

Present : Pereira J.

1912.

APPUHAMY v. NONA

184—C. R. Panadure, 10,259

*Crown grant in favour of dead person—Void—Point of law raised in appeal for the first time.*

PEREIRA J.—Under our procedure all the contentious matter between the parties to a civil suit is, so to say, focussed in the issues of law and fact framed. Whatever is not involved in the issues is to be taken as admitted by one party or the other, and under our procedure it is not open to a party to put forward a ground for the first time in appeal unless it might have been put forward in the Court below under some one or other of the issues framed, and when such a ground that is to say, a ground that might have been put forward in the Court below, is put forward in appeal for the first time, the cautions indicated in the *Tasmania*<sup>1</sup> may well be observed.

*Obiter.*—A Crown grant in favour of a deceased person is void.

THE facts appear sufficiently from the judgment.

H. A. Jayewardene, for the defendant, appellant.

A. St. V. Jayewardene, for the plaintiff, respondent.

*Cur. adv. vult.*

July 17, 1912. PEREIRA J.—

In this case the plaintiff derives title to the share of land in dispute from one Juanis, in whose favour Crown grant No. 24,552 in respect of the whole land appears to have been issued on August

<sup>1</sup> (1890) 15 A. C. 223.

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10, 1906. It is argued in appeal that it appears from the evidence recorded in the case that Juanis was dead at the date of the issue of the Crown grant, and that, therefore, the Crown grant was void and inoperative, being practically a conveyance of property in favour of a deceased person. Following the analogy of the effect of a Fiscal's conveyance made in favour of a purchaser after his death (see *Bastian v. Andris*<sup>1</sup>), I am inclined to think that this contention is sound; but it is open to the defendant in this case to raise this question in this appeal? There was no issue either framed or suggested at any time as to whether Juanis was dead at the date of the Crown grant, and as to the effect of a grant issued in favour of a person after his death; and in the Court below there was no such contention as is now put forward. Mr. H. A. Jayewardene invited my attention to issue No. 4: "Did Juanis or Singho Appu pay the half-improved value, and was the issue of the Crown grant to Juanis proper?" The present contention is not covered by this issue. The issue presupposes that Juanis was alive at the date of the issue of the grant, and the question here really is whether the issue of the grant to him was proper if Singho Appu had paid the half-improved value. Mr. Jayewardene then cited to me the case of the *Tasmania*.<sup>2</sup> There it was held that a Court of Appeal ought only to decide in favour of an appellant, on a ground there put forward for the first time, if it be satisfied beyond doubt, first, that it has before it all the facts bearing upon the new contention as completely as would have been the case if the controversy had arisen at the trial; and next, that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been offered them when in the witness box. I am not sure that this ruling would apply to a system of procedure in which the framing of issues at the trial is an essential step except to the extent of admitting a new contention urged for the first time in the Court of Appeal, which, though not taken at the trial, is still admissible under some one or other of the issues framed. Under our procedure all the contentious matter between the parties to a civil suit is, so to say, focussed in the issues of law and fact framed. Whatever is not involved in the issues is to be taken as admitted by one party or the other, and I do not think that under our procedure it is open to a party to put forward a ground for the first time in appeal unless it might have been put forward in the Court below under some one or other of the issues framed, and when such a ground, that is to say, a ground that might have been put forward in the Court below, is put forward in appeal for the first time, the cautions indicated in the case of the *Tasmania*<sup>2</sup> may well be observed.

I see no reason to disagree with the Commissioner in his decision on the question as to prescriptive possession.

*Affirmed.*

<sup>1</sup> (1911) 14 N. L. R. 437.

<sup>2</sup> (1890) 15 A. C. 223.