

1932

Present : Akbar J.

ASSISTANT GOVERNMENT AGENT, PUTTALAM v. PEIRIS.

884—P. C. Chilaw, 33,949.

Crown land—Definition of boundaries—Action under s. 8 of Ordinance No. 1 of 1844—Recovery of costs—Procedure—Ordinance No. 28 of 1919, s. 2 (c).

Where a Government Agent acting under section 8 of Ordinance No. 1 of 1844 proceeds to define the boundaries of a Crown land he cannot apply to recover the cost of making the survey by means of the procedure provided by section 2 (c) of the amending Ordinance No. 28 of 1919.

A PPEAL from an order of the Police Magistrate of Chilaw.

L. A. Rajapakse, for appellant.

Illangakoon, Deputy S.-G. (with him *Schokman*, C.C.), for Crown, respondent.

May 2, 1932. AKBAR J.—

After argument of appellant's counsel the case stood over for the Crown to obtain further information from the Assistant Government Agent on the Crown case. Mr. Illangakoon appeared on the second day, but I regret that he has not been able to convince me that the order of the Police Magistrate is right. The appellant was ordered by the Police Magistrate to pay the Assistant Government Agent, Puttalam, Rs. 254.28, being the cost of a survey carried out at the instance of the complainant-respondent under section 2 (c) of Ordinance No. 28 of 1919. Under section 2, when it appears to the Assistant Government Agent that the boundary of land belonging to any person which adjoins land belonging to the Crown should be made or renewed in whole or in part the Assistant Government Agent may, in lieu of taking action under section 8 of Ordinance No. 1 of 1844, adopt the following procedure:—(a) He can, if,

after consulting the Surveyor-General, he is of opinion that the work of making or renewing a boundary cannot be satisfactorily carried out by such subject, call upon the Surveyor-General to make or renew such boundary. (b) The Surveyor-General shall certify such costs. (c) The subject shall pay such amount and a Police Magistrate can enforce the payment of this sum, as if it were a fine.

This Ordinance No. 28 of 1919, amended Ordinance No. 1 of 1844, and the relevant portion of section 8 of No. 1 of 1844 provides that where Crown land adjoins the land of a private person the Assistant Government Agent can call upon such subject by notice to make or renew the whole or part of the boundary between the two lands.

If this work is not begun within thirty days after service of notice, the Assistant Government Agent may cause such boundary to be made or renewed and may recover twice the amount of the costs. It is clear from these two sections that the two procedures are alternative and that if an Assistant Government Agent elects to proceed under section 8 of No. 1 of 1844, he cannot afterwards cite section 2 of No. 28 of 1919 to justify his application for a recovery of the actual costs incurred by means of the procedure prescribed for criminal courts. It will be noticed that under section 8 of No. 1 of 1844 the money can only be recovered in a civil case. The correspondence shows to my mind that the Assistant Government Agent elected to proceed under section 8 of 1844. R 1/2.11.28 calls upon the appellant to remove an encroachment.

R 4/6.11.29 is a printed notice issued under section 8 of No. 1 of 1844.

R 6/17.1.30 requests the appellant "to have your boundaries defined by a surveyor on your title plan".

R 8/1.2.30 is to the same effect.

R 10/21.2.30 threatens the appellant that if she will not get the boundaries defined, the work will have to be done by a Government surveyor.

R 11/1.3.30 from the appellant is to the effect that a surveyor was going to be appointed by the appellant to define the boundaries.

R 12/1.10.30, R 13/17.10.30, and R 14/22.10.30 are all letters corroborating the previous letters. By R 15/29.12.30 the appellant informed the Assistant Government Agent that the boundaries had been defined by her surveyor and that there had been no encroachment. In that letter the appellant asked the Assistant Government Agent to pay Rs. 250 costs incurred by an unnecessary survey. By R 17/23.2.31 the Assistant Government Agent called upon the appellant to pay Rs. 254.28 costs of survey under section 2 (c) of No. 28 of 1919. It is this sum which forms the subject-matter of this action.

It is quite clear from the letters I have specified above that the Assistant Government Agent elected to proceed under section 8 of No. 1 of

1844 from the very beginning and that being so he cannot now invoke the provisions of the amending Ordinance No. 28 of 1919. The appeal is allowed and the order of the Police Magistrate is set aside.

Set aside.
