1905.
November 8.

BAUMGARTNER *v.* VAN ROOYEN

D. C., Galle, 181 (*special*)

Surveyor appointed by Court—"Aggrieved person"—Duties of surveyor—Procedure—Ordinance No. 15 *of* 1889, *s.* 8, *s.-s.* 1.

A surveyor appointed by the Commissioner of Requests in a pending case having made two inconsistent plans of the same land, one of them being prepared entirely in accordance with the instructions of one of the parties to the suit, the Commissioner proceeded against him under section 8, sub-section 1, of Ordinance No. 15 of 1889, on the ground that he was incapable of discharging his duties with advantage to the public.

Held, that the Commissioner was an "aggrieved person" within the meaning of section 8 of the Ordinance, and that he was entitled to proceed under that section against the surveyor.

Held, also, that the procedure need not be by petition.

A surveyor appointed by Court becomes an officer of court, and it is his duty to hold the scales equally between the litigants.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for appellant.

Van Langenberg, A. S. G., for respondent.

WOOD RENTON, J.—

In the present case Mr. Jayewardene has urged on behalf of his client all that could possibly be said, but it seems to me that the order of the District Judge was right and must be affirmed. Proceedings were taken against Mr. Van Rooyen under section 8,

sub-section 1 of Ordinance No. 15 of 1889. There is no contest as to the facts. In a case pending before the Court of Requests Mr. Van Rooyen was appointed to make a survey of certain lands in dispute. He prepared in fact two plans. In the plan dated July, 1901, he showed the disputed portion outside lot 1 of plan No. 513, and in the other plan he showed the disputed portion inside the same lot.

Mr. Van Rooyen admits that he made this startling change solely at the instance of the plaintiff, on whose application he had been appointed to make the second survey. It was suggested by Mr. Jayewardene that perhaps he may have been under the impression that since he was appointed at the instance of one party he was entitled to give effect to the view of that party as to the proper starting point from which to make his plan. It appears to me that this suggestion is inadmissible. Mr. Van Rooyen was an experienced surveyor, and he must have known that from the moment of his appointment he became an officer of the Court, and that his duty was to hold the scales equally between both litigants. If there are no legal objections to the decision of the District Judge, it seems to me to be absolutely correct on the facts. A surveyor for the Court who is capable of so surrendering his judgment as to act on the representations of one party alone is in my view "incapable of discharging his duties with advantage to the public." But Mr. Jayewardene has raised on behalf of his client two points of law. In the first place, he says the Commissioner of Requests was not an "aggrieved person" within the meaning of section 8 of Ordinance No. 15 of 1889. There are a great number of statutes in which the words "aggrieved person" occur, and each of these must be considered and construed on its own merits.

For this reason I do not think that the English Trade Mark decisions, which have been cited to us, and which will be found summed up in Mr. Kerly's book on Trade Marks (pp. 265, 271), apply. But it is clear that the English Courts, even in these decisions, have considered that the object of the Legislature in making use of the words "aggrieved person" was to exclude common informers and other persons who had no *locus standi*. I hold that the same reasoning applies to the construction of the Ordinance before us in the present case. The Commissioner of Requests was an "aggrieved person." He had made an order within his jurisdiction which had been disobeyed, and he was entitled to prefer a complaint before the tribunal which the Colonial Legislature has indicated, namely, the District Court. In the second place, Mr. Jayewardene contended, that even if the Commissioner of Requests was an aggrieved person, he ought to have proceeded by petition. This objection

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was not taken in the Court below, and even if it had been so taken I think it would have been untenable. No form of petition is prescribed by the Ordinance. The whole scheme of the Ordinance is that the procedure should be summary, and I think that the District Judge could competently act upon any statement which was in the nature of a request that he should deal with the facts. The District Judge's decision is sound, and it must be upheld.

GRENIER, A.P.J., agreed.