1947 *Present :* **Keuneman A.C.J. and Jayetileke J.**

VANDER POORTEN *et al.*, Appellants, *and* THE SETTLEMENT OFFICER, Respondent.

S. C. 120—D. C. (Inty.) Ratnapura, 6,940.

Waste Lands Ordinance—Commencement of proceedings—Repeal of Ordinance by Land Settlement Ordinance—Petition under section 24—May be treated as petition under section 20, Waste Lands Ordinance—Interpretation Ordinance, section 6 (3) (b).

Proceedings were commenced 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 During the course of the proceedings the Waste Lands Ordinance was repealed by the Land Settlement Ordinance. Proceedings were continued under the Waste Lands Ordinance and Final Order was made. Thereafter the appellants presented a petition under section 24 of the Land Settlement Ordinance claiming the land.

Held, that no application lay under section 24 of the Land Settlement Ordinance since that section applied only where land had been declared to be the property of the Crown under section 5 of that Ordinance.

Held, further, that the petition could be treated as one under section 20 of the Waste Lands Ordinance. A claim under that section would be a continuation of the earlier proceedings and by virtue of section 6 (3) (b) of the Interpretation Ordinance would not be affected by the repeal of the Waste Lands Ordinance.

APPEAL from an order of the District Judge of Ratnapura.

H. V. Perera, K.C. (with him *L. G. Weeramantry*), for the petitioners, appellants.—The petition was properly constituted under the Waste Lands Ordinance. The mere fact that it was stated to be an application under section 24 of the Land Settlement Ordinance cannot prevent its being treated as an application under section 20 of the Waste Lands Ordinance provided it complies with the requirements of that Ordinance. By holding that an appeal lies to the Supreme Court from an order of the District Judge under the Waste Lands Ordinance the Privy Council has by implication regarded the petition as one properly constituted under the Waste Lands Ordinance. *Vide 47 N. L. R. 217.* Proceedings commenced under the Waste Lands Ordinance are kept alive in spite of the repeal of the Ordinance. See section 6 (3) (*b*) of the Interpretation Ordinance. The various steps that are part of the same "action, proceeding, or thing" can be continued until a final result is reached. Any other interpretation would result in hardship. In any event the petition is also one that is properly constituted under section 24 of the Land Settlement Ordinance. Section 32 provides for orders in respect of proceedings under the Waste Lands Ordinance pending at the date of the commencement of this Ordinance being made in a new form. Sub-section (2) says that every such order shall have the same *force* as an order made in consequence of proceedings under the Land Settlement Ordinance. "Same force" means nothing more or less than "same legal effect". This petition can therefore be regarded as one under section 24 of the Land Settlement Ordinance.

When order was entered a right was acquired by any person who had a claim to make it under section 20. This right could not be taken away by a repeal of the Ordinance. This case comes within the rule of *Hamilton Gell v. White.*[1] It is to be distinguished from the rule in *Abbot v. The Minister of Lands*[2].

H. H. Basnayake, K.C., Acting Attorney-General (with him *Walter Jayawardene, C.C.*), for the Settlement Officer, respondent.—The Privy Council merely decided a purely academic question whether an appeal lay to the Supreme Court from an order of the District Judge in respect of a petition under section 20 of the Waste Lands Ordinance. It did not decide whether the petition was in fact a petition under that section. The petition cannot be one under section 20 of the Waste Lands Ordinance because that section has been repealed. Even if section 20 is available to the petitioner the application is out of time. It should have been made within 12 months of publication and not of publication in the *Gazette*. In regard to the appeal itself this is neither an appeal from an order under section 20 nor an appeal from an order under section 24. Under section 24 of the Land Settlement Ordinance no right of appeal is given.

H. V. Perera, K.C., in reply.—The Privy Council has by implication treated the petition as one properly constituted under section 20 of the Waste Lands Ordinance. The application is within time since time runs from date of publication in the *Gazette*.

Cur. adv. vult.

July 9, 1947. KEUNEMAN A.C.J.—

The proceedings in this case were commenced under the Waste Lands Ordinance, No. 1 of 1897. During the course of the proceedings the Waste Lands Ordinance was repealed in 1931 by the Land Settlement Ordinance (now Chapter 319). By virtue of section 6 (3) (*c*) of the Interpretation Ordinance (Chapter 2), 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 and the present appeal is from that order.

At the first hearing of the appeal, the Supreme Court held that the petition so far as it related to section 24 of the Land Settlement Ordinance was misconceived, and this was eventually conceded by appellants' Counsel. Their Lordships of the Privy Council have not commented upon this finding. Some argument was addressed to us at the present hearing on this point, based upon section 32 (2) of the Land Settlement Ordinance which states that "Every Order made under this section shall have the same *force* as an order made in consequence of proceedings under this Ordinance", and it was claimed that the claimant was entitled to invoke the aid of section 24. But section 24 specifically refers to the right of claimants, where the land has been declared under section 5 to be the property of the Crown. It follows therefore that the declaration had

[1] *(1922) 2 K. B. 422.* [2] *(1895) A. C. 425.*

to be made under that special section of the Land Settlement Ordinance. In this case the declaration was made not under section 5 of the Land Settlement Ordinance, but under the Waste Lands Ordinance. I do not think the argument of the appellants can be accepted.

At the former hearing of the appeal, it was also argued that the petition constituted a good and sufficient claim under section 20 of the Waste Lands Ordinance, and that the District Judge should have so treated it. But the objection was raised that no appeal lay from an order under that section. The Supreme Court held that this objection was sound, and dismissed the appeal. In the appeal to their Lordships of the Privy Council, it was held that an appeal lay from an order under that section. Their Lordships abstained from expressing any opinion as to any of the other questions raised by the appeal, which it was for the Supreme Court to determine.

One of the questions which we have to determine is whether the petition in question can be treated as a claim under section 20 of the Waste Lands Ordinance. No argument has been addressed to us that the petition is deficient in form or content. At a stage after the argument was concluded, it was urged by the respondent that the petition of appeal was not accompanied by an affidavit of the value of the land, as required by section 18. This objection has been raised at a very late stage, and I do not think there is substance in it. There was already in the record at the time an affidavit setting out the value of the land which was filed with the earlier papers, and I do not think we should accept this particular objection as valid.

The main argument on the part of the respondent was that the repeal of the Waste Lands Ordinance in 1931 precluded the petitioner from making a claim under section 20 of that Ordinance. It was urged that the terms of the Interpretation Ordinance only conserved the proceedings up to the stage of the order declaring that the land was the property of the Crown, and that the provisions of section 20 were not available to the petitioner, in consequence of the repeal. The appellant on the contrary argued that he came within the terms of section 6 (3) (*b*) and (*c*) of the Interpretation Ordinance.

This section 6 (3) runs as follows :—

> "Whenever any written law repeals . . . . a former written law, such repeals shall not . . . . affect or be deemed to have affected . . . .
>
> (*b*) . . . . any right . . . . acquired . . . . under the repealed written law ;
>
> (*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."

It was argued for the appellants that under section 6 (3) (*b*) the earlier proceedings under the Waste Lands Ordinance had been kept in being not only up to the date of the order declaring the land to be the property

of the Crown, but also on the entering of this order, the right was acquired by any person who had a claim to make the claim under section 20, and that this right was not taken away by virtue of the repeal. Counsel cited the case of *Hamilton Gell v. White.*[1] In my opinion the facts in the present case go beyond the facts in *Hamilton Gell v. White* (*supra*), but at the same time, I am inclined to accept the argument of Counsel for the appellants.

It was further argued that the appellants could take advantage of section 6 (3) (c) of the Interpretation Ordinance, and that the claim under section 20 of the Waste Lands Ordinance was part of the "action, proceeding, or thing" which resulted earlier in the order declaring that the land was the property of the Crown. I am inclined to take the view that the claim under section 20 is a continuation of the earlier proceedings.

Under section 1 of the Waste Lands Ordinance the Government Agent has to publish a notice calling for claims. Under section 2, where no claim is made within 3 months the Government Agent makes an order declaring the land to be the property of the Crown. Under sections 3 and 4 provision is made for inquiry into claims made within the prescribed period, and the making of an appropriate order. Section 20 permits claims to be made within one year of any order declaring the land to be the property of the Crown, and sets out the procedure to be adopted. All these various steps appear to me to be part of the same "action, proceeding, or thing", and the repealing Ordinance did not prevent all these various steps being proceeded with until a final result is achieved. I think any other interpretation would result in hardship, which was not contemplated by the Legislature.

The further argument was pressed on us by Counsel for the respondent, that the District Judge had held that under section 20 of the Waste Lands Ordinance the petitioners "seem to be out of time now." All we need say is that no material has been shown to us in the record which supports the opinion of the District Judge, but it is not necessary for us to decide the point, which may be developed in the course of the further proceedings before the District Judge. It was also urged that the Settlement Officer is not the proper party to be made respondent. But section 20 requires the claimant to make his claim before the District Judge, who is required to make certain inquiries, and thereafter, if so advised, to file the claim, making the proper parties plaintiff and defendant.

In the result then I set aside the order of the District Judge and send this matter back to the District Judge with a direction that he will regard the petition of the appellants as a claim preferred under section 20 of the Waste Lands Ordinance, and that he will make all necessary inquiries and take all necessary steps in this matter. It is desirable in the circumstances of this case that all questions of law and fact be heard and determined by the District Judge, so that if the matter comes before us in appeal in the future we may be in a position to determine all these matters.

[1] *L. R. (1922) 2 K. B. 422.*

In my opinion the appellants are entitled to half the costs of the present hearing of the appeal before us. As the appellants at the hearing before the District Judge depended upon an argument which was misconceived there will be no order for costs of the hearing before the District Judge.

JAYETILEKE J.—I agree.

Order set aside.