CASIPILLAI *v.* RAMANATER.

1896.
March 18.

C. R., Jaffna, 397.

Crown land—Right of possessor to a Crown grant—Prescription—Improved value—Ordinance No. 12 of 1840, s. 8.

Possession, as defined in clause 3 of Ordinance No. 22 of 1871, of Crown land for fifteen years prior to alienation thereof by the Crown cannot avail as a plea in bar to a claim to such land by a private individual who has purchased it from the Crown.

Semble, per BONSER, C.J.—That the Crown cannot by conveying away land in the possession of a private individual deprive the possessor of the benefit of section 8 of Ordinance No. 12 of 1840, under which a possessor of Crown land, in certain circumstances, is entitled to a grant of such land from the Crown on payment of half its improved value, and cannot be ejected from such land except on payment to him of such share of the improved value.

Quære—Whether a purchaser from the Crown does not get an unimpeachable title.

THE facts of the case fully appear in the judgment.

Dornhorst, for appellant.

Wendt and *Sampayo*, for respondent.

18th March, 1896. BONSER, C.J.—

This is an unfortunate litigation about a very small piece of land, some thirty-six perches in extent. It is admitted that the defendants have been in possession of it since 1879, that it was within a clearly marked boundary, and was enjoyed by the defendants as part of their holding. In 1879 the first defendant purchased a piece of land from the Crown, and it was duly conveyed to him by the Crown. The plan on the conveyance to the defendant is the usual sort of thing which is affixed to a Crown grant, but which for any practical purposes might be dispensed with. It is a mere geometrical figure drawn on a blank sheet of paper. The defendants took possession of what they conceived to be the land which was conveyed by the grant, and on the eastern boundary they erected a dam, they cultivated the land, asweddumized it, and brought it into cultivation as paddy land. No one disputed their title till 1893. They thus enjoyed the land for a period which, against any body but the Crown, would be sufficient to establish their title even if they had no previous title. In 1893 the Crown put up for sale the tract of land on the eastern boundary of the defendant's land.

1896.
March 18.
BONSER, C.J.

The plaintiff became the purchaser of this land, and it was duly conveyed to him by a conveyance on which was drawn a plan. The plan was not made an integral part of the conveyance, but it was referred to incidentally in the body of the deed. The land is described as "containing eleven acres and thirty-six perches "according to the annexed survey and description thereof....." The plaintiff, when he bought this land, was aware of the possession by the defendant of the piece of land in dispute which was a strip on the eastern boundary of the defendant's land and therefore on the western boundary of the land bought by plaintiff. He admits that he was aware of the possession by the defendants and of the existence of the boundary dam. The land was jungle land, and it was sold by the Crown as uncultivated land; and I do not for a moment believe that, when the plaintiff purchased this land at the Government sale, he intended to purchase with the uncultivated land this strip of land which he knew to be cultivated and in the possession of the defendants. However, after the conveyance he called in a surveyor, who told him that he was entitled under that conveyance to this disputed piece, and he therefore raised this claim. The defendants being in possession, the proof of title rests with the plaintiff, and he must prove, beyond doubt, that this strip of land which he claims was included in the Crown grant. Surveyors were called by the plaintiff, who testified that by comparison of plans they were of opinion that this strip was included in the plan annexed to the plaintiff's grant. But this involves, what seems to be, a great difficulty. On the western boundary of the defendant's land, as it has been enjoyed by them for many years past, there is a wide channel or water-course. Now, the case for the plaintiff throws the western limit of the defendant's land on the other side of the water-course, giving him a narrow strip of land on the other side of the water-course—a narrow strip of land practically useless. I find great difficulty in believing in such a state of things. It appears to me in the highest degree improbable that the water-course—a natural feature—was not the defendant's western boundary line. Various plans were put in by the surveyors for the plaintiff, and although they all agree in throwing the defendant's western boundary line on the other side of the water-course, yet they do not agree in its dimensions. Some of them make the strip of land and the further side of the water-course wider at the southern extremity and narrower at the northern; others make it wider at the northern and narrower at the southern extremity. The surveyors, therefore, are not agreed as to this western boundary of the defendant's land. The Court is

always desirous to give effect to long possession, and under all the circumstances of the case I cannot come to the conclusion that the plaintiff has made out that this strip of land in dispute was bought by him and conveyed to him. I am perfectly satisfied that it was not bought by him. I am not satisfied that it was ever conveyed to him. It was suggested by Mr. Dornhorst, for the defendant, that length of possession—fifteen years—was sufficient to give the defendant's title in any case against the plaintiff; but I am of opinion that that contention cannot be sustained, that if the plaintiff succeeds to the title of the Crown he is entitled to the rights of the Crown as far as regards prescription. Another point was raised in argument, which it is not necessary to decide, as to the effect of section 8 of Ordinance No. 12 of 1840. That section provides that if a person has taken possession of, and cultivated, planted, or otherwise improved any land belonging to Government, and shall have held uninterrupted possession thereof for not less than ten nor more than thirty years, such person shall be entitled to a grant from Government on payment of half the improved value; and only in case the land is required for public purposes or for the use of Her Majesty can the person in possession be ejected therefrom, and only then on payment of half the improved value.

The defendants had such possession, and had done such acts as would entitle them to the benefit of the section in question, and it was urged that the Crown would not, by conveying land away to a purchaser, deprive the possessor of the benefit given to him by that section. The inclination of my mind is in favour of that contention. But it was not raised in the Court below, and in the circumstances it is not necessary to express any decided opinion now.

Then the question arises as to costs. As I said before, I am not satisfied that the plaintiff thought he was buying this land. He sought to take advantage of what he conceived to be his right under the conveyance. He has failed in his action, and I see no reason for relieving him of the burden of paying the defendant's costs.

I would add that Mr. Wendt contended for the plaintiff that the land was conveyed to him by the Crown, and that whether it belonged to the defendants or not, the plaintiff got a good title; and that the remedy of the defendants was by an action against the Crown for conveying their land, regard being had to what was apparently the law of this Court at a time not very long ago (*2 Thomson's Institutes, 509*). But under the circumstances of this case it is unnecessary to decide that point.