1942 *Present :* **Hearne and Keuneman JJ.**

VANDERPOORTEN *et al. v.* THE SETTLEMENT OFFICER.

120—D. C. Ratnapura, 6,940.

Land Settlement Ordinance, s. 24 (Cap. 319)—Land settled under the Waste Lands Ordinance—Proceedings under Land Settlement Ordinance—Waste Lands Ordinance, s. 20—Right of Appeal.

Proceedings under section 24 of the land Settlement Ordinance cannot be taken in respect of land settled under the repealed Waste Lands Ordinance, No. 1 of 1897.

An appeal does not lie from a decision under section 20 of the Waste Lands Ordinance, No. 1 of 1897.

APPEAL from an order of the District Judge of Ratnapura.

H. H. Basnayake, C.C., for respondent (on a preliminary objection).—The appellant has no right of appeal because the Land Settlement Ordinance, which is a special enactment which confers jurisdiction on the

[1] *18 N. L. R. 334.*

District Court to entertain claims, does not confer a right of appeal from a decision under section 24 of the Ordinance. Appeal does not lie unless it is expressly given. The words "The presentation of and the proceeding in relation to every such petition" are not sufficient to create such right of appeal—*Kanagasunderam v. Bodihame.*[1] The *King v. Joseph Hanson*[2]; *The Queen v. Stock*[3]; *Attorney-General v. Sillem*[4].

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C.*, and *E. G. Wickremanayaka*), for appellant.—Section 24 does give a right of appeal. The appeal is provided by sub-section (2) which provides that the "presentation and the proceedings in relation to every petition" shall be subject to the provisions of Chapter 24 of the Civil Procedure Code. This application is really an application under section 20 of Ordinance No. 1 of 1897, which is now repealed. The words "the foregoing provisions of this Ordinance shall be applicable to the investigation and trial thereof" are wide enough to confer the right of appeal. The mere fact that the wrong section is mentioned in the petition should not prevent the action to be treated as if the proper section had been mentioned. Later Counsel urged that the proceedings were under section 20 of Ordinance No. 1 of 1897, and that the right of appeal was conferred by that section. Although Ordinance No. 1 of 1897 had been repealed, section 6 (3) (c) of the Interpretation Ordinance kept the remedy alive under section 20. The proceedings were begun under Ordinance No. 1 of 1897 and concluded under that Ordinance. The remedy in section 20 was a step in these proceedings.

H. H. Basnayake, C.C., in reply.—Section 20 of Ordinance No. 1 of 1897 is a special remedy and not a step in Waste Lands Ordinance proceedings. The proceedings are concluded with the final order under that Ordinance now made in the form of a Settlement Order. The repeal of Ordinance No. 1 of 1897 has taken away this remedy, and with it the remedy under section 20 has gone. The Courts cannot legislate by providing a remedy where the legislature has provided none.

March 4, 1942. KEUNEMAN J.—

In this case, proceedings had been commenced in respect of the premises in question under the Waste Lands Ordinance. No. 1 of 1897. During the course of the proceedings, the Waste Lands Ordinance was repealed by the Land Settlement Ordinance in 1931 (now Chapter 319). The proceedings were continued under the Waste Lands Ordinance, and Final Order was made under that Ordinance as amplified by section 3 (3), and section 32 of the Land Settlement Ordinance.

Thereafter the appellants, purporting to act under section 24 of the Land Settlement Ordinance, presented a petition to the District Judge claiming the premises. This petition was dismissed with costs, and the present appeal is from that order.

It is clear, and was in fact eventually conceded by appellant's counsel, that the appellants cannot avail themselves of section 24 of the Land

[1] *19 C. L. W. 53.*
[2] *106 E. R. 1027.*
[3] *112 E. R. 592.*
[4] *11 E. R. 1200.*

Settlement Ordinance. The law applicable is contained in section 6 (3) (c) of the Interpretation Ordinance (Chapter 2) and is as follows :—

> "Whenever any written law repeals . . . . a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected—
>
> (c) any action, proceeding, or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal."

The only sections of the Land Settlement Ordinance which have any connection with this matter are sections 3 (3) and 32, but it is clear, on a reading of these sections, that the proceedings begun under the Waste Lands Ordinance are not after the repeal converted into proceedings under the Land Settlement Ordinance and that the Final Order made thereafter is not by virtue of section 32 converted into an order under section 3 of the Land Settlement Ordinance. Section 24 of the Land Settlement Ordinance has therefore no application to this case.

It follows that the petition so far as it relates to section 24 of the Land Settlement Ordinance is misconceived, and it is not necessary to consider further the effect of this section.

Counsel for the appellants, however, contends that this petition constitutes a good and sufficient claim under section 20 of the Waste Lands Ordinance, and that the District Judge should have so treated it. He is met by the objection that no appeal lies from an order made under this section, but counters this by arguing that the words in section 20 "the foregoing provisions of this Ordinance shall be applicable to the investigation and trial thereof" bring in the right of appeal under section 18.

It has been laid down in *The King v. Joseph Hanson* [1] that "the rule of law is that though a *certiorari* lies, unless expressly taken away, yet an appeal does not lie", and this dictum was affirmed in *The Queen v. Stock* [2]. "A right of appeal cannot be implied, but must be given by express words". See also *Attorney-General v. Sillem* [3]. These cases have been recently considered and followed in *Kanagasunderam v. Podi Hamine* [4].

Has the power of appeal been given by express words in respect of section 20 of the Waste Lands Ordinance? Undoubtedly one of the "foregoing provisions" is section 18, which confers a right of appeal in respect of a reference under sections 5 and 6. But the foregoing sections are made applicable to "the investigation and trial." Have these words a limiting effect?

I think they have. Under section 16, the duty of the Commissioner or District Judge is to examine the claimant or his agent, and the witnesses of the parties, to inspect the documents of the parties and to make any further inquiry that may be necessary, and thereafter to pass such order as he may consider just and proper. Under section 17, whenever the Commissioner or District Judge is of opinion that a fresh survey is

[1] *106 E. R. 1027.*
[2] *112 E. R. 892.*
[3] *11 E. R. 1200.*
[4] *19 C. L. W. 53.*

necessary "for the purposes of the investigation and trial" of the claim, he may cause the land to be surveyed.

I am inclined to think that the words "investigation and trial" have reference to the inquiry before the Commissioner or District Judge, and that the right to appeal is distinct and separate, and does not relate to the "investigation and trial.".

I do not think section 23, which has been referred to, throws any light on this matter, and it is not possible to interpret that section as conferring a right of appeal from an order under section 20.

I think the preliminary objection is a good one, and that there is no right of appeal in this case.

The appeal is dismissed with costs.

HEARNE J.—I agree.

Appeal dismissed.