1942. Subject therefore to any other defences which properly arise on the defendants' appeal, the conveyance to the plaintiffs must prevail over the later conveyance of the same allotments of land in favour of the first defendant in April, 1947.

The appeal must now be listed for argument in the normal way before a Bench of two Judges for the consideration of any other questions of law or fact which may arise upon the petition of appeal. The defendants will in any event pay to the plaintiffs the costs of the argument before the present Bench.

DIAS S.P.J.—I agree.

PULLE J.—I agree.

Appeal to be listed in due course.

1950 *Present :* Dias S.P.J., Nagalingam J. and Gratiaen J.

YAKOOB BAI, Appellant, *and* SAMIMUTTU, Respondent

S. C. 381—D. C. Kandy, M. S. 1,972

Civil Procedure Code (Cap. 86)—Section 218 (j)—Execution of decree to pay money—Judgment-debtor, a Head Kangany—Seizure of his wages, dearness allowance and pence money—Invalidity of such seizure—Meaning of "labourer"—Service Contracts Ordinance (Cap. 59), Section 2—Estate Labour (Indian) Ordinance (Cap. 112), Section 3.

In execution of a money decree entered against the defendant, the plaintiff seized the wages, dearness allowance and pence money of the defendant. It was established that the defendant was a Head Kangany who did no manual or physical work of any kind and that his duty was to supervise labourers who did the manual work.

Held, (Gratiaen J. dissenting), that an estate kangany employed merely to supervise a number of estate labourers is a "labourer" within the meaning of section 218 (*j*) of the Civil Procedure Code and that the seizure was, therefore, not valid.

APPEAL from a judgment of the District Court, Kandy. This case was referred to a Bench of three Judges owing to a difference of opinion between the two Judges before whom it had been previously listed.

H. W. Tambiah, with *G. T. Samarawickreme* and *S. Sharvananda*, for plaintiff appellant.—The question at issue is whether a kangany who merely supervises labourers and does no manual or physical work is himself a "labourer" within the meaning of section 218 (*j*) of the Civil Procedure Code. The Estate Labour Ordinance (Cap. 112) defines a "labourer" for the purpose of *that* Ordinance. This definition cannot be used for ascertaining the meaning of the word "labourer" as used in the Civil Procedure Code. One must look at section 218 of the Civil

Procedure Code itself. In *Girigoris v. The Locomotive Superintendent* [1] it was held that the wages due to a mechanic employed by the Ceylon Government Railway was not exempt from seizure as he was not a "labourer". In *Reddiar v. Abdul Latiff* [2] it was held that a lorry driver was not a "labourer" within the meaning of section 218 (*j*). In *Wickremetunge v. Perera* [3] a tramway conductor was held not to be a "labourer". A labourer is one who does manual work. In *Nagasamy v. Hamid* [4] it was held that the wages of a tindal is not liable to seizure. That case is distinguishable because the evidence showed that the substantial work done by the tindal was loading, unloading and arranging cargo. The question in the present case is whether a person who merely supervises labourers is himself a labourer. The trend of the cases is that manual work, that is, actual physical labour, is of the essence of the work of a "labourer". The burden was on the defendant to show that he came within the proviso to section 218, which should be strictly construed—*Sarkar's Civil Procedure Code, Vol. III, p. 516.* As to the meaning of the word "labourer" see *Jechand Khusal v. Aba* [5]; *Riley v. Warden* [6]; *Gordon v. Jennings* [7].

H. W. Jayewardene, for defendant respondent.—It is not correct to restrict the term "labourer" to those doing manual work only. Section 2 of the Service Contracts Ordinance (Cap. 59) defines the word "servant" to include "kanganies and *other* labourers". Section 3 of the Estate Labour Ordinance (Cap. 112) defines "labourer" to mean "any labourer and kangany (commonly known as Indian coolies) whose name is borne on an estate register". See *Nicol v. Kandasami* [8] and *Burrow's Words and Phrases Vol. III, p. 202.* Statutes *in pari materia* should be interpreted alike—*Beal's Cardinal Rules of Interpretation*, p. 402.

H. W. Tambiah, in reply.—The Service Contracts Ordinance and the Estate Labour Ordinance are not *in pari materia* with the Civil Procedure Code. The decision in *Nicol v. Kandasami* (*supra*) cannot be used to interpret section 218 (*j*) of the Civil Procedure Code—*Macbeth & Co. v. Chislett* [9].

Cur. adv. vult.

May 26, 1950. DIAS S.P.J.—

The plaintiff appellant obtained judgment against the defendant-respondent for a sum of Rs. 1,147·50 on a promissory note and issued writ. Under that writ the Fiscal seized the wages, dearness allowance and pence money of the defendant in the hands of the latter's employer. The defendant claiming that he is a "labourer" within the meaning of section 218 (*j*) of the Civil Procedure Code successfully moved the Court to have that seizure withdrawn. From that order the plaintiff appeals.

The appeal was first argued before my Brothers Nagalingam and Gratiaen; but as they disagreed as to whether the defendant was a "labourer", the question now comes before a Bench of three Judges.

[1] *(1912) 15 N. L. R. 117.*
[2] *(1928) 30 N. L. R. 95.*
[3] *(1939) 41 N. L. R. 95.*
[4] *(1912) 13 N. L. R. 525.*
[5] *(1880) 5 Bom. 132.*
[6] *(1858) 2 Exch. 59 at p. 68.*
[7] *(1882) 9 Q. B. D. 45.*
[8] *(1906) 1 S. C. D. 38.*
[9] *(1910) 79 L. J. K. B. 376.*

In the caption to the plaint and answer the defendant is described as "Samimuttu K. P. Kelevitotem, Hatton". In the promissory note dated 1947, on which the defendant was sued, he has signed as Samimuttu K.P. I presume "K. P." means "kanakapulle", i.e., a man who keeps accounts. At the inquiry held by the District Judge the witness Paul Raj, a clerk on the estate where the defendant is employed, stated that though the defendant was formerly a "kanakapulle", he was since 1948 the "Head Kangany" of the estate, and is described as such in the estate register D1. He further stated that head kanganies have a number of labourers under them, and that the duty of a head kangany is to supervise labourers who do the manual work. For this work the head kangany is entitled to draw what is called "pence money". No contrary evidence having been led, we must take it as established that the defendant does no manual or physical labour of any kind, and that his duties are purely supervisory. The question is whether such a person can be described as being a "labourer" within the meaning of section 218 (*j*) of the Civil Procedure Code ?

Section 218 provides that in the execution of a money decree, the judgment creditor may seize and sell and realize in money in the hands of the Fiscal "except as hereinafter mentioned" all saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which the judgment-debtor has a disposing power &c."; provided that the following shall not be liable to such seizure or sale, namely (*inter alia*) :—

(*j*) The wages of labourers and domestic servants.

The Civil Procedure Code contains no definition of the word "labourer". According to Webster's Dictionary, "A Labourer" is one who does physical labour; one who works at a toilsome occupation, especially a person who does work that requires strength rather than skill, as distinguished from artisans and from the professional classes. The Concise Oxford Dictionary says that a "labourer" is one who does for wages work which requires strength and patience rather than skill or training. In "Words and Phrases Judicially Defined" there occurs the following passage: "What degree of skill is sufficient to raise a manual worker out of the labouring class is a question upon which widely varying opinions may be, and frequently are held".

There are decided cases under section 218 (*j*) where this Court has considered whether persons employed in certain occupations are "labourers"—but they do not help us to solve the problem whether a "kangany" is a labourer.

In *Girigoris v. The Locomotive Superintendent*[1] a *mechanic* employed on daily wages by the Ceylon Government Railway was held not to be a "labourer" within the meaning of section 218 (*j*). Wood Renton J. referred to the case of *Jechand Khusal v. Aba*[2] where Melville J. said that persons are "labourers" who earn their daily bread by personal manual labour, or in occupations which require little or no art, skill, or previous education. In *Reddiar v. Abdul Latiff*[3] it was held that a *lorry driver* was not a

[1] *(1912) 15 N. L. R. 117.*
[2] *(1880) 5 Bom. 132.*
[3] *(1928) 30 N. L. R. 95.*

" labourer " within the meaning of section 218 (*j*). Drieberg J. said : " A lorry driver whose occupation needs previous training, some degree of skill, and is not manual in the strict sense of the word, is not a ' labourer ' within the meaning of section 218 (*j*) of the Civil Procedure Code ". In *Wickramatunge v. Perera*[1] de Kretser J. held that a *tramway conductor* was not a " labourer ". He said that in appointing tramway conductors the employer looks to their character and honesty, and that it was clear from the description of the work done by such persons that they do not come within the meaning which one naturally and ordinarily attaches to the word " labourer ". In *Nagasamy v. Hamid*[2] the defendant was the *tindal of a boat*. He was the chief man of the crew, whom he engaged. The work of the crew was to load and unload cargoes. The defendant allotted the work to be done by the crew, and he himself worked with them in the task of loading and unloading. Soertsz J. held that on these facts the defendant was a " labourer " within the meaning of section 218 (*j*). " The fact that the respondent is called the *tindal*, that he deals directly with the employing firm, that he is responsible to the harbour authorities for the observance of the port regulations and things like that, do not in any way alleviate the burden of his manual labour. They may, perhaps, give him a certain standing in his little world of labourers by putting him in the position of *primus inter pares ;* but the crucial fact—the fact whereby there hangs the tale, is that the respondent takes, more or less, an equal hand with others in loading, unloading and arranging cargo, which is their substantial business ".

Had the matter ended here, one would be inclined to hold on the evidence before the Court that a " kangany " whose work was *purely supervisory*, and involved no physical or manual labour of any kind, could not be called a " labourer ". I am, however, of opinion that there is another approach to this problem.

Ordinance No. 11 of 1865 is described as " An Ordinance to consolidate and amend the law relating to Servants, *Labourers*, and Journeymen Artificers under contracts for hire and service ". That Ordinance, and others which followed it, dealt with the relationship of master and servant, principally from the point of view of penal consequences[3], but that Ordinance, nevertheless, still remains in the Statute Book under the new name given to it by the Editor of the Revised Edition as " The Service Contracts Ordinance " (Chapter 59) in Volume 2, page 109, while the connected Ordinance No. 13 of 1889 under the name of " The Estate Labour (Indian) Ordinance " (Chapter 112) has been relegated to Volume 3, page 337, although section 2 of the latter Ordinance provides that " This Ordinance shall, so far as is consistent with the tenor thereof, be read and construed as one with the Service Contracts Ordinance ".

Ordinance No. 11 of 1865 (Chapter 59) in its present form gives statutory effect to the contracts of service between masters and servants in this Island. By an amendment in 1912 (Chapter 60) the main Ordinance was made applicable to " chauffeurs " as if they were " domestic servants ".

Section 2 of Chapter 59 defines the word " Servant " as follows : " The word ' Servant ' shall, unless otherwise expressly qualified, extend to and

[1] *(1939) 41 N. L. R. 95.* [2] *(1942) 43 N. L. R. 525.*
[3] *Isaac Tambyah's Planters' Legal Manual, p. 1.*

include—menial, domestic, and other like servants, pioneers, *kanganies*, and other *labourers*, whether employed in agricultural, road, railway, or other like work ".

In *Ferguson v. Olivera* [1] a Full Bench of the Supreme Court in 1867 said : " The interpretation clause is worded in such a manner that we cannot apply to it the ordinary rule of making the special words at the commencement control all the general words that follow. Neither a ' pioneer ' nor a ' kangany ' is an ' other like ' servant. Yet, both pioneers and kanganies are clearly included. The true meaning seems to us to be that it includes all menial and domestic servants, and also all out-door labourers, whether employed in a private family, or on agriculture, or on road, railway, or other like work. It also includes pioneers and *kanganies*, and persons in employments similar to the employment of pioneers and kanganies. The present defendant seems to us to be in employment similar to that of a kangani. He is not a superintendent of work, in a position far superior to that of the labourers, but he is like a kangani bound to accompany labourers, and to set them to work, and to exact their full amount of labour, and to direct the manner in which they perform their labour. Though not actually doing manual labour himself, he is closely connected with those who do, and approaches nearer to them than to his superior masters as to position "—*per* Creasy C.J., Temple and Stewart JJ. In the late Mr. Isaac Tambyah's book previously cited, the position of a kangany under Chapter 59 is thus summarised with reference to the case law [2] : " As regards a kangany his status has been explained *to be dependent on circumstances*. Where his name is on the estate check-roll, he receives advances of rice, resides on the estate, supervises the work of coolies and had received head-money as per cooly working per day—*he is a labourer—Horsfall v. Juanis* [3] ; and it is enough if he receives head-money and supervises coolies—*Nicol v. Kandasamy* [4], or even if he merely received head-money. But a kangany, though ordinarily liable under Ordinance No. 11 of 1865, has been held *not to be a labourer*, where he was credited with head-money, but he received neither pay, nor rice, nor did any work. A kangany who has no work to do and is not paid, may not be put on to cooly work. It would seem that residence on the estate is not necessary to fix a kangany with liability if his name is on the check-roll, and he has a line and coolies to look after. *He is a labourer* when he has coolies whose work he has to superintend. *He is a labourer* if he is paid by the month though he may also be a contractor. As a rule a kangany, or head kangany, or kanakapulle under a monthly contract to do agricultural work, *is a labourer*, if he has such work to do, to weigh leaf, to keep check-rolls and to supervise the manual labour of others ".

Therefore, a kangany whose duty it is merely to supervise the work of the labour force and for which work he is paid head-money or pence money would be a " labourer " within the meaning of Ordinance No. 11 of 1865 (Chapter 59).

Ordinance No. 13 of 1889 (Chapter 112), which is required by section 2 of that Ordinance to be read and construed as one with Ordinance No. 11

[1] *(1867) Ram. 63-68 p. 288.*
[2] *Planters' Legal Manual, pp. 21-22.*
[3] *(1908) 3 A. C. R. App. iv.*
[4] *(1906) 1. S. C. D. 38.*

of 1865 (Chapter 59) "so far as is consistent with the tenor thereof", by section 3 defines a "labourer" to mean "any labourer and kangany (commonly known as Indian coolies) whose name is borne on an estate register, and includes the Muslims commonly known as Tulicans". The District Judge in considering whether this defendant was a "labourer" imported the definition in section 3 of Chapter 112 into his judgment. Counsel for the appellant has strenuously argued that he erred in so doing, and contends that he is not entitled to construe section 218 (*j*) of the Civil Procedure Code by resorting to a definition contained in an entirely different statutory enactment. He relied on the decision of the House of Lords in the case of *Macbeth & Co. v. Chislett* [1]. In that case it was held that in considering whether a man was a "seaman" within the meaning of the Employers Liability Act 1880, the definition of the word "seaman" as used in The Merchant Shipping Act 1854 could not be utilised. Lord Loreburn L.C. said: "It would be a new terror in the construction of Acts of Parliament if we were required to limit a familiar word to an unnatural sense because, in some Act which is not incorporated or referred to, such an interpretation is given to it for the purposes of that Act alone". In my view, with the greatest respect, I think that case is distinguishable from the facts of the present case. It is clear that long before Ordinance No. 11 of 1865 was enacted, Ordinance No. 13 of 1858 had made kanganies liable as "labourers" for refusing to work [2]. The Legislature then by Ordinance No. 11 of 1865 amended and consolidated the law relating to servants, labourers and journeymen artificers, and pioneers and kanganies were classified as "labourers". Then came the Civil Procedure Code, No. 2 of 1889, which by section 218 (*j*) exempted from seizure the wages of labourers and domestic servants. In the same year was enacted Ordinance No. 13 of 1889 (Chapter 112) when the Legislature declared that a "labourer" meant "any labourer and kangani". "An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the Legislature is treated in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal" [3]. I am, therefore, of opinion, that the Legislature in section 218 (*j*) of the Civil Procedure Code had in view the class of persons specially legislated for by Ordinance No. 11 of 1865 (Chapter 59). The Legislature in effect said: "The wages of 'labourers' and 'domestic servants' as defined by section 2 of Chapter 59, shall not be liable to seizure under the writ of a judgment creditor". In the circumstances, I do not think it is improper to ascertain the meaning of the term "labourer" as used in section 218 (*j*) of the Civil Procedure Code by reference to the labour laws and the cases decided thereunder.

For the reasons I have already given, the facts of this case indicate that this defendant-respondent is a "labourer". I would, therefore, affirm the order appealed against with costs.

[1] *(1910) 79 L. J. K. B. 376.*
[2] *Bel. & Vand. p. 86.*
[3] *Maxwell 9th Ed., p. 163.*

NAGALINGAM J.—

I have had the advantage of reading the judgment prepared by my brother Dias which so fully and exhaustively sets out the views I held both at the original and second hearing of this appeal that it seems to me to be entirely unnecessary to write out a separate judgment. I was pleasantly surprised to find that the point referred to the Divisional Bench had already been determined by a Full Bench of this Court in the case of *Ferguson v. Olivera*[1] which is cited in the judgment but which was not brought to our notice by Counsel at either the first or the second argument of this appeal. This Full Bench case reflects clearly the opinion I had expressed at the first hearing of this appeal, and if this case had been cited at the first hearing there would have been no necessity to have referred the appeal to a Divisional Bench.

GRATIAEN J.—

It is with very much regret that I find myself in disagreement with my brothers Dias and Nagalingam in this case.

The defendant claims to be a "labourer" within the meaning of Section 218 (*j*) of the Civil Procedure Code, and that his "wages", including "pence money", are therefore exempt from seizure at the instance of his judgment-creditors. The admitted evidence is that, at the relevant date, he was employed as a Head Kangani on Harrington Estate in Kotagala; and that in this capacity he was employed to supervise a number of estate labourers. The manual work on the estate was performed by the labourers themselves, his functions being of a purely disciplinary character. In return for these services he received from his employers a salary and "dearness allowance". He was also paid "pence money" which was calculated according to the number of labourers in his gang who turned out in the field each day. I had understood Mr. Jayawardene to concede that "pence money" was in any event not exempt from seizure.

The term "labourer" is not defined in the Code. Nor is it defined in analogous legislation either in England or in India. Section 218 (*j*) was taken over in identical terms from the corresponding part of section 166 of the Indian Code of 1882 (now section 60 of 1908, where certain words have been added which are immaterial to this case). The language of the Indian Section substantially incorporates the provisions of the Wages Abolition Act, 1870, of England (33 and 34 Vic., Cap. 30, section 1) whereby it is declared, *without defining the term "labourer"*, that "no order for the attachment of the wages of any servant, labourer or workman shall be made by the Judge of any Court of Record or inferior Court".

Judges of this Court, in interpreting section 218 (*j*) in the past, have invariably been guided by authoritative rulings of the English and the Indian Courts as to the scope of the analogous legislation to which I have referred, and, indeed, these rulings have been substantially incorporated in the judicial pronouncements which my brother Dias has reviewed in his judgment. I therefore regard it as settled by the earlier precedents that the object of section 218 (*j*) is "to protect persons who

[1] *(1867) Ram. 63–68, p. 288.*

are considered to be in a position in which they are unable to protect themselves . . . . and who might otherwise be prevented from providing subsistence for their families "—*Gordon v. Jennings* [1] : or, as Baron Parke said in connection with a Truck Act which was designed to achieve a somewhat similar purpose, " to protect such men as earn their bread by the sweat of their brow, and who are for the most part an unprovided class "—*Riley v. Warden* [2]. For this reason, it has been decided in India, following the English decisions, that, for the purposes of the Section in the Indian Code corresponding to section 218 (*j*), the term " labourer " is restricted to persons " who earn their daily bread by *personal manual labour, or in occupations which require little or no art, skill or previous education* ". *Jechand Khusal v. Aba* [3]. There are cases in which the necessary attainment of some degree of skill in the performance of an employer's duties has been held to be sufficient to elevate even a manual worker from the category of " labourers " in the present context ; similarly, persons whose employment involves some degree of physical exertion have nevertheless been refused exemption from attachment of their salary because their remuneration was paid to them for performing duties *substantially of a disciplinary character*, or functions which were based on the *confidence which the employer reposed in their honesty*. As against these instances (which are to be found among the authorities cited by my brother Dias) not a single judicial decision has been brought to our notice in which exemption under section 218 (*j*) of our Code or under analogous legislation in other countries was granted to any person who was not a " labourer " in the sense in which the word is popularly understood. In my opinion, this term is inappropriate in such a context except to someone who is engaged " in manual work . . . . . in some unskilled operation " (*per* Soertsz J. in *Nagasamy v. Hamid* [4]) or in some equally humble occupation which may not even involve physical exertion. That is the interpretation I place upon the decision in *Jechand Khusal v. Aba* [3].

For these reasons I respectfully agree with my brother Dias that (*if section 218 (j) be construed apart from the application of some special enactment which may be found to extend the general rule*) a person whose duties are purely of a disciplinary nature, involving no physical or manual labour of any kind, is not entitled to be called a " labourer " within the meaning of section 218 (*j*). Indeed, I would go further, and refuse exemption under the section to any person whose duties may to some extent involve physical labour but whose " *substantial business* " involves responsibilities of a disciplinary character. That is, in my opinion, the *ratio decidendi* of Soertsz J's ruling in *Nagasamy v. Hamid* [4].

Mr. Jayawardene invited us to adopt the argument that a person engaged to supervise *unskilled* labourers is himself a " labourer " within the meaning of section 218 (*j*), whereas a supervisor of *skilled* workmen admittedly falls outside the exempted class. This seems to me an untenable proposition. One can conceive of circumstances in which personal qualifications of a far superior nature are demanded in the case of a man employed to handle a large number of unskilled labourers

[1] *(1882) 9 Q. B. D. 45.*
[2] *(1848) 2 Exch. 59 at p. 68.*
[3] *(1880) 5 Bom. 132.*
[4] *(1942) 43 N. L. R. 525.*

than would be necessary, for instance, in the case of a supervisor of skilled technicians who are well-disciplined and take pride in the quality and output of their work.

It remains to consider the question in regard to which I am constrained to dissent, with great respect, from the views expressed by my brothers Dias and Nagalingam. As I understood the argument of Mr. Jayawardene, he submitted that even if a person who is paid for supervising "labourers" cannot *as a general rule* be regarded as a "labourer" for the purposes of section 218 (*j*), a "kangani" must necessarily fall within that class by reason of certain statutory definitions which have been given to the term "labourer" in Legislative enactments other than the Civil Procedure Code. Let me first examine this argument by reference to the enactments relied on, and then consider the principles of interpretation which seem to be applicable.

The Civil Procedure Code, in which section 218 (*j*) appears, was enacted as Ordinance No. 2 of 1889. I have already stated that the term "labourer" is nowhere defined in this Code. As far as I have been able to ascertain, no definition of this term appeared (either generally or for any special purposes) in any enactment which was on the Statute Book at the time that the Code was passed by the Legislature. *Ordinance No. 5 of 1841* "for the better regulation of servants, labourers and journeymen artificers under contracts of Hire and Service, and of their employers", *Ordinance No. 13 of 1858* "to amend and explain Ordinance No. 5 of 1841", and *Ordinance No. 20 of 1861* "relating to contracts for the Hire and Service of Labourers in this Colony" had all been previously repealed by the provisions of Ordinance No. 11 of 1865. Of these repealed enactments, only the Ordinance of 1858 purported to define a "labourer". It declared, "*in order to remove doubts which had arisen*", that "*in reading and interpreting Ordinance No. 5 of 1841*, the term "labourer" shall be taken to mean, include and apply to every overseer of labourers commonly known as . . . . *Kangani*."

Ordinance No. 11 of 1865 was enacted "to consolidate and amend the Law relating to servants, labourers and journeymen artificers under contracts for hire and service". It now appears in the Statute Book under the designation "Service Contracts Ordinance" (*Chapter 59*) in a form which happily no longer prescribes certain penalties (now regarded as odious), to which "servants" and "labourers" had been subjected in former days. Be that as it may, no statutory definition has been given to the term "labourer" in this enactment. No doubt the generic term "servant" (as contrasted with "journeymen artificers") is there defined as extending to and including "kanganies" for the special purposes of the Ordinance, and no doubt "other labourers" are also classified as "servants" in the same connection, but I do not think that this circumstance indicates an intention on the part of the Legislature to lay down *by implication* a comprehensive definition of a "labourer" for purposes unconnected with the Ordinance. In *Ferguson v. Oliviera*[1] the Full Bench of this Court dealt with a criminal charge against a person who was not a kangani but "whose employment was similar to that of

[1] (*1867*) *Ramanathan's Reports, 288.*

one". The Court held that this person was a "labourer" *within the meaning of the Ordinance* because "his status more closely approached that of the manual workers whom he supervised than that of his superior masters". I am not prepared to concede that this test, which was no doubt appropriate to the special case under consideration at the time when the judgment was pronounced, can help us now in solving a problem which arises under section 218 (*j*) of the Civil Procedure Code. I am not bold enough to attempt a precise assessment of a kangani's present status in comparison with that of his estate Superintendent on the one hand and of his labourers on the other. Still more dangerous would such an assessment be if it were intended to guide future generations.

The other legislative enactment which was suggested to us as being *in pari materia* with section 218 (*j*) of the Code was the Estate Labour (Indian) Ordinance (Chapter 112) which was introduced as Ordinance No. 13 of 1889 "to amend the law relating to Indian Coolies employed on Ceylon Estates". In this Ordinance, both in its original as well as its amended form, a "Labourer" is defined "*for the purposes of this Ordinance*" (that is, for an expressly limited purpose) as meaning "any labourer and Kangani . . . . *whose name is borne on an estate register*", and this term is further restricted by the interpretation clause to "labourers" on estates "*of which ten acres or more are actually cultivated*". I do not think it legitimate to extend this special meaning of "labourer" beyond the limits of the Ordinance when we are called upon to interpret a section in which the same word appears in another Ordinance intended to achieve an entirely different end. I confess that I derive little assistance in the present context from the judgment in *Nicol v. Kandasami*[1] where Wendt J. held that a kangani was rightly convicted and imprisoned for an alleged offence against section 7 (since repealed) of Ordinance No. 13 of 1889.

The Civil Procedure Code (*Chapter 86*) was enacted earlier than *Chapter 112* but seems to have come into operation a few months later. It is designed to regulate the procedure in Courts of Civil jurisdiction, and the various exemptions contained in section 218 were introduced *in the public interest* to curtail the rights of judgment-creditors against certain specified classes of judgment-debtors. The Service Contracts Ordinance (*Chapter 54*) was introduced to regulate the relations of the parties to "contracts of hire and service" of a certain kind. The Estate Labour (Indian) Ordinance (*Chapter 112*) came into force to secure a similar but nevertheless a special purpose connected with the affairs of the larger agricultural holdings. In my opinion these latter Ordinances cannot properly be deemed to be *in pari materia* with section 218 (*j*) of the Civil Procedure Code so as to justify all three enactments being "*taken and construed together as one system and as explanatory of each other*". (*R. v. Loxdale*[2]).

It seems to me that the term "labourer" in section 218 (*j*) must be interpreted solely by reference to the purpose which that section, as explained by previous judgments of the Courts in England, India and

[1] *(1906) 1 S. C. D. 38.* [2] *97 E. R. 394.*

Ceylon, was intended to serve. The categories of "labourer" in this context cannot in my opinion either be limited or enlarged in the light of what the term means in other Ordinances and for other purposes. Many anomalies would result if it were otherwise. A "journeyman artificer" might well be regarded, I think, as a "labourer" under section 218 (*j*) although he falls outside the definition of a "servant" under the Service Contracts Ordinance. Finally, it would be strange, indeed, if a "kangani" of an estate with over ten acres under cultivation were found to enjoy greater immunity than a person performing similar functions for a lower remuneration on a smaller estate which is excluded from the operation of the Estate Labour (Indian) Ordinance.

The conclusion at which I have arrived is that the defendant has not discharged the onus of establishing that he is a "labourer" within the meaning and the spirit of section 218 (*j*) of the Civil Procedure Code. He cannot claim any special advantage over other judgment-debtors in this connection by relying, *simpliciter*, on the fact that he is an estate "kangani". It is a matter of common knowledge today that the services performed by kanganies vary widely from estate to estate. The question whether any of these persons is a "labourer" entitled to claim exemption from attachment of his "wages" must in each case be considered as a question of fact.

In my opinion the appeal should be allowed, but as the majority of the Court have decided otherwise decree must, of course, be entered in terms of the judgment of my brother Dias.

Appeal dismissed.

1949 *Present :* **Nagalingam J. and Windham J.**

CAROLISAPPU, Appellant, *and* ANAGIHAMY *et al.*, Respondents

S. C. 456—D. C. Tangalla, 5,617

Prescription—Adverse possession—Continuity between an intestate and his heirs—Prescription Ordinance (Cap. 55), s. 3.

The period of possession of an intestate person can be tacked on to the possession of his heirs for the purpose of computing the period of ten years required to acquire prescriptive title under section 3 of the Prescription Ordinance.

APPEAL from a judgment of the District Court of Tangalla.

C. E. S. Perera, with *T. B. Dissanayake*, for plaintiff appellant.

G. W. Wijayaratne, for defendants respondents.

Cur. adv. vult.

November 30, 1949. NAGALINGAM J.—

This is an appeal from a judgment of the District Court of Tangalla dismissing the plaintiff's action for declaration of title to an allotment of land on the ground that though the plaintiff may have the documentary title to it the defendants have acquired a title by prescription to the allotment as against the plaintiff.