

HUSSAIN

v.

WADOOD AND ANOTHER

COURT OF APPEAL.

L. H. DE ALWIS, J. AND G. P. S. DE SILVA, J.

C.A. APPLICATION 590/83—D.C. GALLE L/8307.

MARCH 1, 1984.

Interpretation Ordinance, section 6(3)—Retrospective operation of legislation—Second Schedule to Civil Procedure Code amended by section 21 of Act 53 of 1980—Whether amendment retrospective.

The plaintiff instituted action against the 1st and 2nd defendants for ejection from the premises in suit in 1974 and judgment was entered in his favour with costs in 1978. In 1982 the bill of costs was prepared by the plaintiff's Attorney-at-law according to the rates specified in the Second Schedule to the Civil Procedure Code (Chapter 101) as amended by Act No. 53 of 1980. This was objected to on the ground that the action was filed and concluded prior to the enactment of the amending Act.

Held—

In terms of section 6(3) of the Interpretation Ordinance, a repealing Act, unless it expressly so provides, does not affect "any penalty incurred" under the earlier law. There is no such express provision in the Civil Procedure Code (Amendment) Act, No. 53 of 1980.

The presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the courts. Section 21 of Act No. 53 of 1980 is not a provision which relates merely to a matter of procedure but is one which has enhanced the quantum of liability in respect of costs of action. This section has no retrospective operation and is not applicable in the instance case to the costs payable by the 1st defendant.

Cases referred to :

(1) *Akilandanayaki v. Sothinagaratnam*, (1952) 53 N.L.R. 385, 393.

APPLICATION for Revision of an Order of the District Court, Galle.

M. S. A. Hassan for 1st defendant-petitioner.

Muhammed Ghazzali for plaintiff-respondent

Cur. adv. vult.

March 30, 1984.

G. P. S. DE SILVA, J.

The plaintiff instituted this action in May, 1978, against the 1st and 2nd defendants for ejection from the premises in suit. Judgment was entered in favour of the plaintiff with costs of action in 1978. The 1st defendant did not appeal against the judgment. On 27.2.82, the Attorney-at law for the plaintiff, prepared a bill of costs payable by the 1st defendant, according to the rates specified in the Second Schedule to the Civil Procedure Code (Chapter 101) as amended by the Civil Procedure (Amendment) Act, No. 53 of 1980. This was objected to on the ground that the action was instituted and concluded prior to the enactment of the Civil Procedure (Amendment)

Act, No. 53 of 1980. The contention of the 1st defendant was that the relevant scale of costs was that specified in the Second Schedule to the Civil Procedure Code prior to the amending Act, No. 53 of 1980

Admittedly, the action was filed and concluded as against the 1st defendant prior to the enactment of the amending Act, No. 53 of 1980. The District Judge after hearing the parties, made Order that the relevant scale of costs is as set out in the Second Schedule to the Civil Procedure Code as amended by Act, No. 53 of 1980, and that the bill of costs should be taxed accordingly. The 1st defendant has now made an application to this Court to revise the said Order of the District Judge.

Section 21 of the Civil Procedure Code (Amendment) Act., No. 53 of 1980, reads thus :-

“The Second Schedule to the principal enactment is hereby *repealed* and the following new Schedule substituted therefor.” (The emphasis is mine.). As observed by Gratiaen, J. in *Akilandanayaki v. Sothinagaratnam* (1).

“Section 6(3) of the Interpretation Ordinance, in a sense, controls the operation of all repealing enactments.”

The relevant part of section 6(3) of the Interpretation Ordinance, reads thus :-

“Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of express provision to that effect, affect or deemed to have affected—

- (a)
- (b) any right, liberty, or penalty acquired or incurred under the repealed written law ;
- (c)

Thus, a repealing Act, unless it expressly so provides, does not affect “any penalty incurred” under the earlier law. There is no such express provision in the Civil Procedure Code (Amendment) Act, No. 53 of

1980. The important point is that liability to pay costs was incurred by the 1st defendant when judgment was entered against him with costs in 1978. The subsequent amending Act, No. 53 of 1980, does not affect that liability in view of the provisions of section 6 (3) (b) of the Interpretation Ordinance.

This provision of the Interpretation Ordinance (section 6 (3)) is based on the well-settled rule of interpretation that generally a statute operates prospectively, that is, in respect of facts and situations which come into existence after the enactment of the statute. The underlying principle is succinctly stated in Maxwell on *Interpretation of Statutes* (11th Edition), thus :—

“Upon the presumption that the legislature does not intend what is unjust, rests the leaning against giving certain statutes a retrospective operation It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act or arises by necessary and distinct implication Every statute, it has been said, which creates a new obligation, or imposes a new duty or attaches a new disability in respect of transactions already past, must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation.” (Pages 204 and 206).

This principle deeply founded on good sense and strict justice is of ancient origin. “It is certain further that laws give shape to affairs of the future, and are not applied retrospectively to acts of the past.” Voet 1. 3. 17.

It is true that “the presumption against a retrospective construction, has no application to enactments which affect only the procedure and practice of the courts”—Maxwell *Interpretation of Statutes* 11th Edition, page 216. But it must be noted that the amending Act, No. 53 of 1980, has considerably increased the scale of costs and charges set out in the Second Schedule to the Civil Procedure Code. In my view, section 21 of the amending Act, No. 53 of 1980, is not a provision which relates merely to a matter of procedure. It is a provision which has enhanced the quantum of the *liability* in respect of costs of action.

I accordingly hold that section 21 of the amending Act, No. 53 of 1980, has no retrospective operation and is not applicable in the instant case to the costs payable by the 1st defendant. The Order of the District Judge, dated 29.4.81, is set aside and we direct that the bill of costs payable by the 1st defendant, be taxed according to the rates specified in the Second Schedule to the Civil Procedure Code prior to its amendment by Act, No. 53 of 1980. In all the circumstances, we make no order as to costs.

L. H. DE ALWIS, J.—I agree.

Application in revision allowed.