1961 *Present :* **Weerasooriya, J., and T. S. Fernando, J.**

DON EDWIN, Appellant, *and* COMMISSIONER FOR WORKMEN'S COMPENSATION, Respondent

S. C. 2—D. C. (Inty.) Colombo, 2368/X

Workmen's Compensation Ordinance (Cap. 117), as amended by Act No. 31 of 1957—Money due under an award—Procedure for recovery—Right to seize immovable property—Retrospective effect of Section 41 (2)—Inapplicability of Section 6 (3) (c) of Interpretation Ordinance (Cap. 2)—Inapplicability of Section 10 of Prescription Ordinance (Cap. 55).

The amendments of sections 40 and 41 of the Workmen's Compensation Ordinance by Act No. 31 of 1957 are retrospective in operation. Section 6 (3) (c) of the Interpretation Ordinance is inapplicable to them. Accordingly, immovable property may be seized and sold for the recovery of money due under an award given prior to the enactment of Act No. 31 of 1957.

Proceedings taken under section 41 of the Workmen's Compensation Ordinance for the enforcement of an award are analogous to proceedings in execution of a decree, and are a continuation of the action in which the award was made. They do not constitute a separate action, nor does section 10 of the Prescription Ordinance apply to such proceedings.

APPEAL from an order of the District Court, Colombo.

G. T. Samarawickreme, for respondent-appellant.

A. Mahendrarajah, Crown Counsel, for petitioner-respondent.

Cur. adv. vult.

January 5, 1961. WEERASOORIYA, J.—

This appeal arises from an application to the District Court of Colombo in terms of section 41 (2) of the Workmen's Compensation Ordinance (Cap. 117) as amended by the Workmen's Compensation (Amendment) Act, No. 31 of 1957, for the issue of writ to seize and sell certain immovable property belonging to the respondent-appellant in order to realise the balance due from him on an award of compensation in favour of one R. P. Lewis Singho, a workman. The amount of the award, which is dated the 21st November, 1953, was Rs. 4,246/50 including costs. As a result of proceedings taken under section 41 of the Ordinance (before it was amended) a sum of Rs. 2,376/76 was recovered by distress and sale of the appellant's movable property, leaving a balance due of Rs. 1,869/74, in respect of which the application under section 41 (2) was made.

The appellant filed objections to the issue of writ, of which the only one pressed at the inquiry before the District Judge was that section 41 (2), being a subsequent amendment introduced by Act No. 31 of 1957, is not retrospective in operation and, therefore, the method of recovery provided therein is not available in this case. The District Judge dismissed the objections and the present appeal is against that order.

Prior to the enactment of Act No. 31 of 1957, any sum payable in terms of an award of compensation under the Workmen's Compensation Ordinance was recoverable under section 41 as if it were a fine imposed by a Magistrate, which meant that only the movable property of a person against whom the award was made could be seized and sold. Moreover, section 40 prohibited recourse to the civil Courts for the purpose of enforcing any liability incurred under the Ordinance. But by virtue of Act No. 31 of 1957, the existing section 41 was re-numbered as section 41 (1), and a new provision introduced as sub-section (2) enabling seizure and sale of immovable property of the defaulter under a writ issued by a District Court or a Court of Requests on an application made in that behalf; and section 40 was consequentially amended so as to confer jurisdiction on those Courts to entertain an application under section 41 (2).

In contending that the procedure for the recovery of any sum due under the award is governed by sections 40 and 41 as they stood prior to the amendments effected by Act No. 31 of 1957, Mr. Samarawickreme who appeared for the appellant relied strongly on section 6 (3) (*c*) of the Interpretation Ordinance (Cap. 2) which 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—
>
> (*a*) .....
>
> (*b*) .....
>
> (*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. "

If the above provision applies to this case there can be no doubt that Mr. Samarawickreme's contention is entitled to succeed, provided the application for writ was made in an " action, proceeding or thing pending or incompleted " when the amendments to sections 40 and 41 came into operation. Learned Crown Counsel who appeared for the respondent argued, however, that the amendments cannot be regarded as amounting to a repeal of sections 40 and 41 or any part of them, and that section 6 (3) (*c*) is therefore not applicable.

The usual processes by which the legislature provides that existing law shall cease to be operative are amendment, repeal, suspension and expiry. Amendment is the wider term, and may include a repeal as, for instance, where a law is repealed in part and added to in part—both processes being regarded as an amendment of the law. To repeal means to abrogate or annul. When the amendments of sections 40 and 41 by Act No. 31 of 1957 are examined it is apparent that there has been no abrogation or annulment of any part of those sections, either expressly or by implication. Suspension and expiry are also different from repeal.

It was held in *The Queen v. (1) Fernando and (2) Carolis* [1] that the suspension of an enactment does not attract the provisions of section 6 of the Interpretation Ordinance. In *Attorney General v. Francis* [2] section 6 (3) was held not to apply to written laws that have expired. Section 6 was thereafter amended by the addition of a new sub-section (3A) dealing with the expiration of written law.

A similar question was considered under section 38 (2) of the English Interpretation Act, 1889, in *Director of Public Prosecutions v. Lamb* [3]. That case dealt with the effect of an amendment of Regulation 9 of the Defence (Finance) Regulations, 1939, by the addition of a new paragraph at the end of the existing regulation, and three Judges of the King's Bench Division (Humphreys, Tucker and Cassels, JJ.) decided that the amendment did not amount to a repeal.

I would, therefore, hold that section 6 (3) of the Interpretation Ordinance has no application to the present case.

Mr. Samarawickreme stated that in the event of section 6 (3) being held not to be applicable, he would fall back on the general principles which govern the question as to the extent to which subsequent legislation can be regarded as interfering with the rights of parties in a pending action. These principles are clear enough. As stated by Lord Denham in *Hitchcock v. Way* [4], " the law as it existed when an action was commenced must decide the rights of the parties in the suit unless the Legislature express a clear intention to vary the relation of litigant parties to each other ". But even so, it is necessary to ascertain whether any rights of the appellant are adversely affected by the amendments to sections 40 and 41. Mr. Samarawickreme submitted that these sections, as they stood prior to the amendments, conferred on the appellant an immunity from seizure of his immovable property for the recovery of what is due under the award.

In *Starey v. Graham* [5] Channell, J., defined " right acquired " as " some specific right which in one way or another has been acquired by an individual, and which some persons have got and others have not ". He pointed out that it does not mean a " right " in the sense in which it is often popularly used, such as a " right " which a person has to do that which the law does not expressly forbid. In my opinion, sections 40 and 41 prior to the amendments cannot be regarded as conferring on the appellant any right or immunity as claimed for him by Mr. Samarawickreme. I incline to the view, which found favour with the learned District Judge too, that this is simply a case where there was a lacuna in the procedure originally laid down in section 41 which, in effect, prevented any property other than movable property being seized and sold in the enforcement of an award ; and that in introducing the subsequent amendments the legislature sought to make good the omission by providing for the additional method of recovery by seizure and sale of immovable property as well.

[1] *(1959) 61 N. L. R. 395.*
[2] *(1946) 47 N. L. R. 467.*
[3] *(1941) 2 A. E. R. 499.*
[4] *6 Ad. & El. 943 (112 E. R. 360).*
[5] *(1899) 1 Q. B. 406 at 411.*

Maxwell on The Interpretation of Statutes (10th edition, 213) points out that it is upon the presumption that the legislature does not intend what is unjust that the leaning against giving a retrospective operation to a statute rests. There can be no question that even after the appellant's movable property was seized and sold and a part of the amount due on the award realised, his liability to pay the balance continued without any diminution notwithstanding that at the time there was no machinery provided in the Ordinance for the enforcement of that liability by the issue of writ against his immovable property. It could hardly be urged, therefore, that injustice will be caused if sections 40 and 41 in their amended form are so construed as would permit of recourse to the additional method of recovery provided therein against a debtor who, having the means to satisfy an award, refuses to do so. This is another reason for holding that the amendments are retrospective in operation.

I think that the case of *Supramaniam Chettiar v. Wahid* [1] decided by my brother, and to which Mr. Samarawickreme drew our attention, can be distinguished from the present case. The plaintiff in that case had obtained a money decree against the defendants and caused to be seized in execution of the decree a certain sum which was owing to the 2nd defendant from his employer as "salary". The validity of the seizure was, however, challenged on the ground that under item (*m*) of the proviso to section 218 of the Civil Procedure Code the salary and allowances of an employee in a shop or office are exempt from seizure if they do not exceed Rs. 500 per mensem. Admittedly the salary and allowances of the 2nd defendant, who was an office employee, did not exceed that figure. The seizure took place after section 218 was amended by the addition of item (*m*) to the list of excepted property in the proviso. But the action was filed, and decree obtained, before the coming into operation of the amendment. My brother held that the right to seize all sums of money by way of salary and allowances of the 2nd defendant, which had accrued to or vested in the plaintiff with the entering of the decree, was not taken away by the subsequent amendment. As section 218 confers on the holder of a money decree a positive right to seize and sell certain specified property, the *ratio decidendi* of that case would appear to be in accord with Channell, J.'s definition of a "right acquired" in *Starey v. Graham* (*supra*).

The final objection taken by Mr. Samarawickreme to the issue of writ is based on prescription. He submitted that a cause of action accrued when the award of compenstion was entered on the 21st November, 1953, and the application for writ was, in relation to that cause of action, an "action" which should have been filed within three years of the entering of the award, whereas it was filed only on the 30th May, 1958, and was therefore prescribed under section 10 of the Prescription Ordinance (Cap. 55). Section 3 of the Workmen's Compensation Ordinance provides that (subject to the exceptions in the proviso) if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer

[1] *(1956) 58 N. L. R. 140.*

shall be liable to pay compensation in accordance with the provisions of the Ordinance. Section 16 imposes a time limit for the institution of proceedings to recover compensation. According to Mr. Samarawickreme, the proceedings instituted in respect of the liability of the appellant under section 3 were brought to a termination when the award now sought to be enforced was made, and a fresh cause of action arose upon the award. An ordinary civil action does not, however, terminate with the entering of the decree, and proceedings taken in execution have, as far as I am aware, been always regarded as a continuation of the action. In *Peries v. Cooray* [1] it was held that there is no time limit within which a first application for the execution of a writ may be granted. As pointed out in that case, section 5 of the Prescription Ordinance, which restricted the right of a judgment-creditor to execute a decree after the expiry of ten years, was repealed by the Civil Procedure Code. Although the decree was over ten years old when it was sought to be executed it was never contended that, the repeal of section 5 notwithstanding, any of the other provisions of the Prescription Ordinance applied to the case. In the *Siyane Gangaboda Co-operative Stores Union Ltd. v. Amarasekere* [2] the question that arose was in regard to the enforcement of an award under the Co-operative Societies Ordinance (Cap. 107). The rules made under the Ordinance provide for the enforcement of an award as a decree of Court. An objection taken to the enforcement of the award on the ground that no application to have the award filed in Court had been made in terms of section 696 of the Civil Procedure Code within six months of the making of the award, was upheld by the District Judge. In appeal this Court took the view that section 696 was not applicable and sent the case back to the District Court for writ of execution to issue. The application for enforcement of the award had been made nearly six years after the date of the award. Although the question of prescription was not specifically raised or considered, the decision appears to have proceeded on the basis that a valid award under the Co-operative Societies Ordinance can be enforced as a decree of Court irrespective of the time that has elapsed.

In my opinion, the proceedings taken under section 41 of The Workmen's Compensation Ordinance for the enforcement of an award are analogous to proceedings in execution of a decree, and are a continuation of the action in which the award was made. They do not constitute a separate action, nor does section 10 of the Prescription Ordinance apply to such proceedings.

For these reasons the appeal fails and must be dismissed with costs.

T. S. FERNANDO, J.—I agree.

Appeal dismissed.

[1] *(1909) 12 N. L. R. 362.*

[2] *(1958) 60 N. L. R. 45.*