1951 *Present* : **Nagalingam J. and Pulle J.**

MULGIRIGALA CO-OPERATIVE STORES SOCIETY, LTD., *et al.*, Appellants, *and* CHARLIS, Respondent

S. C. 25—D. C. (Inty.) Tangalle, 587

Co-operative Societies Ordinance (Cap. 107)—Section 45—Dispute between Society and past office-bearer—Compulsory arbitration of Registrar—Amending Act No. 21 of 1949—Retrospective operation.

The provisions of the Co-operative Societies (Amendment) Act, No. 21 of 1949, compelling arbitration in a dispute between a co-operative society and a past officer are not applicable to a case instituted by the ex-officer prior to the date when the amending Act was passed.

APPEAL from a judgment of the District Court, Tangalle.

H. V. Perera, K.C., with *E. R. S. R. Coomaraswamy*, for the defendants appellants.

No. appearance for the plaintiff respondent.

T. S. Fernando, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

June 21, 1951. PULLE J.—

This is an interlocutory appeal in an action instituted on October 28, 1948, by the Manager of a Co-operative Society against the Society and its Secretary for the recovery of Rs. 1,455 on account of security deposited and arrears of salary due to him and an assistant salesman. An answer was delivered on February 25, 1949, which among other matters admitted an allegation in the plaint that the plaintiff and his assistant terminated their services on December 15, 1947. The plea was also taken that in terms of an agreement entered into by the plaintiff and the 1st defendant Society any dispute or matter of controversy between the parties should be referred to the arbitration of the Registrar of Co-operative Societies and that therefore the Court had no jurisdiction to try and determine the action.

The trial was taken up on November 7, 1949, and in the meantime, that is on May 24, 1949, the Co-operative Societies (Amendment) Act, No. 21 of 1949, was passed. The point to be determined in this appeal is whether the provisions of the amending Act had the effect of ousting the jurisdiction of the Court to try the case.

Section 45 of the Co-operative Societies Ordinance (Cap. 107) provides that if any dispute, touching the business of a registered Society or its Committee, between the Society and any officer of the Society arises, such dispute shall be referred to the Registrar of Co-operative Societies for decision. In the cases of *Piyadasa v. Bogallegama* [1] and *Illangakoon v. Bogallegama* [2] it was held that the provision as to compulsory arbitration did not apply to a dispute between a Society and an office-bearer who had ceased to hold office. The plaintiff was therefore entitled as an ex-Manager of the 1st defendant Society to institute the present action to obtain the reliefs claimed by him. The effect of the amendment was that a dispute between a Co-operative Society and "any officer or employee of the Society whether past or present" had to be referred to the Registrar for decision. The question, therefore, is whether this amendment which came into operation while the trial was pending brought to an end the jurisdiction of the Court and whether the plaintiff's remedy thereupon was to submit the dispute to the compulsory arbitration of the Registrar. The learned District Judge decided in favour of the plaintiff.

[1] *(1948) 50 N. L. R. 224.*

[2] *(1948) 49 N. L. R. 403.*

At the argument in appeal the plaintiff was not represented by Counsel and we are indebted to Mr. T. S. Fernando, Senior Crown Counsel, who appeared as *amicus curiae*, for his assistance.

For the purpose of this appeal it is not necessary to express a concluded opinion on the question as to whether a person desiring to enforce a claim after May 24, 1949, in a dispute which arose prior to that date is entitled to seek his remedy as the law stood prior to the amendment. The immediate question with which we are concerned is the right of a plaintiff to prosecute a pending suit unaffected by the amending legislation. In the case of the *Colonial Sugar Refining Company, Limited v. Irving* [1] the plaintiffs sought to recover from the Collector of Customs for Queensland a sum of money deposited under protest. Judgment was given in favour of the Collector on September 4, 1903. It was not disputed that but for the provisions of the Australian Commonwealth Judiciary Act, 1903, which came into operation on August 25, 1903, the plaintiffs had a right of appeal direct to the Queen in Council. It was urged, however, on behalf of the Collector, that no right of appeal lay because under the Act of 1903 " every decision of a Court of a State from which, at the establishment of the Commonwealth, an appeal lay to the Queen in Council, shall be final and conclusive, except so far as an appeal may be brought to the High Court". The plaintiffs contended that the provisions of the Act of 1903 were not retrospective so as to defeat a right in existence at the time when that Act came into operation. Lord Macnaghten in delivering the judgment of the Board stated:

" As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolising an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

I ask myself whether the amendment to section 45 effected by the Act of 1949 dealt with a mere matter of procedure or practice. The answer is clearly in the negative. The right of the plaintiffs to prosecute the

[1] *(1905) A. C. 369.*

suit filed by them in the District Court was a substantial vested right. The Act is silent in regard to pending actions and, therefore, the principle that should be applied is that it ought not to be given a retrospective operation so as to interfere with a vested right unless one could say that it was retrospective by necessary intendment, of which there is no indication whatever.

The principle laid down in the case cited above was applied to a pending case by the Divisional Bench in *Guneratne v. Appuhami* [1]. This was an action instituted in 1900 for declaration of title to land and the defendant took the plea that it was not maintainable inasmuch as the estate of one of the plaintiff's predecessors in title had not been administered. The plaintiff sought to rely on the first proviso to section 547 of the Civil Procedure Code, which came into operation in 1904 during the pendency of the suit. Lascelles, A.C.J., stated:

> " Nothing is to be found in section 2 of Ordinance No. 12 of 1904 which shows any intention on the part of the Legislature that the enactment should be retrospective in the sense of affecting pending suits. It was however contended that the enactment was a matter of procedure only and as such would extend to the present action.
>
> " In my opinion the question is concluded by the judgment of the Privy Council in the *Colonial Sugar Refining Company v. Irving* [2] ".

Later at page 95 the learned Acting Chief Justice stated:

> " If the Ordinance is given a retrospective effect the defendant will be deprived of this defence. It is clear to me that this is not merely a matter of procedure—it touches a right which was in existence when the Ordinance was enacted".

It can equally well be stated in the present case that if the amending Act is given retrospective effect, the plaintiff would be deprived of the substantive right of prosecuting his suit before the tribunal which he had selected as of right before the Act was passed.

If the contention on behalf of the appellants is accepted it would mean that, whatever be the stage of the pending action at the time the amending Act came into operation, the jurisdiction came to an end and the parties had to bear the inconvenience and expense of litigating afresh before the Registrar or an arbitrator appointed by him. A far reaching consequence of this kind could not have been intended by the Legislature and the amending Act cannot bear a construction that would lead to this result.

In my opinion the preliminary point taken at the trial by the appellant fails and the appeal is dismissed without costs.

NAGALINGAM J.—I agree.

Appeal dismissed.

[1] *(1906) 9 N. L. R. 90.*

[2] *(1905) A. C. 369.*