1951 *Present:* **Gratiaen J.**

LANKA ESTATES AGENCY, LTD., Appellant, *and* COREA, Respondent

S. C. 27— C. R. Kalutara, 712

Rent Restriction Act, No. 29 of 1948—Retrospective operation—Interpretation Ordinance, s. 6 (3)—Recognized agent—" General power of attorney "—Distinction between general agent and special agent—Civil Procedure Code, 25 (b) (c).

Where, during the pendency of an action for ejectment, the provisions of the Rent Restriction Act were, by proclamation, declared to be applicable to the locality in which the premises in question were situated—

Held, that the coming into operation of the Rent Restriction Act after an action for ejectment has already commenced does not affect the landlord's accrued right to claim ejectment under the common law which governs the relationship of landlord and tenant.

Held further, that an agent with a special authority to represent his principal in matters in connection with a particular trade or business is a recognized agent within the meaning of section 25 (*b*) of the Civil Procedure Code. Section 25 (*b*) was not intended to refer only to persons who hold general powers of attorney authorising them to represent the principal in every conceivable kind of transaction and in connection with every kind of legal proceeding.

APPEAL from a judgment of the Court of Requests, Kalutara.

H. V. Perera, K.C., with *S. Walpita*, for the plaintiff appellant.

E. B. Wikramanayake, K.C., with *E. S. Amerasinghe*, for the defendant respondent.

Cur. adv. vult.

June 22, 1951. GRATIAEN J.—

This action was instituted on 24th March, 1949, by the landlord of a bungalow in the Kalutara District to have his tenant ejected from the premises. Admittedly the tenant had been given due notice to quit, and the provisions of the Rent Restriction Act, No. 29 of 1948, did not, at the time when the action commenced, apply to the premises.

The tenant in his pleadings raised certain technical defences to which I shall later refer. The case was fixed for trial on 22nd August, 1949, but was postponed for 1st November, 1949, on the ground of the defendant's ill-health. On that date the case was again postponed for the same reason. The trial eventually took place and was concluded on 21st December, 1949.

In the meantime the provisions of the Rent Restriction Act, 1948, were, by proclamation, declared to be applicable, with effect from 2nd December, 1949, to the locality in which the premises were situated. Relying on this circumstance, the defendant's proctor raised an additional issue at the trial contesting the jurisdiction of the court to grant

a decree in favour of the landlord except upon proof of one or other of the conditions specified in section 13 of the Act. This contention was upheld by the learned Commissioner of Requests.

It is apparent that there were no statutory fetters on the landlord's common law right to sue his tenant for ejectment when the action was instituted. The question, however, arose whether the subsequent proclamation of 2nd December, 1949, could legitimately be regarded as now restricting the accrued rights of the landlord *in the pending action*. The learned Commissioner answered the question in favour of the tenant on the authority of *Banda v. Karohamy* [1]. With great respect, I do not see what application that decision, which was concerned with a plea of *res adjudicata*, can possibly have on the present issue.

The general principles upon which a court must determine whether intervening legislation can be regarded as having retrospective effect so as to interfere with rights in a pending action are clear enough. In *Hitchcock v. Way* [2] Lord Denham declared that " in general 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 ". It was similarly held that " when the Legislature alters the rights of parties by taking away from them, or conferring upon them, any right of action, *its enactments, unless in express terms they apply to pending actions, do not affect them at all* ". *Vide* also *re Joseph Suche and Co.* [3]. This principle is recognized in section 6 (3) of the Interpretation Ordinance, although the language of the section does not strictly apply to the present action.

I have endeavoured, within the time at my disposal, to search for precedents where the English Courts have considered whether analogous legislation (affecting the rights of landlord and tenant) were retrospective in effect. The *ratio decidendi* of all the decisions which I have traced seems to be that it is necessary in each case to examine the language of the particular enactment, and that only a clear intention on the part of the legislature to affect rights in a pending action could rebut the general presumption to which I have already referred. *Stevin v. Fairbrass* [4]; *Landrigan v. Simons* [5]; *Brooks v. Brimecome* [6]. In the last mentioned decision Lord Du Parcq (then du Parcq J.) adopted an earlier ruling that " no rule of construction is more firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. *If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only* ".

I shall now proceed to examine the provisions of the Rent Restriction Act in the light of these principles. Section 13 (1) seems to me very

[1] *(1948) 50 N. L. R. 369.*
[2] *6 Ad. and El. 943 (= 112 E. R. 360).*
[3] *(1876) 45 L. J. Ch. 12.*
[4] *(1919) L. J. K. B. 1005.*
[5] *(1924) 1 K. B. 509.*
[6] *(1937) 106 L. J. K. B. 801.*

clearly to relate to a point of time preceding the commencement of an action for ejectment. It precludes the landlord of premises to which the Act applies from instituting such an action without prior authorisation in writing from the Rent Control Board unless one or other of the conditions specified in the proviso has been satisfied. It therefore follows that section 13 (1) could have had no application when the present action commenced, and after the Act first applied to the premises the time for obtaining the Board's authority to *institute* the action which was pending had long since passed. No doubt, as Windham J. pointed out in *Ismail v. Herft* [1] the requirement in proviso (*c*) that " the premises are reasonably required for the occupation of the landlord " connotes a continuity of the requirement until the decree for ejectment is executed, but the other parts of section 13 all relate to a point of time prior to the commencement of the proceedings. I would therefore hold that the coming into operation of the Act after an action for ejectment has already commenced does not affect the landlord's accrued right to claim ejectment under the common law which governs the relationship of landlord and tenant. Even if it were correct to say that the language of section 13 may fairly be interpreted as being retrospective, I would say that it might at any rate be interpreted with equal fairness as being prospective only. In that state of things the law requires that the interpretation which preserves the cause of action which has already accrued to the landlord in a pending action should be preferred. I would therefore hold that the plaintiff was not deprived of his right to claim ejectment in these proceedings.

The only other objection on which the tenant relied was that the action was not properly instituted in the name of the landlord by his attorney, The Lanka Estates Agency, Limited. The plaintiff was admittedly residing outside the jurisdiction of the Court at all relevant times, and the Company could therefore make appearances and applications on his behalf as his recognized agent, if, in terms of section 25 (*b*) of the Civil Procedure Code, the Company held " a general power of attorney from the plaintiff authorising the Company to make such appearances and applications on his behalf ".

The power of attorney in favour of the Company has been filed of record. It authorises the Company to manage the property which is the subject matter of this action, to collect the rent and income thereof, to give notice to any tenant terminating the tenancy, to appear for the plaintiff in any Court of law, and to grant proxies on his behalf in favour of any proctor or proctors. The right of representation is of course limited in this context to proceedings affecting the property which the Company was empowered to manage.

The learned Commissioner has taken the view that the power of attorney was a special power of attorney and not a general power within the meaning of Section 25 (*b*) of the Code. I cannot agree. A *special agent* is one who has authority only to act on his principal's behalf for some special occasion or purpose, *Brady v. Todd* [2]; on the other hand, an agency may legitimately be regarded as *general* if, as in the case of a

[1] *(1948) 50 N. L. R. 112.*
[2] *(1861) 9 C. B. N. S. 592 (=E. R. 142—p. 233).*

house agent, the person concerned is authorised to act generally on behalf of his principal in relation to that employment. *Smith v. McGuire* [1]. I do not think that Section 25 (*b*) of the Civil Procedure Code was intended to refer only to persons who hold general powers of attorney authorising them to represent the principal in every conceivable kind of transaction and in connection with every kind of legal proceeding. This is apparent, I think, because the words " where no other agent in expressly authorised to make such appearances " in Section 25 (c) presupposes that a person with a special authority to represent the principal in matters *in connection with a particular trade or business* is a recognized agent within the meaning of Section 25 (*b*).

I find that Section 37 of the original Civil Procedure Code of India contained language similar to Section 25 (*b*) of our present Code. In *Venkataramana v. Narasingha Rao* [2] it was held that the section was satisfied so as to constitute a general agency where there is " a delegation to do all acts connected with a *particular* trade, business or employment ". Applying this ruling I have taken the view that the plaintiff's action was properly constituted.

I set aside the judgment appealed from, and enter decree in favour of the plaintiff as prayed for with costs, subject to the proviso that damages should be awarded against the defendant at the rate of Rs. 50 per mensem. The plaintiff is also entitled to the costs of this appeal.

Appeal allowed.

[1] *(1858) 3 H. and N. 554 (= 157 E. R. 589).*
[2] *(1913) I. L. R. 38 Mad. 134.*