Present: Wood Renton A.C.J. and Pereira J.

1913.

SILVA *v.* KINDERSLEY.

90—D. C. Kurunegala, 4,666.

Register of temple lands—How far binding on Crown—Proceeding under Waste Lands Ordinance—Surveys prepared by Government surveyors—Burden of proof that lands as depicted in surveys were not included within the boundaries given in the register—Ordinance No. 12 of 1840, s. 6—Presumption—Land in Kandyan Provinces.

A register of temple lands prepared under the provisions of "The Temple Lands Registration Ordinance, 1856," is binding on the Crown in all questions touching the boundaries and extents of the several lands claimed by the temple concerned, and no assumption of a mistake in the register can be permitted.

Where in a proceeding under the Waste Lands Ordinance a number of surveys prepared by officers of Government were produced by the Crown as evidence of the fact that the lands in claim were not included in a certain register of temple lands under "The Temple Lands Registration Ordinance, 1856,"—

Held that, inasmuch as matters in connection with the surveys were especially within the knowledge of the Crown, the burden lay on it to establish that the lands in claim as depicted in those surveys were not included within the boundaries given in the register.

The presumption under section 6 of Ordinance No. 12 of 1840, so far as it concerns chena lands in the Kandyan Provinces, does not apply to such lands in respect of which sannases and grants were never issued, and taxes, dues, or services were never paid or rendered.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for the third plaintiff, appellant.

Garvin, Acting S. G., and *V. M. Fernando, C.C.*, for the defendant, respondent.

Cur. adv. vult.

October 3, 1913. PEREIRA J.—

This is a case under the Waste Lands Ordinance. The reference relates to eight allotments of land marked 1, 55, 9, 21, 35, 30, 34, and 49 in preliminary plan No. 556 (D 9). The present contest is between the third plaintiff as trustee of the Buddhist temple at Kandy known as the Dalada Maligawa on the one side, and the

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Government Agent as representing the Crown on the other. The main question for decision is whether the allotments of land referred to above are among the lands mentioned in the register prepared in terms of section 21 of the Temple Lands Registration Ordinance, 1856, by the Commissioners appointed under the Ordinance. The extract 3 P 13 filed of record has been taken from this register. I may mention that it was a question in the Court below whether the document from which 3 P 13 had been extracted was in fact a register made under section 21 of the Ordinance. The District Judge held that it was so. The third plaintiff acquiesced in this decision, and the respondent's attitude has always been in accordance with it.

Now, subject to what I shall say later on the subject of prescriptive possession and of the presumption under section 6 of Ordinance No. 12 of 1840, the whole question in the case appears to me to resolve itself into this: Whether the lands declared to belong to the Dalada Maligawa in the register under the Temple Lands Registration Ordinance, 1856, have been correctly defined in the plans filed, and set aside as lands not belonging to the Crown? As observed by the District Judge, the register is, under section 8 of the Ordinance, binding on the Crown in all questions touching the "boundaries or extent of any lands whatever claimed by the temple." It therefore appears to me to be of primary importance that the lands allowed to the temple in the register should be correctly defined. Now, Mr. Davis, the Crown witness, enumerates the boundaries of the lands of the temple as given in the register, produces plan D 6, and says: "This plan follows that limit closely," but he admits in cross-examination that in the plan the Maligawa land does not come down to the limit of Kudagamana Ganima as shown in the survey of 1899, and adds that it is not far from it.

The District Judge explains this fact by assuming that there is a mistake in the description of the boundaries in the register by the Commissioner under the Temple Lands Registration Ordinance, and on that footing, and as it seems to me on that footing alone, decides the fourth, fifth, and sixth issues in favour of the Crown. He does not accept the theory, and, indeed, there is nothing to support it, that the limit of Kudagamana has shifted. In view of decisive words used in section 8 of the Ordinance, I do not think that it was open to the District Judge to assume that there was a mistake in the register. The words are: "and after the said boundaries shall be ascertained, determined, set out, and fixed, the same shall, and are hereby declared to be, the boundaries of such lands respectively so far as regards any question between such temples and His Majesty's Government touching ..... the boundaries or extents of any lands whatsoever claimed by any such temples." I think that the case

should go back for evidence of what, in strict accordance with the temple lands register referred to above, would be the lands declared to belong to the Dalada Maligawa, and for a decision on the question whether the lands now claimed by the Crown or any portions of them are included within the boundaries given in the register, and for judgment accordingly thereafter. As facts in connection with the different surveys produced are especially within the knowledge of the defence, and as the land described in the register is admittedly the property of the Dalada Maligawa, I think it is for the defence to establish, in the first instance, that the lands now in claim are not included within the boundaries given in the register (secton 106 of the Evidence Ordinance).

As regards prescriptive possession, it is clear that if title to the lands in dispute in the Dalada Maligawa is once established, the question whether it has had prescriptive possession of the lands is immaterial for the purposes of its claim.

As to the presumption under section 6 of Ordinance No. 12 of 1840, it is, of course, a presumption (so far as it relates to forest, waste, unoccupied, or uncultivated lands) that may be displaced by proof of title, and here the third plaintiff, on behalf of the Dalada Maligawa, claims title based on the register referred to above.

So far as the presumption concerns chena lands in the Kandyan Provinces, I do not think it can apply to such lands in respect of which as a matter of custom or practice sannases and grants were never issued, and no taxes, dues, or services were ever paid or rendered. It is in evidence that for lands granted by the old Kandyan Kings to the Dalada Maligawa no sannases were ever issued, and, of course, in respect of such lands, as in respect of temple lands generally, there was no liability on the part of anybody to render any services, nor were any taxes or dues payable. As regards chena lands in the Kandyan Provinces, the only means provided in the Ordinance to save them from the operation of the presumption is the proof of a sannas or grant or of the payment of taxes, &c., and it would be absurd to suppose that the presumption was intended to apply to lands in respect of which proof of the only means provided for its rebuttal was an impossibility. The Ordinance was not intended to vest absolutely in the Crown all chena lands in the Kandyan Provinces belonging to temples.

I would set aside the judgment appealed from, and remit the case to the Court below for the purpose indicated above. I think that all costs should be costs in the cause.

WOOD RENTON A.C.J.—

I agree to the order proposed by my brother Pereira.

Sent back.