Present: Bertram C.J. and Ennis J.

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SAMARA *et al. v.* ELVES.

326—D. C. Kandy, 29,151.

Lis pendens—*Ordinance No. 29 of 1917—Applicable to cases pending at the date of passing of the Ordinance—Prescription—Uninterrupted possession —Possession need not continue till date of action.*

Section 3 of the Land Registration Amendment Ordinance, No. 29 of 1917, which enacts that a *lis pendens* shall not bind a purchaser unless and until it is registered, applies to a *lis pendens* initiated but not concluded before the passing of the Ordinance.

N. E. Weerasuriya, for plaintiff, appellant.

H. V. Perera, for defendant, respondent.

February 11, 1924. BERTRAM C.J.—

This case raises a question of law. That question is whether section 3 of the Land Registration Amendment Ordinance, No. 29 of 1917, as amended by Ordinance No. 21 of the following year, which declares that "a *lis pendens* shall not bind a purchaser unless and until it is registered," applies to a *lis pendens* initiated but not concluded before the passing of the Ordinance.

The facts are these: Plaintiffs and a brother (since dead) brought an action against one Babappu (since dead) and his son Eporis for the recovery of a piece of land on March 14, 1912. At the date of the institution of the action Babappu and Eporis had already been for some years in possession. The action, for various causes, was protracted; other defendants were substituted for the brother who died; judgment was not entered until July 8, 1920. Now, it is settled that a *lis pendens* continues pending until the completion of the execution. But for recent legislation, therefore, plaintiffs would have been protected up to the time when they obtained possession under the execution. They could have snapped their fingers at any person who in that interval bought from the defendants, or against any purchaser at a Fiscal's sale against the defendants. Such a purchaser did in fact present himself. In pursuance of a sale on January 21, 1920, he obtained a Fiscal's transfer on July 15, 1920, that is to say, after plaintiffs' judgment and before execution. But for recent legislation he could have got nothing by this Fiscal's transfer, because any such transfer would have been subject to the execution in plaintiff's action. If he was bound by plaintiffs' action his purchase was worthless to him,

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because the title was in plaintiffs and was so declared by the judgment. If, however, he was not bound by the action, then he could count his predecessor's possession right up to the time when it first began, and could thus show a prescriptive title as against the plaintiffs when sued in the present action.

The difficulty is that the Ordinance referred to came into operation while the action was still pending, and the question arises whether such an action is affected by the Ordinance.

There is always a strong presumption that an enactment is not intended to have a retrospective operation so as to destroy existing vested rights, but the question here is whether the Ordinance is to affect a process which is initiated before the date of its enactment, but not yet completed. There are two authorities in the English books which have a bearing on this question. The first is *Evans v. Williams*.[1] In that case there had been a change in the law with regard to registration of judgments. During a certain period the law had been in the following position. A judgment had two effects: It bound the debtor's land and it gave the judgment-creditor priority as against other creditors in the administration of estates. For some time the law had been that though registration of a judgment was necessary for the purpose of binding land, it was not necessary for the purpose of obtaining the aforesaid priority. In 1860 the law was changed. For the purpose of this case it is only necessary to consider the provision dealing with judgments already registered for the purpose of binding lands. The fourth section of the new Statute, 23 and 24 Vict., C. 38, declared that no judgment so registered should be entitled to priority "unless at the death of the testate or intestate five years shall not have elapsed from the registration." In other words, the Statute required re-registration of judgments every five years. A case arose in which the testator had died before the passing of the Act. The judgment had been registered, but more than five years had elapsed between the registration and the death. It was pointed out that at the passing of the Act the judgment-creditor's right had already vested. He was already entitled to priority at that date, and it was held that "unless the Court sees a clear indication in the Act to legislate *ex post facto*, so as to deprive a man of a right which existed at the time of the passing of the Act, the Court will always assume that the Legislature never does intend to deprive that man, by *ex post facto* law, of a right which existed at the time that Act passed."

Maxwell in his work on the *Interpretation of Statutes, 4th ed., p. 331*, discusses this case and makes the observation that if the debtor in the case had not died till after the Act, the omission to renew the registration would have been fatal, and he supports this observation by a series of cases relating to the old question of the settlement and removal of paupers. In these cases local authorities used to

[1] *(1860) 34 L. J. Ch. 661.*

contend with one another as to their responsibility for the maintenance of paupers who were found in one district, but whose real settlement was in another. If a pauper died in one district leaving a widow who belonged to another, the local authority was entitled to expel the widow from the district and deport her to her original home. In 1846 an Act was passed which in such cases prohibited such deportation until the expiration of twelve months after the husband's death, and the question arose whether this provision applied to a case in which the husband had died before its enactment. See *The Queen v. The Inhabitants of St. Mary, Whitechapel.*[1] The husband died in Bermondsey before the Act; his widow belonged to Whitechapel. It was maintained that the Bermondsey local authority on his death had a vested right to deport the widow, and that the Statute could never have been intended to deprive them of this privilege. Lord Denman, delivering the judgment of the Court, made the following observations: "It was said that the operation of the Statute was confined to persons who had become widows after the Act passed, and that the presumption against a retrospective Statute being intended supported this construction, but we have before shown that the Statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective Statute because a part of the requisites for its action is drawn from time antecedent to its passing."

I think that this principle applies to the present case. The Ordinance, if applied to the present case, cannot be described as interfering with vested rights. No right, vested as against a purchaser up to the date of its passing, is interfered with; it is only the position of purchasers after the enactment of the Ordinance which is improved as against the suitor. The Statute declares that in order to secure the same advantages against future purchasers as the suitor enjoyed against purchasers, who might have purchased before the enactment, the suitor must comply with a new condition. He must register his suit. This is not to destroy a vested right, it is merely to impose a new formality of an existing privilege in future circumstances. There is no presumption against such an application of a Statute. It is entirely in accordance with the spirit of the Ordinance that future purchasers should be protected even in the case of suits already initiated. I am of opinion, therefore, that the learned District Judge was right in ruling that the Ordinance applied.

There was a further question of law to which reference was made. Plaintiffs under their execution actually obtained possession of the property and occupied it for some little time until they were ousted by the defendant. The possession, therefore, of the defendant and his predecessor was interrupted, and did not continue until action brought. It was suggested, therefore, that the

[1] *(1848) 12 Q. B. 118; also 116 E R. 811.*

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possession was not such an uninterrupted possession as is required by section 3 of the Prescription Ordinance, No. 22 of 1871. It may, however, be taken as settled law that the possession required need not continue till action brought. See *Banda v. Banda* [1] and *Walter Pereira's Laws of Ceylon, p. 392.* For reasons I have given, I am of opinion that the appeal must be dismissed, with costs.

ENNIS J.—I agree.

*Appeal dismissed.**