1904.
July 7.

SILVA *v.* ABERAN.

C. R., Galle, 2,366.

Crown grant—Nature of the title.

On a purchaser from the Crown a Crown grant confers absolute dominion, superseding all other title existing at the date of the grant, unless such title has been derived from the Crown itself.

The remedy for any person claiming to have had at the date of the grant better title than the Crown is an action for damages against the Crown.

THE plaintiff, basing his title on a Crown grant dated 16th May, 1890, in favour of his vendor, alleged possession up to December, 1901, and an ouster in that month by the defendant, and prayed for ejectment and declaration of title in his favour. The defendant denied the ouster and claimed title by prescriptive possession of more than thirty-three years next before December, 1901.

1904.
July 7.

The plaintiff raised the issue whether a Crown grant in Ceylon conferred indefeasible title. At the trial in the Court below, 7th March, 1904, the Commissioner of Requests, Mr. G. A. Baumgartner, held that it did; that the plaintiff's vendor started with a title unchallengeable by the defendant, who, therefore, could only succeed by showing prescriptive possession since the date of the Crown grant; that occupation of the land as shown by the plantations on it had not begun before 1887; and that the evidence as to who had possession subsequently to the sale by the Crown was conflicting, but preponderated in favour of the plaintiff. He, therefore, gave judgment for the plaintiff.

On the question of the indefeasible nature of the title conferred by a Crown grant in Ceylon, he referred to the following authorities: *2 C. L. R. 43, 2 N. L. R. 33, 4 N. L. R. 343:* in which the question was referred to as an open one, but was not adjudicated on; Justinian's *Institutes 2, 16, 14:* " but a constitution of Zeno of sacred memory has completely protected those who receive anything from the *fiscus* by sale, gift, or any other title, by providing that they themselves are to be at once secure and made certain of success, whether they sue or are themselves sued in an action. While they who think that they have a ground of action as owners or mortgagees of the things alienated may bring an action against the sacred treasury within four years: " Sandar's Translation. *p. 146: Voet, 49, 14, 2 de Jure Fisci; 18, 4, 8 de Hæreditate Vendita; 12, 2, 3 de Evictionibus; 41, 3, 21 de Usucapionibus; Grœnewegen De Leg. Abr. and Digest., 49, 14, 5; 2 Thomson's Institutes, 509.*

Neostadius (*Decisions of the Court of Holland*, decision 15) in the case of *Harweyer v. Bruijns* was also cited as showing that the Roman-Dutch Law maintained the principle that a Crown grant conveyed absolute *dominium*.

And on the question whether this principle formed part of the law in force under the Dutch Government in Ceylon, he referred to D. C., Colombo, 60,664, *Grenier, 1873, p. 129:* to *Creasy's Reports, pp. 162, 164:* to the Legislative Acts of the Dutch Government in Ceylon, namely, advertisement of 8th April, 1744, and Proclamation of 15th November, 1745, as supporting the conclusion that the principle in question did form part of the laws and institutions which subsisted under the Dutch Government in Ceylon.

He next pointed out that the principle must still be in force by virtue of the second paragraph of the Proclamation of 23rd September, 1799, as there has been no enactment to the contrary by lawful authority, that is, either by the Legislature of Ceylon or by the Crown itself, with or without the advice of the Privy Council, under the powers always reserved to the Crown by the

1904. *July 7.* Charter of 18th April, 1801, and subsequent Charters and Letters Patent.

The learned Commissioner then pointed out that Ordinance No. 12 of 1840 had for its declared purpose the prevention of encroachments by individuals on public property—that is to say, the protection of the Crown; and must be so construed as to render its provisions effectual for that purpose; that, consequently, the decision of the Government Agent, whether to admit or reject a claim to land, must, subject to appeal to the Governor, be final and conclusive, so far as concerns the disposal of the land against all persons who have been parties to the Government Agent's inquiry. The Commissioner said: "I cannot believe that the legislature intended anything so unbusinesslike as to give an option to a claimant whether to abide by the Government Agent's decision or not, and to leave it open to him to challenge that decision after a sale by the Crown." If so, the Crown would be in no better position than it was before the enactment of that Ordinance. Lastly, the Commissioner showed that the law provided a means of redress for those whose land had been wrongly sold by the Crown. He referred to the case of *Siman Appu v. The Queen's Advocate* (*9 Appeal Cases, 571*) as showing that the Privy Council was ready to act on Roman-Dutch authorities, if forthcoming, giving a right of action for damages against the Crown and quoted the case of *Cochrane v. Moore* (*1890*), in which Lord Esher held that the Common Law could not be altered by mere judicial decision, but only by Act of Parliament; that the authority of any judicial decision to the contrary would be over-ruled at any time, however remote, by a competent Court; and that no such Act has been passed by the Legislative Council of Ceylon.

He quoted *2 N. L. R. 361* and *3 N. L. R. 227* as furnishing such authorities, and added the authority of *Perezius, 10, 1, 46*. He mentioned the advantages of security in a Crown title and of the diminishing of litigation, and the unfairness of subjecting the innocent purchaser from the Crown to such litigation. He summarized his conclusions as follows:—

"I find that the law in Ceylon is that a Crown grant confers the absolute *dominium* on the purchaser, superseding all other title existing at the date of the grant, unless such title has been derived from the Crown itself, and that the remedy for any person claiming to have had, at the date of the grant, better title than the Crown, is an action for damages against the Crown, which action is maintainable, as is demonstrated by Chief Justice Bonser in *Sanford v. Waring* and by the other authorities I have cited."

The defendant appealed.

1904.
July 7.

The case came on for argument before Moncreiff, A.C.J., on 7th July, 1904.

Van Langenberg, for appellant.

Rámanáthan, *S.-G.* (with him *H. A. Jayawardene*), for plaintiff respondent.

7th July, 1904. MONCREIFF, A.C.J.—

I affirm the judgment of the Court below, as I see no reasons to the contrary.