1962 *Present :* Sansoni, J.

A. ABEYSINGHE, Appellant, *and* N. C. D. B. GUNASEKARA, Respondent

S. C. 80/61—C. R. Colombo, 77082

Rent Restriction (Amendment) Act, No. 10 of 1961—Section 13 (3)—Retrospective effect—Meaning and effect of the word "pending".

Section 13 sub-section (3) of the Rent Restriction (Amendment) Act, No. 10 of 1961, expressly makes any action or proceedings instituted on or after 20th July 1960 and pending on 30th April 1961 null and void. Nothing more is necessary to make the operation of this sub-section retrospective even to the extent of affecting an acquired right to recover possession.

The entering of a judgment in an action does not in all cases put an end to the pendency of that action, and whether it does so or not can only be decided after considering the relevant statute. An action filed by a landlord in respect of rent-controlled premises must be regarded as pending within the meaning of section 13 (3) of the Amending Act No. 10 of 1961, if judgment was entered prior to 1st May 1961 but petition of appeal was filed within time but after 30th April 1961.

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

G. T. Samerawickreme, with *D. R. P. Goonetilleke*, for the Defendant-Appellant.

C. Ranganathan, for the Plaintiff-Respondent.

Cur. adv. vult.

December 14, 1962. SANSONI, J. —

This is an action filed by a landlord on 9th August, 1960, against his tenant in respect of premises to which the Rent Restriction Act No. 29 of 1948 applies.

The landlord claimed that the premises were reasonably required for his use and occupation, and he asked that the tenant be ejected on this ground. After trial, the Commissioner gave judgment for the landlord as prayed for with costs on 26th April, 1961. In the meantime the Rent Restriction (Amendment) Act, No. 10 of 1961 had been passed and it was to come into operation on a date to be appointed by the Minister.

By a notification dated 28th April, 1961, the Amending Act was brought into operation from 1st May, 1961. Section 13 (3) of the Amending Act reads :

"Where any action or proceedings instituted in any court on or after the twentieth day of July, 1960, for the ejectment of a tenant from any premises to which the principal Act applies on any ground

other than a ground specified in sub-section (1) of this section is or are pending on the day immediately preceding the date of commencement of this Act, such action or proceedings shall be deemed at all times to have been and to be null and void."

The grounds specified in Sub-section (1) of Section 13 are :—

(*a*) that the rent of such premises has been in arrears for three months ;
(*b*) that the premises have been used for an immoral or illegal purpose ;
(*c*) that wanton destruction or damage has been caused to the premises.

This action was not filed on any of the grounds specified in Section 13 (1), and the question that arises is whether any action or proceedings were pending on 30th April within the meaning of Section 13 (3), for, if they were, they " shall be deemed at all times to have been and to be null and void."

On the preliminary point whether this Court can give effect on this appeal to the terms of Section 13 (3), notwithstanding that this provision came into effect after the judgment of the lower Court was delivered, I have no doubt that it must do so if the facts of the case demand it and the provisions of Section 6 of the Interpretation Ordinance, Cap. 2, are satisfied. I have nothing to add to what I have said in *Nawadun Korale Co-operative Stores Union, Ltd. v. W. M. Premaratne* [1]. Section 13 sub-section (3) expressly makes any action or proceedings instituted on or after 20th July, 1960, and pending on 30th April, 1961, null and void. Nothing more was necessary to make the operation of this sub-section retrospective, even to the extent of affecting an acquired right to recover possession. The words used by Lord Radcliffe in *Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents* [2] make the position quite clear : " To be ' express provision ' with regard to something it is not necessary that that thing should be specially mentioned ; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom."

The main question for decision is whether this action was pending on 30th April, 1961, even though judgment had been delivered in the Plaintiff's favour on 26th April, 1961.

I was at first inclined to think that the action was no longer pending once judgment had been delivered ; and I was probably influenced by the many judgments of this Court which have held that Section 404 of the Civil Procedure Code, which deals with the " assignment, creation or devolution of an interest pending the action," applies only to assignments etc. before decree. One of the earliest judgments which so held was that of Bonser, C.J. in *Gooneratne v. Perera* [3]. Subsequent judgments have followed this decision. But Bonser C.J. also said that had this section stood alone, he would have been inclined to interpret the words as signifying at any time before the decree was finally executed. It

[1] *(1954) 55 N. L. R. 505 at page 509.* [2] *(1962) 64 N. L. R. at 33.*
[3] *(1896) 2 N. L. R. 185.*

was only when he considered the words with the other sections in the chapter in which they occur, that he found it impossible to come to any other conclusion than that the words meant before final decree.

The learned Chief Justice was applying a well-established rule of interpretation which requires that in considering the meaning of a word or words in a statute one should not take them " *in vacuo*, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that their meaning is entirely independent of their context "—per Lord Greene, M.R. in *re Bidie* [1]. A word takes its colour and content from the context in which it is found, and it is all-important that the final interpretation should not be arrived at without paying due attention to the contextual scene.

Now it is only too clear from the authorities that the words " pending action " often bear the meaning " while the action is not ended." For instance, in the application of the principle of *lis pendens*, an action is regarded as pending from the time of its institution up to its final settlement in execution. This Court has held in *Saravanamuttu v. Solamuttu* [2], that in the case of a mortgage action the doctrine of *lis pendens* operates after judgment and up to the conclusion of execution, just as it is deemed to prevail in the interval between the final decree subject to appeal and the appeal. The policy that underlies the doctrine is that there will be no end to litigation if unrestricted alienation is permitted during its pendency. Again, in the field of contempt, a criminal case is regarded as pending while the time for appealing has not run out, and certainly, in the case of a man who is appealing or proposing to appeal. The rule in such a case is that the proceedings are pending at any time when there is an opportunity for appeal. In *Delbert-Evans v. Davies and Watson* [3], Humphreys J. referred to the rule that between conviction and appeal the case is not ended at all , it is still *sub judice*.

The view that a cause is still pending, even though final judgment has been given, provided that the judgment has not been satisfied, was also taken in the case of *Salt v. Cooper* [4]. Jessel, M.R. had in that case to interpret Section 24 (7) of the Judicature Act, 1873 which read :

> " The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter ; so that, as far as pos-ible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided."

[1] *(1949) Ch. 121 at p. 129.*
[2] *(1924) 26 N. L. R. 385.*
[3] *(1945) 2 A. E. R. p. 167.*
[4] *(1880) 16 Ch. Div., 554.*

In the course of his judgment he said " A cause is still pending even though there has been final judgment given, and the Court has very large powers in dealing with a judgment until it is fully satisfied." He pointed out that in putting a construction upon the Act, one must have regard to the purview of the Act, and especially to the expressed intention of the Legislature in passing it. Express provision is not necessary, and Parliament rarely states explicitly what its intention is—that has to be gathered from what it expressly says. The case of *Salt v. Cooper* (*supra*) was referred to by the Privy Council in *Ponnamma v. Arumugam* [1], and the purport of the decision of the earlier case was said to be that a cause in which judgment had been given is still pending within the meaning of the rule relating to execution of judgments provided that the judgment has not been satisfied. It is relevant to point out here that although the Plaintiff had obtained his judgment before the amending Act came into operation, the judgment had not been satisfied by the Defendant giving up vacant possession. This case is then authority for the view that the action is still pending.

The last case I need refer to is *Polini v. Gray* [2]. The claimants to a fund in that action failed in the Court of first instance and in the Court of Appeal and were about to prosecute an appeal to the House of Lords. They alleged that their appeal would be nugatory if the fund was paid out to the Defendants, and they applied to the Court of Appeal to stay the distribution of the fund until the decision of the appeal which was to be brought. It was held that the Court had the power to suspend what it had declared to be the right of one of the litigant parties on the principle that " when there is an appeal about to be prosecuted, the litigation is to be considered as not at an end."

Although none of these authorities is precisely in point, they do suggest that the entering of judgment in an action does not in all cases put an end to the pendency of that action, and whether it does or not can only be decided after considering the relevant statute. When I come to consider the particular matter under appeal, I think it is obvious that Act No. 10 of 1961 was passed in order to afford further and early relief to tenants of premises to which the principal Act applied. Tenants who had been in arrears of rent were granted further concessions in order to avoid the termination of the tenancy. But most drastic of all were the amendments brought in by Section 13 of the amending Act which was given retrospective effect as from 20th July, 1960. They rendered pending actions for ejectment filed on grounds which were specified in the principal Act, null and void with retrospective effect. Only actions filed on the grounds —

(1) that the rent had been in arrears for 3 months, or

(2) that the premises have been used for immoral or illegal purpose, or

(3) that wanton destruction or damage had been caused to the premises,

were saved.

[1] (*1905*) *8 N. L. R. 223.*

[2] (*1879*) *12 Ch. D. 438.*

I do not think it could have been intended that where a judgment for ejectment had been given prior to 1st May, 1961, the tenant was to be deprived of the benefits of the amending Act merely because he did not file his petition of appeal before 30th April, 1961. The law, it must be remembered, allowed him time beyond that date to lodge his appeal. Consider the matter from the point of view of the landlord, and one gets an odd result if the date of judgment is taken to be the date when the action ceased to be pending. For then, if this Plaintiff had applied for writ of ejectment in execution of his judgment, the proceedings in execution would all be rendered void if such application had been made before 30th April, 1961, whereas they would be valid if the application for writ had been made after that date. Thus a diligent Plaintiff would suffer while a Plaintiff who did nothing to execute his judgment would be benefited. Such a curious result could not have been intended by Parliament, which would be presumed to act on the well-known principle that "the using of legal diligence is always favoured and will never turn to the disadvantage of the creditor" —per Heath J. in *Cox v. Morgan* [1].

I therefore hold that this action was pending on the relevant date. It follows that under Section 13 (3) of the amending Act it must be deemed to be null and void and I find accordingly. The appeal is allowed. The appellant will have his costs of appeal, but the parties will bear their own costs in the lower Court.

Appeal allowed.