[In Review.] *April 8, 1910*

Present: Mr. Justice Middleton, Mr. Justice Wood Renton, and Mr. Justice Grenier.

MUNASINGHE *et al. v.* THE ASSISTANT GOVERNMENT AGENT, PUTTALAM.

D. C., Puttalam, 12.

Reference under the Waste Lands Ordinance—Crown—How far bound by estoppel—Evidence Ordinance, s. 115—Estoppel by conduct—Prerogative.

In this matter, which was a proceeding under the Waste Lands Ordinance, decree was entered of consent of parties (on March 20, 1904) whereby, *inter alia*, it was ordered that a survey should be made by a specified surveyor, and "that the Crown be and is hereby declared owner of all extents of land found by him to be mukalana, chena, or forest above fifteen years of age; and in respect of the remainder thereof, whether abandoned fields, gardens, chena, or forest under fifteen years, it is declared that the plaintiffs be adjudged the owners thereof on payment by them to the Crown of a sum of Rs. 10 per acre."

The Surveyor-General, after the surveyor's death, forwarded to Court what purported to be a "survey of the land in execution of the commission." The defendant took no exception to the return; and the plaintiff when called upon deposited in Court "value due to the Crown for certain lots in accordance with the terms of the decree." The defendant then moved the Court for an adjudication and investigation "as to what lots shown in the survey should be declared to be the property of the Crown and what to be those of the plaintiffs, in terms of the decree of March 20, 1904," and contended that the surveyor's return was faulty. The plaintiff urged that the Crown was estopped from challenging the return by having called upon the plaintiff to pay the value of the lots in terms of the surveyor's return.

Held, by Middleton J. and Wood Renton J. (Grenier J. *dissentiente*), that defendant was not estopped by his conduct from challenging the return.

The maxim that the Crown is not bound by estoppel is inapplicable to proceedings under the Waste Lands Ordinance.

THE facts of this case are fully set out in the judgment of Wood Renton J.

Walter Pereira, K.C., S.-G. (with him *Maartensz, C.C.*), for the appellant.—The conduct of the defendant does not estop him from contending that no proper return was made by the surveyor. The

April 8, 1910

Munasinghe v. The Assistant Government Agent, Puttalam

fact that defendant called upon the plaintiff to pay the value of the specified lots is not by itself sufficient to estop him from questioning the validity of the return. The defendant made no representation which could have led the plaintiff to believe that defendant would not question the validity of the return. The Crown cannot, moreover, be bound by estoppels (see *Halsbury's Laws of England, vol. VI., 410*). The Evidence Ordinance does not bind the Crown, as there is no express provision in it to that effect (*Palaniappa Chetty v. Ismail Seidik* [1]).

H. A. Jayewardene, for the first plaintiff, respondent.—The maxim that the Crown is not bound by estoppel does not apply to Ceylon, where the Crown has waived its rights not to be sued (*Simon Appu v. Queen's Advocate* [2]). The plaintiffs have paid to the Crown the value of the land, improved the land, and mortgaged the land on the faith of the representations made by the Crown. The facts proved would estop the Crown from challenging the return. Apart from estoppel, there is a concluded agreement between the parties that the surveyor's return should be accepted. The plaintiffs paid the value of the lots assigned to them by the surveyor. The Crown was now bound by the agreement (*Attorney-General for Trinidad and Tobago v. Bourne*,[3] *Municipal Corporation of Bombay v. Secretary of State*,[4] *Ramsden v. Dyson* [5]).

Chitty, for second to sixth respondents.

E. W. Perera (with him *Soertsz*), for the third respondent.

Walter Pereira K.C., S.-G., in reply.

Cur. adv. vult.

April 8, 1910. MIDDLETON J.—

A preliminary objection was taken by the first plaintiff here that the appeal to the Privy Council had been withdrawn by the defendant on the strength of a note appearing on the record, but a reference to my notes, as I informed counsel at the argument, shows, in my opinion, that the application which was withdrawn was one to substitute parties, which was then relegated to the District Court. The hearing in review therefore proceeded.

I have read the judgment under review carefully, and as it sets out all the facts, which are not disputed, I see no reason to recapitulate them. If I understand the case rightly, there does not appear to be any estoppel. What the defendant, giving him that name in the sense used by the Chief Justice, did was to have the plaintiff called upon by the Court on November 22, 1906, to pay into Court the sum of money equivalent to the value of certain properties, on the basis that the Commissioner had decided they

[1] *(1902) 5 N. L. R. 322.*
[2] *(1884) 9 A. C. 571.*
[3] *(1895) A. C. 83.*
[4] *(1904) I. L. R. 29 Bom. 580.*
[5] *(1866) L. R. 1 Eng. and Ir. 170.*

were such as the plaintiffs should pay for at the rate of Rs. 10 per acre, under the consent decree in D. C. 12 dated March 28, 1904.

The plaintiffs paid this money into Court on December 5, 1906, but it was not carried to revenue, and so was not in fact or legally paid to the defendant as representing the Crown.

The plaintiffs were induced to do this under the belief, arising from their own inferences, that title deeds would be granted to them by the Crown. They were not told that title deeds would be granted to them, but it was intimated to the Court by the Assistant Government Agent on November 14, 1906, that the money was required "to give effect to the settlement arrived at." The Secretary of the District Court, by his notice of November 22, 1906, called upon the plaintiffs to deposit the money in Court as value due for certain lots of land in accordance with the terms of the decree in the case. The defendant for the time being evidently thought that the matter had been settled, and that Beebee's plan and tenement sheet were a proper return to his commission which he could accept.

On the other hand, the Colonial Secretary, by his letter under date March 13, 1907 (D 3), had told the first plaintiff that no grants will "be issued for the land decreed by the Court, the applicants may apply to the Court for a final decree in their favour"; and the first plaintiff, who acted apparently for the other plaintiffs, and is a proctor, must have been well aware of the nature of the decree entered in D. C. 12 when the matter was referred to a surveyor, for we find him writing D 2, under date April 7, 1907, to the defendant, that "the decree (in D. C. 12) is in no way an adjudication in favour of the claimants so as to fill the place of a title deed. The decree is only evidence of an agreement entered into by the Crown and the claimants for the future purchase and sale of certain lots to be ascertained by a commission, and if any sale followed by the claimants performing the terms of the agreement, the claimants believed that Crown grants would issue to them in the usual course." In D 1, under date July 8, 1907, the first plaintiff again demands Crown grants for the 746 acres, on the ground that it was a purchase pure and simple, and that it was in contemplation of the parties that the Crown grants would issue as a matter of course. In D 4, dated June 24, 1907, the Assistant Government Agent suggested to the first plaintiff that legal steps should be taken by the plaintiffs to have the matter finally settled and a really definite decree entered up. In D 5, of July 1, 1907, the first plaintiff wrote, on the basis that the matter was finally settled, and regretted the delay of the issue of Crown grants, for which he had paid. In D 6, of July 6, 1907, the Assistant Government Agent again referred the plaintiff to the Colonial Secretary's letter D 3. I do not think that the extract P 7 from the Administration Report of 1906, if we look at the note to item 3, is evidence to show that the Crown looked upon

April 8, 1910

MIDDLETON J.

Munasinghe v. The Assistant Government Agent, Puttalam

or held out the sale as an accomplished fact, but rather that claimants should have the option of purchase. Nor is there evidence to show that this report came to the plaintiff's knowledge or was acted on by him. I therefore do not think it could be said that the Crown intentionally caused or permitted the plaintiffs to believe, and act on the belief, that they would issue Crown grants for the 746 acres, being fields, gardens, chena, or forest under fifteen years of age, or to believe, and act on the belief, that they recognized an absolue sale without a further reference to the Court, which was, I think, clearly contemplated by the consent decree in D. C. 12.

In my opinion the money was not paid to the defendant in the sense contemplated in the example to section 115 of the Evidence Ordinance; nor, in the face of the Colonial Secretary's letter D 3, had the plaintiffs any real cause to believe that the land in question had been absolutely sold to them, or to act upon such belief. On the contrary, I think the first plaintiff's letter D 2 shows that he knew what was his legal position under the decree in D. C. 12. If the first plaintiff has purported to act under the belief that his being called upon to pay the purchase money into Court constituted an absolute agreement by the Government to confer title on the plaintiffs without further proceedings under the consent decree of reference in D. C. 12, he has done so at his own peril, and, as his letter D 2 shows, with a full knowledge of the position of affairs. There are allegations on behalf of the respondents that the lands had been taken possession of and cultivated by them, on the faith of their being called upon to pay the purchase money into Court, and that the purchase money itself was borrowed on the strength of this representation.

The evidence in the record does not disclose that the plaintiffs made the clearing of about 15 acres alluded to by Mr. Fyers and Mr. Allnutt in their evidence, nor is there any proof that they did; and as regards the mortgage deed P 8 put in evidence, only its bare execution is admitted by the defendant, and there is no evidence that it represents money borrowed for the purpose of paying the sum deposited in Court. Even, however, if it did, I do not think there is an estoppel by conduct here which will bind the defendant. In *Goura Chandra Gajapati Narayana Deo v. Secretary of State for India*,[1] to which my brother Wood Renton has called my attention, the Privy Council held that where Government officials under a mistake initiated by the Court of Wards, of which the Collector of the district was a member, that certain Maliah forests belonged to a Zamindari, acquiesced in their possession by the Zamindari, and encouraged such an expenditure of Zamindari funds upon the Maliahs as seemed good in the public interest, this did not estop the defendant from denying the right and title of the plaintiff to these Maliahs.

[1] *(1904) I. L. R. 28 Mad. 130.*

In the present case the Government official seems to me to have done considerably less. The Solicitor-General mainly based his appeal on the ground that the Crown is not bound by estoppel, but in the view I take it is not necessary to consider the question. In *Simon Appu v. Queen's Advocate*[1] it was held that since the conquest of the Dutch a very extensive practice of suing the Crown had sprung up, and had been recognized by the Legislature, and that such suits were now incorporated into the law of the land.

Chapter XXXI. of the Civil Procedure Code of 1889 also recognizes the right of action against the Crown, and it was said by Lord Blackburn in that case that the subject may set up any defence against the Crown. It is true that Chitty on the *Prerogative* (*p. 35*) lays down that " where Colonial Charters afford no criterion or rule of construction, the common law of England with respect to the Royal Prerogatives is the common law of the plantations," and that Lord Watson in the *Maritime Bank of Canada (Liquidators of) v. Receiver-General of New Brunswick*[2] said: " The prerogative of the Queen, when it has not been expressly limited by local law or statute, is as extensive in Her Majesty's Colonial Possessions as in Great Britain. " I am by no means sure, however, that the Crown has not, by waiving its prerogative right not to be sued, and by its recognition of the waiver by legislation, tacitly admitted the right of the subject to avail himself of this defence against the Crown.

The judgment was further supported by the contention of counsel for the respondents that there was a concluded agreement between the Crown and the plaintiffs that the surveyor's return should be accepted as decisive between the parties as a return to the commission under the decree in D. C. 12 of March 28, 1904, and the case of the *Attorney-General for Trinidad and Tabago v. Bourne*[3] was relied on. *The Municipal Corporation of Bombay v. Secretary of State*[4] and *Dadoba Janardhan v. Collector of Bombay*[5] were also cited. I think, however, the answer to this argument, which was not raised on the first appeal, is that the evidence does not prove that a contract was concluded on the basis alleged. The evidence on the question is to be found in the documents I have already alluded to, and I do not think that either in fact or as a matter of inference any such concluded agreement can be deduced from it.

The third ground taken in support of the judgment in review was the principle of equity laid down by Lord Kingsdown in *Ramsden v. Dyson.*[6] Again, I think the facts of the present case do not bring it within the ruling in that case. In the present case the agreement was embodied in the decree in D. C. 12, and I do not think the

[1] *(1884) 9 A. C. 571.*
[2] *(1892) A. C. 441.*
[3] *(1895) A. C. 83.*
[4] *(1904) I. L. R. 29 Bom. 580.*
[5] *(1901) I. L. R. 25 Bom. 714.*
[6] *(1866) L. R. (1) Eng. and Ir. 170.*

April 8, 1910

MIDDLETON J.

Munasinghe v. The Assistant Government Agent, Puttalam

evidence shows that the defendant for the time being ever represented to the plaintiffs that they should have Crown grants if they paid the purchase money into Court, or that their title should be recognized without further proceedings under the decree; nor do I think that the evidence shows that the defendant ever represented to the plaintiffs that he deemed Beebee's return to the commission as it stood decisive of their right.

I think, therefore, that judgment under review should be set aside on the terms suggested by my brother Wood Renton.

WOOD RENTON J.—

This is a hearing in review, prior to an appeal to the Privy Council, of a decision of the Supreme Court adjudging the plaintiffs-respondents the owners of certain lands which formed the subject of proceedings commenced on a reference to the District Court of Puttalam under the Waste Lands Ordinance, 1897 (No. 1 of 1897). The main point that we have to determine is whether the Crown, represented for this purpose by the Assistant Government Agent of Puttalam, is estopped by conduct from disputing the plaintiffs' claim. The District Judge answered this question in the negative. The Supreme Court, on appeal, has answered it in the affirmative, and the matter, as I have already mentioned, now comes before us in review. A preliminary objection to the hearing in review was taken by Mr. Hector Jayewardene, counsel for the first plaintiff-respondent, on the ground that the motion for a certificate with a view to an appeal to the Privy Council had been withdrawn by the Solicitor-General when it became necessary that the case should be sent back to the District Court for the addition of the heirs of the third plaintiff, now deceased. My brother Middleton, who was one of the Judges before whom the application to send the case back was made, has dealt with this point in his judgment, and I do not propose to say anything further in regard to it, except that the interpretation put by him upon the entry appearing in the Supreme Court Minutes on the day in question appears to me to be a sound and reasonable one.

In the view that I take of the present case it is necessary to examine carefully the pleadings and proceedings in the District Court. The claim was referred to the District Court by the then Assistant Government Agent of Puttalam on June 12, 1903. On September 7 and 9 following the plaintiffs filed statements of claim, in which the second to the sixth claimed the land as forming part and parcel of an extent of 2,899 acres, described in the plan marked Y, upon certain duly registered sittus and deeds, while the first plaintiff, who associated himself with the title thus set up by the others, claimed a portion of the land in suit on a conveyance by the second to the sixth plaintiff in his favour dated March 2, 1898.

The Assistant Government Agent, who was defendant to the proceedings, filed answer on March 4, 1904, impeaching the sittus relied on by the plaintiffs as forgeries, denying their title to the land under reference, and alleging that it consisted of old forest, and was the property of the Crown. Issues were framed on these pleadings, and the case was fixed for trial on March 28, 1904. On that day, on a joint motion by the plaintiffs and the defendant, decree was entered by consent on " the terms and conditions of a compromise and settlement," made and agreed to between the parties in respect of the subject-matter of the action. The following paragraphs in the decree are material, and I propose to set them out in full:—

" It is further decreed that upon payment by the plaintiffs to the Crown of a sum of Rs. 1,000 the above-named plaintiffs be adjudged owners of the lots to the south of the said blue line, namely, lots Nos. 8,623, 8,624, 8,632, 8,631, 8,630, 8,628, 8,629, 8,627, and 8,626 shown in the said plan.

" It is further adjudged and decreed that, in respect of the rest of the plaintiffs' claim, as appearing in plan made by Mr. Surveyor Murray, marked letter Y, a survey thereof be made by Government Surveyor, Mr. C. A. Ohlmus, and that the Crown be and is hereby declared owner of all extents of land found by him to be mukalana, chena, or forest above fifteen years of age; and in respect of the remainder thereof, whether abandoned fields, gardens, chena, or forest under fifteen years, it is decreed that the above-named plaintiffs be adjudged the owners thereof on payment by them to the Crown of a sum of Rs. 10 an acre, in addition to the usual fees."

It was further adjudged and decreed that each party should bear his own costs. In the joint motion, in pursuance of which that decree was made, one of the terms of the settlement was stated to be the withdrawal by the plaintiffs of their claim under the sittus. On April 10, 1905, the plaintiffs paid into Court the sum of Rs. 1,000 as the price of the lots referred to in the first of the two paragraphs above set out from the decree. No question as to those lots is raised in the present proceedings, and I refer to the matter only for the purpose of noting that that part of the decree embodied, and was regarded by the parties as embodying, an adjudication of specific lots to the plaintiffs. The case was different, however, in regard to the lands referred to in the 2nd paragraph of the decree. No title to any specific lots passed to the plaintiffs by virtue of the decree itself, and while it is clear, and the learned Solicitor-General, if I understood him aright, did not dispute the fact, that both parties would be bound under the decree to accept, in the absence of fraud, the findings of the surveyor appointed to make the survey, no such obligation arose unless and until the surveyor had made a return in compliance with the terms of the decree. The particular surveyor named in the decree and another surveyor substituted for

April 8, 1910

WOOD RENTON J.

Munasinghe v. The Assistant Government Agent, Puttalam

him by consent were unable to carry out the survey, and on December 8, 1903, on another joint motion by the parties, Mr. J. W. Beebee, Government Surveyor, was appointed to do the work. The order appointing him directs and authorizes him to exhibit to the Court a survey showing the particulars required by the decree. On July 18, 1904, the second to the sixth plaintiffs executed a conveyance of further portions of the lands now in dispute in favour of the first plaintiff. On August 8, 1906, the Surveyor-General forwarded to the District Court of Chilaw the sheets filed of record, " showing block survey preliminary plan No. 340*a* of the village of Potukulama in the District of Puttalam, together with its tenement list," and informed the Court in an accompanying letter that this was the survey of the land by Mr. Beebee in execution of the commission of December 8, 1905. It is clear, as His Lordship the Chief Justice has pointed out, that, apart from any subsequent agreement by the Crown to accept Mr. Beebee's return, if it can be described as such, as a return of the character required by the decree, or any estoppel of the Crown by the conduct of its officers, a final decree in favour of the plaintiffs-respondents in review—to whom I will hereafter refer as the plaintiffs-respondents—could not well have been entered up on the strength of it. Lots 15, 17, and 18 are merely " said " to be under fifteen years. Lot 25 is " said " to be chena fifteen years old. Other lots, for example 20 and 21, are described as chena simply. Lots 9 and 13 appear as " fit for paddy," and lot 14 as " four paddy fields," without any description of their age in either case. The surveyor was required by the Court to give his own finding on the question of age. He did not discharge that duty by saying that certain lots were " said " to be under fifteen years of age. The decree contained no provision for adjudication in regard to lots which were neither under nor above the age of fifteen years; and a return merely describing certain lots as " chena," or " fit for paddy," or consisting of " paddy fields " was no return within the meaning of the decree at all.

We have to consider, however, what followed the Surveyor-General's letter of August 8, 1906, in order to see whether it creates an estoppel, or an equity in the nature of an estoppel, as against the Crown. On November 14, 1906, the Government Agent wrote to the District Judge requesting him to call on the plaintiffs " to deposit in Court Rs. 8,956.57 as per particulars in annexed memo., to enable me to give effect to the settlement arrived at." The " memo." here referred to includes the lots in regard to which Mr. Beebee's return was defective, but contains, in the remarks column, none of the defective entries themselves. On November 22, 1906, the Secretary of the District Court wrote to the plaintiffs requesting them to deposit in Court Rs. 8,956.57, " being value due to the Crown for lots Nos. 7, 9, 10, 11, 12, 13, 14, 20, 21, 25, 15, 17, and 19 . . . . . in accordance with the terms of the decree in the above case."

On December 6, 1906, the first plaintiff-respondent paid the deposit claimed into Court. Three days previously, namely, on December 3, 1906, by deed P 8, which was put in evidence, and of which the bare execution was admitted by the Crown, he had mortgaged his interest in the land in question to certain Chetties for Rs. 10,000. It was suggested by his counsel at the argument before us in review that that mortgage had been effected for the purpose of raising the money required for the deposit; but there is no evidence on which this suggestion can be founded, and the Crown admitted nothing more than the execution of the bond in question. In his return of December 6, 1906, the first plaintiff-respondent informed the Assistant Government Agent that he had paid the sum of Rs. 8,726 into the Puttalam Kachcheri, "being balance payment in full for the lots settled on the claimants in the said case," and added, "the amount includes survey and other fees necessary for the issuing of grants for the said lots." He concluded by requesting the Assistant Government Agent to have Crown grants for the lots in question prepared. On March 13, 1907, the Assistant Government Agent replied acknowledging the receipt of this letter, and stated that further fees were required in respect of the Crown grant for survey fees, deed fees, and stamps and headman's fees. On March 20, the first plaintiff-respondent sent a cheque for the amount claimed, and repeated his request for the grants. The Assistant Government Agent acknowledged this letter on March 21 and enclosed a formal receipt for "the amount of the deposit on account of the Potukulama claim." On April 7, 1907, the first plaintiff-respondent again wrote to the Assistant Government Agent, stating that he had received a "communication from Government" that no grants were necessary, inasmuch as there was a decree in favour of the claimants. The communication here referred to is a letter from the Colonial Secretary dated March 13, 1907, in reply to a letter from the first plaintiff-respondent dated August 11, 1906, requesting that Crown grants might be issued. The Colonial Secretary stated in effect in his letter that Crown grants had been issued for the lands actually sold, that no grants would be issued for those decreed by the Court, and that the claimants might apply to Court for a final decree in their favour. The claimants were not disposed, however, to adopt this suggestion, and in his letter above referred to of April 7, 1907, the first plaintiff-respondent made use of the following language:—

"The decree is in no way an adjudication in favour of the claimant so as to fill the place of a title deed. The decree is only evidence of an agreement entered into between the Crown and the claimants for the future purchase and sale of certain lots to be ascertained by a Commissioner, and if any sale followed by the claimants performing the terms of the agreement, the claimants believed that Crown grants would issue to them in the usual course. It was in consequence of this that the claimants withdrew and abandoned all

April 8, 1910

WOOD RENTON J.

Munasinghe v. The Assistant Government Agent, Puttalam

title on the sittus, the basis of their claim, to enable them to claim their title from the Crown."

On June 27, 1907, the Assistant Government Agent wrote to the first plaintiff-respondent suggesting that the claimants should take legal action to get the matter finally settled and a really definite decree entered up and published. On July 1, 1907, the first plaintiff-respondent replied that the matter had been finally settled long ago, and asked him to expedite the issue of the Crown grants. In reply to this letter he was, on July 6, referred to the Colonial Secretary's letter of March 13. On July 8, 1907, the first plaintiff replied to the Assistant Government Agent's letter of the 6th saying that it was in the contemplation of the parties that Crown grants would issue as a matter of course if the required payments were made. On February 12, 1908, the Assistant Government Agent moved the Court that a day be appointed " for investigating and adjudicating what lots shown in the survey plan executed under Mr. Beebee's commission should be declared to be the property of the Crown, and what to be those of the plaintiffs in terms of the decree of March 28, 1904." On this motion the case came on for hearing before the District Judge of Puttalam on April 29, 1908. The plaintiffs-respondents' counsel contended that the decree of March 28, 1904, was not an interlocutory one, but a final one on the plan of the survey and return of the commission by Mr. Beebee, and also that the Crown was estopped from challenging the return by having called upon the first plaintiff to pay Rs. 10 per acre for the lots with which it dealt. The learned District Judge held, quite rightly, that Mr. Beebee had made no proper return to the commission issued to him in the case. The plaintiffs' counsel then asked leave to call evidence for the purpose of showing that the Assistant Government Agent had accepted the amount deposited on December 6, 1906, that it had been credited to revenue, and that the Crown was therefore estopped from disputing the survey and description of the land furnished by Mr. Beebee. Leave to call evidence in regard to these points was given, and Mr. Allnutt, the Assistant Government Agent of Puttalam, was called on behalf of the plaintiffs. Besides producing the correspondence, the effect of which I have summarized above, Mr. Allnutt stated that the sum of Rs. 8,726, on the payment of which the plaintiffs relied, had not been credited to the revenue, and was still in deposit to the credit of the suit. He further stated that in no letter to the first plaintiff had he impeached the survey of Mr. Beebee as fraudulent; that it was only on September 3, 1907, that he had made the discovery that the first plaintiff was not entitled to the lots for which he had deposited money, and that Crown grants were not issued to him because the matter was one for the Court. The learned District Judge held that the amount of the deposit had not been accepted by the Crown and credited to revenue, and that the circumstances

of the case did not establish any estoppel by conduct. The Proctor for the Crown thereupon asked for the issue of a fresh commission, on the ground that Mr. Beebee's plan and tenement sheet were not a proper return, and that the descriptions therein given of the lots were false. The District Judge intimated his intention to admit evidence to justify the issue of a fresh commission. The plaintiff's proctor thereupon withdrew from the proceedings. Mr. H. F. C. Fyers, Deputy Conservator of Forests, and Mr. John F. Dias, Government Surveyor, Chilaw, were then examined on behalf of the Crown. Their evidence, which was accepted by the Court, showed, if accurate, that Mr. Beebee's descriptions of the property in question were misleading and false in material particulars. I should observe, in passing that Mr. Beebee himself is dead, and that his evidence has not been available to either side at any stage of these proceedings. There is on the face of the record no material on which a charge of fraud could have been made against Mr. Beebee, and I confess that I entertain some doubt as to whether the papers forwarded by the Surveyor-General to the Assistant Government Agent were ever intended by him to be regarded as a return to his commission. The learned District Judge held that no settlement between the parties in terms of the decree of March 28, 1904, could be based on his plan and tenement sheet, and issued a fresh commission to Mr. G. Wijesekera, Government Surveyor. I do not think that the District Judge had any power to make such an order except by consent. If a settlement between the parties cannot be arrived at under the decree of March 28, 1904, the proper course, in my opinion, to adopt is to remit the case for trial on the original pleadings.

But, although I greatly regret to find myself in conflict with the views of His Lordship the Chief Justice and my brother Grenier in this case, I am unable to hold that any estoppel has been established. I will deal with the arguments of the plaintiffs-respondents' counsel as they were presented to us at the hearing in review. Mr. Hector Jayewardene, who appeared for the first plaintiff-respondent, and whose arguments were adopted by counsel for the other respondents, put his case on three grounds. He contended (i) that, apart from any question of estoppel, there was a concluded agreement between the Crown and the respondents that Mr. Beebee's return should be accepted, whatever might be its shortcomings, as decisive of the rights of the parties under the decree of March 28, 1904; (ii) that the circumstances created, as between the Crown and the respondents, an equity in the nature of an estoppel precluding the former from challenging the accuracy and sufficiency of Mr. Beebee's return; and (iii) that the Crown, by having intentionally caused or permitted the respondents to believe, and to act upon the belief, that they had adopted this attitude towards Mr. Beebee's return, was estopped from impeaching it by section 115 of the Evidence Ordinance (No. 14 of 1895).

April 8, 1910

WOOD RENTON J.

Munasinghe v. The Assistant Government Agent, Puttalam

(i) I gather from the terms of the judgment of His Lordship the Chief Justice that the first of these three points was not taken at the argument in appeal. In my opinion it is clearly bad. Mr. Jayewardene said that he was prepared to put his argument so high as to contend that the Crown, knowing the defects of Mr. Beebee's return, or indifferent whether it was defective or not, deliberately accepted it as a conclusive settlement of the litigation. The record discloses, it is true, gross laches on the part of the officers of the Crown, into whose hands what purported to be Mr. Beebee's " return " had come. But there is no trace of any agreement of the kind for which Mr. Jayewardene contends. It is inconceivable, in view of the value of the land and of the allegations in the answer filed on behalf of the Crown, that any such agreement could have been contemplated. The terms of the decree of March 28, 1904, itself, and of the commission to Mr. Beebee, clearly show that it was only by a return complying strictly with the requirements of the decree that the Crown undertook to be bound. Moreover, Mr. Allnutt, who was examined as a witness on behalf of the respondents themselves, speaking for himself, states that it was not till September 3, 1907, that he was aware that the first plaintiff-respondent was not entitled to the lots for which he had deposited money, and—a point with which I shall have to deal more particularly in considering the second branch of Mr. Jayewardene's argument—the whole correspondence adduced in the case seems to me to corroborate Mr. Allnut's further statement that Crown grants were not issued to the first plaintiff because the Government regarded the case as " a Court matter. "

(ii) In support of his second point, Mr. Jayewardene relied on the principle enunciated by the House of Lords in *Ramsden v. Dyson*,[1] and applied by the Privy Council in *Plimmer v. Wellington (Mayor of)*,[2] and by the High Court of Bombay in *Dadoba Janardhan v. Collector of Bombay*,[3] and *Municipal Corporation of Bombay v. Secretary of State*,[4] that " if a man under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation created or encouraged by the landlord that he shall have a certain interest, takes possession of such land with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation." It is pointed out by Sir Lawrence Jenkins C.J., in the second of the two Indian cases above cited, that the doctrine so laid down in *Ramsden v. Dyson*, although often treated as one of estoppel, is a rule of equity, taking its origin from the jurisdiction assumed by the Court of Chancery to intervene

[1] *(1866) L. R. 1 Eng. and Ir. 129.*
[2] *(1884) 9 A. C. 699.*
[3] *(1901) I. L. R. 25 Bom. 714.*
[4] *(1904) I. L. R. 29 Bom. 580.*

in the case of, or to prevent, fraud, and that it is distinct from the rule of evidence embodied in section 115 of the Indian Evidence Act, which corresponds to section 115 of our own Ordinance. Even if this doctrine applied to the facts of the present case, I do not think that the respondents would be entitled, as of course, to a decree adjudging them the owners of the land in suit. It is pointed out in the case of *Ramsden v. Dyson* [1] itself that the proper relief to be granted, under the circumstances indicated in the passage above quoted, might consist, not of a specific interest in the land, but of pecuniary compensation for expenditure incurred. In the present case the respondents are said to have altered their position to their own prejudice in consequence of the conduct of the officers of the Crown first, by entry upon and cultivation of portions of the land in dispute; and secondly, as regards the first plaintiff-respondent, by the payment of the deposit of Rs. 8,726 and by the mortgage of December 3, 1906. There is no proof of any cultivation by or on behalf of the respondents. Mr. Allnutt, giving evidence on April 29, 1908, says: " On or about the 23rd ultimo I saw that an extent of about 12 or 15 acres of lot 15 had been cleared and planted. " Mr. Fyers and Mr. Dias gave similar evidence. There is nothing to show at what time the clearing and plantation had been effected, or, indeed, that it was done by or at the instance of the respondents. The respondents did not adduce any affirmative evidence on these points, as it was their duty to do if an estoppel was relied on. Observations of a similar character apply to the mortgage of December 3, 1906. As I have already pointed out, only the bare execution of the deed was admitted by the Crown. It was suggested by Mr. Jayewardene that the mortgage had been effected in order to raise the money required for the deposit of Rs. 8,726. There is no evidence to support that suggestion. The first plaintiff-respondent was not called as a witness in support of it. As regards the deposit, the learned District Judge has found, on the evidence of Mr. Allnutt, and the Supreme Court in appeal accepts the finding, that the money was never credited to the revenue, but has remained all along in Court, and is still at the disposal of the first plaintiff-respondent. I should not be prepared to hold, even if I thought that the conduct of the officers of the Crown gave rise to an equity in favour of the plaintiffs-respondents of the kind indicated in *Ramsden v. Dyson*, [1] that they would be entitled, on the strength of that finding and without any further inquiry or evidence, to be declared the owners of the valuable lands here in question. So far as the deposit is concerned, it would be a serious question whether the first plaintiff-respondent would not be sufficiently compensated by a decree awarding him interest on the amount of it.

I think, however, that the circumstances of the case disclose no estoppel as against the Crown. The successive officers of the Crown,

[1] *(1866) L. R. I. Eng. and Ir. 129.*

April 8, 1910

WOOD RENTON J.

Munasinghe v. The Assistant Government Agent, Puttalam

who had to deal with the matter, no doubt acted, up to a certain point, on the assumption that Mr. Beebee had made a return such as would entitle the plaintiffs-respondents to a final decree in their favour. The demand for the payment of the deposit proceeded on that assumption. But I do not find in the correspondence any representation, express or implied, on their part, that the claim of the respondents would be allowed otherwise than by a decree of the District Court based on a return complying with the requirements of the interlocutory decree of March 28, 1904. In the receipt of March 21, 1907, forwarded by the Assistant Government Agent to the first plaintiff-respondent, when the latter had paid the further fees required in respect of the Crown grant and the survey, the amount is expressly described as "the deposit on account of the Potukulama claim." I do not for one moment believe that the first plaintiff-respondent imagined that, on payment of the deposit, nothing more remained to be done in order to effectuate his claim than to obtain Crown grants. Both as a party to the proceedings and as a proctor he must, I think, have known perfectly well that the whole matter was in the hands of the Court, and that it was only after the Court had satisfied itself that a return had been made in conformity with the terms of the decree of March 28 that his title to the property could be perfected. His letter of April 7, which I have already quoted at length, shows clearly the view that he took of the effect of that decree. Although His Lordship the Chief Justice refers in his judgment to the fact that some deeds were put in to show that the plaintiffs had, after the payment in Court, dealt as owners with some of the lands in respect of which they made the payments, he does not say that he considers that fact to have been proved, and bases his ultimate finding against the Crown, on the question of estoppel, on the deposit alone. I have already endeavoured to show that the deeds referred to have not been proved, and that there is no evidence of any act on the part of the respondents which could form the basis of an estoppel, except the deposit. However well pleased the first plaintiff-respondent may have been at the course that events seemed to be taking, I do not think that, in making the deposit, he could have believed that he was paying the purchase money of the lots in question, and that he was free thereafter to deal with the property as he thought fit, entirely irrespective of the question as to whether or not Mr. Beebee had made a proper return. Even if he believed, and it had been the fact, that only Crown grants were necessary to complete his title, there was nothing in the conduct of the officers of the Crown to encourage or justify an expectation on his part that such grants would be made without any consideration of the question whether Mr. Beebee's return was in conformity with the terms of the decree of March 28, 1904. There is no kind of analogy between the present case and those to which Mr. Jayewardene

referred us, in inviting us to apply the rule laid down by the House of Lords in *Ramsden v. Dyson.*[1] In *Plimmer v. Wellington (Mayor of)*[2] the equity was raised against the Crown because it had, not merely stood by, but requested the tenant to make the improvements, on the strength of which the equitable relief was claimed. In *Attorney-General for Trinidad and Tabago v. Bourne*[3] there was direct proof of a concluded contract with the Crown, which the Privy Council held entitled the plaintiff-respondent to a grant in respect of the land in suit. In *Dadoba Janardhan v. Collector of Bombay*[4] the Government, on the sale of the land in suit to a purchaser, expressly stated that it would be assessed at a certain rate, indicating in no way that there would be a right to enhance the rate in the future. The High Court of Bombay held that the conduct of Government was, under the circumstances, such as to create and encourage in the purchaser as a reasonable man the belief that no right to enhance the assessment was being reserved. In the *Municipal Corporation of Bombay v. Secretary of State*[5] express sanction was given by the Governor of Bombay to an application of a Municipal Commissioner for a site for stabling on certain land. On the strength of this sanction the Municipal Commissioner entered into possession of the land, and stables were erected on the site in question at considerable expense. The High Court held that the Municipality had an equity as against the Crown within the meaning of the rule laid down in *Ramsden v. Dyson.*[1] In the present case, as I interpret the facts, there was no concluded contract on the part of the Crown to accept any results that Mr. Beebee might send in under the name of a " return, " whether they conformed to the decree of March 28, 1904, and the terms of his commission or not. There was no representation by the Crown, nor did the first plaintiff-respondent believe that there was any such representation, that, on payment into Court of the amount claimed from him, all inquiry into the adequacy of Mr. Beebee's return would be waived, and the functions of the District Court would be restricted to the ministerial duty of entering a final decree in terms of any figures which that return might contain. Even if no application to the District Court was necessary, and only the issue of Crown grants was contemplated by the parties, there was no representation by the Crown, nor, in my opinion, could the first plaintiff-respondent have believed that such grants would be issued blindly without any scrutiny of Mr. Beebee's proceedings. The only representation made by Government was that, assuming Mr. Beebee to have made a proper return, the Crown would hold itself bound under the decree of March 28, 1904, to give effect to it. The statements in the Administration Report for 1906, on which the respondents' counsel relied, do not seem to me to carry

[1] *(1866) L. R. 1 Eng. and Ir. 129.*
[2] *(1884) 9 A. C. 699.*
[3] *(1895) A. C. 83.*
[4] *(1901) I. L. R. 25 Bom. 714.*
[5] *(1904) I. L. R. 29. Bom. 580.*

April 8, 1910

WOOD RENTON J.

Munasinghe v. The Assistant Government Agent, Puttalam

the case any further. They merely give expression to the assumption, on which the officers of the Crown were acting at the time, that Mr. Beebee had made a return satisfying the terms of the decree of March 28, 1904, and of his commission, and that a final settlement of the dispute could be effected on the basis of it. The statements in the report were in no way addressed to the first plaintiff-respondent, and there is nothing to show that he either acted upon them or was aware of their existence.

The question of the effect of mistake, and of conduct based on mistake, in cases of this kind, was raised to some extent in *Goura Chandra Gajapati Narayana Deo v. Secretary of State for India.*[1] This was a suit against the Government of India by the Zamindar of Parlakimedi in 1894, claiming proprietary rights in, and possession of, certain hill tracts of forest land called " Maliahs " as appertaining to the Zamindari. These lands had originally belonged to the Zamindari, but in consequence of a rebellion in 1799, in which the then Zamindar took part, the Government, by a Proclamation issued in 1800, declared that the Zamindari was confiscated, and that the " Bissoyees " or local chiefs on service tenures, in respect of which they paid to the Zamindar a sum as kattubadi or quit-rent should thenceforward pay their revenue directly to the Collector. But the Proclamation held out a hope of the restoration of the Zamindar's son to the land of his ancestors, with the exception of those held by the " Bissoyees, " which were declared separated from the Zamindari for ever. This restoration was made in 1803. From 1861 to 1893, in consequence of the disability or incapacity of the successive Zamindars, the Zamindari was in possession of the Court of Wards, represented by the Collector of the District. The Court of Wards erroneously treated the " Maliahs " as if they belonged to the Zamindari, worked the forests on the " Maliahs, " and constructed roads through them at the expense of the Zamindar, and the Court of first instance found that the Government regarded the construction of these roads as part of the Zamindar's duty, and not only urged forward their construction at his expense through the medium of the officers of its own Public Works Department, but in one case cavilled at the short work said to have been turned out by them departmentally. As the Court of Wards was really acting in the matter as the guardian of the Zamindar's estate, and not as the representative of the Government, its conduct under the mistake which, it was held both by the Agent of the Government of Madras who investigated the case as Judge of the facts and by the High Court of Madras, and the Privy Council on appeal, had arisen on the question of the inclusion of the " Maliah " lands in the Zamindari could create no estoppel against the Government; but it was urged, and the Agent of the Government of Madras gave effect to the contention, that the Government was estopped from denying

[1] *(1904) I. L. R. 28 Mad. 130.*

the title of the Zamindar to these lands owing to its recognition of such title on the strength of which the Zamindar had, with the full knowledge and at the instance of the Government, expended large sums on the opening up and development of the country by means of roads. The High Court of Madras held that there was no estoppel, and this decision was affirmed by the Privy Council. In delivering the judgment of the Judicial Committee, Sir Arthur Wilson made use of the following language:—

"The Court of Wards, on behalf of the Zamindar, was in the possession of the Maliah forests under the mistaken idea that they belonged to the Zamindari. The Government officials, under the same mistake, acquiesced in that possession, and while that state of things continued, they encouraged such an expenditure of Zamindari funds upon the Maliahs as seemed good in the public interest. It seems impossible to put the appellant's case higher than this. And their Lordships can see in this no such representation as could give rise to the estoppel contended for."

It appears to me that the facts of the present case are equally insufficient for the purpose of creating an estoppel.

(iii) For the reasons I have already given, I do not think that there was in this case any such intentional representation on the part of the Crown as can give rise to an estoppel under section 115 of the Evidence Ordinance.

It only remains to notice an argument put forward for the first time at the hearing in review. The learned Solicitor-General, while strenuously denying that the facts of this case disclose any estoppel as against the Crown, further contended that, in any event, the Crown was not bound by estoppels. As I understand the authorities, it is only in the case of an estoppel under section 115 of the Evidence Ordinance that the question of the prerogative right of the Crown not to be bound by estoppels would arise. In the case of *Attorney-General for Trinidad and Tobago v. Bourne*—an action of ejectment by the Crown—the Colonial Judge of first instance held that the prerogative of the Crown, in matters affecting the rights of revenue of the Sovereign, had not been affected by the local Judicature Acts, that in Crown proceedings initiated by information of intrusion, the only title to be recognized is a legal title, and that no equitable ownership could prevail against the Crown. The Supreme Court of Trinidad held, on appeal, that an equitable defence was available as if it were a case between subject and subject. In the argument in the Privy Council the appellant's counsel stated that they did not contend that an equitable defence by a subject against the Crown did not avail, and Lord Watson, in delivering the decision of the Judicial Committee, dealt with the matter thus:—

"At the hearing of this appeal counsel for the appellant conceded (very properly, in the estimation of their Lordships) that,

April 8, 1910

WOOD RENTON J.

notwithstanding the form of action, every defence was available to the respondents which would have been open to them in an ejectment suit at the instance of the subject."

Munasinghe v. The Assistant Government Agent, Puttalam

In the case of *Municipal Corporation of Bombay v. Secretary of State*,[1] the High Court of Bombay expressly held that the Crown came within the range of the equity with which we are here concerned (and see *In re Purma Nandas Jeewundas*[2] *and Toolseemoney Dossee v. Maria Margery Cornelius*[3]). As regards estoppel under section 115 of the Evidence Ordinance, I should be disposed to hold, if it were necessary to decide the point, that the Crown is in the present case bound. The authorities for the rule that the Crown is not bound by, although it may take advantage of, estoppels are collected in Lord Halsbury's *Laws of England*,[4] and bear out the proposition that such a prerogative right exists. The only question would be as to whether or not it was applicable to Ceylon. No authority was cited to us in the argument, and I am not aware of any, to show that there is any rule, either in Roman-Dutch Law or in the statute law of the Colony, which could be said to have expressly excluded its application. Section 115 of the Evidence Ordinance contains no such provision, and if there had been nothing further, I take it that the principle enunciated by Lord Watson in *Maritime Bank of Canada (Liquidators of) v. Receiver-General of New Brunswick*[5] would have applied. "The prerogative of the Queen," said His Lordship, "when it has not been expressly limited by local law or statute, is as extensive in Her Majesty's Colonial Possessions as in Great Britain." It was on the ground of such an express limitation of the particular prerogative involved in the case—namely, the right of the Crown to be paid its debts in priority to subject-creditors of equal degree—that it was, in *Exchange Bank of Canada v. Regina*,[6] held by the Privy Council to have been impliedly excluded, except as regards "comptables," by the provisions of section 1994 of the Quebec Civil Code (and see *Palaniappa Chetty v. Ismail Seidik*[7]). On the other hand, in *Maritime Bank of Canada (Liquidators of) v. Receiver-General of New Brunswick*,[5] the Privy Council approved of a decision of the Supreme Court of Canada in *Regina v. Bank of Nova Scotia*,[8] holding that this prerogative existed in Nova Scotia, and itself affirmed its existence in New Brunswick, in neither of which Colonies did any such local legislation exist.

I am inclined, however, to think that, in such proceedings as the present at least, the prerogative in question has been, by necessary implication, excluded by the right to sue the Crown conceded to the subject by the Waste Lands Ordinance, 1897.

[1] *(1904) I. L. R. 29 Bom. 580.*
[2] *(1882) I. L. R. 7 Bom. 109.*
[3] *(1873) 11 Ben. 144.*
[4] *Vol. VI, 410.*
[5] *(1892) A. C. 437, at p. 441.*
[6] *(1895) 11 A. C. 157.*
[7] *(1902) 5 N. L. R, 322.*
[8] *11 S. C. R. 1.*

I would set aside the decree of the Supreme Court in appeal, and direct judgment to be entered setting aside so much of the decree of March 28, 1904, as directs a survey of the land therein mentioned to be made, declares the rights of parties on the finding of that survey, and provides that each party should bear its own costs. The amount of the deposit made by the first plaintiff-respondent must be returned, and the case should proceed to trial in the ordinary way. The appellant is entitled to the costs of the appeal and of the hearing in review. The whole costs of the action should, I think, abide the event.

GRENIER J.—

The proceedings in this case commenced with a reference to the District Court of Puttalam under the Waste Lands Ordinance, No. 1 of 1897. In the statement of claim dated September 7, 1903, filed by the plaintiffs, the Assistant Government Agent of the Puttalam District being the defendant, it was alleged that the village Potukulama, which consisted of paddy fields, tanks appertaining thereto, high and low jungle lands, and forests, was from time immemorial the private property of Potukulama Muhandiram and his predecessors in title, and as such private property was in the possession of the said Muhandiram in the Saka year 1588 (A.D. 1666) and previously thereto.

The plaintiffs also alleged that the portion of land of the extent of 777 acres, called Potukulama, forming the subject of the reference, was part and parcel of the village Potukulama, and was comprised within the boundaries mentioned in paragraph 2 of the statement of claim. The chain of title on which the plaintiffs relied, and which was mainly documentary, was clearly set out in the plaint, and stretched over a period of more than one hundred years. It included two sittus of the Saka years 1588 and 1731 respectively.

The defendant filed answer on March 4, 1904, denying that the extent of land which was the subject of the reference was situated within the boundaries recited in the two documents pleaded by the plaintiffs, namely, the sittu of the Saka year 1588 and the sittu dated the Saka year 1731, both of which were impeached as forgeries. The defendant denied that the plaintiffs were entitled to the land under reference, and averred that it consisted of old forest and was the property of the Crown.

Certain issues were submitted to the Court by the defendant on March 4, 1904, and were in the following terms:—

(1) Is the sittu of Saka 1588 a genuine document or a forgery ?
(2) Does it include the land in claim ?
(3) Is the sittu of Saka 1731 a genuine document or a forgery ?
(4) Does it include the land in claim ?
(5) Is the land in claim the property of the Crown ?

April 8, 1910

GRENIER J.

Munasinghe v. The Assistant Government Agent, Puttalam

(6) Is the Crown estopped from claiming the said land ?

(7) Are the plaintiffs entitled to the land under reference by prescriptive possession ?

I may mention that the sixth issue was evidently framed with reference to a question of estoppel raised by the plaintiffs in the statement of claim, but it does not appear to have been pressed at any time, and may be dismissed from consideration.

From these issues it would appear that the plaintiffs had put forward a title founded upon certain sittus which were impeached as forgeries, but in view of what transpired subsequently I think it may be assumed that the genuineness of the sittus was not seriously challenged. The case did not go to trial on these issues at all, for I find on March 28, 1904, there is an entry in the record in the following terms:—

" The parties having come to a settlement, the advocates and proctors on either side state that a written motion of consent will be submitted in the course of the day embodying the settlement, and asking for judgment in terms thereof.

" P. ARUNACHALAM,
" District Judge."

On the same day I find an entry in these terms:—

" Advocates and proctors present as above and submit a paper writing marked S, and signed by the defendant and such of the plaintiffs as are present and by the proctors for defendant and plaintiffs. Let judgment be entered in terms thereof.

" P. ARUNACHALAM,
" District Judge."

Under the signature there is the following entry:—

" Sittus marked A and B referred to in S, and on which plaintiffs' claim is based, is produced by them and filed in the case.

" P. ARUNACHALAM,
" District Judge."

There is another entry on the next page of the record (16) in the following terms:—

" On the motion of Mr. Advocate Fernando, and by consent, it is ordered that a Commission do issue to Mr. C. A. Ohlmus, Surveyor, to make the survey asked for in the motion S."

The motion S, which is to be found on page 91 of the record, is in the following terms:—

" In the District Court of Puttalam, No. 12, we move that the Crown be adjudged the owner of lot 8,620, above the line indicated in blue in plan marked X; and that the lots to the south, 8,623,

8,624, 8,632, 8,631, 8,630, 8,628, 8,629, 8,627, 8,626, be decreed to the plaintiff on payment to the Crown of a sum of Rs. 1,000 by plaintiffs; lot 8,621 to be regarded as a village tank. In respect to the rest of plaintiffs' claim as appearing in plan marked Y, it be decreed that a survey be made by a surveyor appointed by consent; that the Crown be adjudged the owner of all extents of land found by him to be mukalana or chena or forest above fifteen years of age, and as regards the remainder, whether abandoned fields, gardens, chena, or forest under fifteen years, that the plaintiff be adjudged the owner of the same on payment to the Crown of a sum of Rs. 10 an acre and fees for the same; any tanks within the said area to be regarded as village tanks. The plaintiffs to withdraw all claims on the sittus pleaded by them. Costs divided.

"Puttalam, March 28, 1904."

Underneath this document follow the signatures of the defendant, the then Assistant Government Agent, Mr. Freeman, and the proctors of the claimants, and some of the claimants themselves.

It is necessary, in the first place, to assign to the paper writing marked S, which embodied the terms of settlement, its true meaning and effect viewed in relation to the entries under date March 28, 1904. There was a decree drawn up dated March 28, 1904, embodying the terms of the settlement in document 6. The material parts of the decree are as follows:—

"This action coming on for final disposal before P. Arunachalam, Esq., a Judge of the District Court of Puttalam, on March 28, 1904, on a motion jointly made by the plaintiffs and defendant, notifying to this Court under section 408 of the Civil Procedure Code the terms and conditions of a compromise and settlement made and agreed to by and between them in respect to the subject-matter of this action, &c., it is ordered and decreed that the Crown be and is hereby adjudged the owner of lot No. 8,620, above the line marked in blue in plan No. 1,704, marked letter X . . . . . It is further adjudged and decreed that in respect of the rest of plaintiffs' claim as appearing in plan made by Mr. Surveyor Murray, marked letter Y, that a survey thereof be made by Government Surveyor, Mr. C. A. Ohlmus, and that the Crown be and is hereby declared owner of all extents of land found by him to be mukalana, chena, or forest above fifteen years of age, and in respect of the remainder thereof, whether abandoned fields, gardens, chena, or forest under fifteen years, it is decreed that the above-named plaintiffs be adjudged the owners thereof on payment by them to the Crown of a sum of Rs. 10 an acre in addition to the usual fees."

It will be noted that the decree refers specifically to the terms and conditions of a compromise and settlement made and agreed to by and between the parties in respect of the subject-matter of the

April 8, 1910

GRENIER J.

Munasinghe v. The Assistant Government Agent, Puttalam

action. Now, what was the compromise and settlement which the decree indicates ? The parties had before March 28, 1904, been at issue in regard to the genuineness of the two sittus relied upon by the plaintiffs for their title. The plaintiffs had claimed the extent of land in question as private property, whilst the defendant had claimed it as the property of the Crown; and I take it that the settlement proceeded upon a basis which, while it conceded both to the plaintiffs and the Crown a great part of their respective claims, left it practically to the arbitration of a surveyor, nominated by both parties, to determine and find the character of certain portions of the land about which there was some doubt, whether they answered to certain descriptions or not, before plaintiffs were adjudged the owners. The person so nominated could only use the best intelligence and observation at his command. This fact must have been present to the minds of both parties, because there is no infallible test by which the age of a forest or mukalana can be ascertained, and very often hearsay evidence is availed of for the purpose. The surveyor could do no more than embody in his report the results of his observation and judgment, unconsciously corrected and modified, perhaps, by the opinion of headmen and old villagers ; and I have therefore advisedly used the word " arbitrator " in referring to his real function on this occasion. In my opinion the parties by the decree of March 28, 1904, which is expressly stated to be final, mutually agreed and bound themselves at the time to accept as an essential part, and later on as a necessary result of the compromise and settlement they had arrived at, the surveyor's return as final, subject of course to a merely formal adjudication as regards the specific lots which were to be declared to be the property of the plaintiffs and the Crown. So long as there was no suggestion of fraud or misconduct on the part of the surveyor, his return would be accepted if it sufficiently ascertained and found what the lots were that were to be assigned to the plaintiffs on their compliance with the conditions as to payments, &c. The words used in the decree are all-important, and clearly significant of the intention of the parties. " That the Crown be adjudged the owner of all extents of land found by him (the surveyor) to be mukalana or chena; and as regards the remainder, whether abandoned fields, gardens, chena, or forest under fifteen years, that the plaintiff be adjudged the owner of the same on payment to the Crown of a sum of Rs. 10 an acre and fees for the same."

It seems to me therefore that the parties accepted the decree of March 28, 1904, as a final and absolute one, not only at the time it was made, but they regarded it as such, especially the defendant, in the correspondence which passed between the parties, and which, as far as I can gather, terminated with plaintiff's letter of July 8, 1907. To that correspondence I shall presently refer, when I come

to another branch of the case. I have little hesitation in holding that when Beebee's return, which consisted of (1) six sheets forming a plan and (2) three sheets signed by him giving in separate columns the number and name and description of each lot, was forwarded by the Surveyor-General on August 8, 1906, to the District Court, the defendant and his advisers accepted it as reasonably fulfilling all the substantial requirements of the decree of March 28, 1904. It is hardly credible that these papers were not examined and scrutinized by the Assistant Government Agent for the time being, who was in the position of the defendant, or his legal advisers. There was nothing to prevent his doing so. If the return were not in accordance with the decree, the defendant should have at once moved the Court, upon notice to the plaintiffs, for a fresh commission to another surveyor. But he took no such step. Therefore there was, in my opinion, a concluded agreement between the plaintiffs and the Crown on the receipt of Beebee's return and its acceptance by them. Whether that return was defective or not is quite a different question. I will assume that it was defective in certain respects, as pointed out by His Lordship the Chief Justice in the judgment under review, but, as he has remarked, " the fact, if it is the fact, that the return was inaccurate and untrustworthy would not be sufficient reason for setting it aside." Both parties knew it was defective, but they seemed to fully understand what Beebee found as regards the lots in question, because the plaintiffs paid into Court the value of the same, and the money is still in deposit there. In so paying the money the plaintiffs adhered strictly to the terms of the decree of March 28, 1904, which made it a condition precedent to their being " adjudged " the owners of the lots in question that they should pay to the Crown at the rate of Rs. 10 an acre and fees. Both parties therefore stood in this position as soon as the plaintiffs paid the money into Court. The plaintiffs had complied with the terms of the decree, and the defendant had acquiesced in the act of the plaintiffs by accepting Beebee's return, and regarding it in the very same light in which the plaintiffs had regarded it when they had paid the money into Court. Whether that money was credited to revenue or not seems to me immaterial. I do not know that Beebee's return was after all so defective as the defendant has sought to make it out to be, because there is the indubitable fact that on November 28, 1906, the Secretary of the District Court wrote to the plaintiffs requesting them to deposit in Court Rs. 8,956.57, " being value due to the Crown for the lots 7, 9, 10, 11, 12, 13, 14, 20, 21, 25, 15, 17, and 19 in accordance with the terms of the decree in the above case."

The defendant was aware of the terms of the Secretary's letter at the time it was written. Indeed, it is admitted that it was at the instance of the defendant that the plaintiffs were called upon to make the payment. There is evidence afforded by the correspondence

April 8, 1910

GRENIER J.

Munasinghe v. The Assistant Government Agent, Puttalam

that on December 6, 1906, the first plaintiff wrote to the defendant stating that the money had been paid into the Kachcheri, "being balance payment in full for the lots settled on the claimants, including survey and other fees necessary for the issue of grants," and requesting him to prepare Crown grants in favour of the plaintiffs. It will thus be seen that the identity of the lots was fixed and ascertained before the money was paid into Court, and that there was no objection taken by the defendant on the ground that Beebee's return was defective to such an extent that it was impossible to ascertain what the lots were, which, in terms of the decree, were to be declared the property of the plaintiffs. On the contrary, I think that, with the deposit of the money in Court in the circumstances under which the deposit was made, both parties understood that there was a concluded agreement between them, from which it was not open to either party to resile unless by mutual consent. I am therefore inclined to agree with the appellant's counsel in his contention that there was a concluded agreement between the parties, and that all that remained to be done was a formal adjudication and declaration that the plaintiffs were entitled to the lots in question.

I may mention that in the argument of the appeal before His Lordship the Chief Justice and myself the questions I have discussed were not raised before us, but I have thought it right to address myself to them at some length on account of their importance.

The principal question that was argued on the first appeal was whether the defendant was estopped by his representation and conduct from denying that the plaintiffs ought to be adjudged the owners of the lots in question for which they have paid money into Court. In our Evidence Act, No. 14 of 1895, an estoppel is defined as follows: "When one person has by his declaration, act, or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself or such person or his representative to deny the truth of that thing." In the present case it is necessary to inquire, before we apply the doctrine of estoppel, what the declarations, acts, or omissions of the defendant were upon which the plaintiffs rely as establishing an estoppel.

In the first place, after the plaintiffs had made the deposit in Court, we have a letter written by the defendant to the plaintiff, dated March 13, 1907 (P 2), to the following effect: "Referring to your letter dated December 6, 1906 (P 1), I have the honour to forward a statement of the amount due by you, and if you want Crown grants for lots 4, 5, and 8, which were declared the property of the claimants on payment of Rs. 1,000, it will be necessary to pay an additional sum of Rs. 214.73. If, however, you desire lots 4, 5, and 8 to be excluded, a further sum of Rs. 5.33 is still due."

Here we have what amounts to a definite act by the defendant, by which he caused the plaintiffs to believe that the sum of money they had paid into Court had been accepted in respect of the lots settled on the plaintiffs, because in the letter written by the plaintiffs they had intimated to the defendant that they had paid the sum of Rs. 8,726.57 on account of those lots. Annexed to the defendant's letter (P 2) was a statement in detail of the purchase amount and fees in respect of what was described as the " Potukulama claim." In accordance with the request contained in P 2, dated March 13, 1907, the plaintiffs forwarded a cheque for Rs. 214.73 by letter (P 4) dated March 20, 1907, and in letter (P 5) the defendant acknowledged receipt of the cheque and sent a formal receipt for the same.

In the second place, we have a declaration by the Crown in the Ceylon Administration Report of 1906 (P 7) that the extent of land in question was declared Crown land, but according to the " agreement " the claimants were to have the option of buying it, and that it was in fact sold to them. On closely examining this extract (P 7) from the Ceylon Administration Reports, it will be seen that not only was this declaration there, which I have referred to, but the further and more definite statement that the plans which formed the subject of a reference case were received this year, and that the extent sold to claimants at Rs. 10 per acre and fees were 746 acres and 34 perches. This unmistakably shows that the Crown not only accepted Beebee's return, but acted upon it by concluding a sale to the plaintiffs of the lots in question.

In the third place, there is the letter from the Colonial Secretary dated March 13, 1907, in reply to a letter from the first plaintiff dated August 11, 1906, requesting that Crown grants might be issued, in which the Colonial Secretary intimated to the plaintiff that Crown grants had been issued for the lands actually sold, that no grants would be issued for those decreed by the Court, and that the claimants might apply to Court for a final decree in their favour. Here, again, we have a declaration by the Crown that the sale to the plaintiffs was an accomplished fact, and all that was necessary for the plaintiffs to do was to apply to the Court for a final decree in their favour. In other words, that the Crown had no further interest or claim in the lands in question, and that only a formal application was now necessary to effectuate and complete the title of the plaintiffs. Apparently the plaintiffs thought, and thought wrongly, that Crown grants were necessary, and it was for this reason that they appeared to have been insistent upon obtaining them. It was in consequence of this misguided view on the subject that the first plaintiff wrote the letter of April 7, 1907, in which he stated that the decree was in no way an adjudication in favour of the claimant so as to fill the place of a title deed, and that the decree was only evidence of an agreement entered into between the Crown and the claimants for the future purchase and sale of certain lots

April 8, 1910

GRENIER J.

Munasinghe v. The Assistant Government Agent, Puttalam

to be ascertained by the Commissioner; but the first plaintiff went on to state in his letter that if any sale followed by the claimants performing the terms of the agreement, the claimants believed that Crown grants would issue to them in the usual course, and that it was in consequence of this that the claimants withdrew and abandoned all title on the sittus, the basis of their claim, to enable them to claim their title from the Crown. As I understand this letter, it simply means that the first plaintiff placed grants from the Crown far above a decree of the Court, and his object in requiring grants was to make them take the place of the sittus. I have referred to this letter in passing, because it naturally fell into the line of thought which I had been pursuing on the question of estoppel.

To resume, the acts and declarations of the defendant which I have already detailed, taken in connection with certain things that the plaintiffs did, acting upon the belief that the lots in question had been sold to them by the Crown, create, in my opinion, an estoppel under section 115 of our Evidence Act, and the defendant cannot now be allowed to say that the plaintiffs ought not to be adjudged the owners of the lots in question. I am aware of the existence of the word " intentionally " in section 115. It is a sound rule of law, applicable I believe both to criminal and civil matters, that a person is presumed to intend the reasonable consequences of his acts. And I think that in the present case that rule must apply, and it must be held that the defendant knew what construction would be placed upon his acts and declarations by the plaintiffs, and that the plaintiffs would shape their conduct and action, and alter their position, to their prejudice it may be, by the attitude adopted by the defendant. We accordingly find that on December 3, 1906, the first plaintiff executed a mortgage bond (P 8) in favour of some Chetties, on which he borrowed the sum of Rs. 10,000, mortgaging by way of security " all his right, title, and interest in and to all that tract of land . . . . . called and known as Potukulama . . . . . under a decree entered in a case No. 12 of the District Court of Puttalam." It was stated by plaintiff's counsel that the money thus raised was part of the money which was deposited on December 5, 1906, in terms of the decree of March 28, 1904. There was no evidence led by the plaintiff in the Court below in support of this statement, but the defendant admitted the " bare execution "—the word " bare " has to my mind no special significance—of the mortgage bond, which meant, I presume, that on December 3, 1906, the first plaintiff executed a notarial instrument in favour of some Chetties, borrowing and receiving from them, as the instrument shows on the face of it, the sum of Rs. 10,000 upon the security of certain lands which are described therein. By this admission I understand the defendant not to have required formal proof of the bond by the notary and the attesting witnesses being called, but the admission by no means involved a denial of the material facts

recited in the bond in regard to the lending of the money by the mortgagees and the borrowing of it by the mortgagor. The date of the deposit—December 5 or 6, 1906—and the date of the mortgage bond—December 3, 1906—show that the money raised was for the purpose of making the deposit. So that it seems to me that the first plaintiff would not have acted as he did, unless he had believed in the truth of a state of things which the defendant had by his declarations and acts caused or permitted him to believe.

Again, although the evidence is slender on the point, a portion of the land in question, about 15 acres, has been cleared. This evidence certainly comes from the defendant's side, and I cannot well see how it can be said there is nothing to show that the clearing was the work of the plaintiff. Who else would be interested, in the absence of any positive suggestion to the contrary, in cultivating or improving the land, but the plaintiff? There was no suggestion that the clearing was done by trespassers or squatters, and it may be that, in consequence of the plaintiff withdrawing from the proceedings which gave rise to this appeal, no evidence was forthcoming in regard to the identity of the persons who made the clearing.

For the reasons I have given, I am of opinion that the judgment under review rightly decided the question of estoppel against the defendant. I would unhesitatingly adopt the reasoning of Chief Justice Jenkins in the case of *Dadoba Janardhan v. Collector of Bombay* [1] and his observations in regard to the scope of section 115 of the Indian Evidence Act, which is precisely the same as ours.

I shall deal, lastly, with the point which was taken by the learned Solicitor-General for the first time, after the argument on the first appeal had been concluded and judgment had been reserved. I was on circuit at Kurunegala, where some papers were forwarded to me from the Chief Justice, with a request from the Solicitor-General, as far as I remember, that if our judgment had not passed the seal of the Court, liberty be given him to submit as a further argument in support of his position that it was competent for the District Court to have made the order appealed from, that the King can do no wrong, and that the Crown is not bound by estoppel. The point was taken again at the argument of this appeal, and I will proceed to deal with it now as briefly as I can. I must confess that I do not quite see how the prerogative of the King that he can do no wrong can be made to apply to the facts and circumstances of the case now before us. The real scope of that prerogative must be first rightly understood before it can be invoked. In Stephen's *New Commentaries on the Laws of England, vol. II., 478*, I find the following passage, which clearly explains the extent of this prerogative: "Another attribute to the royal character is irresponsibility: it being an ancient fundamental maxim that the

[1] *(1901) I. L. R. 25 Bom. 714.*

April 8, 1910

GRENIER J.

Munasinghe v. The Assistant Government Agent, Puttalam

King can do no wrong. This is not to be understood as if everything transacted by the Government was of course just and lawful. Its proper meaning is only this—that no crime or other misconduct must ever be imputed to the Sovereign personally. However tyrannical or arbitrary therefore may be the measures pursued or sanctioned by him, he is himself sacred from punishment of every description. If any foreign jurisdiction had the power to punish him, as was formerly claimed by the Pope, the independence of his Kingdom would be no more, and if such a power were vested in any domestic tribunal there would soon be an end of the constitution by destroying the free agency of one of the constituent parts of the legislative power. On the same principle no suit or action can be brought against the Sovereign even in civil matters. Indeed, his immunity both from civil suit and from penal proceeding rests on another subordinate reason also, namely, that no Court can have jurisdiction over him. For all jurisdiction implies superiority of power, and proceeds from the Crown itself. But who, says Finch, shall command the King ?"[1]

The true and real effect of this prerogative therefore is that no Courts, Civil or Criminal, have jurisdiction over the King, and that he is sacred from punishment of every description. It does not mean that he takes upon himself the responsibility of every act of the subordinate government, however unjust and unlawful it may be, and permits his servants to invoke this prerogative in order to protect themselves from the consequences of their carelessness or misconduct. It must be remembered that every act of Government is not an act of State. for otherwise it will be open to any official in the position of a Government Agent or Assistant Government Agent in this Colony to shelter himself behind the royal prerogative whenever he does anything which is not just and lawful. The attribute of irresponsibility is purely one which belongs to the royal character and person, and I therefore fail to see in what sense it can be said in this case, with reference to the action of the Assistant Government Agent of Puttalam in the Potukulama claim, that he was irresponsible for what he did, and that it was open to him to rip up any part of the proceedings already had by virtue of the royal prerogative founded on the fundamental maxim that the King can do no wrong.

As regards the contention that the Crown is not bound by estoppel, it seems to me that that maxim is also inapplicable to this case. The question of estoppel is one which has to be governed by the rules of evidence, and where the Crown itself gives the subject the right to sue it, as in the Waste Lands Ordinance, No. 1 of 1897, I cannot see how the Crown can say that it is not bound by the rules of evidence, and that if it is unsuccessful it can claim and take advantage of the prerogative that it is not bound by estoppel.

[1] *Finch L. 83.*

On reference to Ordinance No. 1 of 1897, which relates to claims to forest, chena, waste, and unoccupied lands, it will be seen that section 12, sub-section (1), gives the subject the right to sue the Government Agent or Assistant Government Agent as representing the Crown, and section 13 provides that proceedings in references instituted under the Ordinance shall be regulated so far as they can be by the Code of Civil Procedure. I take it, therefore, that the Crown has by this Ordinance expressly waived its prerogative that no Court can have jurisdiction over it, and that the King by his special grace and bounty has given the subject the right to sue him through a local representative in the person of the Government Agent or the Assistant Government Agent, or to put it in accordance with the wording of section 12, " the Government Agent or Assistant Government Agent shall appear as defendant on behalf of the Crown."

The leading case on the subject relating to the right of the subject to sue the Crown is to be found in *Simon Appu v. Queen's Advocate*,[1] where it was held that since the occupation of the Island by the British the practice of suing the Crown had been recognized by the Legislature, and that suits against the Crown now form part of the law of the land.

I would repel the contention founded upon the prerogative rights relied upon by the learned Solicitor-General, and hold that they have no application to the present case.

I would confirm the judgment under review, with all costs.

Set aside.