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In the Matter of the Forest Settlement Inquiry regarding the Land called Chetty Chena at Puttalam.

SEGO NAINA *et al.*, Claimants.

"The Forest Ordinance, 1885"—Inquiry by forest settlement officer—How far his decision binds Crown or claimants—Question of title—Land at the disposal of the Crown—Meaning of "try and determine" as used in s. 5 of Ordinance No. 1 of 1892.

In an inquiry under section 9 of Ordinance No. 10 of 1885 into claims made to certain lands proposed to be constituted a reserved forest, it appeared that for a quarter of a century there had been disputes between one set of claimants and the Crown as to the greater part, if not the whole, of such lands; that in contest with persons claiming title under the Crown, the claimants had obtained decrees in their favour from a competent court of justice for areas within the limits of such lands; that for some years there were negotiations for the settlement of disputes as to the whole area between the claimants and the Crown; and that at one time the Crown granted allotments within the limits of such lands to persons who, on complaint that they were not allowed to enter on those allotments by the claimants, had their payments of the price restored to them—

Held by BONSER, C.J., and WITHERS, J., that in these circumstances it was not a proper use of the Ordinance to apply it to the settlement of the disputes aforesaid between the Crown and the claimants, inasmuch as it was not intended by the Ordinance that an inquiry should be held under it into a claim to title which could only be effectively settled by action in a court of justice.

LAWRIE, J., while having no doubt that, in the circumstances, the best course would have been to have had the question of title decided in an action in the District Court, could not say that the course adopted by the Crown was illegal.

Per WITHERS, J.—If a forest settlement officer decides to reject a claim to any parcel of land, his decision is not binding on the claimant so as to conclude him from establishing his right of property in a court of law. If, on the other hand, the forest settlement officer decides that an area of the land is not at the disposal of the Crown, the Crown is not prevented from establishing its title in a court of law.

Per LAWRIE, J.—The words "try and determine," as used in section 5 of Ordinance No. 1 of 1892, do not mean a regular trial *inter partes*. They mean an inquiry at the close of which the forest settlement officer shall give a decision on the question of title, only for the purpose of the Ordinance, leaving to the claimant, if unsuccessful, his common law rights.

ON the 24th April, 1893, a notice was published by order of the Governor in the *Government Gazette*, under section 6 of Ordinance No. 10 of 1885, declaring that Government proposed to constitute certain lands in the District of Puttalam, described in the notice, a reserved forest, and naming Mr. H. L. Moysey Forest

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Settlement Officer to inquire into claims. On the 31st May, 1893, Mr. Moysey, as such officer, published a notification as required by the Ordinance calling upon claimants to present written statements of claim before the 15th September following, or to appear before him at a place named in the notice on the 20th September and make personally statements of claim to him. On the 15th September Mr. Moysey received a written statement of claim from the claimants referred to above. He had already received a formal statement of claim on behalf of the Crown signed by the Assistant Government Agent of Puttalam. On the 20th September, 1893, he opened the inquiry, when the claimants appeared by counsel and took certain objections to the proceedings. The order on those objections was appealed from by the claimants, and after the return of the record from the Supreme Court the claims were on the 3rd October, 1894, inquired into in the presence of counsel for the claimants and the Crown, the issue formulated for trial being, whether the land specified in the notice of the 24th April, 1893, was at that date at the disposal of the Crown. The evidence led showed that this very question had arisen some forty years before the notice published in the *Gazette*, and that for many years there had been disputes, and negotiations to settle such disputes, between the claimants and the Crown, and litigation between the claimants and persons claiming title under the Crown, in respect of large areas of the land in question. The Forest Settlement Officer found that the entire land, save as to certain rights of way over it acquired by the public, was land at the disposal of the Crown. The claimants appealed.

Dornhorst and *Van Langenberg*, for claimants, appellants.

Templer, Acting S.-G., for the Crown.

Cur. adv. vult.

11th August, 1896. WITHERS, J.—

I have been singularly embarrassed all through this appeal by there being no exact evidence of the distinctive character of the land which it was originally proposed to constitute a reserved forest under the provisions of the Forest Ordinance, 1885.

One would have thought there would be little difficulty in doing so, when one bears in mind what land can by that Ordinance be constituted a reserved forest. It is land at the disposal of the Crown and that is defined as all land "which under Ordinance "No. 12 of 1840 is presumed to be the property of the Crown "until the contrary be proved," saving certain rights under that

Ordinance and No. 1 of 1844, the acquisition of rights under duly registered grants or leases made by British, Dutch, or Native Governments, and lands registered as temple lands under Ordinance No. 10 of 1856. As the Chief Justice observed in the course of argument, for the earlier words, " which under Ordinance No. 12 of " 1840," &c., might well have been substituted the words, " all forest, " waste, unoccupied or uncultivated lands." One witness spoke of the land as being partly forest and partly open land; but the word " open " is so inexact as to be useless.

The whole body of the evidence, however, seems to disclose the fact that not a little of this land is occupied and cultivated. In the southern part is a church; along the winding creeks which break up the land into three parts and constitute barriers across the land are occupied sites of ground. In the upper portion of the " land " there are extensive areas under cultivation. Such being the apparent character of the entire land, I find it difficult to understand how it could have been proposed to constitute the land a reserved forest. Further, the discussion of the case left me in some little doubt as to what are the duties and powers of the forest settlement officer who is appointed to conduct an inquiry into claims of right put forward in respect of " the land," and what is the nature of the inquiry, and who, if any, may be said to be the parties to that inquiry.

By section 6 of Ordinance No. 10 of 1885 the forest settlement officer is appointed " to inquire into and determine the existence, " nature, and extent of any rights claimed by or alleged to exist " in favour of any person in or over any land comprised within " the limits " specified in the published notice. I leave claims to chena practice out of account. By section 7 three months are to be fixed by the notice as from the date of publication, and within that time persons claiming any right are to present to the forest settlement officer a statement in writing specifying their claims, or to appear before him and state the nature of such right. By section 9 such statements are to be recorded in writing by the forest settlement officer who is to inquire into claims not made as well as to claims so made, and he is further to consider and record any objection which a forest officer may make to such claims or the existence of such rights. By section 10 the forest settlement officer has to make up in a separate file a record of all the evidence, oral or documentary, and his finding or decision as to each claim and his reason therefor and his orders thereon are to be duly entered of record. By section 11 and Ordinance No. 1 of 1892, section 4, the forest settlement officer, for the purpose of

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such inquiry; decision, and orders, has the powers of Commissioners appointed under Ordinance No. 9 of 1872 to compel the attendance of witnesses and the production of documents and to administer oaths. By section 13 in the case of a claim to a right in or over any land other than the following rights—*i.e.*, right of way, to use of water, of pasture or forest produce—the forest settlement officer is to pass an order specifying the particulars of such claim and admitting or rejecting such claim, wholly or in part. If he admits the claim, he can treat for its surrender or exclude it from the limits, or the claim—if one to part of the land itself—may be acquired in the manner provided by the Land Acquisition Ordinances, 1876, and No. 6 of 1877.

Thus, according to Ordinance No. 10 of 1885 as unamended there was nothing in the nature of a suit about a forest settlement officer's inquiry. He was to entertain claims, indeed to call for them, and he was to listen to a forest officer's objections to any claim put forward, and in the end he was to include or exclude parcels claimed, allow or disallow rights, as the case might be. The " person " aggrieved might appeal. But Ordinance No. 1 of 1892 seems to have enlarged the scope of the inquiry and given to it the semblance of a trial; for by that the forest settlement officer is " to try " a " question of title," and the liberty to appeal is given to any " party to the proceeding."

I refer to the clause added to section 13, which is thus expressed: " If in any inquiry by a forest settlement officer any question shall " arise as to whether the land proposed to be constituted a reserved " forest is land at the disposal of the Crown, the forest settlement " officer shall have jurisdiction to try any such question of title for " the purposes of the Ordinance," and to section 9 of the later one which begins, " Any party to the proceedings who is dissatisfied " with the decision or order of a forest settlement officer in respect of " any claim made under section 13 or 14 may appeal to the Supreme " Court against such decision or order."

Now, the Government is solely concerned with the " question " of title " involved in the question whether land is or is not at the disposal of the Crown; but unless the Government intervenes in the inquiry it can hardly be regarded as a party to the proceeding if it desire to appeal from an adverse decision. But no provision has been pointed out to me for the due representation of Government at the inquiry.

I should have thought that an inquiry of the kind was on the presumption that the land was land at the disposal of the Crown. But even if the Government is represented at the inquiry and trial and they are thus parties to the proceedings, there is no

relation between them as between contending parties in a court of justice which makes a decision binding on both of them so as to determine the issue once and for all.

If a forest settlement officer decides to reject a claim to any parcel of land, his decision is not binding on that party so as to conclude him from establishing his right of property in a court of law. If, on the other hand, the forest settlement officer decides that an area of the land is not at the disposal of the Crown, the Crown is not prevented from establishing its title in a court of law.

Such seems to me to be the position and attributes of the forest settlement officer. Of course, if his decision and orders stand undisturbed in appeal, they bind the parties for all the legitimate purposes of the Ordinance.

Indirectly, the rejection of a claim to a land by a forest settlement officer drives the claimant into a civil court as a plaintiff; whereas if he is in the *bona fide* occupation or possesion of the land, he ought in fairness to be on the defensive and his rights of occupation and possession protected.

His plot once constituted a part of a reserved forest, he cannot use it without constant risk of incurring the pains and penalties of fine and imprisonment. The result points to the manifest intention of the Ordinance that an inquiry into a claim of title is purely incidental to the principal object of constituting a land a reserved forest.

No land, I take it, would be published as one fit for constituting a reserved forest, unless as a whole it was *primâ facie* distinctly characteristic as a forest, waste, unoccupied, or uncultivated land.

The principal object and one of great benefit to the public is the reservation of suitable land for forest purposes and supplying local demands for large and small timber, fuel, grass, and other forest produce. Incidental to that is the inquiry into claims of private rights conflicting with public needs.

The present case illustrates the use of the machinery of the Forest Ordinance for a purpose for which it was never intended, and for which it is not efficacious. What is clear from the evidence of this record and incontestable, is, that for the last quarter of a century there has been a notorious dispute between one set of claimants and the Government as to the greater part, if not the whole, of the large area of land sought to be constituted as a reserve forest. Their claim dates from a purchase from the Fiscal in 1833. Forty years after that, in contest with persons claiming title from Government, the claimant won decisions from a competent court of justice for areas within the limits specified

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in the notice published of the land in question, at least the northern, western, and eastern limits and at some point on the sea coast on the south.

For some years in the seventies there were negotiations for the settlement of disputes as to the whole area between the claimants' agent, a proctor, and the agent for Government for the district. Those negotiations, at one time trembling on a settlement, eventually came to nothing. Again, in the year 1885, the Government granted blocks of land within the limits of the land in the official notice and in the claimants' transfer, which were returned on its hands by the grantees, who, on the complaint that they were not allowed to enter on those blocks by the present claimants or those whom they represent, had their payment restored to them.

Was it intended by the Ordinance that in such circumstances an inquiry should be launched under an act for the constitution of a reserved forest, into a claim to title which could only be settled once and for all by a court of justice between actual parties, the claimants on one side and the Crown on the other ? I say emphatically, No.

The moment we find that from inadvertence an Ordinance is being put to a purpose for which it was never intended, I think it becomes our duty, if we have the power, to arrest and stay the proceedings taken to effect an illegitimate object of the kind.

The 9th section of the Ordinance No. 1 of 1892 permits us, in dealing with an appeal from a decision and order of a forest settlement officer, to make such order as the justice of the case may require.

I think the justice of this case peremptorily requires that the decision and order of the forest settlement officer in this case should be quashed ; and I would have such order made accordingly.

LAWRIE, J.—

The Governor of Ceylon (presumably for good reasons) decided that it was for the public advantage that these lands should be made a reserved forest.

One object of appointing and sending out a forest settlement officer in the ordinary case is to ascertain whether there be claimants to the whole, or any part, of the land which the Governor had been advised would make a good reserve forest.

In the present case it was known to Government, from proceedings before Mr. Lee, a former forest settlement officer for

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the same forest, that the whole land was claimed as their own by these claimants. I am decidedly of opinion that, under these circumstances, the best course would have been to have had that question of title decided in an action in the District Court; but I cannot say that the course adopted by Government was illegal. The amending Ordinance No. 1 of 1892 enacted: "If in any inquiry by a forest "settlement officer any question shall rise as to whether the land "proposed to be constituted a reserved forest is land at the disposal "of the Crown, the forest settlement officer shall have jurisdiction "to try and determine any such question of title for the purpose of "this Ordinance."

It is said that the words "If in any inquiry by a forest settlement officer any question shall arise" mean "if the question shall "unexpectedly arise." I am unable so to read the words. I agree that it would be an abuse of the Ordinance if Government were to use it for any other purpose than the settlement of claims in proceedings to settle the area of forest. I am not at liberty to hold that there was any other purpose in view. As was expected, the forest settlement officer received a claim to the whole land. He fixed a day for the inquiry. I do not see how (holding his commission and in view of the provisions of the amending Ordinance) he could decline jurisdiction.

I am of the opinion that the forest settlement officer mistook the nature of the proceedings which he had to conduct. They should have taken the shape of an inquiry into a claim, not of a trial *inter partes*. That was clear with regard to all proceedings under the original Ordinance; but it is suggested that the words "try any such question of title" in the amending Ordinance imply and involve a regular trial *inter partes*.

If a regular trial was necessary, then there was no trial in the strict sense; there were no pleadings and no issues. But in my opinion the words "try and determine" do not here mean a regular trial *inter partes*—they mean an inquiry at the close of which the forest settlement officer shall give a decision on the question of title, only for the purpose of the Ordinance, leaving to the claimant, if unsuccessful, his common law rights.

Holding this opinion, I think that the recognition of a proctor for the Crown was a mistake. The Crown was not a party to the proceedings. No burden of proof was laid on it. The claimants had to make out a good case. The burden was thrown on them.

This view of the nature of the proceedings is greatly in favour of the claimants.

If the proceedings were of the nature of a trial *inter partes* between the claimants and the Crown, the claimants would be

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met with the presumption in favour of the Crown arising from the Ordinance No. 12 of 1840, and with difficulties arising from the Prescriptive Ordinance not affecting Crown rights.

But if the proceedings be regarded as an inquiry *ex parte* before a non-judicial officer who is to be guided only by common sense and by feelings of justice, the claimants would succeed if they made out such a *primâ facie* case as would lead to success in a litigation with fellow-subjects. I read the evidence here as given not against the Crown, but to satisfy the Commissioner that the claimants had right to the land whether by title or by possession.

That was the footing on which the case was argued by the claimants appellants; and I see no good reason why judgment should not be given on the evidence as it stands.

I hold that the claimants have made out such a *primâ facie* case of right to the extent of marshy ground along the Puttalam lake (M 153) as entitles them to have that excluded from the proposed forest.

The decrees in the several District Court cases produced in my opinion almost necessarily involve the recognition of their right to the land M 153.

But as regards the large extent of jungle and open land A 704, C-I 704, K-O 704, G-S 704, Y 704, A-C 705, G 705, K 705, M 705, O 705, P 705, S 705, W 705, and lot 7,322–1,396: my opinion is that the claimants have not made out such a *primâ facie* right either by title or by possession as entitles them to have the lands struck out of the proposed forest.

This question of title may be raised again; it would, therefore, be improper to do more than give a verdict as of a jury, without reasons.

If I were to discuss the evidence point to point and were to express an opinion on the testimony of each witness, it would embarrass the parties and the Judge in the trial which may still take place as to title.

All I can (with propriety) say is, that I am not satisfied with the evidence led by the claimants.

I would sustain the judgment of the settlement officer (with variation already noted) on the ground that the claimants have not shown good cause why the greater part of the lands embraced in the Governor's Proclamation of the 24th April, 1893, should not be reserved as a forest under the Ordinance.

BONSER, C.J.—

It is sufficient to dispose of this case to observe that the question, whether the land proposed to be constituted a reserved forest was land at the disposal of the Crown, did not arise in the inquiry of the forest settlement officer, and that the forest

settlement officer had therefore no jurisdiction to try and determine such question of title under section 5 of Ordinance No. 1 of 1892. That question arose some forty years ago, and it was, it would appear, for the express purpose of settling that question that these proceedings were instituted.

I agree with my brother Withers that this is not a proper use of the Ordinance. If the Legislature, in its wisdom, is of opinion that the ordinary courts of justice of this Island are not competent to try questions of disputed title to land between the Crown and its subjects, it is open to it to establish a special court for that purpose and withdraw the cognizance of such questions from the ordinary tribunals; but it has not yet done so. And that being so, I am of opinion that the order proposed by my brother Withers is the proper order to make in this case.