1956 *Present :* **T. S. Fernando, J.**

SUPPRAMANIAM CHETTIAR, Appellant, *and* M. A. WAHID, Respondent

S. C. 11—C. R. Colombo, 43,869

Execution of decree to pay money—Judgment debtor an employee in a shop or office—Liability of his salary and allowances to be seized in execution—Civil Procedure Code, s. 218 (m)—Amending Act, No. 20 of 1954, has no retrospective effect—Interpretation Ordinance (Cap. 2), s. 6 (3) (b and c).

The amendment of section 218 (*m*) of the Civil Procedure Code by Act No. 20 of 1954 exempting from seizure in execution of a decree to pay money the salary and allowances of an employee in a shop or office, if such salary and allowances

[1] *(1944) K. B. 80.*
[2] *(1944) K. B. 412.*
[3] *(1933) 1 K.B. 850.*
[4] *(1934) 2 K.B. 408.*
[5] *(1914) 29 C. A. R. 162.*

do not exceed Rs. 500 per mensem, does not have any retrospective operation so as to deprive a judgment-creditor, who had obtained a decree in his favour before the date on which the amending Act came into force (viz., March 17, 1954), of his right to seize the salary and allowances payable to his judgment-debtor even after the date of the amendment.

APPEAL *from an order of the Court of Requests, Colombo.*

C. Ranganathan, with *S. C. Crossette-Thambiah*, for the plaintiff-appellant.

No appearance for the 2nd defendant-respondent.

Cur. adv. vult.

September 24, 1956. T. S. FERNANDO, J.—

The amendment of section 218 of the Civil Procedure Code effected by the Amendment Act, No. 20 of 1954, exempted from seizure in execution of a decree to pay money the salary and allowances of an employee in a shop or office, if such salary and allowances do not exceed five hundred rupees per mensem. This appeal raises the interesting question of law whether this amendment has retrospective operation so as to deprive a judgment creditor who has obtained a decree in his favour before the date on which the Amendment Act came into force of the right he had of seizing the salary and allowances of his judgment-debtor.

In order to discuss this question of law it is necessary first to state the relevant facts. The plaintiff filed this action on 13th February, 1953, against the 1st defendant and the 2nd defendant (who is the respondent to this appeal), and on 21st May 1953 judgment was entered against both defendants whereby they were ordered to pay jointly and severally to the plaintiff a sum of Rs. 145/62, with interest on Rs. 135 at 18 per cent. per annum from date of action up to date of decree and thereafter with legal interest on the aggregate amount until payment in full. It was further ordered that the amount of the decree was payable by the defendants by monthly instalments of Rs. 12/50, payable on the 5th day of each month commencing from 5th June 1953. In default of the due payment of a single instalment writ was to issue on the balance then due on the decree. It is admitted that the defendants paid the instalments due in June and July, 1953, and that default was made in the payment of subsequent instalments. The plaintiff applied for writ against the defendants on 24th March 1954, and in execution of that writ the fiscal seized a sum of Rs. 37/69 in the hands of the 2nd defendant's employer, the Associated Newspapers of Ceylon, Ltd., which sum represented the payment due to the 2nd defendant for working overtime in the month of June 1954. After the seizure had been effected the 2nd defendant moved the Court of Requests for a release of the seizure on the ground that the Amendment Act No. 20 of 1954 exempted this sum from seizure. It was admitted that the 2nd defendant's salary and allowances for a month do not exceed Rs. 500, that he was employed in an office within the meaning of the Act and that the payment for working overtime would come within the

meaning of "salary and allowances" in section 218, but the plaintiff resisted the motion for the release of the seizure claiming that the right to seize the 2nd defendant's salary and allowances had accrued to him before 17th March 1954 (the date on which the Amendment Act came into force), and that such right was not taken away by the Act.

The learned Commissioner of Requests held that at the date on which the Amendment Act came into force (viz., 17th March 1954) no right had been acquired by the plaintiff to seize any payment by way of salary or allowance which had not fallen due by that date and, as the sum of Rs. 37/69 represented overtime payment in respect of June 1954, he held that the seizure had to be released. I am unable to agree with the view taken by the learned Commissioner as the right that had been acquired by or accrued to the plaintiff by 17th March 1954 was not merely a right to seize some particular property that had, so to speak, come into existence (in this case the sum of Rs. 37/69) but also the right to do something, i.e., the right to seize all salary and allowances. If it was the intention of the legislature to deprive judgment-creditors of rights they had acquired before the Amendment Act came into force, that intention should have been clearly expressed in the statute or should be one which could be gathered by necessary implication from the wording of the statute. The presumption that the legislature intends a statute to be prospective only has not been rebutted.

The rule of construction cited in Maxwell on the *Interpretation of Statutes* (10th edition), at page 221 in the following form :—

> "In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

is applicable in this country as well—see the case of *Guneratne v. Appuhami*[1]—and is recognized in our law by section 6 (3) (*b*) of the Interpretation Ordinance (Cap. 2) which enacts that whenever any written law repeals either in whole or in 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 any right acquired under the repealed written law. By virtue of the decree in this case on 21st May 1953 before the Amendment Act came into force a right had accrued to or become vested in the plaintiff to seize the salary and allowances of the defendant. The salary and allowances capable of being so seized were not limited to salary and allowances which had fallen due for payment by the date of decree and remaining unpaid, but extended also to salary and allowances payable even after the date of the decree. An examination of relevant authorities, both English and local, compels me to reach the conclusion that the plaintiff's claim to seize the sum in question was not affected by the Amendment Act in any way.

In the case of *Knight v. Lee* [2], the defendant employed the plaintiff, a betting agent, to make certain bets in his (the plaintiff's) name on the defendant's behalf. The bets having been made and lost, the plaintiff

[1] *(1906) 9 N. L. R. 97.* [2] *(1893) L. R. 1 Q. B. D. 41.*

paid the amount of the losses on the defendant's account. This occurred prior to the passing of the Gaming Act, 1892. After the passing of the Act, the plaintiff commenced an action to recover from the defendant the money so paid. The defendant pleaded the Act as a bar to the action. Section 1 of the Act which was the relevant provision provided that " any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Act of 8 and 9 Vict. C. 109 . . . . shall be null and void, and no action shall be brought or maintained to recover any such sum of money ". Mathew J. in the course of holding that the 1892 Act was not retrospective and that the action might be maintained stated that " the implied promise by the defendant to repay to the plaintiff the sum paid by him on the defendant's account was a perfectly valid promise at the date when it was made, and the presumption is that the legislature did not by subsequent legislation intend to deprive the plaintiff of his right under that promise ".

In the later case of *Henshall v. Porter* [1] McCardie J. called upon to consider the question whether section 1 of the Gaming Act of 1922 which enacted that no action under section 2 of the Gaming Act of 1835 to recover back money paid in respect of gaming debts " shall be entertained in any court ", held that as the plaintiff's cause of action had vested in him before the Gaming Act of 1922 had come into force he was not prevented from commencing the action after the Act came into force and was entitled to recover from the defendant. Dealing with an argument that the debt owed by the defendant gave rise only to a right to recover and that such a right was not " property ", the learned judge stated as follows at page 197 :—

> " Take the broad facts here. On July 20, 1922, the plaintiff possessed fully accrued rights under the Act of 1835. The defendant then owed him statutory debts. These debts constituted property in the fullest sense of the word. Can it be justly said that on July 20, 1922, that property was wholly destroyed by an ambiguously worded Act of Parliament ? In my opinion the answer is No."

The ratio decidendi of the case of *Hai Bai v. Perera* [2] which was concerned with the effect which an Act amending the Public Servants (Liabilities) Ordinance had on the rights enjoyed by judgment creditors appears to me to be equally applicable to the case now before me. In that case decree had been entered in favour of the plaintiff on September 30, 1952, in an action on two promissory notes. At the time the defendant borrowed money on the promissory notes he was a public servant receiving a monthly salary exceeding Rs. 300 and therefore outside the protection of the Public Servants (Liabilities) Ordinance (Cap. 88). During execution proceedings he pleaded that, inasmuch as the Public Servants (Liabilities) Ordinance, as amended by the Amendment Act, No. 10 of 1951 (which came into force on March 15, 1951), protected public servants drawing a monthly salary of Rs. 520 or less, he was entitled to be protected from proceedings in execution of the decree. Gratiaen J. in holding against this plea stated

[1] *(1923) L. R. 2 K. B. 193, at 197.* [2] *(1954) 55 N. L. R. 442.*

that the amending Act does not expressly, or even by necessary implication, purport to destroy or reduce the rights which the creditors of previously unprotected public servants had acquired or transactions entered into before 15th March 1951, and that, in the result, section 6 (3) (*b*) of the Interpretation Ordinance preserves the rights of the plaintiff against the defendant in respect of the promissory notes sued on.

A decree might for all practical purposes be an empty decree if all that it permits its holder to do is to seize such sums of money as are in existence at the date of the entering of the decree. It cannot be doubted that at the date on which the decree in the present case was entered, viz., 21st May 1953, the judgment-creditor had a right to seize all sums of money falling due even after the date of decree until the decree in his favour was satisfied. Such a right is truly a vested right. What is there in the Amendment Act of 1954 to compel one to conclude that the legislature intended to take away that vested right ? I should refer in this connection to the effect of another provision of the Interpretation Ordinance, namely section 6 (3) (*c*), which provides that a repeal of a written law shall not, in the absence of any express provision to that effect, affect or be deemed to have affected 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. The action which the plaintiff instituted and which had reached the stage of the entering of the decree on 21st May 1953 had not been completed at the time the question arose before the learned Commissioner. The fact that the question arose in execution proceedings did not make it any the less a question that arose when the action was pending. In point are the observations of the Judicial Committee in the case of *Redfield v. The Corporation of Wickham*[1] in which their Lordships were considering the interpretation to be placed on a certain provision of a statute which enacted that nothing therein contained shall in any manner affect suits then pending in any court of law :—

> " the respondents are within the exception, because the section in which their decree was obtained was actually in dependence at the time of its passing. It was argued for the appellants that the exception is limited to suits during their dependence, and does not apply to proceedings taken in execution of a judgment after the suit is at an end. That construction of the clause would deprive it of all meaning."

For the reasons indicated above, I am of opinion that the accrued or vested right of the plaintiff to seize all sums of money by way of salary and allowance extended also to sums of money which had not fallen due on the date of the decree and that this right was not taken away by the Amendment Act, No. 20 of 1954. The appeal is therefore allowed with costs and the seizure in question will stand.

Appeal allowed.

[1] *(1888) L. R. 13 App. Cases 467, at 473.*