

BETWEEN : GEOFFREY BRUCE CLEMENTS and
ANNE PATRICIA CLEMENTS
(Appellants)

AND : THE HONGKONG AND SHANGHAI BANKING
CORPORATION
(Respondent)

JUDGMENT

This is an appeal from Cooke C.J. who on 18th March 1988 made a receiving order against the Appellants under the English Bankruptcy Act 1914. There is no Vanuatu Bankruptcy Act.

We are satisfied that the Bankruptcy Act 1914 is a statute of general application and that by Queens Regulation No. 2 of 1976 it applied in the New Hebrides immediately prior to Independence.

Article 93 (2) of the Constitution provides that:

"93 (2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom."

Mr Rissen challenges the Receiving Order on only one ground. He argues that even if the 1914 Act applies in Vanuatu, its operation is restricted in that it can only apply to persons who were in Vanuatu immediately before Independence. That is an extraordinary proposition. He justifies it by reference to Section 2 of the New Hebrides Order in Council 1922 as amended in 1973. That provides that the protocol "... shall be binding upon all persons within the New Hebrides over whom Her Majesty shall at any time have jurisdiction." He accepts that immediately before Independence English laws applied to persons resident here and continued to apply to those persons. But they did not apply to anyone who arrived after Independence because those persons were not persons over whom Her Majesty had had jurisdiction.

Article 93 (1) of the Constitution provides:

"93 (1) Until otherwise provided by Parliament all Joint Regulations ..." (and this includes the orders applying English law) "... in force immediately before the day of Independence..." (as those orders were) "... shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution."

On Independence, jurisdiction in all matters passed from Her Majesty to the Republic of Vanuatu. All regulations must be construed in that light.

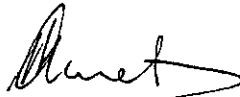
It was clearly intended that existing law would remain in force, and continue to apply to all persons subject to the jurisdiction of the Republic. That includes all persons within its frontiers, whether they entered before or after Independence. Any other interpretation would lead to manifest absurdity.

We hold that the Bankruptcy Act 1914 applies to the Appellants. The Receiving Order is not challenged on any other grounds and the appeal is dismissed with costs to be taken from assets held by the Official Receiver.

DATED at Port-Vila this 21st day of October, 1988.



Chief Justice
TONGA



Supreme Court Judge
PAPUA NEW GUINEA

