

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,  
and Mr. Justice van Langenberg.

June 2, 1910

GARNIER v. SUPPEN KANGANY.

D. C., Kalutara, 3,961.

*Effect of repeal of a former written law—When retrospective—Arrest of kangani—Ordinance No. 9 of 1909, s. 5, and Ordinance No. 21 of 1901, s. 5 (3).*

The provisions of section 5 of Ordinance No. 9 of 1909 are not retrospective. A kangani is liable to arrest in execution of a decree for money obtained before October 1, 1909.

THE facts are set out in the judgment of Hutchinson, C.J.

*Vernon Grenier*, for appellant.—The effect of the District Judge's holding is to add a proviso to the plain words of section 5 of Ordinance No. 9 of 1909. Where the intention of the Legislature clearly appears, the Court will give an enactment a retrospective effect in pursuance of such intention (*Gardner v. Lucas*<sup>1</sup>). In *Orchard v. Carupai*<sup>2</sup> retrospective effect was given to this Ordinance, with respect to prosecution for past offences, on the ground that it was only a matter of procedure that was involved. The same reasoning, it is submitted, applies to this case. It was after the Ordinance came into operation that any right by virtue of which the respondent claims to arrest the appellant accrued.

No appearance for respondent.

*Cur. adv. vult.*

June 2, 1910. HUTCHINSON C.J.—

The plaintiff obtained a decree against the appellant on May 26, 1909, for Rs. 496.56 and costs. A writ of execution against the appellant's property was issued on July 18, 1909, but nothing was recovered. Notice was served on the appellant in November, 1909, to appear and be examined as to what property he had. He did not appear, and a warrant was afterwards issued for his arrest, on which he was arrested. He objected to the validity of the arrest in reliance on section 5 of Ordinance No. 9 of 1909, but the Judge overruled the objection and made an order committing him to prison. He appeals against the order. Section 5 of the Ordinance introduces a new section 19 into the Ordinance No. 13 of 1899 in these words: "From and after the commencement of this Ordinance no kangani .....shall be liable to arrest under the provisions of the Civil

<sup>1</sup> (1878) 3 A. C. 601.

<sup>2</sup> (1901) 2 Cur. L. R. 50.

June 2, 1910 Procedure Code of 1889 in execution of a decree for money. ” The  
 HUTCHINSON C.J. appellant is a kangani, the decree is a decree for money, and his  
 counsel urges that the words of the new enactment are quite clear,  
 and exempt him from arrest. The Ordinance came into force on  
 Garnier v. October 1, 1909. It is, however, enacted by section 5 of Ordinance  
 Suppen No. 21 of 1901 that “ whenever any written law repeals either in whole  
 Kangany or in part 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.....any right acquired under the repealed law, or (c)  
 any action, proceeding, or thing pending or incompleated 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 ”; and the District Judge held that, in  
 consequence of that enactment, although the provisions of the Civil  
 Procedure Code as to arrest were in part repealed, the present  
 proceeding must be carried on and completed as if there had been  
 no such repeal. The appellant’s counsel referred us to *Orchard v.*  
*Carupai*.<sup>1</sup> That case was decided on the general principles as to the  
 retrospective effect of legislation where the Legislature has not  
 inserted any express provision on the point. The Legislature had  
 enacted that prosecutions for certain offences must be commenced  
 within 36 months after the date when the offence was alleged to have  
 been committed, and the Court held that the enactment was retro-  
 spective and barred a prosecution for one of those offences alleged  
 to have been committed before the enactment came into force, but  
 more than 36 months before the commencement of the prosecution.  
 But here we have not to apply general principles, but to construe  
 two enactments: The plaintiff had, when the Ordinance of 1909  
 came into force, “ a right ” under the partially repealed provisions  
 of the Civil Procedure Code to claim that his debtor should be  
 imprisoned; and the action was “ incompleated ” when the Ordi-  
 nance of 1909 came into force; therefore the right and the action  
 were not affected by that Ordinance, “ in the absence of any express  
 provision to that effect. ” Is there any such express provision?  
 The appellant’s counsel asks what other meaning can we attach to  
 the words “ from and after the commencement of this Ordinance ”?  
 It is not usual to insert them, because they are generally unneces-  
 sary, for the natural presumption is that every section of an Ordinance  
 comes into force when the Ordinance comes into force, and we do not  
 find these words in section 3, which was the one which had to be  
 interpreted in *Orchard v. Carupai*.<sup>1</sup> But we find them in section 23  
 of this same Ordinance, where they are, so far as I can see, mere  
 surplusage. I am not at all convinced, therefore, that they are  
 not mere surplusage in section 19, or that they were intended to be  
 “ an express provision ” such as is required in order to prevent the  
 operation of section 5 of Ordinance No. 21 of 1901.

<sup>1</sup> (1910) 2 Cur. L. R. 50.

VAN LANGENBERG J.—

June 2, 1910

On May 26, 1909, a decree was passed against the defendant ordering him to pay the plaintiff Rs. 496.56, interest, and costs, and on January 20, 1910, writ against his person was issued, and he was arrested and brought before the Court on February 14, 1910. On the next day he showed cause against being imprisoned. Ordinance No. 9 of 1909 came into operation on October 1, 1909, and it was urged that under section 5 of that Ordinance, which added a new section 19 to Ordinance No. 13 of 1889, he was exempt from arrest. For the plaintiff it was contended that by reason of section 5 (3) of Ordinance No. 21 of 1901 the plaintiff's right to arrest the defendant, was not affected. The District Judge found against the defendant, and I think he is right. There can be no doubt that section 19 referred to repeals in part, the provisions of the Civil Procedure Code relating to the arrest of judgment-debtors, and section 5 (3) of Ordinance No. 21 of 1901 provides that such repeal shall not, in the absence of any express provision to that effect, affect any action pending at the time when the repealing law comes into force, but that every such action shall be carried on and completed as if there had been no such repeal. I am of opinion there is no "express provision" as required by section 5 of Ordinance No. 21 of 1901, and I would, therefore, dismiss the appeal with costs.

*Garnier v.  
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Kangany*

*Appeal dismissed.*

