Present : Bertram C.J. and Schneider J.

1922.

GARUPPEN CHETTY *et al v.* HARRISON & CROSFIELD, LTD.

125—D. C. Colombo, 2,597/F.

Business Names Ordinance, No. 6 of 1918—Action to be dismissed if provision is not complied with—Court to act ex mero motu*—Objection may be taken at any stage.*

An objection that the provisions of the Business Names Ordinance, No. 6 of 1918, had not been complied with may be taken at any time before judgment.

If it comes to the notice of the Court in the course of an action that the provisions of the Ordinance had not been complied with, the Court should, *ex mero motu*, give effect to the terms of section 9 of the Ordinance. It is always open to a person whose action is dismissed under such circumstances to bring a fresh action when he has complied with the provisions of the Ordinance.

Samarawickreme (with him *Tisseveresinghe*), for the appellants.

Bawa, K.C. (with him *Bartholomeusz* and *R. C. Fonseka*), for the respondents.

December 15, 1922. BERTRAM C.J.—

In this case the point we have to decide is a point under the Business Names Ordinance, No. 6 of 1918. It transpired in the course of the action that the plaintiffs had not complied with the provisions of that Ordinance, and the learned Judge has dismissed their action on that ground.

Mr. Samarawickreme, on appeal, contends that this was an objection which ought not to have been taken without an amendment of the pleadings, and that in the circumstances of the case such an amendment ought not to have been allowed on the ground that it was an amendment for the purpose of asserting a technical objection at a late stage of the case. He contends, therefore, that the District Judge was wrong, relying mainly on the case of *Collette v. Goode*[1], and in particular on the observations of Fry J. on page 847, which are confirmed and supported by those of Cotton L.J. in the case of *Edevain v. Cohen.*[2]

I do not think that this contention is sound. The objection taken in this case was not on all fours with the objection taken in the case of *Collette v. Goode* (*supra*). That was an action for

[1] *(1878) 7 Ch. Div. 842.*

[2] *(1890) 43 Ch. Div. 190.*

1922.

BERTRAM C. J.

Karuppen Chetty v. Harrison & Crosfield, Ltd.

breach of a copyright, and the objection taken in the course of the case was that the provisions of the Copyright Act, 1842, with regard to registration, had not been complied with. Under the Copyright Act, the rights of a person in respect of any book or other production were enlarged and put upon a more favourable footing. but as a condition of the enjoyment of those rights, it was provided by sections 11 and 13 of the Act that certain particulars should be registered, and by section 24 of the Act it was further provided that no proprietor could sue in respect of the infringements of his copyright, unless he should have caused an entry to be made in the book of registry in pursuance of the Act. The question whether or not this condition had been complied with was purely a question inter partes. The registration was a condition precedent to the enforcement of the special right of property which the plaintiff claimed. I do not think that our own Business Names Ordinance is in the same position as the Copyright Act. That Ordinance was passed to give effect to a general principle of public policy, and to secure the enforcement of a system in which all members of the commercial world of the Colony were interested. The object of the Ordinance was to prevent foreigners carrying on business in this country and from suing in our Courts under a disguise. I think it was clearly intended that, if it came to the notice of the Court itself in the course of an action that the provisions of the Ordinance had not been complied with, the Court should immediately give effect to the terms of section 9 of the Ordinance, which declare that the rights of a defaulter in such a case shall not be enforceable, all the more so in view of the fact that in any case in which the enforcement of that principle might seem to inflict a hardship it is always open to a person, whose action is dismissed under such circumstances, to bring a fresh action for the enforcement of his rights when he has complied with the provisions of the law. Indeed, I would go further and say that I think it should be the duty of Courts to watch over the enforcement of this Ordinance, and if a Court sees from the facts of the case that the Ordinance had not been complied with, it should *mero motu* give effect to the provisions I have cited. I do not think that in such a case any special leave would be required to bring a fresh action where an action has been dismissed. No doubt such leave would be required where the plaintiff himself moved for leave to withdraw the action and to bring a fresh one on the ground of a defect in the proceedings. In this case the appeal should be dismissed, with costs, without prejudice to the plaintiff's right to bring a fresh action.

SCHNEIDER J.—I agree.

Appeal dismissed.