[FULL BENCH.]

Oct. 18, 1910

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, Mr. Justice Wood Renton, and Mr. Justice Grenier.

RAMAN CHETTY *v.* WEERAPATIRAN KANGANY.

D. C., Kurunegala, 3,841.

Action against kangany on promissory notes executed before Ordinance No. 9 of 1909 came into operation — Judgment obtained after Ordinance came into operation—Kangany not liable to arrest.

Plaintiff sued defendant, a kangany, on February 10, 1910, on two promissory notes dated October 22, 1908, and January 24, 1909, and obtained decree in March, 1910.

Held, that the defendant was not liable to arrest for the debt. (1) (Per Hutchinson C.J. and Wood Renton J.) The plaintiff had, at the time when Ordinance No. 9 of 1909 came into operation, "acquired" no "right" to enforce his decree by imprisonment within the meaning of section 5 (3) (*b*) of Ordinance No. 21 of 1901. (2) (Per Wood Renton and Grenier JJ.) Apart altogether from the provisions of that Ordinance (No. 21 of 1901), section 19 enacted by Ordinance No. 9 of 1909 is retrospective.

Garnier v. Suppen Kangany[1] over-ruled.

THE facts of this case are fully set out in the judgment of Wood Renton J.

Sampayo, K.C., for the appellant.—The notes sued upon were made before the Ordinance No. 9 of 1909 came into operation; at the date when the Ordinance came into operation the plaintiff had acquired a right to recover his debt in the manner permitted by the law as it stood at the time of the making of the note. Section 5 (3) of Ordinance No. 21 of 1901 enacts that in the absence of express provision to that effect, a repeal shall not affect any right acquired under the repealed law. It has been held in *Garnier v. Suppen Kangany*[1] that section 5 of Ordinance No. 9 of 1909 does not contain any express provision giving that section a retrospective effect. The plaintiff in this case had, at the time the new Ordinance came into operation, acquired a right to recover his debt from the defendant—if need be by getting him arrested. [WOOD RENTON J.—Can it be said that a man has a vested right to put another in jail? Is not the arrest of a debtor merely a procedure provided by law for recovery of the debt?] No; it is

[1] *(1910) 13 N. L. R. 169.*

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not a question of procedure; it is a substantive right. Counsel referred to *Maxwell on the Interpretations of Statutes (4th ed.), pp. 321 and 327*, and *Orchard v. Carupai.*[1]

No appearance for respondent.

Cur. adv. vult.

October 18, 1910. HUTCHINSON C.J.—

On February 19, 1910, the plaintiff brought this action on two promissory notes dated October 22, 1908, and January 24, 1909, and in March he obtained a decree for payment. He issued a writ of execution, but his decree was not satisfied, and he then applied for execution by attachment and imprisonment of the debtor. The Court refused his application, and he appeals against the refusal. Section 5 of Ordinance No. 9 of 1909, which came into force on October 1, 1909, enacts that: "From and after the commencement of this Ordinance no kangany . . . . . shall be liable to arrest under the provisions of 'The Civil Procedure Code, 1889,' in execution of a decree for money." This section in effect repeals the provisions of the Civil Procedure Code as to arrest in execution of a decree for money so far as kanganies are concerned, and this defendant is a kangany. But the Interpretation Ordinance, No. 21 of 1901, section 5, enacts that a repeal shall not, in the absence of any express provision to that effect, affect (amongst other things) any right acquired under the repealed law, and the appellant contends that there is no such express provision in the Ordinance of 1909, and that the plaintiff had acquired a right under the Civil Procedure Code to have his debtor imprisoned. I have already expressed my opinion in *Garnier v. Suppen Kangany*[2] that the words "From and after the commencement of this Ordinance" do not constitute an express provision to the effect mentioned in the Interpretation Ordinance. But I do not think that any right had been acquired by the plaintiff before the Ordinance of 1909 came into force which was affected by that Ordinance. His only right was to have the debt due to him paid, and to enforce payment in accordance with the procedure in force at the time when he should apply to the Court. I would, therefore, dismiss the appeal.

WOOD RENTON J.—

This case, which has been referred to a Bench of three Judges by my brothers Middleton and Grenier, raises an interesting and important question under "The Indian Coolies' Ordinance, 1909" (No. 9 of 1909). The plaintiff-appellant sues the defendant-respondent for the recovery of Rs. 1,561.98, interest, and costs due on two promissory notes executed by the respondent, and dated respectively October 22, 1908, and January 24, 1909. The action, which was by way of summary procedure under chapter LIII. of the Civil

[1] *(1910) 2 Cur. L. R. 50.* [2] *(1910) 13 N. L. R. 169.*

Procedure Code, was instituted on February 19, 1910, and the appellant obtained judgment as prayed for on March 8, 1910. On March 14 the appellant applied for execution of the decree in his favour. Writ issued on April 4 against the respondent's property, but nothing was recovered thereunder, and on May 9 the Fiscal made his return to that effect. On the following day application was made on the appellant's behalf *ex parte* for a warrant for the arrest of the respondent in execution of the decree. The District Judge disallowed the application in these terms: "Refused. Estate labourers are immune from arrest." The present appeal is brought against that order, and our decision will turn on the construction of section 5 of Ordinance No. 9 of 1909, adding to Ordinance No. 13 of 1889 a number of new sections. We are here concerned with a provision which is directed to be numbered section 19. It is in the following terms:—"From and after the commencement of this Ordinance no kangany, subordinate kangany, or labourer shall be liable to arrest under the provisions of 'The Civil Procedure Code, 1889.' in execution of a decree for money."

Ordinance No. 9 of 1909 came into operation on October 1 in that year. In the present case the action was not instituted till after that date, namely, February 19, 1910, but one of the two notes on which the appellant sued was executed, and the case was argued before us on the basis that the debts in respect of which both notes were granted had been contracted before the new Ordinance came into operation. It was argued by Mr. Sampayo, on behalf of the appellant, that, inasmuch as the debts which formed the consideration for the promissory notes had been contracted under the old law, he had at the date when the new law came into force "acquired" a "right" under the old law within the meaning of section 5 (3) (*b*) of "The Interpretation Ordinance, 1901" (No. 21 of 1901), to have his judgment enforced by imprisonment, even although his action on the promissory notes had been instituted, and his decree had been obtained, after the commencement of the operation of Ordinance No. 9 of 1909. I am not prepared to accede to that contention. The only "right" which the appellant "acquired" by virtue of the respondent's indebtedness to him was a right of having payment of that debt enforced by whatever procedure the law for the time being recognized at the date of its enforcement. I have been unable to find any direct authority upon the question as to whether the right of enforcing a decree for the payment of a debt by a writ against the person of the debtor can be regarded as anything but a part of the ordinary machinery of the Courts for the enforcement of rights which has been judicially declared to be matter of procedure alone. There is one case, however, which throws considerable light upon the point. I refer to *Wright v. Hale*.[1] That case turned on the question as to whether retrospective

[1] *(1860) 30 L. J. Ex. 40.*

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effect should be given to section 34 of the Common Law Procedure Act, 1860 (23 and 24 Vict. C. 126), which enacted that when the plaintiff in any action for an alleged wrong in any of the Superior Courts recovers by the verdict of a jury less than £5, he shall not be entitled to any costs in case the Judge certifies that the action was not really brought to try a right, besides the mere right to recover damages; that the trespass or damage complained of was not wilful or malicious; and that the action was not fit to be brought. It was held by the Court of Exchequer that this enactment applied to actions tried after, although commenced before, the Act came into operation. Wilde B. expressed the *ratio decidendi* as follows: "What is the right the suitor has? The right of action is the right to bring the action; and what is the right to bring the action? Why, to have it conducted in the way and according to the practice of the Court in which he brings it; and if any Act of Parliament, or any rule founded on the authority of an Act of Parliament, alters the mode of procedure, then he has a right to have it conducted in that altered mode. That, therefore, takes away nothing; the right of action does not involve the right to keep all the consequences of that right as they were before. It gives him the right to have the action conducted according to the rules that are then in force with respect to procedure." That statement of the law was accepted as correct by the House of Lords in the case of *Attorney-General v. Sillem*.[1] It appears to me to govern the present case.

Mr. de Sampayo admitted that, in view of the English decisions on the point, he could not contest the proposition (see *Orchard v. Carupai*[2]) that the presumption against a retrospective construction of statutes does not apply to statutes of limitations. But he contended that in the present case something more than a mere rule of procedure is in issue, and that the right to use such an effective weapon as imprisonment for the recovery of debts is of a substantive character. It will appear, however, on reference to the English decisions which I have referred to above, and which are collected and discussed in the case of *Orchard v. Carupai*,[2] that it was because the English Courts held that the time within which a right of action or of prosecution can be enforced is a matter of procedure only, and is quite different from the right of action or prosecution itself, that the rule in question as to statutes of limitations was laid down. I cannot myself see any difference in principle between those cases and the one before us, in so far as it turns on the point of law with which we have here to deal, and if it were necessary to dispose of it on that point alone, I should be prepared to hold that the present appeal must be dismissed.

But, in view of the fact that there is no direct authority on the question, I do not think that we can avoid an expression of opinion on the further issue whether, even assuming that the right of the

[1] *(1864) H. L. C. 704.* [2] *(1910) 2 Cur. L. R. 50.*

appellant to enforce payment of his judgment debt by execution against the person of the debtor could be held to be a "right acquired" under the old law prior to the enactment of the new one, it has not been taken away by "express provision to that effect" within the meaning of section 5 (3) of Ordinance No. 21 of 1901. I need scarcely say that I desire to express my own opinion on this question with the utmost diffidence, in view of the decision of the Supreme Court on the point in *Garnier v. Suppen Kangany*.[1] I feel bound to say that I think the language of the new section enacted by Ordinance No. 9 of 1909 does give retrospective effect to the prohibition of imprisonment for debt which it contains. Mr. de Sampayo called our attention to the fact that the language used in section 5 (3) of Ordinance No. 21 of 1901 requires that the provision by which the enactment is made retrospective should be "express." I do not think that section 5 (3) of the Ordinance of 1901 either was intended to, or did, alter the general rule of the interpretation of statutes theretofore existing, by which retrospective effect might be given to an enactment either expressly or by necessary implication from the language used. It must be borne in mind that the object of such enactments as Ordinance No. 21 of 1901 is merely to obviate the necessity for the insertion of a saving clause in every enactment that is passed by the Legislature. In my opinion, the language of section 5 (3) does not enlarge the old canons of statutory interpretation as to the circumstances under which retrospective effect should not be given to any particular enactment. The new section that we have here to deal with appears to me to prohibit the arrest of labourers on civil process absolutely from and after the commencement of the Ordinance. It is obvious, of course, that the mere use of the words "from and after the commencement of this Ordinance" is not conclusive on the point. (See D. C., Matara, 26,376[2]). They occur at least in one other section of Ordinance No. 9 of 1909, namely, section 23 (1), with the construction of which it is not necessary at the present moment to deal, and they do not occur in section 30, which is, I think, clearly retrospective. At the same time the use of these words is a circumstance that has to be noted in the construction of the section, and taking them in conjunction with the wide and peremptory terms of the rest of that section, they appear to me to amount to a provision that no kangany, subordinate kangany, or labourer shall be liable to arrest under the provisions of "The Civil Procedure Code, 1889," in execution of a decree for money, irrespective of the date of the decree, or, for that matter, of the date when the debt on which it was founded was contracted. I record my own opinion on this point for what it is worth, and only because I feel that the decision of the case ought not to be left to depend on the correctness of my interpretation of the words "right acquired,"

[1] *(1910) 13 N. L. R. 169.* [2] *(1872) Gren. III. D. C. 55*

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in the absence of any direct judicial authority on the point, when there is another, and, as I venture to deem it, a stronger, ground on which the dismissal of the present appeal may be justified. On both of the grounds above stated, namely, (1) that the appellant had, at the time when Ordinance No. 9 of 1909 came into operation, "acquired" no "right" to enforce his decree by imprisonment within the meaning of section 5 (3) (*b*) of Ordinance No. 21 of 1901, and (2) that, apart altogether from the provisions of that Ordinance, section 19 enacted by Ordinance No. 9 of 1909 is retrospective, I hold that this appeal must be dismissed, and I agree with Grenier J. that it should be dismissed with the costs, if any, incurred by the respondent.

GRENIER J.—

The facts material to the decision of this appeal are not disputed, and the only question before us is whether or not a kangany is immune from arrest by virtue of the provisions of section 5 of Ordinance No. 9 of 1909. The words of the section are as follows: "From and after the commencement of this Ordinance no kangany, subordinate kangany, or labourer shall be liable to arrest under the provisions of 'The Civil Procedure Code, 1889,' in execution of a decree for money." When the case was first argued before my brother Middleton and myself, I thought that the section in question was clearly intended to have a retrospective effect in view of the way in which it was worded, and the apparent object with which provision was made in favour of a certain class of people protecting them from arrest under civil warrant. To my mind it seemed that the enactment was absolutely retrospective in its terms, and that the Interpretation Ordinance, No. 21 of 1901, did not limit or in any way affect the scope of its operation. On further consideration, although I have the misfortune to take a different view from that expressed in the case of *Garnier v. Suppen Kangany*,[1] I remain of the same opinion. I think there is express provision in the words of section 5 of Ordinance No. 9 of 1909 prohibiting arrest and imprisonment for debt in the case of persons referred to therein, and this being so it is unnecessary to discuss the effect of the Interpretation Ordinance on the section. I would dismiss the appeal with costs, if any.

Appeal dismissed.

[1] *(1910) 13 N. L. R. 169.*