing the notice should be reckoned as " proof " of the date and proper publication of such notice." The respondent had not shown that he had been in any way prejudiced by any of the so-called irregularities. If he wanted time to prove his claim, he should have applied for a postponement of the hearing, but it is not permissible to discuss questions of form and procedure so as to evade trial of the case on the merits.

Dornhorst (with *Rudra*), for respondent. As the Ordinance No. 1 of 1897 is an innovation on the existing law and gave the Crown extraordinary rights, the Crown should be put to the proof of every ingredient which the Ordinance enjoined, irrespective of the question whether the person forced into the position of plaintiff had been prejudiced or not by irregularities of procedure before the reference.

The Chief Justice, after conferring with his learned brother, affirmed the order of the Court below, as follows :—

2nd September, 1898. BONSER, C.J.—

This is an appeal from an order of Mr. Casie Chitty, Acting District Judge of Matara, who has held that he had no jurisdiction to deal with the reference which had been made to him by the Special Commissioner appointed under Ordinance No. 1 of 1897. Now, that Ordinance is an Ordinance of an extraordinary nature. It provides that when it appears to the Government Agent of a province or to the Assistant Government Agent of a district that any land within his province or district is forest, chena, waste, or unoccupied land, it shall be lawful for him to declare by a notice that, if no claim to such land is made to him within three months from the date of such notice, such land shall be deemed the property of the Crown. And it is further provided that, if no claim is made within three months, the Government Agent or Assistant Government Agent shall make order declaring such land to be the property of the Crown, that such order shall be final, and when published in the *Government Gazette* shall be received in all Courts as conclusive proof that

the land is the property of the Crown. It further provides that if any person appears within the period of three months from the date of the notice and makes a claim to the land, the Government Agent or Assistant Government Agent is to hold an inquiry into the claim. If he rejects the claim, he must refer the matter to the District Court, and that on that reference the claimant is to be deemed the plaintiff and the Government Agent or Assistant Government Agent to be deemed the defendant. The result, therefore, of a notice under this Ordinance is that the claimant is either altogether shut out without the power of appeal to any Court, or is forced into the position of a plaintiff instead of being in the more favourable position of a defendant. It is clear that an Ordinance of this nature giving this extraordinary remedy to the Crown must be construed strictly.

The 1st section makes provision for the publication and advertisement of the notice which is to have such very serious results. It provides that the notice is to be published in the English, Sinhalese, and Tamil languages, six times at least, in the *Government Gazette*. There is no provision there as to the date on which the first publication is to be made, or as to the intervals between these publications. The copies of the notice are to be posted on the land and also affixed to the walls of the several Kachcheries and Courts of the province within which such forest, chena, waste, or unoccupied land is situated, and in such other localities as may secure the greatest possible publicity thereto, and the said notice is likewise to be advertised by beat of tom-tom at such places on or near the land, and at such times as the Government Agent or Assistant Government Agent may direct and order; and then we have a clause which is very difficult to construe, which provides that every such notice shall be, as near as is material, in the form in the schedule, and that the publication of the notice in the *Government Gazette* shall be proof of the date and proper publication of such notice. It is almost impossible to put any reasonable interpretation upon that last clause—the publication of the notice is to be proof of the date, and of the proper publication itself. Does that mean that the production of one *Gazette* in which the notice was first published is to be proof that it was six times published? Various other difficulties might be suggested as arising out of this clause. I do not think that it is necessary for us now to attempt to solve this problem which has been propounded by the Legislature. It is not said that publication in the *Gazette* is to be conclusive proof: at most it is proof which is liable to be rebutted by other evidence, and if, as in the present case, it should appear on the face of the libel

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of reference that there was no proper publication of the notice, then this clause becomes immaterial. In the present case, the notice was dated the 15th of June, 1897. It was not published in the *Government Gazette* until the 9th of July, 1897, so that instead of the full period of three months being given for claimants to come in, the period of three months less twenty-four days only was given. It seems clear that in the present case the notice was not properly published, and I doubt whether a notice can be regular if its date is antecedent to the date of its publication in the *Government Gazette* so as not to give the full three months to possible claimants.

Then, it was contended by the Solicitor-General that the claimant had waived all objection to this irregularity by appearing and putting in a claim, but I am not prepared to hold that his appearance under the circumstances of the case amounted to a waiver of the irregularity. As I said before, I am of opinion that this Ordinance must be strictly construed in view of the stringent nature of its provisions and the perilous consequences which follow on the publication of a notice under it. Besides the consequence to which I have referred, there are others of a still more serious nature : for section 22 of the Ordinance provides that, whenever the Government Agent or Assistant Government Agent has issued the notice prescribed by this Ordinance, it shall not be lawful for any person thereafter to acquire any right in or over such land, or to enter therein or thereon, or (to cut the matter short) to exercise any proprietory right over the land, and his doing so is made an offence punishable with rigorous imprisonment for a term of three months. It is quite clear to my mind that an act of a Government officer, which is to have so serious a result as this, must be strictly performed, and that no irregularity ought to be condoned.

For these reasons I am of opinion that the order of the District Judge is right, and that the appeal should be dismissed.

WITHERS, J.—

I agree entirely with the judgment of the Chief Justice, and I will only add a few words. Government Agents and Assistant Government Agents are empowered by Ordinance No. 1 of 1897 to initiate proceedings relating to claims to chena, forest, waste, and unoccupied lands, which may end in a reference to a competent Court to decide those claims, or may end, if no claims are preferred, in a decision by one of those officers that the land belongs to the Crown, a decision which is conclusive proof of the title of the Crown.

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That being the case, it seems to me that due observance of the requirement of notice *qua* publication in all its forms, and *qua* the period of time during which the notice is to run, is a condition precedent to the right of jurisdiction given by the Ordinance to those officers. The time for which the notice is to run is of the very essence of the notice, and non-observance of the requirements regarding the notice, in my opinion, renders subsequent proceedings of no effect.