[PRIVY COUNCIL]

1970 *Present :* **Lord Hodson, Lord Devlin, Lord Donovan, Lord Wilberforce, and Lord Diplock**

THE COLOMBO APOTHECARIES COMPANY LTD., Appellants,
and E. A. WIJESOORIYA and Others, Respondents

PRIVY COUNCIL APPEAL No. 8 OF 1969

S. C. 232/67 (ID/LT/121/67)—In the Matter of an Application for a Mandate in the nature of a Writ of Prohibition under s. 42 of the Courts Ordinance

Interpretation Ordinance—Section 6 (3) (c)—" Express provision "—" Comes into operation "—Industrial Disputes (Amendments) Act, No. 39 of 1968—Change therein of definition of " workman "—Retrospective effect.

Section 6 (3) (c) of the Interpretation Ordinance reads as follows :—

" Whenever any written law repeals either in whole or 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 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. "

***Held*, that a simple provision in an amending Act that such Act is to be deemed to come into operation upon a past date is enough without more as an " express provision " within the meaning of section 6 (3) of the Interpretation Ordinance. Accordingly, the change in the definition of " workman " made by the Industrial Disputes (Amendment) Act No. 39 of 1968 during the pendency of the present appeal to the Privy Council was expressly brought into operation on 30th December 1957.**

A statute may be brought into operation after the date of its enactment and it can also, provided the language is clear and unambiguous, be made to operate before enactment.

1**—J 13285 (4/70)

APPEAL from a judgment of the Supreme Court reported in *(1968) 70 N. L. R. 481.*

M. P. Solomon, with *E. Cotran*, for the employer-appellant.

N. Satyendra, with *M. I. Hamavi Haniffa*, for the second respondent (the employee).

E. F. N. Gratiaen, Q.C., with *R. K. Handoo*, for the third respondent (the Minister of Labour).

Cur. adv. vult.

January 26, 1970. [*Delivered by* LORD DEVLIN]—

The appellants were the employers of the second respondent until they dismissed him on 5th April 1965, an action which led to proceedings under the Industrial Disputes Act (C 131). Their ordships need not detail the whole history of these proceedings. It is sufficient to say that on 19th April 1967 the Minister of Labour, who is the third respondent, made an order under s. 4 (1) of the Act referring the matter as an industrial dispute to the fifth respondent, who is the President of a Labour Tribunal, for settlement by arbitration ; and on 20th June 1967 the appellants filed a Petition in the Supreme Court of Ceylone praying for a Mandate in the nature of a Writ of Prohibition forbidding the fifth respondent from entertaining, hearing or determining the proceedings. The contention of the appellants was and is that the Minister had no power under the Act to make the reference and consequently that the Labour Tribunal had no jurisdiction. Because the application gave rise to some very difficult questions of construction of the Act, the Chief Justice directed that it should be heard by a Special Bench of Seven Justices. The argument turned to a large extent upon the meanings to be given to the terms " workman " and " industrial dispute " as they are used in the Act. On 29th February 1968 the Supreme Court gave judgment dismissing the application by a majority of 4 to 3. It is from this judgment that the appellants now appeal to the Board.

On 12th October 1968 assent was given to an Act amending the Industrial Disputes Act. Among the amendments made by the Industrial Disputes (Amendments) Act No. 39 of 1968 was a change in the definition of " workman ", and the Act provided that the amended definition should " be deemed, for all purposes, to have come into operation on December 30th 1957 ". The appellants concede that if the Board applies the Industrial Disputes Act as thus amended, the appeal must fail. They contend however that the Act should not be so applied and for this purpose they rely on s. 6 (3) of the Interpretation Ordinance, the material parts of which are as follows :

> "(3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of an express provision to that effect, affect or be deemed to have affected . . .
>
> . . . .
>
> (*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."

The appellants submit that the amending Act No. 39 of 1968 does not contain any "express provision" within the meaning of s. 6 (3) and accordingly that the proceedings now before the Board must be carried on as if there had been no change in the principal Act.

A similar submission was considered and rejected by the Board in *Nalla Karumburu Kayambu Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents*[1]. The Board there laid it down that what was required by s. 6 (3) was an express provision, but not a specific one. Lord Radcliffe said at 527 :

> "To be 'express provision' with regard to something it is not necessary that the thing should be specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom."

Mr. Solomon has pointed to differences in the language of the amending Act in that case and in this, but in their Lordships' opinion they are not material. It is true that in *Shanmugam's case* the wording of the amending Act was more elaborate, but their Lordships consider that a simple provision that the amending Act is to be deemed to come into operation upon a past date is enough without more.

That this must be so is manifest from the language of the Interpretation Ordinance itself. The Ordinance applies to proceedings "pending or incompleted when the repealing written law comes into operation". Their Lordships cannot accept Mr. Solomon's argument that in this context "comes into operation" means "is enacted". Statutes are frequently brought into operation after the date of enactment; and they can also, provided the language is clear and unambiguous, be made to operate before enactment. In the present case the "repealing written law" was expressly brought into operation on 30th December 1957, on which date the present proceedings were not pending or incompleted: so that s. 6 (3) of the Ordinance does not apply at all.

For these reasons their Lordships will humbly advise Her Majesty that this appeal be dismissed. The appellant must pay the costs of this appeal.

Appeal dismissed.

[1] *(1962) A. C. 515 ; 64 N. L. R. 29.*