

1913.

Present: Pereira J.

GOVERNMENT AGENT, SOUTHERN PROVINCE,
v. JAYASEKERA.

302—C. R. Balapitiya, 9,322.

Notice by Government Agent calling upon person owning land adjoining Crown land to make or renew boundary—May notice be signed by any other officer in his department?—Ordinance No. 1 of 1844, s. 8.

PEREIRA J.—The statutory duty of issuing a notice in terms of the proviso to section 8 of Ordinance No. 1 of 1844 is expressly cast on the Government Agent or the Assistant Government Agent, and I doubt that the fact of such a notice being signed by an officer in the department of Government Agent or the Assistant Government Agent, even though he has official authority to sign notices generally on behalf of the Government Agent or the Assistant Government Agent, is a sufficient compliance with the requirements of the Ordinance.

IN this case the Government Agent, Southern Province, sues the defendant for the recovery of the sum of Rs. 69.58, being double the cost of defining the boundaries of defendant's land called Polgahalanga at Batapola. The defendant sent a declaration to the Government Agent intimating his intention to open a plumbago pit in his land, which he had purchased from the Crown and which adjoins Crown land. The Government Agent sent a notice in terms of Ordinance No. 1 of 1844. The notice was signed

by the Office Assistant. The defendant having failed to define the boundaries the Government got it done.

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*Government
Agent,
Southern
Province, v.
Jayasekera*

The following issues were framed:—

- (1) Did the Government Agent or the Assistant Government Agent issue a notice on defendant in terms of section 8 of Ordinance No. 1 of 1844? If so, was that notice served on the defendant?
- (2) What was the amount spent by Government in defining the boundaries?
- (3) Can the Government Agent maintain the action?

The Acting Commissioner of Requests (B. Amerasekera, Esq.) held, on the first issue, that the notice signed by the Office Assistant satisfied the requirements of the section. He decided the other issues also in favour of the plaintiff.

The defendant appealed.

A. St. V. Jayewardene, for defendant, appellant.

Garvin, Acting S.-G., for respondent.

September 15, 1913. PEREIRA J.—

In this case the first issue framed was whether the Government Agent or the Assistant Government Agent issued a notice on the defendant in terms of section 8 of Ordinance No. 1 of 1844. The burden of proof on this issue was clearly on the plaintiff, and the only evidence on the issue is document P 1. This document is not signed either by the Government Agent or the Assistant Government Agent. It is signed as follows:—"W. K. H. Campbell, for G. A., S. P." The statutory duty of issuing such a notice as the one in question is expressly cast on the Government Agent or the Assistant Government Agent, and I doubt that the fact of such a notice being signed by an officer in the department of the Government Agent or the Assistant Government Agent, even though he has official authority to sign notices generally on behalf of the Government Agent or the Assistant Government Agent, is a sufficient compliance with the requirements of the Ordinance. The question involved here need not, however, be decided. The Acting Solicitor-General has not been able either to show by the production of such a book or document as is referred in section 57 of the Evidence Ordinance or otherwise that Mr. Campbell had official authority to sign notices generally on behalf of the Government Agent or Assistant Government Agent, or to refer me to any evidence in the case to the effect that Mr. Campbell had the authority of the Government Agent or the Assistant Government Agent to sign for him the particular notice in question in this case.

I set aside the judgment appealed from, and dismiss the plaintiff's claim with costs.

Set aside.