

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,  
and Mr. Justice Wendt.

1908.  
April 16.

CUMBERLAND v. FERNANDO.

D. C., Colombo, 339 (Special).

Surveyor, inquiry into conduct of—"Aggrieved person"—Assistant  
Government Agent—Ordinance No. 15 of 1889, s. 8.

Where a licensed surveyor employed to define the boundaries of a private land included within the boundaries of the said land property belonging to the Crown, and where the Assistant Government Agent, in his official capacity, petitioned the District Court to inquire into the conduct of the surveyor under the provisions of Ordinance No. 15 of 1889—

Held, that the Assistant Government Agent was an "aggrieved person" within the meaning of section 8 of Ordinance No. 15 of 1889, and was entitled to ask for an inquiry under the Ordinance.

*Baumgartner v. Van Rooyan*<sup>1</sup> followed.

**A** PPEAL from an order of the District Judge cancelling the appellant's license as a surveyor.

The facts sufficiently appear in the judgment of the Chief Justice.

*Hayley*, for the appellant.

*Walter Pereira, K.C., S.-G.*, for the Crown.

*Cur. adv. vult.*

April 16, 1908. HUTCHINSON, C.J.—

The appellant is a surveyor, and appeals from an order of the District Court cancelling his license. The order was made after an inquiry under Ordinance No. 15 of 1889 upon the petition of the Assistant Government Agent of Kalutara asking the Court to inquire whether the appellant had been guilty of gross misconduct in the discharge of his duties as a surveyor, or whether he had proved himself incapable of discharging his duties as such with advantage to the public, in the following matter, viz., that in August, 1904, his services were requisitioned by one Sarnelis to survey and define the boundaries of a private land described in title plan No. 95,065, and the surveyor defined its boundaries on the site of Crown land described in lot No. 9,015 $\frac{1}{4}$ .

There were two inquiries. At the first the District Court ordered the surveyor's license to be cancelled; on appeal the order was set aside, and a fresh inquiry ordered, Wood Renton J., with whom Grenier J. concurred, saying that the petition should show that the complainant is an "aggrieved person" in the sense that he has some substantial or official interest in the subject-matter of his complaint, and that the petition should be amended in that way. There was probably another reason for setting aside the order of the District Court, but it does not appear on the record. At the second inquiry

<sup>1</sup> (1905) 8 N. L. R. 298

1908.  
 April 16.  
 HUTCHINSON  
 C.J.

the petition was amended by the addition of an allegation that the petitioner was, as Assistant Government Agent, bound to protect the interests of the Crown lands in the District of Kalutara, and officially entrusted with the duty of preventing encroachments on Crown lands; and the District Court, after taking evidence, held that the appellant had proved himself incapable of discharging his duties as surveyor with advantage to the public.

The appellant objected that the petitioner was not shown to be an "aggrieved person" within the meaning of section 8 of the Ordinance No. 15 of 1889. The District Court over-ruled the objection! and I think that we are bound by the decision of this Court in *Baumgartner v. Van Rooyen*<sup>1</sup> to hold that the objection was rightly over-ruled.

Upon the facts it is urged for the appellant that the evidence is not conclusive that he made a mistake, but rather raises a suspicion that he actually surveyed and marked out the right plot No. 95,065, and that Sarnelis afterwards fraudulently took possession of the Crown land, and, when detected, threw the blame on the surveyor. Whether the surveyor really marked out the Crown land depends mainly on the evidence of Sarnelis and two men, who deposed that they were present at the survey. Sarnelis said that having taken a lease of a piece of land from E. C. Fonseka for the purpose of digging plumbago, he got it surveyed by the surveyor, and was present when the surveyor cut trenches and fixed pegs and defined boundaries; that he then started digging on the land, but was ordered by the Mudaliyar to stop, and was satisfied that it was Crown land; that he did not know the land before; that the surveyor put in pegs, and the trenches were cut while he was surveying. Baron Appuhamy gave evidence that he worked under Sarnelis; that he was present at the survey; that "trenches were cut on all sides and houses built for us" (this clearly cannot refer to the day of the survey); that the surveyor marked out the land by cutting the trees on the boundaries, "that is we cut them as he went on surveying." he looked through theodolite, "put pegs down, and told us to cut the trenches according to the pegs he had put down." Pedrick Appu gave evidence that he was present when the surveyor surveyed the land on which Sarnelis afterwards dug plumbago; that as the land was surveyed the trenches were cut; that they started cutting the boundaries from the rock where the surveyor kept his theodolite (which is incredible); and he said "It was I who cut the trenches;" "I do not remember who cut the trenches;" "the respondent (surveyor) stayed there till the boundaries were cut; he blazed the trees; he did not fix any pegs in the ground." Neither of these two men gave evidence at the first inquiry, and the applicant, giving evidence in his own defence, said that neither of them was present at the survey, but that his own coolies (who did not give evidence) and

<sup>1</sup> (1905) 8 N. L. R. 298.

Sarnelis were with him; that no trenches were dug while he was on the land; that the land which he surveyed was No. 95,605; that he started to survey from the rocks shown in P 2 (a plan from the Surveyor-General's Office furnished to him by Sarnelis), and took a traverse as shown in his book, D 2 (which he produced); he then plotted it and made a sketch, D 3, from D 2, which he compared with a tracing from P 2, and found that they corresponded; and then went back to the land and defined the boundaries and put in six pegs at the six corners. The shape of No. 95,605 is quite different from that of No. 9,015 $\frac{1}{2}$ , but the area is almost exactly the same. He said that he saw no pits on the land that he surveyed; but it was proved that No. 95,605 was "riddled with old plumbagó pits."

1908.  
April 16.  
HUTCHINSON  
C.J.

The evidence of Baron Appuhamy and Pedrick Appu, especially that of the latter, is not altogether satisfactory. But after reading all the evidence carefully I am of opinion that it quite justifies the conclusion at which the District Court arrived. Nor do I think that the cancellation of the appellant's license was too severe a penalty. The conduct of the surveyor in this matter showed either great incompetency or fraud.

I would dismiss the appeal with costs.

*Appeal dismissed.*

WENDT J.—I agree.

---