1940 *Present:* **Howard C.J., Moseley S. P. J., and Soertsz J.**

KANAGASUNDERAM *v.* PODIHAMINE.

187—C. R. Avissawella, 20.

Appeal—Order of costs—Land Acquisition Ordinance, s. 31 (1) (Cap. 203).

There is no right of appeal to the Supreme Court from an order of taxation of costs made under section 31 (1) of the Land Acquisition Ordinance.

***Government Agent, Uva v. Banda* (*13 N. L. R. 341*) not followed.**

THE Government Agent and the defendants agreed as to the amount of compensation to be allowed under section 9 of the Land Acquisition Ordinance (Cap. 203) ; but, as the first defendant claimed the entirety of the compensation while the second claimed one-twenty-fifth of it, the third one-tenth, the fourth one-fourth, and the fifth one-fortieth, the Government Agent referred the matter under section 11 of the Ordinance to the Court of Requests. In the statements of claim filed in Court, the third defendant claimed the value of the plantation. After inquiry the Commissioner awarded the compensation deposited in Court less the costs of the Crown to the first defendant. In the taxation of costs under section 31 of the Ordinance the Court fixed the costs incurred by the Crown at Rs. 12.75. The first defendant appealed against the order of costs.

The Counsel for the respondent objected to the hearing of the appeal on the ground that there was no appeal from an order of taxation made under section 31 (1) of the Ordinance. The appeal was ultimately referred to a Bench of three Judges on the preliminary objection.

H. H. Basnayake, C.C., for the respondent.—The Land Acquisition Ordinance is a special statute which creates special machinery for determining disputes between the acquiring authority and the persons whose lands are acquired. The District Court and Court of Requests are special tribunals for the purposes of the Ordinance and can exercise when acting thereunder only the powers given by the Ordinance. The powers and procedure under the Civil Procedure Code are not available except where they are expressly conferred.

[SOERTSZ J.—What is the procedure in Court of Requests land acquisition cases?]

By section 11, Court of Requests have jurisdiction similar to the District Court.

[SOERTSZ J.—In uncontested money cases there is no right of appeal under section 833 of the Civil Procedure Code, is there?]

This is not a land case nor a money case. In an uncontested money case costs would be Rs. 10.

Right of appeal is given in various Ordinances. Vol. V., Chapter 53, Municipal Councils Ordinance the appeal section is 124 (3). Section 32 of the Land Acquisition Ordinance is not capable of extension so as to give a right of appeal. Rights must be specially conferred. Rules of procedure and practice cannot be extended. Right of appeal must be express, and cannot be implied or inferred. Section 32 cannot in the light of authority be extenred. *G.A., Uva v. Banda*[1] does not apply to the present case. An appeal is a right of entering a superior Court and invoking its aid. (*A. G. v. Simona* at page 1209). *G. A., Uva v. Banda* was decided before section 30 was amended by 1911 Ordinance. *Pitche Thamby v. Mariker 18 N.L.R.* at page 117 deals with special right of appeal. There is no right of appeal where Legislature does not give a right of appeal. Creation of new right of appeal is plainly an act which needs legislative authority. *A. G. v. H. J. Sillem*[2], *vide* Revised English Reports 11 at page 1207. Appeal does not lie unless expressly given by the statute (*King v. Joseph Hanson.*[3]) Appeal cannot be given by implication, but must be given by express words (*Queen v. Stock; 8 Adolphus & Ellis 405*[4]). Under the Housing and Improvement Ordinance there is no right of appeal from a District Court to the Supreme Court, only a District Court may state a case (*32 N. L. R.* at page 92 *Sangarapillai v. Municipal Council, Colombo*). In maintenance cases, only orders from certain sections are appealable. (*Kathirasipillai v. Subramaniam.*[5])

Court of Requests provides for taxation by chief clerk (section 833, Civil Procedure Code). Section 214 will not apply to Court of Requests. There must be a statutory right of appeal (*Rangoon Co., Ltd. v. Collector, Rangoon; Law Reports Indian Appeals (Vol. 39, page 139.*[6]) In *Special Officer v. Mottlavalla,* it was held that proceedings under Land Acquisition are under a special statute. In *In re Said Bank Trustees*[7] —a case under Land Clauses Consolidation Act—the Court has no jurisdiction over a taxing master. Even in matters of review the statute must give power of appeal. Costs must be given by statute. Section 30 of Land Acquisition Ordinance provides for costs. The Court has no inherent power to grant costs. (*Vol. IV. Encyclopaedia of England, 3rd e., p. 66.*) Commissioner of Requests has no right to review the taxation by the chief clerk. Section 55 of the Civil Procedure Code speaks of "chief clerk or secretary". The Secretary refers to District Court and chief clerk to Court of Requests.

N. Nadarajah, for appellant.—At the time the Acquisition Ordinance was passed rule 41 gave a right of appeal. Rule 41 was incorporated under section 32 of the Land Acquisition Ordinance. Ordinance No. 2 of 1889 repealed rule 41, and sections 208-214 of the Civil Procedure Code (Ordinance No. 2 of 1889, took its place. Section 214 of the Civil Procedure Code reproduces rule 41. *Re* the jurisdiction regarding costs *13 N. L. R. 341*

[1] *13 N. L. R. 241.*
[2] *10 H. L. Cases 703.*
[3] *4 Barnwell and Alderson 518.*
[4] *112 English Reports 892.*
[5] *7 C. L. W. 94.*
[6] *14 Bombay L. R. 833.*
[7] *14 Bombay L. R. 1194.*
[8] *3 Q. B. L. R. para 41*

(*G. A., Uva v. Banda*) a full bench decision is binding. There is a right of appeal, *vide* Wood Renton J. at page 344. Court of Requests procedure is at Part (X.), Civil Procedure Code. Section 833 of the Civil Procedure Code does not contradict the sections regarding costs. Section 214 of the Civil Procedure Code refers to registrar or secretary or chief clerk as the case may be. Section 214 applies to the Court of Requests too. In Sehedule I. of the Civil Procedure all repealed rules are set out. The case *G. A., Sabaragamuwa v. Asirwathan*[1] held that rules in sections 18 and 32 are still existing. In *39 Indian Appeal Cases* at pp. 197 and 200, that an appeal does not exist as of right. Section 32 of the Land Acquisition Ordinance is wide enough to include sections 209-215 of the Civil Procedure Code. It is too late in the day now to say there is no right of appeal specially after sections 30 and 29. Section 31 lets in the entire machinery by which the Civil Procedure Code functions. The House of Lords Case can be distinguished. It deals with "process practice and mode of pleadings".

[SOERTSZ J.—Sections 26 and 35 of the Ordinance are necessarily superfluous then if right of appeal lies ?]

No. They are necessary. The Land Acquisition Ordinance has special machinery. Section 30, sub-section (1), deals with costs. Inquiry under section 11 is subject to an appeal under section 14. Section 34 deals with apportionment "*inter se* only". Section 31 allows the taxation of the bill. (*Vide* Walter Pereira, pp. 133 and 134, Vol. I., 1913). Similar legislation need not be referred to. Therefore the cases cited cannot help.

H. H. Basnayake, C.C., in reply.—Section 32 regulates procedure and practice. Right of appeal is not procedure. See *Poyser v. Miners*[2].

Cur. adv. vult.

December 19, 1940. HOWARD C.J.—

This case has been referred to a Bench constituted by three Judges on a preliminary objection by Counsel for the respondent that no appeal lies from an order of taxation made under section 31 of the Land Acquisition Ordinance (Cap. 203 of the Legislative Enactments). The facts leading up to the appeal in this case are as follows :— The amount of compensation to be paid by the Government for the land acquired was agreed on by the Government Agent and the parties interested under section 9 of the Ordinance. Rival claims to the whole of the compensation were made by the first and third defendants. On August 12, 1940, the claim made by the third defendant was withdrawn and decree was entered awarding the compensation to the first defendant, less Crown costs. There has been considerable argument as to whether the award was made under section 35. The Government Agent in this case made his inquiry under section 7 with the result that (1) the compensation was agreed, and (2) rival claims were set up to such compensations. A question, therefore, arose under section 11 (*e*) "respecting the title to the land or any rights thereto or interests therein arising between two or more persons". In these circumstances the Government Agent referred the matter to the determination of the Court of Requests. It is conceded that the

[1] *29 N. L. R. 367.*

[2] *7 A. B. D. (1881) p. 329 at para. 333.*

Commissioner of Requests on such reference has acted under the provisions of Part IV. of the Ordinance. The award of the Assistant Government Agent stated as follows :—" And that the said amount be apportioned in the following manner, viz., in a manner to be determined by Court ". Hence the Assistant Government Agent deemed the matter to be one of apportionment and referred it as such to the Commissioner of Requests. If Part IV. is inapplicable, the only other provisions in the Ordinance that could possibly confer jurisdiction on the Court to determine the matter in dispute are contained in Part III. But the phraseology of sections 14-29 indicates that these sections have no application when the amount of compensation is agreed as between the Government Agent and interested parties. I have, therefore, come to the conclusion that the matter in dispute was one of apportionment. Being a dispute as to the apportionment after the amount of compensation had been settled under section 9, the Commissioner of Requests has acted under sections 34 and 35. Although one of the claimants did not pursue his claim and the question at issue was settled, the amount of compensation to be paid to the first defendant was made on order of Court dated August 15, 1940. This was, therefore, a decision under section 35 and in such circumstances subject to appeal to the Supreme Court. It is also provided that such appeal " shall be prosecuted within the time and in the manner and subject to the rules and practice provided for or observed in appeals from interlocutory orders of District Courts ". Part IV. is silent with regard to costs. The decision on the apportionment is alone subject to appeal. Moreover the Government Agent is not interested in the decision. Hence it could be argued that no costs can be awarded. On the other hand although no mention is made in Part IV. as to the applicability of sections 30, 31 and 32 to a reference under this Part, I consider that their phraseology indicates that they were intended to apply to such a reference. Section 30 (3) obviously contemplates the award of costs to the Government Agent when a question arises as to the correct apportionment of the compensation. Moreover in the *Government Agent, Uva v. Banda*[1], a Full Bench decided that such costs were payable. Section 31 (1) also provides that the costs in all legal proceedings when there has been a reference to the Court, shall be taxed by the Court. The drafting and arrangement of the provisions of this Ordinance are certainly difficult to follow but the words of section 31 (1) are wide enough to include a reference under section 34. I agree with the contention of Mr. Basnayake that this Court would have no right to entertain an appeal where that power is not expressly given by statute. The cases cited by him, namely, *Sangarapillai v. Chairman, Municipal Council, Colombo*[2]; *Fernando v. Chairman, Municipal Council, Colombo*[3]; *Attorney-General v. Sillem*[4]; *The King v. Joseph Hanson*[5]; and *The Queen v. Stock*[6], are authority for this proposition. In *The King v. Joseph Hanson*, Abbot C.J. stated as follows :—

"For the rule of law is, that although a certiorari lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute."

[1] *13 N. L. R. 341.*
[2] *32 N. L. R. 92.*
[3] *38 N. L. R. 75.*
[4] *11 E. R. 1200.*
[5] *106 E. R. 1027.*
[6] *112 E. R. 892.*

This dictum was affirmed by Lord Denman C.J. in *The Queen v. Stock* (*supra*) with the words "Abbot C.J. says, in *Rex v. Hanson*, speaking, not from any authority, but from his own observation, that a right of appeal cannot be implied, but must be given by express words". In his judgment in *Attorney-General v. Sillem* (*supra*) Lord Westbury stated as follows :—

> "The creation of a new right of appeal is plainly an act which requires legislative authority. The Court from which the appeal is given, and the Court to which it is given, must both be bound, and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right. Suppose the legislature to have given to either tribunal, the fullest power of regulating its own practice or procedure, such power would not avail for the creation of a new right of appeal which is in effect a limitation of the jurisdiction of one Court, and an extension of the jurisdiction of another. A power to regulate the practice of a Court does not involve or imply any power to alter the extent or nature of its jurisdiction."

The question for decision in this case was whether section 26 of 22 and 23 Vict. c. 21 permitted the Lord Chief Baron and two or more Barons of the Court of Exchequer to make rules and orders creating a right of appeal. Section 26 was worded as follows :—

> "It shall be lawful for the Lord Chief Baron and two or more Barons of the Court of Exchequer from time to time to make all such rules and orders as to the process, practice and mode of pleading on the revenue side of the Court, and as to the allowance of costs, and for the effectual execution of this Act and the intention and objects thereof, as may seem to them necessary and proper ; and also from time to time, by and such rule or order to extend, apply, or adapt any of the provisions of the 'Common Law Procedure Act, 1852', and the 'Common Law Procedure Act, 1854', and any of the rules of pleading and practice on the plea side of the said Court to the revenue side of the said Court, as may seem to them expedient for making the process, practice and mode of pleading on the revenue side of the said Court as nearly as may be uniform with the process, practice, and mode of pleading on the plea side of such Court."

It was held by a majority of the Court that the words—

> "'process, practice, and mode of pleading' are not used in the abstract, but with reference to existing Courts, the word 'practice' means the rules which guide the mode of proceeding within the walls of the Court itself ; and the later words of the section give the Barons the power 'extend, apply and adapt' to the revenue side of the Court of Exchequer no more than the 'process, practice, and mode of pleading' which were already in use on the plea side of that Court, and these words bear in the second part of the section the same meaning as in the first part of the section.
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> Held, therefore, that rules, which, by applying to cases on the revenue side of the Exchequer, the provisions of the Common Law Procedure Act of 1854 respecting appeals on motions for a new trial, gave an appeal in such motions on the revenue side, were rules made without legislative authority, and were consequently void."

In the course of his judgment Lord Westbury stated as follows :—

"An appeal is the right of entering a superior Court, and invoking its aid and interposition to redress the error of the Court below. It seems absurd to denominate this paramount right part of the practice of the inferior tribunal. The mode of proceeding may be regulated partly by the practice of the inferior, and partly by the practice of the superior tribunal ; but the appeal itself is wholly independent of these rules of practice. The right to bring an action is very distinct from the regulations that apply to the action when brought, and which constitute the practice of the Court, in which it is instituted. So the 34th and 35th sections of the Act of 1854 which create new rights of appeal, and the 36th section which defines and binds certain Courts to receive and determine such appeals, cannot with any accuracy or propriety be termed provisions which relate to process, practice, or mode of pleading, either in the Court appealed from, or that to which the appeal is to be made. They are enactments creating new relations between certain Courts in cases which are defined, and they are as distinct from rules of practice as international is distinct from municipal law."

In applying the principles formulated by this case the following passage from the same judgment is also relevant :—

"The principal argument of the Attorney-General was, that the words, 'process, practice, and mode of pleading' were equivalent to the word 'procedure', and that the word 'procedure' denotes the whole course of a cause, from its commencement in the Court of First Instance until its final adjudication in the ultimate Court of Appeal ; and he then contends that a provision giving a new right of appeal may be properly termed a provision relating to the procedure in a cause. I cannot accept either of these two positions. The words 'process, practice, and mode of pleading' are not used in the abstract, but always with reference to some Court or Courts ; and so used, they have a well understood and definite meaning. They are used in the 26th section in connection with the plea side and revenue side of the Court of Exchequer, and properly denote the proceedings in a cause on either side within the walls of that tribunal. They have no extra territorial operation, but if they received the larger construction of the Attorney-General, it would follow that under 26th section the Barons of the Exchequer would have power to make rules as to procedure in the House of Lords—which would be absurd".

The question, therefore, for our consideration is whether the language of sections 31 and 32 of Cap. 203 gives not merely by implication but by express words a right of appeal. It is argued that the words "the proceedings in any District Court taken under this Ordinance shall be subject so far as the same can be made applicable to the rules, practice and procedure provided for or observed at the time of such proceedings in civil suits", do give such a right. Applying the principles laid down in *Attorney-General v. Sillem* the word "proceedings" are limited by the words "in any District Court" and do not denote the whole course of an action from its commencement in the Court of first instance until its final adjudication in the ultimate Court of Appeal. The phraseology of

the section merely regulates the practice and procedure of proceedings in the District Court under Cap. 203 by importing the provisions provided for or observed in ordinary civil suits.

Counsel for the appellant has argued that a right of appeal from an order of taxation under section 31 (1) is recognized as existing under section 32 by the judgment of Wood Renton J. in the *Government Agent, Uva v. Banda.* The right of appeal does appear to be recognized in the following passage :—

> "There can be no doubt but that, under section 209 and following of the Civil Procedure Code, it would be competent for a Court to order even a successful party to pay costs which had been rendered necessary by his own conduct—the ground on which the District Judge has relied in the present case—and also that the Supreme Court would not interfere with the exercise of that discretion in appeal, unless it was clear that a manifest injustice had been caused by its exercise."

The question of the right to appeal was not argued in that case, and in view of the principles expounded in clear and unequivocal language in the English cases I have cited I am not prepared to accept the contention that *Government Agent, Uva v. Banda* is an authority for the proposition that such a right exists.

A further argument against the contention that a right of appeal as contended for exists lies in the fact that rights of appeal are given in clear and unequivocal language by sections 26 and 35 whereas no such language is employed in section 32. If section 32 does confer a right of appeal, sections 26 and 35 so far as they confer such a right are redundant.

For the reasons I have given the preliminary objection must be upheld and the appeal dismissed with costs.

MOSELEY S.P.J.—I agree.

SOERTSZ J.—I agree.

Preliminary objection upheld.