1969 *Present :* Samerawickrame, J.

V. EMINONA, Appellant, *and* THE GOVERNMENT AGENT, POLONNARUWA, Respondent

S. C. 1002/67—M. C. Polonnaruwa, 15872

Land Development Ordinance—Sections 106, 107, 109, 117, 119, 120, 125—Gran of a holding—Subsequent cancellation of the grant—Whether its validity can be attacked collaterally by a third party on ground of defective notice to the permit-holder—Alteration of a permit—Requirement of authentic evidence.

When the grant of a holding has been cancelled in terms of section 109 of the Land Development Ordinance, it is not open to a third party, in proceedings to eject him from his unlawful possession or occupation of the holding, to challenge the validity of the cancellation of the grant collaterally on the ground that the notice issued to the permit-holder prior to the cancellation did not comply with the requirement of section 107 in that the date specified in the notice was not thirty clear days from the date of its issue.

When the permit issued to a permit-holder contains an interpolation scoring off his name and substituting another person's name, the alterations in the permit are not valid unless they are authenticated by the signature or even the initials of the officer who made them.

APPEAL from a judgment of the Magistrate's Court, Polonnaruwa.

C. Ranganathan, Q.C., with *M. T. M. Sivardeen*, for the 1st respondent-appellant.

V. C. Gunatilaka, Crown Counsel, for the complainant-respondent.

Cur. adv. vult.

August 25, 1969. SAMERAWICKRAME, J.—

This is an appeal against an order made by the learned Magistrate under section 125 of the Land Development Ordinance directing the appellant to be ejected from a holding.

It would appear that a permit in respect of this holding had originally been issued to one H.R. Charlie. On the 9th of November, 1963, a notice (1D4) in terms of s. 106 of the Land Development Ordinance had issued to the said Charlie intimating to him that his permit would be cancelled unless sufficient cause to the contrary was shown on the 9th of December, 1963. Charlie failed to attend the inquiry and order was made in terms of s.109 cancelling his permit. As the appellant was found to be in occupation of the holding an order was issued on her in terms of s.119 forthwith to vacate the said holding. Upon her failure to do so a report had been made to the learned Magistrate in terms of s. 120 and an inquiry has been held. The learned Magistrate made order stating that he was not satisfied that the appellant was entitled to possession or occupation of the holding and ordered her ejectment.

Learned Counsel for the appellant has submitted that the notice (1D4) served on Charlie was not in terms of s. 107 of the Land Development Ordinance in that the date specified in the notice was not thirty clear days from the date of its issue. He submitted, therefore, that the order of cancellation of the permit issued to Charlie was bad and the notice issued to the appellant in terms of s.119 of the said Ordinance was also accordingly bad and void. He further submitted that Charlie had surrendered his permit and that on his doing so a permit had been issued to the appellant. It was his position that upon the facts spoken to by the appellant no cancellation of the permit was possible and accordingly the provisions in sections 119 and 120 of the Land Development Ordinance had not come into operation.

The permit relied on by the appellant was the permit originally issued to Charlie in which his name has been scored off and the name of the appellant had been interpolated. The alterations in the permit have not been authenticated by the signature or even by the initials of the person who had made them. There were similar alterations in the Kachcheri Ledger (1D7) where too Charlie's name had been struck off and the appellant's name entered. These alterations too had not been signed or even initialled by any officer. The learned Magistrate held that the document produced by the appellant is not a permit validly issued to her. I see no reason to interfere with that finding.

In regard to the question of law raised by Mr. Ranganathan on behalf of the appellant, it appears to me that thirty clear days had not been allowed in the notice (1D4). It may have been open to Charlie to have taken proceedings by way of writ or otherwise to impugn the notice and the order made thereafter but Charlie has not in fact taken any steps to impugn the notice or the subsequent order made in default of appearance. I do not find it possible to hold that by reason of the defect in the notice the

proceedings were a nullity and liable to an attack in collateral proceedings between third parties—vide *Posner v. Collector for inter-State destitute persons* [1] and *Durayappah v. Fernando* [2]. Learned Crown Counsel has also drawn my attention to s. 117 of the Land Development Ordinance which reads :—

> "No appeal shall lie against an order of cancellation made by the Government Agent under section 109 but such order shall be final and conclusive for all purposes."

This clause may not have stood in the way of Charlie had he applied for a writ to quash the notice served on him and the order that was made consequent to it but, as I have said earlier, he has made no such application. It is no doubt open to the appellant to show that no valid order of cancellation was made but, in my view, the notice, though it may have been defective, did not render the proceedings a nullity and therefore it cannot be said that there was in point of fact no order of cancellation.

> Section 125 provides—" If, after due inquiry the Magistrate is not satisfied that the person showing cause is entitled to the possession or occupation of the holding, he shall make order directing such person forthwith to be ejected from the holding."

The learned Magistrate has held that he is not satisfied that the appellant is entitled to possession or occupation of the holding and I think that his finding must be upheld. In the circumstances, the appeal is dismissed.

Appeal dismissed.