APPELLATE CIVIL.

Before Mr. Horace Owen Compton Beasley, Chief Justice and Mr. Justice Curgenven.

VENKATARAMA AYYAR (PETITIONER), APPELLANT,

1930, February 5.

v.

THE COLLECTOR OF TANJORE (RESPONDENT), RESPONDENT.*

Land Acquisition Act (*I of* 1894), *sec.* 9 (2) *and* (3)—*Necessity to give fifteen days' notice under—Absence of such interval, effect of, on sec.* 25—*Waiver, requisites of.*

A public notice under section 9 (2) of the Land Acquisition Act (I of 1894) requires at least fifteen days' interval between its publication and the time at which claimants to the land are required to state their objections and make their claims.

Section 9 (3) which enacts that "the Collector shall also serve notice to the same effect" on the occupier and others interested in the land, means that there must be in the case of such personal notices also a similar interval of at least fifteen days between the date of the service of such notices and the date when they are required to state their objections and claims.

It is only when such interval has been given by the notices under section 9 (2) and (3) that the stringent provisions of section 25 (2) can be applied.

Where in answer to a notice issued under section 9 (3) which gave only nine days' interval, a claimant appeared before the Land Acquisition Officer and replied to a question of his that he did not know the value of his land, and the Government did not show that the claimant knew that he was entitled to at least fifteen days' notice, when giving the reply,

Held, that though by the above reply the claimant failed to make a claim to compensation there was no waiver of the requisite notice.

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* Appeal No. 361 of 1928.

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APPEAL by the claimant against the order of the Court of Subordinate Judge of Tiruvarur in Land Acquisition Original Petition No. 16 of 1926.

The facts are fully given in the judgment.

T. Rangachari (with him *R. Seturama Sastri*) for appellant.—The notice served on me did not call upon me to make a claim. The notice gave me only 9 days' time to make my objections. It is invalid as I am entitled to at least 15 days' notice under section 9 (3) of the Land Acquisition Act. Even if I appeared before the officer on insufficient notice, the trial could not go on unless I had waived my right to a proper notice. There is no evidence in this case that I knew that I was entitled to at least 15 days' notice and that I waived it. I rely on *Krishna Sah* v. *The Collector of Bareilly*(1), *Collector of Chingleput* v. *Kadir Mohideen Sahib*(2) and *Rameswar Singh* v. *Secretary of State for India*(3). Section 25 can apply only if the notice is proper.

Government Pleader (*P. Venkataramana Rao*) for respondent.—The notice that was served demanded the claimant to state his objections and to make a claim. Fifteen days' interval is required only in cases coming under section 9 (2) and section 10 (1) and not by section 9 (3). The public notice under section 9 (2) gives sufficient time and that is sufficient for all purposes. Even if 15 days' notice was necessary it must be deemed to have been waived by the claimant appearing within the 15 days and making a statement before the Officer. Absence of 15 days' notice may be a "sufficient reason" within section 25 (2) and (3) to make a claim later but does not vitiate the proceedings. The claimant had really no claim to make and this technical objection is an afterthought. The cases quoted by the appellant can be distinguished; see also *Birbal* v. *The Collector of Moradabad*(4).

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—The petitioner's lands in Naduvacheri village were acquired to the extent of 47 cents in accordance with the scheme sanctioned in G.O. No. 3559, Revenue, dated the 10th November 1917. The award of the Land Acquisition Officer is dated the

(1) (1917) I.L.R., 39 All., 534.
(2) (1926) 50 M.L.J., 566.
(3) (1907) I.L.R., 34 Calc., 470.
(4) (1926) I.L.R., 49 All., 145.

17th November 1925. After the award was made, the petitioner put in an application on the 22nd December 1925 under section 18 of the Land Acquisition Act (I of 1894), requiring the matter to be referred to the Subordinate Court on the ground that there had been a gross undervaluation of the properties acquired. Under section 25 (2) of the Act, when an applicant has omitted without sufficient reason to make a claim, the amount awarded by the Court, i.e., the Subordinate Court, shall in no case exceed the amount awarded by the Collector. The learned Subordinate Judge held that the appellant had omitted to make a claim under the Act and that such omission was without sufficient reason. Upon that finding he could not under the Act award an amount in excess of the amount awarded by the Collector but nevertheless he proceeded to deal with the case on its merits.

Two preliminary questions have to be decided here before the case can be considered on its merits. The first point is whether the notice issued by the Collector under section 9 of that Act complies with the provisions of sub-sections (2) and (3) of that section, as it is contended on behalf of the appellant that the notice did not call upon him to make a claim for compensation. The second point is that the notice does not comply with the provisions of those sub-sections because the notice served upon the appellant was served upon him only on the 17th October 1925 whereas he was called upon to appear before the Collector, in this case, the Labour Officer, on the 26th October and hence he was only given nine days' notice and it is contended that he was entitled to not less than fifteen days' notice after the date of the publication of the notice.

With regard to the first point, the personal notice to the appellant is Exhibit N. It is a notice issued under

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sections 9 (3) and 10 of the Land Acquisition Act and it states as follows :—

"The Government are going to acquire the lands mentioned in the list hereunder under Act I (India) of 1894. You shall appear either in person on the 26th October 1925 before me at Nannilam camp or by an authorized agent and inform the nature of the right you possess in these lands, the amount due to you out of the amount of compensation to be given for the said right, and objections if any in respect of the measurements made according to section 8. You should prepare a written statement and the same signed either by you or by your authorized agent should be presented."

The notice then goes on to call for the particulars required under section 10 of the Act. It is contended by Mr. Rangachariar that this notice does not call upon the appellant to put in his claim. Section 9 (2) of the Act says—

"Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interest, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent."

Sub-section (3) states—

"The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf within the revenue district in which the land is situate."

The notice under sub-section (2) is the public notice and that under sub-section (3), the personal notice. Exhibit N is the personal notice and it is to be observed

that it is to be to the same effect as the notice in sub-section (2). The particulars of the land so needed were set out in the list sent with that notice and in it the applicant was told to appear either personally or by an authorized agent on a date mentioned, namely, the 26th October and at a place mentioned, namely, the Nannilam camp and to state the nature of the right he possessed in the land, the amount of compensation to be given for such right and objections, if any, to the measurements made under section 8. He was further required to prepare a written statement and sign it and present it. Mr. Rangachariar contends that this notice does not call upon the appellant to state his claim to compensation because he is merely called upon to inform the nature of the right he possesses in the land and the amount due to him out of the amount of compensation to be given for the said right. He contends that this is not the same thing as calling upon him to state the amount and the particulars of his claim to compensation for his interest in the land. It seems to me that such an argument is wholly untenable. No other construction can be put upon Exhibit N except that it is a notice calling upon the appellant to claim an amount of compensation due to him for such interest as he possesses in the land under acquisition. In my view, the notice in this respect clearly is in accordance with the provisions of section 9 and I cannot for one moment credit the statement that it is ambiguous and likely to be misunderstood by the appellant. This contention therefore fails.

On the second point, what has to be considered is whether it is necessary for the Collector to give at least fifteen days' notice from the service of the notice to the date of the appearance of an applicant before him, for admittedly Exhibit N gave only nine days' notice; and

if fifteen days' notice is requisite, then it is contended by Mr. Rangachariar on behalf of the appellant that the omission to give that notice must be held to be a sufficient reason for the omission of the appellant to make a claim. It is conceded by Mr. Rangachariar that he did not make the claim required by the Act. It is quite clear that the Act requires a claimant to state the amount of compensation he is claiming, and on page 1 of the pleadings there is the statement of the appellant made to the Labour Officer on the 26th October 1925 and there he said that he received a notice directing him to submit his objections, that no one had any right over his lands under acquisition by way of mortgage, that he had not got any sale-deed to show the price of land in the village and that he could not state the value of the land. This statement was made by him in answer to questions put to him by the Labour Officer. He therefore clearly did not make such a claim as is required by the Act. But Mr. Rangachariar contends that the personal notice under section 9 (3) of the Act makes it requisite that an applicant should have at least fifteen days' notice. The sub-section does not state that he must have such a notice but it is argued that as it is provided that the notice must be to the same effect as in section 9 (2), all the conditions of the latter notice apply to the notice under sub-section (3). On the other side, the learned Government Pleader argues that fifteen days' notice is not necessary in the case of the notice under section 9 (3) of the Act, because the notice thereunder is merely to be to the same effect as the notice under sub-section (2) and that the notice under the latter sub-section, although it must give an interval of at least fifteen days, does not state in the body of it that the interval is one of at least that time. That, of course, is quite true because the notice merely states the

date and the time of the appearance of the applicant. He argues that it is only necessary that there should be an interval of fifteen days from the date of publication of the notice under section 9, sub-sections (1) and (2) and, if that notice has been given, then it does not matter if the notice under sub-section (3) gives a shorter time to the applicant. But if it is important for the applicant in the public notice to have fifteen days' notice at least, it is difficult to see why he should have any shorter notice in the notice served upon him personally. On the contrary, it appears to be more important that he should have the requisite notice in the personal notice than in the public notice. The latter he may never see and therefore the former may be the only notice he receives calling upon him to make his claim. For example, there are cases, which must by no means be uncommon, where the applicant either lives in another place or has gone away on business to another place. If such a person has to rely merely on the public notice, he may receive no notice at all. On the other hand, the personal notice does, or ought to, reach him wherever he may be, and it seems to me obvious that in such cases he must have sufficient time in which to prepare his claim. Section 9 (2) by providing for a notice of at least fifteen days makes that a reasonable notice and I cannot see why in the case of the personal notice the applicant should not be entitled to an equally reasonable notice. The learned Government Pleader argues that, in the case of which I have given an example, it might be a ground for holding that the applicant had sufficient reason for omitting to make a claim but the intention of the Act is to get persons to come forward with their claims and not to enable them to be absent and make no claim and thereafter be excused. It seems to me that the spirit of the Act is that a person should have a

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reasonable notice served upon him in order to give him time to formulate his claim. The importance of the fifteen days' notice was considered in *Krishna Sah* v. *The Collector of Bareilly*(1), where it was held that, under section 9 (3) of the Act, the occupier of land concerning which a public notice has been given under sub-section (1) of the section is entitled to such notice as will give him, in the same manner as the person mentioned in sub-section (2), fifteen days' interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation. In that case, the publication of the notice was on the 18th July and the date required for appearance before the Collector was the 24th of July, clearly a much shorter period than that prescribed by the section. The personal notice, namely, that under sub-section (3), was served on the 16th July and that was also less than fifteen days' notice. On page 535 of that case, in the judgment, it is stated :—

> "There is no reason why the occupier should not have the same time allowed him within which to make his objection as other persons. We think that the words 'to the same effect' in clause (3) really mean that the second notice should have the same matters mentioned in it, including the time, as the first notice."

It is not clear from this judgment whether the Court decided that the applicant in the personal notice should have at least fifteen days from the date of the public notice or whether he should have at least fifteen days from the date of the service of the personal notice upon him. But I think that it must follow that the fifteen days must be from the date when the matter is brought to his attention, because, as I have already stated, the public notice may escape the appellant's attention. This

(1) (1917) I.L.R., 39 All., 534.

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question was also considered by a Bench of this Court in *Collector of Chingleput* v. *Kadir Mohideen Sahib*(1), where it was held that where the notification under section 9 does not give the claimant the fifteen days' notice as required, it amounts to "sufficient cause" within the meaning of section 25 (3) of the Act for the claimant's omitting to make a claim and he thereby escapes the application of the stringent provisions of section 25 (2). KRISHNAN J. in his judgment states :—

"The objection based on section 25 (2) of the Land Acquisition Act (I of 1894) is clearly untenable. Clause (1) says that the claim for compensation has to be made 'pursuant to the notice given under section 9' and this makes a proper notice a pre-requisite. Now, as shown by the District Judge and by my learned brother, such a notice was not given in this case, the notices all being defective in one way or another. The claimant's omission, therefore, to make a claim before the Deputy Collector was not without 'sufficient reason' and he escapes the application of the stringent provisions of clause (2) to his case."

It must be noted that in this case, in addition to not giving the claimant fifteen days' notice, the property intended to be acquired was not clearly defined. But that does not affect this question. There is however a later decision of the Allahabad High Court, *Birbal* v. *The Collector of Moradabad*(2), in which a view contrary to that taken by the same Court in *Krishna Sah* v. *The Collector of Bareilly*(3) was taken. There it was held that the rule requiring an interval of fifteen days between the issue of the public notice provided for by clause (2) and the hearing of claims by the Collector does not apply to the personal notice issued under clause (3). *Krishna Sah* v. *The Collector of Bareilly*(3) does not appear to have been brought to the notice of the Court and there is no reference to it whatever in the judgment and I am not

(1) (1926) 50 M.L.J., 566. (2) (1926) I.L.R., 49 All., 145.
(3) (1917) I.L.R., 39 All., 534.

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inclined to accept this case as accurately deciding this question. In *Rameswar Singh* v. *Secretary of State for India*(1) there are some very valuable observations. That was a case under the Land Acquisition Act and the notice under section 9 of the Act did not contain the material facts which would enable the land-owner to identify the land intended to be taken up and the notice fixed less than the prescribed time to prefer claims. It was held that these were irregularities and a suit for damages for permanent injury caused by the acquisition of the land was maintainable in the Civil Court. In dealing with the irregularity of the notice in point of time, in the judgment of the Court on page 480, it is stated that:—

"Where the Statute requires that the notice should give the owner a prescribed time, after the expiry of which claims and objections might be preferred, a notice which fixes a shorter time is in contravention of the Statute, and is consequently defective. The principle is that no man shall have his rights determined without the opportunity to be heard in his defence and where the Statute prescribes the mininum period, which the person affected is to have, for submission of his defence, such time cannot be allowed to be reduced. In order to give validity to the proceedings and finality to the award in which they terminate, the power of acquisition with all statutory limitations, and directions for its use, must be strictly pursued; every essential pre-requisite to the jurisdiction called for by the Statute must be strictly complied with."

In that case, the judgments of the Privy Council in *North Shore Railway Co.* v. *Pion*(2) and of the House of Lords in *Herron* v. *Rathmines*(3) were referred to. In the latter case, Lord MACNAGHTEN observed that where the promoters of a public undertaking have authority from Parliament to interfere with private property on certain terms, any person whose property is interfered with

(1) (1907) I.L.R., 34 Calc., 470.

(2) (1889) 14 A.C., 612.

(3) [1892] A.C. 498.

by virtue of that authority has a right to require that the promoters shall comply with the letter of the appointment so far as it makes provision on his own behalf. I entirely agree with the views expressed by the Calcutta High Court in *Rameswar Singh* v. *Secretary of State for India*(1), the Allahabad High Court in *Krishna Sah* v. *The Collector of Bareilly*(2), and this High Court in *Collector of Chingleput* v. *Kadir Mohideen Sahib*(3). The stringent provisions of section 25 (2) of the Act can only be applied after a notice which is strictly in compliance with section 9, sub-sections (2) and (3) has been served upon the landowner.

A further point arises however, and that is whether the appellant by appearing before the Labour Officer, notwithstanding the fact that he had not received the requisite notice, must be held to have waived that requirement. The learned Government Pleader contends that he has done so and that this is merely a technical objection which ought, under the circumstances, to be brushed aside. In my view, it lies upon the Government Pleader to show that the waiver has been clearly established. It is not sufficient to show that the appellant appeared before the Labour Officer and answered certain questions that were put to him. It has not been shown that the appellant knew that he was entitled to at least fifteen days' notice; nor has it been shown that, if he had known that he was, he would not have asked for an adjournment and there is nothing to show that there has been any waiver by the appellant. The learned Government Pleader further argues that this ojection is a mere afterthought and that it was never put forward until the argument was addressed to the lower Court at the close of the case. But, in my

(1) (1907) I.L.R., 34 Calc., 470.
(2) (1917) I.L.R., 39 All., 534. (3) (1926) 50 M.L.J., 566.

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opinion, this cannot affect the value of the objection. It was argued by Government in the lower Court that the appellant was shut out from any enhancement of the Labour Officer's award by reason of his omission to make a claim. When that objection to the appellant's claim in the lower Court was urged, it was open, in my opinion, to the appellant to raise the point that the notice served upon him was defective in any respect even though that point had not been raised before. The appellant was therefore entitled to have the case considered on its merits. [After dealing with the evidence as to the value of the land acquired, his Lordship concluded as follows :—]

In the result, the claimant will get compensation at the rate of Rs. 18 per cent. for the sites in the Sudra quarters and Rs. 12 per cent. for the sites in the Cheri, besides the 15 per cent. compensation due to him. With regard to damages, I do not think that any case for awarding damages has been made out by the appellant and therefore he will get nothing in that respect. The claims for severance and for the value of trees were given up here in the course of the argument. The appellant is ordered to pay half the costs of the respondent. Interest is allowed on the amount awarded at six per cent. per annum from the date of possession, namely, the 2nd December 1925, up to the date of payment.

CURGENVEN J.

CURGENVEN J.—The first contention raised in this appeal is that the learned Subordinate Judge was wrong in deciding, with reference to the terms of section 25 (2) of the Land Acquisition Act, that the applicant had omitted without sufficient reason to make a claim, with the result that the Court was precluded from awarding more to him than the sum fixed by the Collector. In support of this contention, two reasons are given for the applicant's failure. The first has

reference to the wording of the notice, Exhibit N, issued under sub-section (3) of section 9 and section 10 of the Act. I agree that the notice clearly calls upon him to state the amount of compensation which he claims, although the language may not be a verbatim transcript from section 9 (2), and that there is no substance in this objection. The second point taken is that, whereas the latter provision prescribes an interval of fifteen days, the applicant was given only nine days from the 17th October, when the notice was served upon him, to the 26th October when he was required to appear to make his claim. The learned Government Pleader takes up the position that whereas a fifteen days' interval, reckoned from the date of publication, is prescribed for the public notice under sub-section (2) of section 2, no such condition attaches to a notice issued under sub-section (3) to the owner or occupier of the land. I think that this view must be rejected upon a right construction of the Act. Sub-sections (1) and (2) of section 9 enumerate the various particulars which a public notice must comprise; in particular it—

> "shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land" etc.

Sub-section (3) says that the Collector shall also serve notice *to the same effect* on the occupier, etc. The learned Government Pleader would have us construe this as meaning that the latter notice must be in consonance with the public notice as regards the date of appearance, but that service of the notice is not thereby required to be not less than fifteen days before the date of hearing. I do not think that such a notice would be "to the same effect" as the public notice, because what the public notice in effect does is to give claimants a

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minimum period of fifteen days within which to present their claims. It is difficult to suppose that the intention of the Act is to deprive persons who are dependent for their information of the proceedings upon a personal notice of this right, while conceding it not only in the case of the public notice but also, as a reference to the section will show, in the case of requisitions under section 10 (1). This is the view that was taken in *Krishna Sah* v. *The Collector of Bareilly*(1), and although a later Allahabad case, *Birbal* v. *The Collector of Moradabad*(2), records a decision in the opposite sense, it is noteworthy that no reference is made in it to the earlier decision of the same Court and, except for the observation that the provision in clause (2) of section 9 relating to the fifteen days is not repeated in clause (3), the construction of the section is not further discussed. In *Collector of Chingleput* v. *Kadir Mohideen Sahib*(3), a Bench of this Court held that a claimant must be given at least fifteen days in the notice issued to him and, adopting this view, I conclude that, in this respect, the notice issued to the applicant was not in accordance with the terms of the Act.

It has then to be decided whether this defect furnished the applicant with sufficient reason to omit to make his claim. The notice was served on him, as I have said, on the 17th October and on the 26th he appeared before the Labour Officer, who was the Collector appointed for this acquisition, and made a statement which admittedly did not comprise a "claim" as that word is used in section 25. All that he said on the question of valuation was

"I have not brought any sale-deed to show the price of land in the said village. I cannot say the value of the land in my village."

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(1) (1917) I.L.R., 39 All., 534. (2) (1926) I.L.R., 49 All., 145.
(3) (1926) 50 M.L.J., 566.

In order to amount to a claim, the applicant should have assessed the value of the property in definite terms. In the two cases cited above, which held that a notice under clause (3) must give a minimum period of fifteen days, the claimant failed to make any statement at all and it is not difficult to hold that such a failure is attributable to the insufficiency of the time given, and therefore that he had sufficient reason for the omission. The learned Government Pleader argues that the present case is distinguishable because the claimant did appear and made a statement, and that it cannot be said that the inadequacy of this statement as a claim is traceable to any shortness in the notice. He draws attention also to the late stage at which exception was taken on the score of insufficiency of time and argues that the point was a mere afterthought and in no way affected the applicant's interests. It is no doubt true that the defectiveness of the statement given on the 26th is not clearly traceable to the cause pleaded, but I am not satisfied that this disposes of the applicant's objection. If a person makes no claim at all and the notice issued to him is found to have offended against the fifteen days' rule he may be deemed to have had sufficient reason for the omission, and it is difficult to see why another person, similarly handicapped, who does something more towards making a claim should be penalized, unless it be by an application of the doctrine of waiver. To apply this doctrine, it must, I think, be found that the applicant knew what his legal rights were and consented to forego them. In the present case I can find no sufficient reason to make this assumption, or to infer with certainty against the claimant that, if he had had due notice, he would not have presented a claim within the meaning of the Act. Where an officer whose duty it is to apply the provisions of an Act such as the Land

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Acquisition Act commits an error of procedure, I think that every presumption should be made in favour of the party likely to have been prejudiced by the error. This principle, in its application to the Act, will be found set forth and supported by the citation of a number of English and American cases in *Kamini Debi* v. *Pramatha Nath Mookerjee* (1) and, although that case dealt with the matter from the point of view of jurisdiction, I think, the observations are equally pertinent here where the application of section 25 is in question. Expressed in general terms, the conclusion I would reach is, therefore, that although it may be doubtful whether the insufficiency in the notice and the defectiveness of the statement were related as cause and effect, the presumption that this must have been so has not been successfully rebutted.

Apart from the question of insufficiency of notice, it appears to me that the applicant may be said to have had another sufficient reason for not making a claim. When he appeared, the Labour Officer took an oral statement from him which, had it comprised the necessary particulars, would have amounted to making a claim. It may be taken, I presume, that the Labour Officer knew what those particulars should be, and in particular that they should have included the applicant's own valuation of his property. The officer must be taken to have known also the penalty to which the applicant subjected himself by not furnishing this information. Did he explain to the applicant that it was necessary that he should put a price on his land and the consequences to him of the failure to do so? If not, may it not be said that he allowed the applicant to go away in the belief that he had complied with the

(1) (1911) I.L.R., 39 Calc., 33.

requirements of the Act, and that the adoption of such a course provided the applicant with sufficient reason for not having complied with them? On this ground too, I think, the applicant should not be precluded by the terms of section 25 (2) from questioning the Labour Officer's valuation.

There is finally another consideration, not adverted to in the arguments but which seems to me a valid objection to the application of section 25 (2). The claim contemplated in each of the three sub-sections of that section is to be "pursuant to any notice given under section 9," and where, as here, the notice issued is in some respect in contravention of the terms of section 9, I think the only logical conclusion is that the penalty which section 25 (2) imposes cannot be taken advantage of by the Government. [His Lordship then discussed the evidence as to the value of the lands acquired and concurred with the decision of the Chief Justice on this point and also as regards costs.]

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Jackson.

1930, February 11.

In re K. RAMARAJA TEVAN AND FIFTEEN OTHERS (ACCUSED), APPELLANTS.*

Code of Criminal Procedure, 1898, sec. 537—Assumption of failure of justice if mandatory provision infringed.

Section 537 of the Code of Criminal Procedure affords no real ground for the assumption that, if a mandatory provision of

* Referred Trial No. 155 of 1929 and Criminal Appeal No. 556 of 1929.