

BYRDE v. DAUNDASEKERA.

D. C., Ratnapura, 1,066.

1902.

March 26.

*Waste Lands Ordinance, No. 1 of 1897, s. 5—Reference by Government Agent—  
Appearance of several claimants claiming divers and conflicting interests—  
Procedure.*

Where, upon a reference made by the Government Agent, under section 5 of the Waste Lands Ordinance, No. 1 of 1897, in regard to four allotments of land, several claimants appeared and claimed divers interests under divers titles and in mutual opposition,—

*Held*, that the District Judge's order that the case be confined to the claim of the first claimant was one within his discretion to make under section 16 of the Ordinance.

A more expedient course, however, is for the District Judge to deal with the claims in respect of each piece of land, frame issues thereon, and adjudicate upon the rights of each of the claimants.

**T**HIS was a reference made by the Government Agent of the Province of Sabaragamuwa, under section 5 of "The Waste Lands Ordinances, 1897, 1899, and 1900," regarding four allotments of land bearing Nos. 29, 45, 46, and 70. Of the claimants who appeared at the inquiry before the Government Agent, the following persons filed statements of claim, namely, the first claimant claiming lots Nos. 45 and 46, the third claimant claiming a portion of lot No. 46, and the fifth and sixth claimants claiming also a portion of lot No. 46.

At the hearing of the case before the District Judge (Mr. P. E. Pieris), the counsel for the first and third claimants urged that the case could not proceed in its present shape, as the claims were mutually opposed. The District Judge upheld the objection by the following order:—

"The first claimant claims lots Nos. 45 and 46; the third claimant by a different title claims an undivided portion out of a block which forms part of lot No. 46; the fifth and sixth claimants claim another portion out of lot No. 46, and by a title opposed to and different in its origin from that of the first and third, respectively.

"I fail to see how such claimants, claiming divers interests under divers titles and in mutual opposition, can be joined as plaintiffs in one action. The procedure is laid down in section 11 of the Civil Procedure Code. If all the claimants claimed the same, it might be possible to join them as plaintiffs, but the cause for action is not the same. It appears to me impossible for the various claimants to have full justice done to their individual

1902. claims, if they are forced into this four-cornered fight. The  
*March 26.* provisions of this Ordinance have been described as 'stringent,'  
— and its consequences 'perilous' (*vide 3 N. L. R. 175*). I uphold  
the objection. My order is that this case be confined to the  
first claimant."

The Government Agent appealed.

*Fernando, C.C.*, for appellant.

*Morgan*, for respondent.

26th March, 1902. MIDDLETON, J.—

In this case there is an appeal by the Government Agent of Sabaragamuwa against an interlocutory order made by the District Judge of Ratnapura on a reference under consolidated Ordinances, which is now No. 1 of 1897. The facts of the case were that there were two plots of land, Nos. 45 and 46, and for these two plots of land there were three claimants for No. 46 and one claimant for No. 45. The District Judge had a preliminary objection taken before him that the claimants' claim is not the same; that they are different parties and claiming under different titles, all of whom had been made plaintiffs. That was the preliminary objection taken in the case, when it came on for hearing before the District Judge, by, I presume, the proctor for the defendants. The District Judge made an order in which he upheld the objection. His order was that this case be confined to the claim of the first claimant, and I presume that it was his intention by that order simply that the case as regards the first claimant to No. 45 should be heard first. What was to be done afterwards, we are in the dark about.

So far as I am able to read this Ordinance of 1897, I think it is an Ordinance the object of which is to clear titles to lands in the Colony, lands which the Government claim as Crown lands and lands of which there are occupiers who say they are their property. The object of the Ordinance was simply to provide a summary and an expeditious method of finding out who are the persons entitled to the land. Now, unfortunately, in this Ordinance, which is one to provide a summary procedure, technical terms such as "plaintiff" and "action" have been introduced. By the use of these technical terms in the proceedings which were before the District Judge, one would be led to suppose the proceedings were in the nature of a formal action, although I should say it was intended by the Ordinance that the inquiry was to be certain, expeditious, and inexpensive, and, so far as possible, one that would be finished in the District Court. Now, reading the sections of that Ordinance

which have been quoted to me, especially sections 6 and 7, it is clear that the Government Agent has to refer to the names of the claimants, but that he may also refer the names of any other persons whom he has reason to think have any interest in the land, so that, I presume, if these names were referred to the District Judge, notices would be sent to them, and they would have an opportunity of filing statements showing whether they made any claims, and, if so, the extent of that claim. Section 16 lays down the procedure at the hearing. That, so far as one can see, is very simple, and, to my mind, gives a very considerable discretion to the District Judge, who is entrusted with the inquiry, as to the way in which it should be conducted. It seems to me that here the learned District Judge has done no more than exercised his discretion. I cannot myself say that I altogether agree with him on the lines in which that discretion has been exercised, because I cannot myself see how the inquiry will proceed after he has disposed of the claim of the first claimant. I should have thought that a better, a more expedient, and more fitting course to have followed would have been for the Judge to take the case of each piece of land, ascertain the claims of the Crown and the claimants to it, and then frame issues as to the claim made by each party to each piece of land, and, having heard each of the claimants on their claim and their evidence, he would be in a position to adjudicate upon the rights of any one or other of them to each piece of land. This, I think, might well have been done in the case of the land No. 46, where there were three different claimants to the ownership of the land. I see no difficulty in the claimants assisting in the framing of issues, putting forward their evidence, and calling witnesses to prove their claims as against the Crown and as regards the other claimants. They could be examined and cross-examined, one claimant could cross-examine the other claimants, and be cross-examined by them and by the Crown, and the whole inquiry might proceed as if it were one case. To my mind there is no difficulty in that procedure, but as this is an order in which the learned Judge has exercised his discretion, I do not think we should interfere with his discretion so far as this particular order is concerned, but I would like to indicate my view as to what the course of proceedings should be in an inquiry where there are different claimants to one land. I have not touched upon the question as to the use of the words "plaintiff" and "defendant," because, although these words are introduced in the law, and although it was said that these proceedings are to be governed by the provisions in section 13 of the Ordinance, which enacts that in "references instituted under this Ordinance the proceedings shall be regulated, as far as they can be,

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*March 26.*MIDDLETON,  
J.

1902. by the Code of Civil Procedure," I myself will never believe that  
*March 26.* it was ever intended that inquiries under this Ordinance were to  
MIDDLETON, be strictly in the nature of actions. They were mere summary  
J. inquiries to determine the rights of claimants as against the  
Government regarding the piece of land in dispute.

The order, in my opinion, should not be interfered with.

MONCREIFF, J.—I am of the same opinion.

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