ASSISTANT GOVERNMENT AGENT *v.* KULATUNGA.

1901.
February 27.

D. C. Matara, 4.

Ordinance No. 1 of 1899, s. 8—" With intent "—Meaning of section.

In section 8 (1) of Ordinance No. 1 of 1899, the words " with intent " do not govern the whole of the succeeding clauses down to the end of the sub-section, but only the words immediately following, down to the words " rights of ownership."

BONSER, C.J.—The section is not happily expressed, but the meaning seems to be that, if a man has not entered upon the land included in the notice, he is forbidden to do so if his purpose is to assert any claim to the land by so doing; but if he has already entered upon land included in the notice, he is not to do anything which would alter the condition of the land. He is not to build houses or form plantations or make clearings, or cut trees or open mines, but things are left *in statu quo* until the question of the true ownership of the land has been decided.

If he has already entered and reduced the land or any parts of it into a state of cultivation, then he may go on cultivating and gather the fruits, but he is not to do anything which would substantially alter the existing condition of things.

THE facts of the case are fully set out in the following judgment of the Chief Justice.

Bawa, for appellant.

Solicitor-General, for respondent.

---

* This section runs as follows:—

" After the date of the *Government Gazette* containing the first publication of the notice prescribed in section 1 it shall not be lawful for any person, without the written consent of the government agent or assistant government agent, to enter on any land specified in such notice with intent to establish a right of possession or occupation of such land or to exercise rights of ownership, or to build any house or hut or to form a plantation thereon, or to make clearings for the purpose of cultivating such land or for any other purpose, or to cut or fell any trees upon such land or to open work or to use any mine thereon, until such land has been declared not to be the property of the Crown."

1901.
February 27.

27th February, 1901. BONSER, C.J.—

This is an appeal by a person who has been ordered under section 8 of Ordinance No. 1 of 1899 to deliver up possession of certain lands to the Crown.

The Ordinance provides that it shall be lawful for the Government Agent, if it shall appear to him that any lands within his Province are forest, chena, waste, or unoccupied, to issue a notice declaring that, if no claim is made to him within three months from the date of such notice, such land is to be deemed the property of the Crown. That notice is to be published in the *Government Gazette*, and it is provided that after the date of the publication of that notice in the *Government Gazette*, it shall not be lawful for any person, without the written consent of the Government Agent or the Assistant Government Agent, to enter on any land specified on such notice with intent to establish a right of possession or occupation of such lands or to exercise rights of ownership or to build any house or hut, or to form a plantation thereon, or to make clearings for the purpose of cultivating such land or for any other purpose, or to cut or fell any trees upon such land, or to open work or to use any mine thereon, untill such land has been declared not to be the property of the Crown.

Now that provision is not very happily expressed, but I think its meaning is reasonably clear. Mr. Bawa asked us to construe it as though the words " with intent " governed the whole of the succeeding clauses down to the end of the sub-section, and to read that what was there forbidden was an " entry on the land with intent," that is with intent to build a house, or to form a plantation, or to cut trees, or to open a mine in it. I do not think that that is a reasonable construction of the clause. It seems to me that the words " with intent " only govern the words immediately following down to the words " rights of ownership ", and that then we have after that an enumeration of the things expressly forbidden to be done by a person, whether he has already entered on the land or not. The meaning of the section seems to me to be this: that if a man has not entered upon the land included in the notice, he is forbidden to do so if his purpose is to assert any claim to the land by so doing, but if he has already entered upon land included in the notice, he is not to do anything which would alter the condition of the land. He is not to build houses or form plantations, or make clearings, or cut trees, or open mines, but things are to be left *in statu quo* until the question of the true ownership of the land has been decided. If he has already entered and reduced the land or any part of it into a state of

cultivation, then he may go on cultivating. If he has, for instance, planted fruit trees, it cannot be contended that he is obliged to allow the fruit to rot on the land; he may take the fruits. And if he has sown paddy he may go on sowing paddy, and not let the land go out of cultivation; but he is not to do anything which would substantially alter the existing condition of things.

Now, the only question in this case is as to what the appellant did. There is no doubt that in September last he caused some ten acres of land included in a notice under the Ordinance to be sown with *amu*, a species of fine grain. He says that the ground where the *amu* was sown had been previously under cultivation and that sweet potatoes had been growing there before, and that all that he did was to clear the weeds and hoe up the ground for the purpose of sowing *amu*. If this is what he did, I do not think he is obnoxious to the provisions of the Ordinance. But the Mudaliyar who went to the land in May when the notice was issued, and again in September before the *amu* was sown, gives a very different description of its condition. He says: "At the date " of the notice the land on which *amu* is now growing was covered " with jungle, bushes, old stumps re-sprouting in some places so " thick and high that a man could not be seen; in others four or " five feet high. When I went in September I saw jungle lying " there felled, evidently with katties. The growth was jungle, " not weeds which could be cleared with a mamoty."

Now, if that evidence is to be believed, what the appellant did was to make a clearing for the purpose of cultivation, a thing which is expressly forbidden by the Ordinance. The District Judge saw no reason for disbelieving the Mudaliyar. He says he cannot help believing him. I see no reason to disbelieve him either.

The appeal will be dismissed.

BROWNE, A.J., agreed.