1921.

[PRIVY COUNCIL.]

Present : Lord Buckmaster, Lord Atkinson, and Lord Carson.

HAMID *et al. v.* THE SPECIAL OFFICER APPOINTED UNDER THE WASTE LANDS ORDINANCE.

Waste Lands Ordinance, No. 1 of 1897, s. 24—"Chenas and other lands which can only be cultivated after the interval of several years."

Section 24 of Ordinance No. 1 of 1897 provides—

All forest, waste, unoccupied, or uncultivated lands, and all chenas and other lands which can be only cultivated after intervals of several years, shall be presumed to be the property of the Crown until the contrary thereof be proved.

Held, that the expression "which can only be cultivated after the interval of several years" has no application to "chenas."

The character and quality of the chena lands must be determined by the actual use of the land itself, and not by its potential possibilities. Land that is chena land cannot be taken out of the category merely by evidence to show that by another method of cultivation, by the application of other processes in other hands, it might be cultivated in a different way.

A decree under the Partition Ordinance does not bind the Crown.

THE judgment of the Supreme Court is reported in *21 N. L. R. at p. 355.*

October 24, 1921. Delivered by LORD BUCKMASTER :—

This is an appeal from a decree of the Supreme Court of the Island of Ceylon affirming the decision of the Judge of the District Court of Kurunegala on a claim put forward by the appellants to certain lands in the district to the extent of some 278 acres. The matter came before the District Judge on a reference under section 5 of the Waste Lands Ordinance of 1897, and the question which it involved was whether or no the Crown were entitled to the land in dispute by virtue of the provisions of the Ordinance No. 12 of 1840 or the Ordinance of 1897. The later amending Ordinances of 1899, 1900, and 1903 are not involved in the dispute.

The facts were these. The appellants in 1914 and 1915 acquired their alleged rights in the lands by purchase from one James Marambe, who had acquired the same in 1913 for Rs. 300 from the villagers, who claimed by right of inheritance. On November 29, 1916, one of the appellants obtained against the other a partition decree awarding part of the land to one and part to the other, and

armed with this authority they sought to establish their title against the Crown. The short answer put forward by the Crown was that the land in question was chena land, and that, consequently, it was the property of the Crown by virtue of section 24 of the Ordinance of 1897.

The real question that arises upon this appeal is whether or no that defence can be maintained. Chena lands are well known, and their description is clearly understood. They are jungle lands subjected to periodic cultivation by means of burning down the jungle and then growing some grain crop upon the site. After this crop has been grown, the land relapses back once more into jungle, until the period has come when it can again be profitably burned and the process of cultivation resumed. It is unnecessary to discuss the quality of this system of agriculture. It seems by common agreement to be an extremely extravagant and wasteful use of the land, and one adapted to people who are not devoted to the arduous process of regular husbandry.

The Ordinance of 1897, following on an earlier Ordinance of 1840, expressly dealt with these lands. It began with a recital that it was expedient "to make special provision for the speedy adjudication of claims to forest, chena, waste, and unoccupied lands"; and then by section 1 it provided that—

> "Whenever it shall appear to the Government Agent of a province or to the Assistant Government Agent of a district that any land or lands situated within his province or district is or are forest, chena, waste, or unoccupied,"

it shall be lawful for him to declare the same by a notice, and then certain procedure results. By section 24, which is the critical section in the present dispute, it is provided that—

> "All forest, waste, unoccupied, or uncultivated lands, and all chenas and other lands which can be only cultivated after intervals of several years, shall be presumed to be the property of the Crown until the contrary thereof be proved."

The appellants contend that the qualification to be found in that section as to lands, which can only be cultivated after intervals of several years, is a qualification which attaches to the chenas, and that it must, therefore, be read as meaning that it is only such parts of the chena land as are incapable of cultivation by any other method than by chena cultivation that are subject to the operation of the section.

In the first place, their Lordships think it right to say, especially having regard to an earlier decision (*Queen's Advocate v. Appuhamy*) reported in *1 Supreme Court Circulars at p. 26*, that in their view the character and quality of the chena lands must be determined by the actual use of the land itself, and not by its potential possibilities. Land that is chena land cannot be taken out of the

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category merely by evidence to show that by another method of cultivation, by the application of other processes in other hands, it might be cultivated in a different way. That, of course, does not dispose of the appellants' contention, because it may even yet be that the Ordinance was only intended to cover this limited and particular section of the chena property; but having given careful consideration to the very full argument that was advanced by the appellants upon this point, their Lordships are unable to accept it. They do not think that the expression "which can be only cultivated after intervals of several years" has any application to chenas. They think that the section means that each enumerated head stands alone and unqualified, and the last of these is the "other lands which can only be cultivated after intervals of several years." What those other lands may be which can be the subject only of such cultivation no one before their Lordships has been able to suggest, but they are general words intended to gather up and to sweep into the ambit of this section such lands as might not be within the description of the preceding words. The introduction of the word "and" before chenas lends some support to the appellants' contention, but their Lordships regard this conjunction as knitting together the specified classes mentioned by name, and to these the other lands are added. It was urged on behalf of the appellants that this view did not do full justice to the history of the legislation, and that the earlier Ordinance which was passed in 1840 showed that a different meaning should be given to the clause. In the Ordinance of 1840 the critical section was section 6, the earlier part of which ran in much the same language as that of section 24 of the later Ordinance, but it continued by providing that—

> "in all other districts in this Colony such chena and other lands which can only be cultivated after intervals of several years shall be deemed to be forest or waste lands within the meaning of this clause";

and it is said that there "chena" must be subject to the qualification as to the possibility of cultivation, because it is used in the form of an adjective, and not in the form of an independent noun. Their Lordships are not greatly impressed with that argument. Even assuming that that were the true construction of section 6, it would not throw any great light upon the interpretation of the later Ordinance, but even in that section they do not regard the suggested interpretation as accurate. In their Lordships' view the words "such chena and other lands" are properly construed as meaning such chena lands and the other lands which can only be cultivated in the manner described, and there is no reason why the chena lands should be subject to the limitation suggested. This is, in their Lordships' view, the fair interpretation of some rather ambiguous language, and it is the only interpretation which can give both sense and justice in the operation of the clause.

It would be impossible to know for certain what were the inherent capacities of the soil that was subject to jungle growth, and if any other method of determination were selected than that of the actual user, there would be the possibility of great difficulties in connection with conflicting evidence given, not as to facts, but as to remote and hypothetical possibilities.

Their Lordships have only to add that the other question argued, as to whether the operation of the Ordinance is to date from the date of the Ordinance or from the time when the claim is made, is one that does not arise for determination in the present case, for here admittedly these lands retained their existing quality at the moment when the dispute arose.

Their Lordships are glad to find that the view that they have expressed appears to be in agreement, both with the judgment in *Corea Mudaliyar v. Punchirala* reported in *4 N. L. R. at p. 135*, and the case of *Cooke v. Freeman* reported in *8 N. L. R. at p. 265*.

The argument with regard to the title given by the partition decree is one which cannot be maintained. It arises under section 9 of the Ordinance No. 10 of 1863, which provides that a decree for partition or sale under the Statute shall be good and conclusive against all persons whomsoever.

It is unnecessary to consider whether this section establishes title to the land as against strangers, or only title to the shares as against interested parties; it is sufficient to say there is nothing in the Ordinance to bind the Crown, and it would, indeed, be a remarkable thing if a partition decree effected between two or three parties, it might be by arrangement among themselves, should have the effect of depriving the Crown of the important rights conferred under the Ordinance in question.

For these reasons their Lordships think that this appeal should be dismissed, with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.