[IN THE PRIVY COUNCIL.]

1946 *Present:* **Lord Macmillan, Lord du Parcq and Sir John Beaumont.**

VANDER POORTEN *et al.*, Appellants, *and* THE SETTLEMENT OFFICER, Respondent

PRIVY COUNCIL APPEAL No. 78 OF 1944.

S. C. 120 Inty—D. C. Ratnapura, 6,940.

Ordinance relating to claims to Forest, Chena, Waste and Unoccupied Lands No. 1 of 1897—Petition under section 20—Dismissal by District Judge—Right of appeal to Supreme Court.

An appeal lies to the Supreme Court against the dismissal by a District Judge of a petition made under section 20 of the Ordinance relating to Forest, Chena, Waste and Unoccupied Lands, No. 1 of 1897.

APPEAL from a judgment and decree of the Supreme Court. The judgment of the Supreme Court is reported in (1942) 43 N. L. R. 230. As the appellants could not appeal to His Majesty in Council as of right—*Vide* (1942) 43 N. L. R. 436—they obtained special leave.

C. S. Rewcastle, K.C., and *R. K. Handoo*, for the appellants.

C. T. Le Quesne, K.C., and *Sydney Pocock* for the respondent.

March 13, 1946. [*Delivered by* LORD DU PARCQ]—

The only question for determination in this appeal is whether the Supreme Court of Ceylon was right in holding that no appeal lay to that Court against the dismissal by a District Judge of a petition which, for the purpose of dealing with the preliminary objection that the appeal could not be entertained, the Court treated as a "claim" made under section 20 of the Waste Lands Ordinance, No. 1 of 1897.

The facts relevant to this single question are few, and may be shortly stated. The Ordinance of 1897 empowered the Government agent to declare by a notice duly published that any lands which appeared to him to be waste lands should be deemed the property of the Crown unless a claim was made to them within three months from a date specified in the notice and further enacted that if no such claim were made the lands should be declared to be the property of the Crown. On September 21, 1928, such a notice was published in respect of the lands which are the subject of the present suit. No claim was made within the period of three months, which began to run on the date of the notice, but before the lands had been declared to be Crown lands the Ordinance of 1897 had been repealed by the Land Settlement Ordinance of 1931 which provided for the appointment of Settlement Officers, and in terms authorised any such officer "to continue or to complete any action or proceeding taken or commenced under Ordinance No. 1 of 1897"

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On April 5, 1940, an Assistant Settlement Officer published a notice under the Land Settlement Ordinance by which he ordered that the lands in question should be settled as therein specified, thus dealing with them as Crown property.

Meanwhile one A. J. Vander Poorten, since deceased, whose executors are the present appellants, had written to the Land Settlement Officer on January 30, 1931, saying that he held the lands in question " in trust for " one Meedeniya and that the same might be settled on him in spite of the writer " being nominal owner ", and, later, namely on February 26, 1937, by which date Meedeniya had died, he is said by the appellants to have intimated to the Settlement Officer that he withdrew the earlier letter, and to have set up his own claim to the lands. A. J. Vander Poorten died on or about December 28, 1937.

On December 5, 1940, the appellants, purporting to proceed under the Land Settlement Ordinance, presented a petition to the District Court of Ratnapura praying that the lands now in question should be transferred to them as executors of A. J. Vander Poorten. It was conceded by counsel for the appellants before the Supreme Court that, by reason of the terms of section 6 (3) (*c*) of the Interpretation Ordinance (Chapter 2), they had erred in proceeding under the Land Settlement Ordinance, and that any claim which they may have should have been brought under the Waste Lands Ordinance of 1897. The learned District Judge dismissed the petition on the ground that the petitioners were not entitled to relief under the Land SettlementOrdinance. In the course of his judgment he said : " Even if it could be said that the remedy provided for by section 20 of the Waste Lands Ordinance was available to the petitioners in spite of this Ordinance having been repealed the petitioners seem to be out of time now ".

Section 20 of the Waste Lands Ordinance of 1897 is as follows :—

> " No claim to any land or to compensation or damages in respect of any land declared to be the property of the Crown under the provisions of this Ordinance shall be received after the expiration of one year from the date on which such declaration shall have been made. If within such year any claimant shall prefer a claim to such land or to compensation or damages in respect thereof before the commissioner appointed under this Ordinance for the province in which such land is situated, or in the event of no commissioner being appointed, before the district judge of the district in which such land is situated, and shall show good and sufficient reason for not having preferred his claim to the government agent or assistant government agent as aforesaid within the period limited under section 1 of this Ordinance, such commissioner or judge shall file the claim, making the claimant plaintiff and the government agent or assistant government agent as aforesaid defendant on behalf of the Crown in the action, and the foregoing provisions of this Ordinance shall be applicable to the investigation and trial thereof. "

The petitioners appealed to the Supreme Court, who dismissed their appeal without going into the merits of the case. Keuneman J., with whose judgment Hearne J. concurred, after holding that the appellants

(as their counsel had admitted) could not avail themselves of the Land Settlement Ordinance, stated the question which now arises for decision as follows :—

> "Counsel for the appellants, however, contends that this petition constitutes a good and sufficient claim under section 20 of the Waste Lands Ordinance, and that the District Judge should have so treated it. He is met by the objection that no appeal lies from an order made under this section, but counters this by arguing that the words in section 20 'the foregoing provisions of this Ordinance shall be applicable to the investigation and trial thereof' bring in the right of appeal under section 18."

The learned judge rejected this interpretation of section 20 and the Court adjudged that the appeal should be dismissed by reason of the preliminary objection, and decreed accordingly. The present appeal is brought against this decree by leave of His Majesty in Council.

The question now in issue ultimately depends on the construction of the words "the investigation and trial thereof" in section 20. The provisions of section 18, which give a right of appeal to a person who has lodged a petition within thirty days from the date of the order of a commissioner or district judge, are among "the foregoing provisions" of the Ordinance. If the words "investigation and trial" are to be read as including the decision which is the end and object of the trial, it must follow that the decision, to which the provisions of section 18 are thus made applicable, is rendered appealable. In their Lordships' opinion the word "trial" in this context must be read as including the decision, which it is not improper to regard as an important part of the trial, and the expression "investigation and trial" is to be understood as descriptive of the whole proceedings. It is true that in some contexts (*e.g.*, in the Code of Civil Procedure) the word "trial" is at times used in contradistinction to "judgment" or "appeal", but there is nothing in the material sections of the Waste Lands Ordinance which suggests that the word is there being used with this limited meaning. On the contrary, the intention of the legislature, so far as it can be gathered from the terms of the Ordinance, seems to have been to put a person who, though his claim was made out of time, could show "good and sufficient reason" for his delay, in the same position as one who had lodged his petition within the time limited by section 18. It was submitted by counsel for the respondents that it was reasonable to attribute to the legislature an intention to grant only a qualified indulgence to those persons whose claims were made at a late date, and that the right of appeal had been withheld from them deliberately. As to this submission their Lordships would observe, first, that if it had been the intention of the legislature to penalise those whose claims were made at a late date, it is difficult to believe that the draftsman of the Ordinance would not have expressed that intention in plain words, and, secondly, that, inasmuch as a claimant whose delay is due to some "good and sufficient reason" is no less meritorious than one who has been able to act promptly, there is no ground for imputing the suggested intention to the legislature.

For these reasons their Lordships are of opinion that the learned judges of the Supreme Court were wrong in holding that the words " investigation and trial " had " a limiting effect ", and referred only to the inquiry before the Commissioner or District Judge in the narrower sense of that word.

It was submitted by counsel for the appellants that, even if there were no right of appeal under section 20 of the Waste Lands Ordinance, an appeal was competent by reason of the provisions of section 73 of the Courts Ordinance. In consequence of the view which their Lordships have formed as to the construction of the former section it is unnecessary that they should express any opinion with regard to this submission and they refrain from doing so.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, and that the case should be remitted to the Supreme Court with a direction that an appeal lies to that Court under section 20 of the Ordinance No. 1 of 1897 from the order of the District Judge dated October 30, 1941. Their Lordships have designedly abstained from expressing any opinion as to any of the other questions raised by the appeal, which it will be for the Supreme Court to determine. The respondent should pay the appellants' costs of this appeal, and also their costs of the hearing before the Supreme Court which has proved abortive. It will be for the Supreme Court to make such order as it may think right both as to the costs of the proceedings before the District Judge and as to any of the costs hitherto incurred in respect of the appeal to the Supreme Court which have not been thrown away.

Appeal allowed.