[FULL BENCH.]

Present: Ennis A.C.J., De Sampayo J., and Loos A.J.

1919.

THE ATTORNEY-GENERAL *v.* PUNCHIRALA *et al.*

349—D. C. Anuradhapura, 769.

Chena lands in the Kandyan Provinces—No prescription against the Crown.

FULL BENCH.—In the case of chena lands in the Kandyan Provinces title by prescription cannot be proved against the Crown.

Attorney-General v. Punchirala [1] followed.

DE SAMPAYO J.—"No Court should refuse to apply statute law, even though there be no formal issue stated on the point. If necessary, the Court should, in pursuance of the provision of the Civil Procedure Code in that behalf, frame an issue before delivering judgment."

[1] *(1915) 18 N. L. R. 152.*

* The original of this judgment is not available in the Registry.—ED.

1919.

The Attorney-General v. Punchirala

THE facts are set out in the judgment of the District Judge (Dr. P. E. Pieris):—

This is an action brought by the Crown in respect of a chena of about 8 acres situated eighteen miles from Anuradhapura, and which is claimed by the defendants.

There is a statutory presumption in the case that the land is Crown, for at the time it was cleared by the defendants there was on it a forest growth of about twenty years. The defendants claim it under their *talipot* D 1, which bears the date of 1664 Saka, or 1742 A.D. This document has for many years been in the custody of the Police Court, from which it is now produced.

No question has been raised as to its having been in lawful custody. It was duly registered in 1873 under the Ordinance of 1866. It purports to convey an extent of land, and names certain boundaries which are identifiable to-day, and within which the land in dispute falls. It is the admitted fact that for many years, in spite of much litigation, the parties claiming under D 1 had persistently and resolutely been clearing the land within the boundaries. The main issue which I am asked to decide is as to the genuineness of D 1. There is a presumption as to its genuineness.

To rebut that presumption the Crown has called evidence. Mr. Bell, for many years Archaeological Commissioner, is the chief Crown witness. He has criticised the document from various points of view. He has pointed out certain orthographical errors, but has candidly admitted that in themselves they were not sufficient to condemn the document. I am inclined to go further, and to suggest that these errors seem an indication of the genuineness of a literary effort produced in a miserably backward district in a miserably backward period. I do not admit that all the alleged mistakes are mistakes, but, in view of the very little weight attached to them by Mr. Bell himself, it is unnecessary to discuss them in detail.

He has pointed out that the signature or sign manual appearing in the document, the entirety of which he was unable to read, does not appear to spell Rajakaruna, which is the name of the alleged grantor. The letters are a mixture of Tamil and Sinhalese. I did not understand that Mr. Bell inferred from this that the document was genuine. It is rather difficult to think that a party intending to forge Rajakaruna's signature deliberately went and wrote something else.

This, again, seems to point to the *bona fides* of the document. I think it is well known that in ancient Sinhalese transfers of lands the signature of the grantor was not regarded as invariably necessary. The main thing was the names of the witnesses. Mr. Bell further points out that the village of the grantor does not appear, and he is of opinion that in genuine documents the village invariably appears. If the latter were the fact, it is difficult to conceive why the forger, who undoubtedly must have had some document in his mind, omitted the village. I fear I cannot accept Mr. Bell's opinion on the point as conclusive, nor can I attach weight to the position of the clause containing the date or to the use of the expression *Wasama gath bawata.*

The weight to be attached to his evidence is very seriously discounted by the fact that it is based on an examination, not of original documents, but almost exclusively of copies obtained from the Registrar of Lands.

As D 2 shows, these copies themselves contain errors. Without examining the original it is not possible for Mr. Bell to say that the document he prefers to follow in any precise matter is itself a genuine one and not a forgery. It is also obvious that he has seen very few documents of the age and of the district of D 1.

Not a solitary document of those on which he relies has been produced in Court, and it is very doubtful whether the evidence which he has given in respect to them is even admissible legally. To be perfectly fair to him, I should record that the impression which he created in my mind was that he saw some reason to doubt the genuineness of D 1, but that he was not prepared unhesitatingly to say that D 1 is a forgery.

In view of the circumstances of the country, and of the alleged time when D 1 was written, I thing it is equally possible to come to a different conclusion on examining the very points touched upon by him.

The evidence is totally inadequate for holding that D 1 is a forgery. The Crown case must stand or fall on that issue; that there was possession of this particular block by the defendants is proved by the fact that the growth on it was only twenty years old.

The plaintiff's action is accordingly dismissed, with costs.

Garvin, S.-G. (with him *V. M. Fernando, C.C.*, and *Dias, C.C.*), for plaintiff, appellant.—In the case of chenas in the Kandyan Provinces section 6 of Ordinance No. 12 of 1840 admits proof of private title only by sannas, by grant, or by payment of customary taxes within twenty years. This has been repeatedly held in a number of cases. Counsel cited *Ram. (43-45) 25; (1854) Nell C. R. 239* (37, Nuwara Eliya, 88); 268, C. R. Panwila 273;[1] *Ran Menika v. Appuhamy;*[2] 161, C. R. Kegalla, 5,024;[3] 333, D. C. Ratnapura, 1,309; [4] D. C. Kegalla, 3,129;[5] *Abeysekere v. Banda.*[6]

Lawrie J., referring to lands in Kandyan Provinces, said; " The better the proof that the land is chena, the stronger is the presumption that it belongs to the Crown, and that presumption can be rebutted only by proof of a grant or by payment of tax " (*Attorney-General v. Wanduragala*[7]).

Thombu register cannot give title to a private party to chenas in the Kandyan Provinces. At the most it may denote the origin of prescription. But under Kandyan law a private subject cannot prescribe against the king, and Roman-Dutch law of prescription was never extended to the Kandyan Provinces (6,418, Agent's Court, Ratnapura;[8] *Attorney-General v. Punchirala*[9]). But *contra* see 295, C. R. Gampola, 1,094,[10] and *Ran Menika v. Appuhamy.*[2]

The learned District Judge was in error in holding that the Crown case must stand or fall on the issue as to forgery.

[1] *S. C. M., Nov. 30, 1893.*
[2] *(1901) 5 N. L. R. 226.*
[3] *S. C. M., June 19, 1905.*
[4] *S. C. M., April 5, 1905.*
[5] *S. C. M., Sept. 12, 1913.*
[6] *(1918) 20 N. L. R. 447.*
[7] *(1901) 5 N. L. R. 98, at 105.*
[8] *S. C. M., Nov. 1, 1833.*
[9] *(1915) 18 N. L. R. 152.*
[10] *S. C. M., Dec. 14, 1893.*

1919.

The Attorney-General v. Punchirala

The defendants admitted that the land in question was chena land, to which the presumption created by section 6 of Ordinance No. 12 of 1840 in favour of the Crown applied. That presumption has not been rebutted.

It was proved at the trial that the talipot in question was a transfer between private parties; it cannot affect the case for the Crown.

Even assuming, as the District Judge has done, that the talipot is genuine, its production is not sufficient to rebut the presumption in favour of the Crown.

A. St. V. Jayawardene, for the defendants, respondents,—The claim of the Crown is based on the presumption created by section 6 of Ordinance No. 12 of 1840. This presumption only applies when the Crown invokes the summary procedure laid down by that Ordinance. It has no application in other forms of action. The Ordinance as originally passed had the words " and it is further enacted " at the beginning of section 6 and the other sections, clearly showing that the sections hang together (*Stroud's Judicial Dictionary*). The presumption should not be given a general application. Even if the section applied generally, the presumption created by it is a rebuttable presumption. " Deemed to belong to the Crown " does not necessarily mean taken as conclusively belonging to the Crown. See the language used in section 5.

The Roman-Dutch law allowed prescription of roads. When Kandyan law is silent, Roman-Dutch law applies.

[DE SAMPAYO J.—Kandyan chenas all belonged to the king, unless he gave it to a private party.]

The effect of section 2 of Ordinance No. 9 of 1841 is not to distinguish Kandyan chenas from low-country chenas.

Section 8 of Ordinance No. 12 of 1840 creates presumptively a title by prescription after thirty years. Up to thirty years there is no prescription against Chena Lands. After thirty years all lands are in the same position, *i.e.*, full title is given. Otherwise the exemption of chenas from the operation of section 8 is meaningless. It is because rights can be acquired in chena land by possession that they have been expressly exempted from the operation of section 8 (see Ordinance No. 9 of 1841).

The history of Ordinance No. 12 of 1840 is fully given *in Babappu v. Don Andris.*[1] The effect of the disallowance of Ordinance No. 5 of 1840 and the Order in Council of August 11, 1841, soon after the passing of Ordinance No. 12 of 1840, was to give prescriptive title by possession for thirty years and upwards. Thirty years in section 8 of Ordinance No. 12 of 1840 was the same as one-third of a century in Roman-Dutch law.

[1] *(1910) 13 N. L. R. 273.*

If the Crown is entitled to succeed on this issue, the defendant should be given an opportunity of showing that the talipot they rely on has been granted by an official, a "mudiyanse," who was a high official during the Kandyan times (see Ievers' *Manual of the North-Central Province*). There is hardly any proof except the admission that the land in question is chena. The District Judge doubts whether the land is chena, on the evidence led by the Crown.

April 10, 1919. ENNIS A.C.J.—

This was an action by the Crown for a declaration of title to certain lands. Counsel for the defendants admitted that the land is chena land, and that there is a statutory presumption in favour of the Crown. The learned District Judge gave judgment for the defendants, and the plaintiff appeals. The case has been referred to a Full Court by my Brothers de Sampayo and Loos for the consideration of one question only, viz., whether, in the case of chena land in the Kandyan Provinces, title by prescription can be proved against the Crown.

Section 6 of the Ordinance No. 12 of 1840 provides that "all chenas and other lands which can be only cultivated after intervals of several years shall, if the same be situate within the districts formerly comprised in the Kandyan Provinces (wherein no thombu registers have been heretofore established), be deemed to belong to the Crown, and not to be the property of any private person claiming the same against the Crown, except upon proof only by such person of a sannas or grant for the same, together with satisfactory evidence as to the limits and boundaries thereof, or of such customary taxes, dues, or services having been rendered within twenty years for the same as have been rendered within such period for similar lands being the property of private proprietors in the same districts."

Most of the cases on this section were considered in *The Attorney-General v. Punchirala* [1] by Sir Alexander Wood Renton, who held that the natural interpretation of the section was that no title can be set up against the Crown to lands of the class dealt with by the section, save a title by sannas, or by grant, or by customary taxes, dues, or services within the prescribed period. With that interpretation I am in entire accord. It was urged that section 5 of the Ordinance No. 5 of 1852 introduced into the Kandyan Provinces the Roman-Dutch principle; that in a number of cases regarding chena land in the low-country, it has been held that prescription would run against the Crown in the case of chena land in the Kandyan Provinces. The reason given in section 6 for making for the Kandyan Provinces a provision different from the provision in the other Provinces is that in the Kandyan Provinces there were no thombu registers. The thombu registers were the means by which the Dutch Government recognized private title to land,

[1] *(1915) 18 N. L. R. 152.*

1919.

ENNIS A.C.J.

The Attorney-General v. Punchirala

and title could easily be proved by the production of a certified copy of the register. It was title by registration, and I venture to doubt whether under the Dutch Government, with the thombu system of registration, any title by proof of prescriptive possession would have been required at all. But for the purposes of this case the Attorney-General conceded that prescription runs against the Crown in the case of chena land in the Provinces other than Kandyan. It then remains to consider whether Kandyan law is silent on the point. On this point it seems to me that section 6 of the Ordinance No. 12 of 1840 is express: no title can be set up against the Crown except as therein mentioned, and proof of prescriptive possession is not one of the methods enumerated. It was urged for the respondent that the reasons which led to an amendment of the Ordinance later showed a leaning towards prescription, and the case of *Babappu v. Don Andris*,[1] which sets out the history of enactment, was cited. It seems to me that the contention is against the respondents, for if the alterations were made with prescription in view, it would have been easy to alter section 6. The presumption is that section 6 was intentionally left as it originally stood, *i.e.*, proof of prescriptive possession was not one of the means by which the title of the Crown could be contested.

An argument based on section 8 was addressed to us, but I am not sure I have properly understood it. It seemed to be that section 8 had introduced prescription into the Kandyan Provinces, but if this were so, the original section 9 of the Ordinance, and the amendment introduced by the Ordinance No. 9 of 1841, expressly declared that the provisions of section 8 should not apply to the land referred to in section 6.

In the circumstances, I am of opinion that the question referred to the Full Court must be answered in the negative.

DE SAMPAYO J.—

This action was brought by the Attorney-General to have it declared that a land called Hikgahahena, situated in Periyakulama, in the Kalagam korale, in the Province of Sabaragamuwa, was the property of the Crown. The defendants claimed it on a talipot or ola deed of the Saka year 1664 (1742 A.D.) in favour of an ancestor of theirs, and also by right of prescriptive possession. It was admitted at the trial by counsel for the defendants that the land in dispute was chena, and that there was a statutory presumption in favour of the Crown. The talipot in question was then produced and marked D 1, and, in addition to an issue previously framed as to the jurisdiction of the Court, the following issues were framed:—

(2) Is the land in dispute covered by the document D 1?
(3) Is the document D 1 a forgery?
(4) What damages, if any, is plaintiff entitled to?

[1] *(1910) 13 N. L. R. 273 (with correction in 14 N. L. R., page iv).*

The revenue officer of Tamankaduwa, who was a Crown witness, established the fact that the land Hikgahahena was within the boundaries given in the talipot. As regards the third issue, Mr. H. C. P. Bell, the retired Civil Servant and Archæological Commissioner, was called to prove that the talipot was not genuine, but the questions addressed to him for that purpose were for some reason or other objected to by counsel for the defendants, and, as I understand the record, were disallowed. Nevertheless, Mr. Bell was allowed to say something with regard to the character of the document, and at the conclusion of the evidence the Crown Proctor intimated to the Court that the plaintiff was not really interested in the document D 1, and was indifferent as to whether it was genuine or not, his standpoint being that the talipot, not being a grant or sannas within the meaning of section 6 of the Ordinance No. 12 of 1840, was insufficient to upset the statutory title of the Crown. The District Judge, for the reasons stated by him in his judgment, held the talipot to be genuine, and, remarking that the case of the Crown must stand or fall on the issue of forgery, he dismissed the plaintiff's action, with costs.

When the appeal first came before my Brother Loos and myself, the Solicitor-General took up the same position as the Crown Proctor in the Court below with regard to the effect of the talipot. Mr. Jayawardene, however, argued that as no issue had been stated as to whether the talipot, even if genuine, satisfied the requirements of section 6 of the Ordinance, the action must, as the District Judge himself appears to have thought, fail, in view of the finding as to the genuineness of the talipot. This is taking a very narrow view of the nature of a trial in the Court of first instance. The issue said to be necessary would have reference merely to the construction of an Ordinance, and no Court should refuse to apply statute law, even though there be no formal issue stated on the point. If necessary, the Court should, in pursuance of the provision of the Civil Procedure Code in that behalf, frame an issue before delivering judgment. Moreover, the contention on behalf of the defendants takes no note of the fact that the Crown Proctor, as a matter of fact, submitted to the Court for its consideration the very point which would have been the subject of the issue which is said to be wanting, and I think it was impossible for the Court to ignore it. Mr. Jayawardene then argued that the talipot was a document in the nature of a sannas, and in support of this we were referred to *Marshall's Judgments 297*, in which the learned Chief Justice discusses the nature of service tenure lands, and shows how, if the tenant abandoned the land, it reverted to the king, who sometimes re-granted the land, and he proceeds to say that, " according to more general custom, the crop was appropriated by or disposed of by the chief of the province, village, or department to which the land belongs, or it was re-granted by him to another

1919.

DE SAMPAYO J.

The Attorney General v. Punchirala

subject to the same service, and frequently on payment of a suitable fee." Mr. Jayawardene asked us, if necessary, to give him an opportunity to show that the person who gave the talipot was an official of the kind. But there is no indication whatever that the transaction was one of the kind to which Sir Charles Marshall refers. The talipot in form and substance is a private conveyance by one private person to another for the consideration of 150 ridis paid in cash. There is no reference to the grantor being an official of any kind, or to the land being service land, nor are any services reserved on the conveyance. We, therefore, did not think that the case was such as to justify further inquiry on the point suggested. It was also contended that the land was not chena so as to be affected by section 6 of the Ordinance. One or two of the headmen who were called to prove the damages stated in the course of their evidence that the jungle on the land was of about twenty years' growth, and so it was argued that it was not chena land. We could not follow Mr. Jayawardene here, but it was unnecessary for us to discuss once again the old question as to what a chena is. It had been admitted in the Court below that the land in dispute was chena, to which the presumption in favour of the Crown applied, and the appeal, therefore, could only be considered and disposed of on that basis. It will be noticed that the defendants in their pleading depended on prescriptive possession, though no issue on that point was stated at the trial, and Mr. Jayawardene finally asked us for an opportunity to adduce evidence of prescription. To this the Solicitor-General's reply was that the land being chena, situated in the Kandyan Provinces, prescription was not available against the Crown, and he cited the decision of Wood Renton C.J. in *The Attorney-General v. Punchirala.*[1] That case was quite in point, and we ourselves felt no doubt on the subject, but we thought it best to refer the question to the Full Bench in order that it might once for all be settled.

Having fully heard counsel on the point referred, I have no hesitation in agreeing with the decision in *The Attorney-General v. Punchirala* (*supra*). All the previous decisions on the subject were there collated and discussed, and among them were two unreported judgments of Lawrie J. (268, C. R. Panwila, 273, and 295, C. R. Gampola, 1,094), which practically created the whole difficulty. Those two cases were decided by Lawrie J. on a finding that, though the lands in claim were chenas in the Kandyan Provinces, a prescriptive title had been established against the Crown. In neither of them, however, was the particular provision of section 6 of the Ordinance fully discussed or considered, and both appear to be *primæ impressionis* only, inasmuch as the learned Judge regretted that, for the reasons stated by him, he was unable to refer the matter to the Full Court. The later case, *Corea Mudaliyar v. Punchirala,*[2] is not in point, because the subject-matter there was not a chena in

[1] *(1915) 18 N. L. R. 152.*

[2] *(1899) 4 N. L. R. 135.*

the Kandyan Provinces. On the other hand, *The Attorney-General v. Wanduragala*,[1] in which the same learned Judge delivered the principal judgment, and which, I think, is a more authoritative decision, is consistent with the previous unreported Courts of Requests cases. There it was found that the land was forest, but counsel strenuously argued that it was chena, and on that assumption, and referring to certain cases cited to him, Lawrie A.C.J. said: " So far as any of these decisions hold that proof that private parties cultivated the land as chena is proof of private ownership, they seem to me to be contrary to the words of the Ordinance. The better the proof that the land is chena, the stronger is the presumption that it belongs to the Crown, and *that presumption can be rebutted by proof of a grant or by payment of tax.*" I have italicized this last sentence, because it is expressive of the learned Judge's considered opinion that, under section 6 of the Ordinance, the presumption in favour of the Crown with regard to Kandyan chenas could only be met by one or other of the modes which are therein specified, and of which prescription is not one. But the matter is thrown again into a state of obscurity by *Ran Menika v. Appuhamy*,[2] where Lawrie A.C.J., while expressly saying that he adhered to the construction of section 6 of the Ordinance No. 12 of 1840, given by him in *The Attorney-General v. Wanduragala* (*supra*) went on to state that his judgment in C. R. Gampola, 1,094, contained a correct statement of the low. I think, however, that there he did not purport to deal specifically with the effect of section 6 of the Ordinance, but was combating an opinion of Bonser C.J., that prescription was now wholly regulated by the Ordinance of Prescription, and not by the Roman-Dutch law, and, in consequence of section 2 of the Regulation No. 13 of 1822, that it was not a mode of acquisition of title, but was only a limitation of action, and he meant to state his own opinion to the contrary. He no doubt added that in any case the Regulation of 1822 did not touch the Kandyan law, by which (he said) possession for thirty years gave " title." He, however, gives no authority for this proposition, nor has any been cited to us. So far as I can discover, there is no trace of prescription in the Kandyan law, and with great respect I should say that under the Kandyan law the principle *nullum tempus occurrit regi* was equally applicable. The extension of the law of prescription in any respect to the Kandyan Provinces is a matter of statutory provision. Previous to 1870 it appears to have been thought that prescription was unavailable against the Crown at all, but in D. C. Colombo, 1,246,[3] it was decided that the Crown in Ceylon was in the same position as the *fiscus* under the Roman-Dutch law, and that possession of land for a third of a century gave title by prescription against the Crown. This has

[1] *(1901) 5 N. L. R. 98.*

[2] *(1901) 5 N. L. R. 226.*

[3] *Vand. Rep. 83.*

1919.

DE SAMPAYO J.

The Attorney-General v. Punchirala

since been the accepted law on the subject. Section 5 of Ordinance No. 5 of 1853 provides that where the Kandyan law is silent on any matter arising for adjudication within the Kandyan Provinces, for the decision of which other provision is not specifically made, the Court shall have recourse to the law on the like matter in force within the Maritime Provinces. Consequently the law of prescription above laid down may be considered to have become applicable to the Kandyan Provinces. That being so, if a question arose as to title to " forest, waste, or unoccupied or uncultivated lands " within the meaning of section 6 of the Ordinance No. 12 of 1840, or to chenas in Provinces other than the Kandyan Provinces, the private claimant might rebut the presumption in favour of the Crown by proof of prescriptive possession for a third of a century. But the question now is as to chenas situated within the Kandyan Provinces, and that depends on the construction of the special provision contained in the same section with regard to them.

The provision is that such chenas shall be deemed to belong to the Crown, and not to be the property of any private person, " *except upon proof only* by such person of a grant or sannas for the same, ... or of such customary taxes, dues, or services having been rendered within twenty years for the same as have been rendered for similar lands being the property of private proprietors in the same districts." The words italicized by me make it quite clear that no other proof is allowable for the purpose. If that is the true construction of the provision of section 6, as I think it is, then section 5 of Ordinance No. 5 of 1852 above referred to has no effect as regards chenas within the Kandyan Provinces, because to hold that the law of prescription applied to such chenas would be to contravene directly the provision of section 6 of the Ordinance No. 12 of 1840. If that were intended, the legislation would have been more explicit. Mr. Jayawardene relied on the history of the legislation leading up to the Ordinance No. 12 of 1840, as disclosed in the judgment of Sir Alexander Wood Renton in *Babappu v. Don Andris.*[1] When the earlier Ordinance No. 5 of 1840—which in providing by section 1 a summary remedy against encroachments on Crown property had contained no limit with regard to the period of possession by the private party—was referred to the Secretary of State, the Law Officers of the Crown disapproved of its provisions, and advised that more regard should be had to length of possession and rights of prescription. The Ordinance was accordingly disallowed, and the Ordinance No. 12 of 1840 was passed instead. In section 1 of the latter Ordinance, as it originally stood, provision was made for possession for " thirty years or upwards," beyond which the summary remedy against a private person was not available. The Order in Council of August 11, 1841, which considered the period of thirty years or upwards to be unreasonably long, cut down the

[1] *(1910) 13 N. L. R. 273.*

period to " five years or upwards." Moreover, section 8 of the Ordinance No. 12 of 1840 gives a right to half-improved value to persons who have held uninterrupted possession " for not less than ten nor more than thirty years." In view of these circumstances, Mr. Jayawardene contends that the Legislature intended to give effect to prescription by possession for thirty years and upwards. According to him the period of thirty years was the same as the third part of a century of the Roman-Dutch Law. I cannot accept this view. In my opinion the thirty years was, so to say, accidental, and was selected only as a reasonable period, and had no reference to the Roman-Dutch law of prescription. Indeed, at that date the Roman-Dutch law of prescription against the Crown by possession for a third part of a century was not in mind of any one; that, as shown above, was a much later discovery. It was said that in any case the Ordinance No. 12 of 1840 inferentially provided that possession for thirty years should give absolute title to the possessor, seeing that possession for less than thirty years gave to the possessor under section 8 a right at least to half-improved value. It should be stated, however, that the Ordinance No. 9 of 1841, passed within two months of the Order in Council above referred to, declares that none of the provisions contained in section 8 of the Ordinance No. 12 of 1840, nor the provisions touching prescription contained in section 1, shall extend to any land referred to in section 6. I may say, moreover, that I do not understand inferential legislation of the kind contended for, and I do not think it possible. It may be assumed that, in deference to the opinion of the Law Officers of the Crown, the Ceylon Legislature did pay regard to rights arising from possession, but the extent of such recognition must be found within the four corners of the Ordinance itself. I may go further, and assume that the principle of prescription against the Crown by possession for a third of a century was inferentially included in a general sense in the Ordinance. But that does not affect section 6, as it specifies the only modes by which title to chenas in the Kandyan Provinces can me established as against the Crown, and prescription is not one of them. The reason for this exclusion is a matter of conjecture. It may be due to the fact that at that date, as appears from the judgment of Sir Charles Marshall in *Mudalihamy v. Molligoda Adigar*, referred to in *The Attorney-General v. Punchirala*,[1] it was thought that no prescription ran against the Crown in any case, wherever the land might be situated. But it is needless to speculate; we can only administer the law as we find it.

The question referred to the Full Bench is whether, on the true construction of section 6 of the Ordinance No. 12 of 1840, prescriptive title can be proved against the Crown in the case of chenas situated within the Kandyan Provinces, and I have given reasons for thinking it cannot. I may here shortly refer to a further

[1] *(1915) 18 N. L. R. 152.*

1919.

DE SAMPAYO J.

The Attorney-General v. Punchirala

argument of Mr. Jayawardene, though it is not exactly relevant to the question referred to the Full Bench, viz., that section 6 of the Ordinance is connected with, and is applicable only to, the summary proceedings provided by section 1. I do not think there is any good ground for this limitation, and, in my opinion, section 6 is a general enactment declaratory of the rights of the Crown to certain descriptions of immovable property. Lawrie A.C.J. expressed an opinion to the same effect in *The Attorney-General v. Wanduragala.*[1]

For the reasons above stated, I would reverse the judgment appealed against, and direct that a decree be entered in favour of the plaintiff for the land in claim and for Rs. 30 as damages, being the amount agreed upon in the District Court. As the plaintiff consented to the trial of a false issue, I would give no costs of the action to either side, but the defendants must pay the plaintiff's costs of appeal.

Loos A.J.—

I am so entirely in accord with the conclusions arrived at by my Brother de Sampayo, before whom and myself the appeal was originally argued, and with the reasons stated in his judgment, which I have had the advantage of reading, that it is unnecessary for me to add anything.

In my opinion section 6 of the Ordinance No. 12 of 1840 specifically indicates the only methods by which the presumption in favour of the Crown can be rebutted. I agree to the order proposed by my Brother de Sampayo.

Appeal allowed.