

1903.
March 26.

ABERAJENDERA *v.* GOVERNMENT AGENT,
CENTRAL PROVINCE.

D. C., Kandy, 11.

Forest, chena, waste, or unoccupied lands—Ordinance No. 1 of 1897—Right of private individual to withdraw from proceedings begun under the Ordinance—Section 13 of Ordinance No. 1 of 1897 and Civil Procedure Code, s. 406.

If a person interested in a forest, chena, waste, or unoccupied land appears in a proceeding instituted under the Ordinance No. 1 of 1897, he cannot withdraw from it.

The provision in section 13 of that Ordinance, that the proceedings held under it shall be regulated so far as they can be by the Code of Civil Procedure, means, "so far as such procedure is consistent with the provisions of the Ordinance No. 1 of 1897."

As the object of the Ordinance is to provide for the speedy adjudication of claims to forest, chena, waste, and unoccupied lands, the withdrawal of a claimant from the proceedings, if allowed, would be inconsistent with the object and spirit of the Ordinance.

THE plaintiff appealed in this case against an order of the District Judge of Kandy refusing to allow him to withdraw from certain proceedings taken under the Ordinance No. 1 of 1897. The District Judge held that the plaintiff was not entitled to ask permission to withdraw his action.

Dornhorst, K.C., for plaintiff, appellant.

Fernando, C.C., for respondent.

26th March, 1903. LAYARD, C.J.—

I think the District Judge was right. The Ordinance No. 1 of 1897 was expressly enacted by the Legislature for the purpose of making special provisions for the speedy adjudication of claims to certain classes of lands, such as forests, chena, waste, and unoccupied land. The Legislature gave the power to officers of the Crown to compel parties to bring forward their claims under that Ordinance, the policy of the Ordinance being that the claims of private individuals and of the Crown should be settled as speedily as possible. There is no provision in the Ordinance which would enable a private individual who has been forced into Court under the provisions of the Ordinance of 1897 to withdraw proceedings. It was urged, however, that in view of the provisions of section 13 of the Ordinance the right to apply for the withdrawal of an action under the provisions of section 406 of the Civil Procedure Code is reserved to the private individual who has been brought into Court under

the provisions of Ordinance No. 1 of 1897. It appears to me that section 13 of the Ordinance only provides that the proceedings under the Ordinance No. 1 of 1897 shall be regulated so far as they can be by the Code of Civil Procedure when there is no special provisions in the Ordinance of 1897 to regulate such proceedings. The words "so far as they can be" used in section 13 I construe as meaning so far as such procedure is consistent with the provisions of Ordinance No. 1 of 1897. I do not think, as the object of the provision of Ordinance No. 1 of 1897 is the speedy adjudication of all claims in respect of the class of land mentioned in the Ordinance and to enforce a settlement thereof, that the plaintiff can claim to withdraw his action under the provisions of section 406 of the Code of Civil Procedure. The withdrawal of the action if allowed would be inconsistent with the object and spirit of the Ordinance No. 1 of 1897, namely, the speedy adjudication of claims.

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I therefore think the District Judge is right, and the appeal should be dismissed with costs.

WENDT, J.—

The Ordinance does not leave the plaintiff any option as to the time of his coming into Court. The moment the reference is made upon a dispute with the Government Agent the claimant is required by notice to file his statement of claim and is obliged to do so.

As the Chief Justice has pointed out, that is in keeping with the object of the Ordinance, which is to bring claims to waste lands to a prompt settlement. It is also worthy of notice that in section 13 of the Ordinance No. 1 of 1897 the words "so far as they can be" do not stand alone, they follow the words "except as in this Ordinance provided;" and I think that shows that the former phrase was not intended merely to meet some *casus omissus* in the Ordinance. I agree with the Chief Justice in thinking that the meaning to be attached to that phrase is, "so far as is consistent with the scope and object of the Ordinance." I think, therefore, that the District Judge has no such discretion as section 406 would give him. Even if it were otherwise, I am of opinion that the plaintiff has shown no grounds whatever for the exercise of that discretion in his favour.
