

Present : Pereira J.

NONIS v. TAMEL.

131—P. C. Chilaw, 35,910.

Crown costs—Appeal.

An appeal lies from an order purporting to be an order condemning a complainant in Crown costs, so long as it is not an order duly made under section 197 of the Criminal Procedure Code.

THIS was an appeal from an order condemning the complainant to pay Crown costs.

E. W. Jayawardene (with him *E. T. de Silva*), for the appellant.

Balasingham, for the respondent, raised the preliminary objection that an appeal did not lie against an order to pay Crown costs. [*Pereira J.*—Has it not been held that an appeal lies against such an order if it was made, as in this case, without giving the complainant an opportunity of urging his objections to such order being made?] Yes (*Silva v. Joana*¹). But section 198 of the Criminal Procedure Code does not permit an appeal under any circumstances.

The non-compliance with the provisions of section 197 is an irregularity, and the present appeal is on a point of law. But section, 198 does not make any distinction between appeals on points of law and on questions of fact, as section 335 does. The appellant should have applied to this Court by way of revision.

Jayawardene, for the appellant. It has been held in several cases that an appeal lies where the procedure laid down in section 197 has not been complied with. The order is *ultra vires* and is not protected by section 198. Counsel referred to 2 *Weerakoon* (*S. C. D.*) 78 ; *Koch* 43.

Cur. adv. vult.

February 20, 1914. PEREIRA J.—

This is an appeal from an order purporting to be an order for the payment of Crown costs. Objection has been taken that no appeal lie from such an order. No doubt if the order was in fact an order under section 197 of the Criminal Procedure Code no appeal would lie from such an order. No doubt if the order was in fact an order an appeal would lie from it under the general right of appeal allowed by section 338. Now, as provided for by the section itself, a

¹ (1905) 2 *Bal.* 60.

1914.
PEPERA J. necessary preliminary to an order under section 197 is to record and consider any objection which the complainant may urge against the making of the order. Without this preliminary, the order can hardly be said to be an order under section 197. It would, indeed, be an order that is *ultra vires*; and as this Court has held in more than one case (see 2 *Weerakoon's Reports* 78, *Koch's Reports* 43) an appeal would lie from such an order.

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For these reasons an appeal lay from the order referred to, and for the same reasons the order cannot be supported, and I set it aside.

Set aside.

