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Case No.: 661/87

BOX 89(3)

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

ADAMPOL (PTY) LTD Appellant

and

THE ADMINISTRATOR OF THE TRANSVAAL Respondent

CORAM: JOUBERT, HOEXTER, BOTHA, VIVIER et EKSTEEN, JJA

HEARD: 21 February, 1989

DELIVERED: 22 May 1989

J U D G M E N T

HOEXTER, JA .....

HOEXTER, JA

I have had the benefit of reading the judgments respectively prepared by my Brother JOUBERT and my Brother BOTHA. I agree with the view expressed in the penultimate paragraph of the latter judgment that the decisive question in the appeal is whether or not sec 95A reveals a clear intention on the part of the legislature that its provisions should apply to expropriations that have taken place before its enactment. My Brother BOTHA concludes that no such clear intention is revealed. I would, with deference, disagree with that conclusion. In my opinion the meaning which the appellant's counsel seeks to assign to sec 95A is the correct one. For the following reasons I agree with the orders set forth in the concluding paragraphs of the judgment of my Brother JOUBERT.

What VAN DER MERWE, J conceived to be the initial

inquiry.....

inquiry in the problem of interpretation confronting him appears from the following passage in the judgment of the Court below:-

> "The first question that must be answered, is the following. If interest is ..... payable to an expropriatee prior to 25 September 1985, does it mean that the section will have retrospective effect?"

I venture to suggest that the first question which fell to be answered was rather this : What is the ordinary grammatical meaning of the words of the section? If such a meaning is apparent, and if it produces no obvious absurdity, repugnance or inconsistency, the inquiry ends there. The paramount principle, as has often been stated, is construction according to the plain import and effect of the words. In cases of ambiguity certain presumptions may be called in aid. One of them is the

presumption .....

presumption against the restrospective operation of statutes. Legislation which is truly retrospective, and which operates ex post facto, may in some cases run counter to natural justice; and where there is ambiguity the presumption against retrospective operation is a strong one. The fact remains, however, that presumptions - whether they be weak or strong - have a purely auxiliary function; and they may be invoked in the process of interpretation only if the language in question is not clear. In Parow Municipality v Joyce and McGregor (Pty) Ltd 1974(1) SA 161 (C) VAN WINSEN, AJP observed (at 165H/166A) -

> "However, these rules of statutory exegesis are intended as aids in resolving any doubts as to the legislature's true intention. Where this intention is proclaimed in clear terms either expressly or by necessary implication the assistance of these rules need not be sought. Steyn in his work on Uitleg van Wette, 3rd ed., p. 2, states the position thus:

> '.....'n reël waaraan alle ander reëls ondergeskik is, naamlik dat indien maar eenmaal vasstaan wat die werklike bedoeling is wat die woorde wil uitdruk, aan daardie uitleg gevolg gegee moet word.'"

In his judgment my Brother JOUBERT holds that the wording of sec 95A(1) is clear and unambiguous; and that the ordinary meaning of the words used involves no manifest absurdity, inconsistency or hardship. I arrive at the same conclusion. When one heeds and gives natural effect to the exact words of the section they signify, I think, that interest will be paid to an expropriatee:-

(a) calculated at the rate and in the fashion indicated in the section;

(b) on any amount of compensation under sec 92 which on or after 25 September 1985 is payable but unpaid;

(c) in.....

(c) in respect of an expropriation under

Ordinance 22 of 1957.

Counsel for the respondent invites us to read the section as if, after the words:

> "...on any outstanding amount of the compensation payable in terms of section 92...."

there should be slipped in, by implication, words having the following effect:

> ".....pursuant to a notice contemplated in subsection (1) of the latter section promulgated after the coming into effect of this section."

I confess that I am quite unable to see any reason for so tinkering with the express words actually used by the legislature. In my judgment the words of the section are too plain and clear to admit of any such implication, which is negatived by the use of the word "any" which prefaces the words "outstanding amount."

Any.....

Any speculation as to the inscrutable workings of the legislative mind which is divorced from the actual words of the statutory provision in question does not appear to me to be particularly helpful. In the instant case it is said, for example, that in enacting sec 95A(1) the primary purpose of the legislature must have been to make provision for the payment of interest on amounts of compensation payable but outstanding in respect of expropriations taking place after the date on which the section came into operation. That conjecture may be sound. There are no less cogent grounds, I think, for another surmise. It seems to me to be reasonable to suppose that the legislature was mindful of the long delays which in practice frequently separate the date of expropriation and the date of payment of compensation; and that the legislature's use of words of unqualified generality.....

rality ("any outstanding amount") was prompted by a firm intention to help not only future expropriatees but also those to whom, at the date of the enactment, compensation had not yet been paid.

For the above reasons I come to the conclusion that the Court below erred in deciding the stated case in favour of the respondent. In my judgment the words of sec 95A(1) in their ordinary meaning are conclusive: and they apply clearly and directly also to outstanding amounts payable in respect of expropriations preceding the date on which the section came into operation.

This conclusion renders it unnecessary for me to express any firm opinion on the issue, much debated both in the Court below and on appeal, whether according to the construction for which the appellant contends the section operates with retrospective effect. I wish to

say,.....

say, nevertheless, that in my view that question should be answered in the negative.

The basis of the decision made by VAN DER MERWE, J in favour of the respondent was a finding that the construction proffered by the appellant did in fact involve retrospective operation; and, since the language of the section indicated neither expressly or by implication that there should be retrospective operation, that the presumption against retrospectivity had not been displaced.

In regard to the issue of retrospectivity the test applied by VAN DER MERWE, J was the following:-

> "The Ordinance will, in my opinion, be retrospective if it provides that as at a date prior to 25 September 1985 the law shall be taken to have been that which it was not."

The learned Judge was satisfied that the question indicated above should be answered in the affirmative. For

the.....

the reasons briefly stated hereafter it seems to me, with respect, that the test used by the learned Judge should have yielded a negative result.

The test applied by VAN DER MERWE, J is one formulated in the oft-quoted judgment of BUCKLEY, LJ in the case of West v Gwynne (1911) 2 Ch. 1 at 11/12:-

> "Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law."

It seems to me that in the instant case too the essential

inquiry relates to the ambit of sec 95A(1) rather than to retrospectivity in the true sense of the word. The provisions of sec 95A(1) decreeing the payment of interest on outstanding amounts are not foredated to a time earlier than 25 September 1985 : they govern the payment of interest only on amounts outstanding on and after that date.

The distinction between retrospective operation and interference with existing rights is neatly illustrated by the situation with which the Court in Parow Municipality v Joyce and McGregor (Pty) Ltd. (supra) had to deal. In that case the respondent was a property-owning development company. In 1932 it had submitted and received approval for a plan of sub-division of land which included an area designated as "recreation ground". Subsequently thereto sec 127 of the Cape Municipal Ordinance 19 of 1951 provided:-

"The.....

> "The ownership of all immovable property to which the inhabitants of the municipality shall have or acquire a common right and of all public streets and the land comprised therein shall vest in the municipality;....."

In an application by the Parow Municipality for an order compelling the respondent to transfer the aforesaid recreation ground to the Municipality, the Court held that the recreation ground was a public street within the meaning of sec 127, and that sec 127 had vested the ownership thereof in the Municipality. In arriving at this conclusion VAN WINSEN, AJP, rejected the respondent's contention that if the ownership of the recreation ground were to vest in the Municipality sec 127 would be operating retrospectively. The Court pointed out that although sec 127 interfered with existing rights, ownership of the ground in question vested in the Municipality only

from.....

from the date of promulgation of sec 127. At 164G/165C

VAN WINSEN, AJP remarked:-

> "The section applies to a state of affairs existing at its inception, viz., that a certain area of land shewn upon an approved sub-division plan comprises a public street. The fact that the afore-mentioned requisites for its operation existed antecedent to the time when the section was promulgated does not in itself render it retrospective in its operation. Cf. R v St Mary, Whitechapel, 12 Q.B. 120 at p 127; Master Ladies Tailors Organisation v Minister of Labour, (1950) 2 All E R 525 at p 527; R. v A. Solicitor's Clerk, (1957) 1 W L R 1219. It would, in my view, have been retrospective in its operation if it had sought to provide that as from a date anterior to its promulgation the local authority had become vested with ownership in what were then public streets. But this it does not do. The remarks of BUCKLEY, LJ in West v Gwynne, (1911) 2 CH. 1 at p 11, quoted with approval by SCHREINER, ACJ, in Shewan Tomes & Co Ltd v Commissioner of Customs & Excise, 1955(4) SA 305 (A D), are apposite in this connection. The learned Judge observed as follows:
>
> 'During the argument the words 'retrospective'
>
> and.....

> and 'retroactive' have been repeatedly used, and the question has been stated to be whether sec 3 of the Conveyancing Act, 1892, is retrospective. To my mind the word 'retrospective' is inappropriate, and the question is not whether the section is retrospective. Retrospective operation is one matter. Interference with existing rights is another.....
> .....'"

(In the rest of his quotation from the remarks of BUCKLEY, LJ in West v Gwynne (supra) VAN WINSEN, AJP cited the remainder of the passage already quoted earlier in this judgment. VAN WINSEN, AJP then proceeded as hereunder indicated).

"See, too Sarahbibi v Principal Immigration Officer, 1957 (2) SA 175 (N) at p 180: Scott v Artus, 1964(3) SA 384 (E) at p 388.

> I conclude, therefore, that while it can be conceded that sec 127 does, as from the date of its promulgation, interfere with existing rights it does not operate retrospectively."

It seems to me, with respect, that in the above-quoted passage VAN WINSEN, AJP correctly stated the criterion to be.....

be employed in cases of this sort, and I proceed to apply it to the situation in the instant case.

In providing what the law is to be with effect from 25 September 1985 sec 95A(1) undoubtedly interfered with the existing rights of the parties to this appeal. Before that date the respondent bore no obligation to pay interest on any outstanding amount of compensation owing to the appellant, and the latter enjoyed no right to claim such interest from the former. That fact, by itself, does not render the operation of sec 95A(1) retrospective. Nor, in my opinion, is its operation rendered retrospective by the adventitious circumstance that the interest payable is to be computed from a date which may precede (and which, in the instant case does precede) 25 September 1985. In my view that factor is one quite extraneous to the inquiry.

Had....

Had sec 95A(1) provided for the payment of interest not only on amounts outstanding from the date on which it came into operation, but also on amounts outstanding for any period prior to 25 September 1985 and which had been paid in full to the expropriatee before that date, then its provisions would have satisfied the criterion enunciated in West v Gwynne (supra) and applied in the Parow Municipality case (supra). It would then have decreed, ex post facto, the payment of interest in respect of transactions wholly past and perfected. However, as already pointed out, the section does no such thing. It provides for the payment of interest only on amounts outstanding on and after 25 September 1985. Sec 95A(1) provides what the law is to be with effect from 25 September 1985. It does not provide that at a past date the law shall be taken

to.....

to have been that which it was not. Reduced to essentials the contention advanced on behalf of the respondent in the present case (and the same may be said of the respondent in the Parow Municipality case (supra)) really comes to this: that prior to the date of the amending enactment he enjoyed a vested and entrenched right that in future the law governing his obligations would never be amended. That contention, is, I consider, an untenable one.

I would allow the appeal. I concur in the orders proposed by JOUBERT, JA.

G G HOEXTER, JA

VIVIER, JA)
EKSTEEN, JA) Concur

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IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

ADAMPOL (PTY) LTD .....Appellant

and

THE ADMINISTRATOR OF THE TRANSVAAL .....Respondent

Coram: JOUBERT, HOEXTER, BOTHA, VIVIER et EKSTEEN JJ A.

Heard: 21 February 1989

Delivered: 22 May 1989

J U D G M E N T

JOUBERT J A:

This is an appeal against a judgment of VAN DER MERWE J in the Transvaal Provincial Division on a

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special case in which he decided a point of law in favour of the respondent ("the Administrator") viz. that the appellant ("Adampol") was not entitled to payment of interest in terms of section 95 A of the Roads Ordinance 22 of 1957 (T) ("the Ordinance") prior to 25 September 1985. The appeal is brought with leave of the Court a quo.

The undisputed facts material to the present appeal are briefly as follows. Adampol was at all relevant times the registered owner of a certain immovable property situate in Randburg. Acting in pursuance of the powers conferred on him by section 5(1)(b) of the Ordinance the Administrator on 31 December 1980 duly promulgated in the Provincial Gazette two notices (numbers 2068 and 2069) in which he declared two public roads, one being a throughway and the other being a district road, to exist over a portion of Adampol's property. For the sake of convenience I shall

hereinafter refer to these promulgated notices as the notices of expropriation. I shall likewise refer to 31 December 1980 as the date of expropriation. By virtue of the provisions of section 92 of the Ordinance the Administrator became obliged to pay Adampol compensation in respect of the land encroached upon by the establishment of the two public roads. On 28 May 1982 Adampol submitted its claim for compensation to the Administrator. They were unable to agree mutually on the amount of compensation. During February 1983 Adampol instituted in the Transvaal Provincial Division an action against the Administrator in which it claimed the determination by the Court of the compensation in an amount of not less than R350 000-00 with interest at the rate of 11% and costs. On 29 April 1986 the parties partially settled the action. In accordance with their settlement the Administrator on 10 June 1986 paid Adampol the sum of R200 000-00 as compensation

in terms of section 92 of the Ordinance, such sum representing the market value of the land encroached upon. The only matter in dispute between the parties was whether or not Adampol was entitled to interest in terms of section 95 A of the Ordinance on the compensation paid by the Administrator, from a date prior to 25 September 1985. To appreciate the nature of the dispute it is necessary to point out that prior to 25 September 1985 the Ordinance made no provision for the payment by the Administrator of interest on the outstanding balance of any compensation payable in terms of section 92 of the Ordinance. An important innovation was, however, brought about when section 95 A was inserted as a new section in the Ordinance by section 11 of the amending Ordinance 20 of 1985 with effect from 25 September 1985. The material portion of section 95 A reads as follows:

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"Interest on compensation payable in terms of section 92

95 A(1) Interest at the Standard interest rate determined in terms of section 26(1) of the Exchequer and Audit Act, 1975 (Act 66 of 1975), shall be paid on any outstanding amount of the compensation payable in terms of section 92 with effect from a date sixty days from the promulgation of the notice contemplated in subsection (1) of the latter section.

(2) Where the owner of land referred to in section 92(1) occupies or utilizes the land concerned, no interest shall, in respect of the period during which he occupies or utilizes such land, be paid in terms of subsection (1) on the outstanding amount contemplated in that subsection:

--------"

The provisions of section 95(A)(2) are not relevant for purposes of the case since it is common cause that Adampol never occupied or utilized the land encroached upon as contemplated in that

section.

Adampol's contention is, as set out in the stated case, "that, on a proper construction of section 95 A of the Ordinance, it is entitled to interest on the amount of R200 000-00 paid to it at the rate laid down in that section, calculated from a date sixty days from the date after the promulgation of the notice in terms of section 92(1) of the Ordinance up until the date of payment of the compensation, that is from 1 March 1981 to 10 June 1986."

According to the stated case the Administrator's contention is "that the plaintiff (i.e. Adampol) is entitled to interest to be calculated as set out in the said section 95 A on the said sum of R200 000-00 from 25 September 1985, but not prior to that date." During the course of his argument in this Court Mr Grobler, on behalf of the Administrator, advanced a more restrictive construction

of section 95 A(1), viz. that Adampol was not entitled to the payment of any interest on the said sum of R200 000-00. The basis of his contention was that section 95 A(1) was intended to operate only prospectively (ex nunc) from its date of coming into operation (i.e. 25 September 1985) in regard to future transactions or matters. 31 December 1980 was the date of the promulgation of the Administrator's notices of expropriation while 1 March 1981 was the date reckoned 60 days from the promulgation of the said notices. Both of these dates were prior to 25 September 1985 when there was no obligation on the Administrator to pay interest on the outstanding balance of compensation. What was contended for on behalf of Adampol, according to Mr Grobler, was to place retrospectively a new obligation on the Administrator to pay interest on the outstanding balance of compensation despite the fact that no obligation to pay interest existed

prior to 25 September 1985. The only relevant matter that occurred after 25 September 1985 was the determination of the amount of the compensation by the parties in their partial settlement of the action. The other relevant matters occurred prior to 25 September 1985.

The soundness or otherwise of these opposing contentions depends upon the proper construction of section 95 A(1). "The purpose of all rules or maxims as to the construction or interpretation of statutes is to discover the true intention of the law, and the rules or canons of construction are merely aids for ascertaining legislative intent. The rules of construction are neither ironclad nor inflexible, and must yield to manifestations of a contrary intent. Such rules are useful only in cases of doubt; they are never to be used to create doubt, but only to remove it" (Corpus Juris Secundum, vol 8, 1953 § 311).

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The plain meaning of the language in a statute is the safest guide to follow in construing the statute. According to the golden or general rule of construction the words of a statute must be given their ordinary, literal and grammatical meaning and if by so doing it is ascertained that the words are clear and unambiguous, then effect should be given to their ordinary meaning unless it is apparent that such a literal construction falls within one of those exceptional cases in which it would be permissible for a court of law to depart from such a literal construction e.g. where it leads to a manifest absurdity, inconsistency, hardship or a result contrary to the legislative intent. See Venter v Rex, 1907 T.S. 910 at pp. 913-914, Johannesburg Municipality v Cohen's Trustees, 1909 T.S. 811 at pp. 813-814, Shenker v The Master and Another, 1936 A D 136 at p. 142, Ebrahim v Minister of the Interior, 1977(1) SA 665 (A) at

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p. 678 A-G.

It becomes necessary to construe the wording of section 95 A(1) in its ordinary meaning and to have regard to its words in the light of their context. According to the Oxford English Dictionary, vol 7, s.v. "outstanding" the following meanings are attributed to the word "outstanding" as an adjective, viz.:

"1. That stands out or projects; projecting, prominent, detached.

2. fig. Standing out from the rest; prominent, conspicuous, eminent; striking.

3. That stands out in resistance or opposition.

4. That stands over or continues in existence; that remains undetermined, unsettled, or unpaid.

5. That sets a course outwards."

From the context of section 95 A(1) it is apparent that the

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expression "outstanding amount of the compensation" according to its ordinary grammatical meaning denotes "unpaid or undetermined amount of the compensation" which is "payable in terms of section 92". Section 92 (1) enjoins the Administrator to "pay to the owner, in respect of the land encroached upon by such establishment - - - such compensation as may be mutually agreed upon or, failing such agreement, as may be determined in accordance with section 14 of the Expropriation Act, 1975 - - -" In terms of section 92 (1)the amount of compensation may be determined or quantified (1) by agreement between the Administrator and the owner of the land, or (2) by a Court (section 14(1) of the Expropriation Act 63 of 1975), or (3) by arbitration (section 14(7) of the Expropriation Act 63 of 1975). I may interpose here to observe that according to our law an unliquidated debt cannot carry interest. See Victoria Falls and Transvaal

Power Co Ltd v Consolidated Langlaagte Mines Ltd, 1915 A D 1 at pp. 31-32, Union Government v Jackson & Others, 1956(2) SA 398 (A) at p. 412 E. It is therefore essential for the payment of interest in terms of section 95 A(1) that the amount of compensation should be determined in accordance with one of the three methods mentioned supra. In the present case the parties in their settlement on 29 April 1986 determined the amount of compensation in the sum of R200 000-00. Moreover, section 95 A(1) renders it obligatory that the payment of the interest shall be "with effect from a date sixty days from the promulgation of the notice contemplated in subsection (1) of the latter section" (i.e. section 92). That is to say, the interest is to be calculated from a date 60 days subsequent to the date of promulgation of the notice of expropriation. Section 95 A(1) also prescribes how the rate of interest is to be

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ascertained. In my judgment the wording of section 95 (A)(1) is clear and unambiguous. Nor does the ordinary meaning of its words lead to a manifest absurdity, inconsistency, hardship or a result contrary to the legislative intent.

It now remains to apply the clear and unambiguous meaning of the wording of section 95 A(1) to the undisputed facts of the present case. Prima facie section 95 A(1) is in its direct operation prospective since it decrees, without any express qualification, from the time of its insertion on 25 September 1985 in the Ordinance. On that date an unpaid or undetermined amount of compensation was payable by the Administrator to Adampol in terms of section 92(1). On 29 April 1986 the parties determined the amount of compensation in the sum of R200 000-00 which was paid on 10 June 1986 to Adampol. According to section 95 A(1) interest is to be calculated from a date 60 days subsequent to 31 December

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1980 being the date of promulgation of the notices of expropriation, i.e. from 1 March 1981 until 10 June 1986.

The question which now arises is whether such construction of section 95 A(1) in effect confers on it retrospective operation, since there was prior to 25 September 1985 no obligation on the Administrator to pay interest on any amount of outstanding compensation. Does such construction entail the imposition of a new obligation on the Administrator to pay interest on an outstanding amount of compensation which originated prior to 25 September 1985?

I now turn to consider the rule of construction against the retrospective operation of statutes. The origin of the rule is to be found in an imperial decree enacted during 440 A D by the Emperors Theodosius and Valentian. It is recorded in Cod 1.14.7, reading as follows:

Leges et constitutiones futuris certum

> est dare formam negotiis, non ad facta praeterita revocari, nisi nominatim etiam de praeterito tempore adhuc pendentibus negotiis cautum sit.
> (My translation : "It is certain that the laws and decrees give shape to future matters and are not applied to acts of the past, unless express provision is made for past time and for matters which are still pending").

The rule was also introduced into England as appears from Bracton, (l 1268) De Legibus & Consuetudinis Angliae, 1569, lib. 4 folio 228 : Item tempus spectandum erit, cum omnis nova constitutio futuris formam imponere debet & non praeteritis. See also Coke, (1552-1634) Second Part of the Institutes of the Laws of England, 1809, Statutum de Glocester cap. 3 at p. 292: "This extendeth to alienations made after the statute, and not before, for it is a rule

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and law of parliament, that regularly nova constitutio futuris formam imponere debet, non praeteritis." The rule has been developed by the Courts in England with many exceptions to it. It has become a presumption as appears from Craies on Statute Law, 7th ed., p. 387 sqq and Maxwell on Interpretation of Statutes, 12th ed., p 215 sqq. In referring to this rule Lord SIMON P said in Williams v Williams, (1971) 2 All E R 764 (Div.) at p. 770j - 771a: "This rule is a presumption only; and it may be overcome either by express words in the statute showing that the provision is intended to be retrospective, or 'by necessary and distinct implication' demonstrating such an intention."

The rule has developed along similar lines in America. See Corpus Juris Secundum, vol. 82, 1953, §§ 412:

"Literally defined, a retrospective law

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is a law which looks backward or on things that are past; a retroactive law is one which acts on things that are past. In common use, as applied to statutes, the two words are synonymous, and in this connection may be broadly defined as having reference to a state of things existing before the act in question. A retroactive or retrospective law, in the legal sense, is one that takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. However, a statute does not operate retroactively merely because it relates to antecedent events, or because part of the requisites of its action is drawn from time antecedent to its passing, but is retroactive only when it is applied to rights acquired prior to its enactment."

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The rule has been adopted in Roman-Dutch law and is being developed by our Courts along similar lines as in England and America. Compare Steyn, Uitleg van Wette, 5th ed., p. 82 - 97.

In our law there are two exceptions to the rule of construction against the retrospective operation of statutes which, in my judgment, require careful consideration in resolving the issue in the present case, viz.

1. The first exception is stated by Voet (1647 - 1713) 1.3.17:

> Porro leges futuris certum est dare formam negotiis, non ad facta praeterita revocari, Cod. 1.14.7, Cod. 4.35.23.3, Cod. 4.21.17 — - - - Nisi tamen aliud nominatim & de praeterito tempore, & de praesentibus negotiis, legislator expresserit Cod. 1.14.7 quod potissimum fit, si favorabilia legibus novis constituantur; quae ad

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casus etiam praesentes, sed necdum decisos aut transactione sopitos extendi, iniquum non est, favoribus scilicet ampliandis. (Exempla sunt in Nov. 19 in praefatione, Cod. 1.2.21 in fine et lex 22.1). Nam ut negotia, jam dudum ex antiqui juris dictamine sopita, novae legis occasione resuscitarentur, aut everterentur, nec aequitas patitur, nec populi salus; cum inde maxima litium, confusionis & incertitudinis rerum juriumque, ansa nasceretur - - -

(Gane's translation: "It is certain further that laws give shape to affairs of the future, and are not applied retrospectively to acts of the past. - - - An exception is when the legislator has nevertheless expressed himself otherwise in clear words, treating both of past time and of present affairs. This particularly happens when special favours are conferred by new laws; for there is no injustice in extending such grants, by enlargement

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> as it were of the favours, to cases which have indeed already arisen, but have not yet been decided or set at rest by compromise. Neither equity nor public safety admits of affairs, long since set at rest by the dictates of ancient right, being revived or upset by the happening of a new law. That would provide a very great handle for litigation, confusion and uncertainty of things and rights."

See also 3(2) Hollandsche Consultatien c. 314 nr. 16.

2. The second exception was applied by the great medieval Commentator Bartolus (1313-1357) ad D 1.1.9 nr. 47:

> Statutum quod uxore mortua in matrimonio sine filiis vir lucretur tertiam partem, habet locum in dote data ante statutum, si uxor post moriatur.
> Ecce alia. dicit statutum quod uxore mortua in matrimonio sine filiis vir lucretur tertiam partem dotis, quaeritur utrum hoc habeat locum in dotibus ante statutum

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> datis, & certe cum tale ius retinendi certam partem dotis competat viro ex isto facto scilicet morte uxoris, si hoc contingit post statutum credo quod habeat locum statutum etiam in dotibus ante datis per ea quae dicta sunt.

Where a statute provided that a husband was entitled to retain a third part of a dowry upon the death of his wife who died during the marriage without being survived by sons, Bartolus was of the opinion that the husband was entitled to the third part of the dowry even where the dowry had been furnished before the passing of the statute. See also Schrassert (1687 - 1756) 2 Consultatien, advysen ende advertissementen, c 69 nrs. 4 et 5. In modern parlance such a statute would not properly be called a retrospective statute because a part of the requisites for its operation was drawn from time antecedent to its passing. Consult Corpus Juris Secundum,

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vol. 82 1953, § 412 supra, Master Ladies Tailors Organisation and Another v Minister of Labour and National Service, (1950) 2 All E R 525 (K B D), R v Inhabitants of Christchurch, (1848) 12 Q. B. 149, R v Grainger, 1958(2) SA 443 (A) at p. 446 A - D.

Upon closer analysis it appears that both exceptions have much in common. Neither of them purports to revive past events which have already been disposed of (negotia praeterita et decisa). They cannot therefore be said to seek retrospective operation of statutes. (Compare West v Gwynne, (1911) 2 Ch 1 (C A) per BUCKLEY L J at p. 12 : "If an Act provides that as at a past time the law shall be taken to have been that which it was not, that Act I understand to be retrospective"). Both exceptions concern the same subject-matter albeit from different angles and for different reasons. The first exception is applicable to

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negotia praesentia et facta de praeterito tempore on the grounds of absence of injustice where the statutes confer benefits. The second exception is also applicable to negotia praesentia et facta de praeterito tempore obviously for reasons of expediency and logic. Both exceptions contain features or elements of a retrospective nature without affecting the prospective operation of the statutes as such.

To revert to the interpretation of section 95 A(1). The language of the section is clear and unambiguous, as I have already indicated. The intention of the Legislature, as gathered from the section, was not to impose on the Administrator a duty to pay interest on compensation already paid before the commencement of the section i.e. 25 September 1985. In other words, the intention of the Legislature was not to revive past transactions which had already been disposed of (negotia praeterita et decisa).

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The intention of the Legislature was therefore not to legislate retrospectively in the sense stated by BUCKLEY L J in West v Gwynne, supra. The use of the words "outstanding amount of the compensation payable in terms of section 92" indicates that the intention of the Legislature was to refer to compensation which was unpaid or undetermined as at the date when the section became operative, i.e. 25 September 1985, or thereafter. Prima facie the unpaid or undetermined compensation could relate to negotia pendentia or negotia praesentia as well as negotia futura. The words "with effect from a date sixty days from the promulgation of the notice" are in themselves equivocal depending on whether the promulgation of the notice occurred before or after 25 September 1985, since there is no limitation of the time when the promulgation of the notice had to be effected. On reading these words in the context of the section as a whole the date could,

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depending on negotia pendentia or negotia praesentia or negotia futura, be either a factum de praeterito tempore or a factum de futuro tempore in relation to 25 September 1985. Is section 95 A(1) then to be construed as having prospective or retrospective operation, the latter being confined to two facta de praeterito tempore viz. the date of promulgation of the notices on 31 December 1980 from which a date 60 days subsequent thereto (1 March 1981) is to be taken for the purpose of calculating the interest ? "As a general rule, statutes are construed to operate prospectively unless the legislative intent that they be given retrospective or retroactive operation clearly appears from the express language of the acts, or by necessary or unavoidable implication" (Corpus Juris Secundum, vol. 82, 1953 § 414). See also Lauri v Renad, (1892) 3 Ch. 402 (C A) per LINDLEY L J at p. 421: "It is a fundamental rule of English

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law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction." Moreover, where the language of an enactment is capable of either prospective or retrospective operation it should be construed as prospectively only (Re Athlumney, (1898) 2 Q B 547 per WRIGHT J at p. 552).

Having regard to the wording of section 95 A(1), as analysed supra, in the light of these rules of interpretation I am of the view that section 95 A(1) should be construed to operate prospectively but that does not conclude the matter. I indicated supra that the wording of section 95 A(1) is such that it could be construed to relate to negotia pendentia or negotia praesentia as well as negotia futura while the date for the calculation of the interest could be de praeterito tempore or de futuro tempore in relation to

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the operative date of section 95 A(1). These considerations amount to features or elements of a retrospective nature which render the second exception, mentioned supra, applicable to the construction of section 95 A(1) without affecting its prospective operation as such. (Perhaps it would be more appropriate to designate a prospective statute with such retrospective features as a mixed prospective statute).

It is therefore permissible according to this construction of section 95 A(1) to draw part of the requisites for its operation from events antecedent to its coming into operation on 25 September 1985. That is in fact what the contention of Adampol amounts to. Mr Grobler's contention that the effect of Adampol's contention would be to cast a new obligation on the Administrator to pay interest on the outstanding amount of compensation before 25 September 1985 overlooks the fact that the Administrator's obligation to pay interest is the

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concomitant of Adampol's right to claim payment of interest.

The intention of the Legislature in providing for the payment of interest was undoubtedly to confer a benefit on owners of encroached land. According to the first exception, stated by Voet 1.3.17, such an enactment should by benevolent interpretation be extended "to cases which have indeed already arisen, but have not yet been decided or set at rest by compromises", i.e. to negotia pendentia or negotia praesentia as is the position in the present case.

All things considered, the reserved point of law should, in my judgment, be decided in favour of Adampol. The appeal must therefore be upheld.

The following orders are granted :

A. The appeal is allowed with costs, such costs are to include the costs of two counsel.

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B. The order of the Court a quo is replaced by the following order :

"An order is granted :

1. Declaring that the defendant is obliged to pay to the plaintiff interest on the sum of R200 000-00 for the period 1 March 1981 to 10 June 1986 at the standard rate of interest determined in terms of section 26(1) of the Exchequer and Audit Act, 1975;

2. Directing the defendant to pay the costs of the proceedings in terms of Rule 33, including the costs occasioned by the employment of two counsel."

C. P. JOUBERT J A.

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LL Case No 661/1987

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

ADAMPOL (PTY) LIMITED Appellant

and

THE ADMINISTRATOR OF THE TRANSVAAL Respondent

CORAM: JOUBERT, HOEXTER, BOTHA, VIVIER et EKSTEEN JJA

HEARD: 21 FEBRUARY 1989

DELIVERED: 22 MAY 1989

JUDGMENT

BOTHA JA:

I have had the privilege of reading the judgment of my Brother JOUBERT, to which I shall refer, for convenience, as "the main judgment". With respect, I find myself unable to agree with it. In my respectful opinion the appeal should fail, for the reasons stated below.

The facts of the case and the issue between the parties are set out in the main judgment. I shall refer to the parties in the same manner as in the main judgment. Likewise, I shall refer to the notices promulgated by the Administrator in terms of section 5 (1) (b) of the Ordinance as the notices of expropriation, and to the date of their promulgation, being 31 December 1980, as the date of expropriation.

For the purposes of my judgment it is important, at the outset, to have clarity about what the legal effect was, in the present context, as between Adampol and the Administrator, of the notices of expropriation, on the date of expropriation. The effect was to impose upon the Administrator an obligation to pay to Adampol the compensation

provided for in section 92 of the Ordinance, and to confer upon Adampol a corresponding right to claim payment of such compensation from the Administrator. Both the Administrator's obligation and Adampol's corresponding right came into being on the date of expropriation. The amount of the compensation payable (the market value of the land encroached upon) was still to be determined, whether by agreement, arbitration, or an order of court, but that in no way detracts from the fact that on the date of expropriation a complete legal relationship or vinculum juris had been created between the parties, consisting of the Administrator's obligation and Adampol's right in regard to the payment of compensation. In particular, Adampol's right to be compensated vested in it on the date of expropriation; it cannot be suggested that the accrual of the right was postponed or suspended pending the determination of the amount of the compensation payable.

With regard to expropriations occurring after the coming into operation of section 95 A of the Ordinance (25

September 1985), considerations similar to those mentioned above, regarding the compensation itself, apply, in my view, in relation to the additional obligation imposed upon the Administrator to pay interest on any outstanding amount of the compensation payable, and the corresponding additional right conferred upon an affected owner of land to claim payment of such interest. Section 95 A fixes the rate at which interest is payable, but the actual amount of interest payable cannot be determined unless and until the amount of the compensation itself is determined. That fact cannot, however, in relation to expropriations occurring after 25 September 1985, prevent the coming into existence of an obligation on the part of the Administrator to pay the interest provided for, with effect from a date sixty days from the promulgation of a notice of expropriation, nor can it affect the accrual of a right on the part of an affected owner to claim such interest with effect from such date. The owner's right in respect of interest does not arise only when the amount of it is determined or becomes determinable;

his right is created by the notice of expropriation and it takes effect sixty days thereafter.

It is against this background that consideration must be given to the impact of the coming into operation of Section 95 A on the facts of this case. Neither on the date of expropriation nor on the date sixty days thereafter (1 March 1981) was the Administrator under any obligation to pay interest to Adampol on the amount of compensation payable by the former to the latter. Nor did Adampol have any right to claim payment of such interest. In content, the legal relationship between the parties was confined to the existence of an obligation on the one part and a right on the other regarding the payment of compensation alone. That legal relationship subsisted until the coming into operation of section 95 A on 25 September 1985. Adampol's contention is that the effect of the amendment of the Ordinance by the introduction of section 95 A was to entitle it to claim interest on the amount of compensation (the whole of which was outstanding until 10 June 1986, when it was

paid), inter alia over the period from 1 March 1981 to 25 September 1985. If this contention were to be upheld, it is immediately apparent, I consider, that section 95 A would be accorded the effect of altering the content of the pre-existing legal relationship between the parties by superimposing on the existing obligation and right in regard to the payment of the compensation itself, an additional obligation and corresponding right in regard to the payment of interest on the compensation, and furthermore, that such enlargement of the Administrator's obligation and of Adampol's right would be operative as from 1 March 1981, in accordance with the provision of section 95 A that interest is payable "with effect from a date sixty days from the promulgation" of the notice of expropriation. Thus the operation of section 95 A would, if Adampol's contention were to be accepted, be antedated from 25 September 1985 to 1 March 1981. These considerations lead inevitably to the conclusion, in my judgment, that Adampol's claim to be paid interest for the period from 1 March 1981 to 25

September 1985 cannot be acceded to otherwise than by giving full and unqualified retroactive effect to section 95 A. That cannot be done, however, unless it is clear that the Legislature intended the section to operate retroactively. In my view there is no reason for thinking that the Legislature did so intend.

Counsel for Adampol advanced various arguments in support of Adampol's contention. I proceed to deal with such of the arguments as appear to me to merit attention.

Counsel relied on the plain, literal and ordinary meaning of the language of section 95 A, which, he submitted, unambiguously conferred upon Adampol the right to claim the interest in question. In particular, counsel focussed attention on the phrase "any outstanding amount of the compensation payable", which, he submitted, applied to the compensation payable by the Administrator to Adampol, such being "outstanding" as at 25 September 1985, when the section came into force; hence, so the argument continued, interest was payable in accordance with the section's provisions, "with

effect from" the date mentioned, which in this case was 1 March 1981. With regard to this line of argument, it is perfectly true that the compensation which was payable to Adampol fell squarely within the ambit of the literal and ordinary meaning of the words "any outstanding amount of the compensation payable", as at 25 September 1985; but for the rest, the argument in my opinion misses the point. To place the argument in its proper perspective, it is necessary to state the obvious: that the Legislature clearly intended, primarily at least, to provide prospectively for the payment of interest in respect of expropriations that were to take place after the coming into operation of the section. For that purpose it must have considered the phrase "any outstanding amount of the compensation payable" to be appropriate in relation to the application of the new measure in the future. But non constat that it used those words with the object of making the new measure applicable also to expropriations that had taken place in the past. Indeed, if that had been its intention, the use of the

phrase in question would constitute a most oblique and obscure way of giving effect to such intention. In respect of future expropriations the use of the expression "with effect from", concerning the date of inception of the liability to pay interest, would have prospective operation only; but with regard to past expropriations, it could have rather drastic retroactive consequences, as in the present case. In these circumstances it seems probable that it is no more than a coincidence that the phrase "any outstanding amount of the compensation payable" can be made to apply to past expropriations. That being so, the language of the section does not afford sufficient justification for applying it with retroactive effect. At best for Adampol, the wording of the section is equivocal in regard to the question whether or not the Legislature intended it to be applicable not only prospectively but also retroactively. Consequently the general rule against retrospectivity, as discussed in many of the authorities cited in the main judgment, must prevail.

It may be convenient at this stage to point out that the Administrator's liability to pay interest to Adampol as from 25 September 1985 to 10 June 1986 is not in issue in this appeal. As appears from the main judgment, the Administrator assumed such liability in terms of the stated case. Presumably that assumption of liability was based on the notion that it would give recognition to a prospective operation of section 95 A as from 25 September 1985. During the course of his argument in this Court, however, counsel for the Administrator experienced some difficulty in reconciling such an approach with the wording of that part of the section which provides that interest shall be payable "with effect from" a date sixty days after the date of expropriation. It was for that reason that counsel decided to advance a more restrictive construction of the section than that which is reflected in the stated case, viz that Adampol was not entitled to any interest at all, as is mentioned in the main judgment. It is not necessary to consider whether or not the expression "with effect

from" constitutes an insuperable difficulty in the way of giving the prospective operation to the section which is reflected in the stated case, and I express no opinion on that question. It suffices to say that whatever answer may be given to the question, it cannot affect the outcome of the issue in this appeal, which relates solely to Adampol's right and the Administrator's obligation in respect of the payment of interest for the period from 1 March 1981 to 25 September 1985. That is all that I am considering.

Counsel for Adampol advanced a further line of argument, which can be paraphrased as follows: interest cannot accrue on a capital sum which is unliquidated; accordingly Adampol's right to claim payment of interest arose only on 29 April 1986, when the amount of compensation payable was determined by agreement, in the sum of R200 000; the amount of the interest payable had to be calculated then with reference to 1 March 1981, in accordance with what was no more than a formula provided in section 95 A for the calculation, by means of the words

"with effect from ....."; the use of a date prior to the coming into operation of the section related merely to the formula for calculating the amount of interest payable and did not involve any retroactive operation of the section; consequently the rule against retrospectivity did not militate against upholding Adampol's contention. I do not agree with this line of argument; in fact I disagree with every component part of it, as I shall now endeavour to show.

With regard to the running of interest on an unliquidated capital sum, there is a reference in the main judgment to two cases decided in this Court: Victoria Falls and Transvaal Power Co Ltd v Consolidated Langlaagte Mines Ltd 1915 A D 1 and Union Government v Jackson and Others 1956 (2) S A 398 (A). In the former case INNES CJ held at 31-32 that under our common law mora interest did not accrue on an unliquidated debt for damages. It is of more than passing interest, however, that the learned Chief Justice expressly refrained from laying down that under no

circumstances whatever could unliquidated damages carry interest. He left open cases in which, though the claim is unliquidated, the amount payable might have been ascertainable upon an enquiry which it was reasonable the debtor should have made. (I do not suggest that the present case may be one of that kind; I am dealing merely with the formulation of the principle.) In Jackson's case supra FAGAN JA at 412 E - 416 H applied the general principle laid down in the Victoria Falls case to a claim for compensation in respect of expropriation. The possibility of interest nevertheless being claimable in an exceptional case was again left open (see at 414 G). It is significant that FAGAN JA at 412 D/E formulated the rule applied in the Victoria Falls case in the following terms:

> "The ordinary rule of our law is that liability for interest does not automatically attach to an unliquidated debt - an obligation which has not yet been reduced to a definite sum of money."

And in applying that rule to the case with which he was dealing, FAGAN JA said (at 416 G/H):

> "..... that there is no principle in our law which automatically makes the Government liable for interest on the amount of the compensation between the date of its acquisition of the expropriated property and the time when the amount is determined by agreement or by a judgment."

It is clear, therefore, that these cases were concerned only with the general rule of our common law that interest does not run on an unliquidated capital debt. They certainly afford no authority for the proposition that the accrual of interest on an unliquidated amount of compensation is a notional impossibility. Counsel's submission, as a generalization, that interest cannot accrue on an unliquidated capital sum is, in my view, insupportable. If the Legislature decrees that an unliquidated amount shall carry interest, then it does. And that, I consider, is precisely the effect of section 95 A.

The above remarks also put paid to counsel's submission that Adampol's claim for interest arose only when the amount of compensation was fixed, on 29 April 1986. It is of the very essence of interest that it

accrues from day to day, continuously. The legislative decree that interest shall be payable with effect from a particular date means that the interest commences to accrue on that date and that it continues to accrue from day to day thereafter. The principle is in no way affected, in my opinion, by the fact that the actual amount of interest accruing cannot be determined until such time as the amount of the compensation itself is determined. Having regard to what has been said earlier in this judgment, my view is that the debt in respect of interest, as provided for in section 95 A, arises on a date sixty days after the date of expropriation, just as the debt in respect of the compensation in terms of section 92 arises on the date of expropriation. In neither case is the coming into being of the indebtedness precluded by the circumstance that the amount of it will only be determined later.

It follows that counsel's attempt to side-step the idea of retrospectivity in the present case, by assigning to the words "with effect from ....." the status

of a mere formula for calculating the amount of the interest falling due when the amount of compensation is fixed and paid, must also be rejected. The notion of such a mere formula is a complete negation of the essential nature of interest as something which accrues from day to day and is wholly artificial and unacceptable. Counsel sought to justify it by relying on the case of Master Ladies Tailors Organisation and Another v Minister of Labour and National Service (1950) 1 All ER 525. I do not propose to analyze the facts or the decision in that case. It suffices to say that the facts in that case differed in material respects from those in the present one; that the Court in that case found it possible to construe the legislative measure in question there as laying down a formula for calculating the amount of a debt with reference to past events; and that in the present case I find it impossible to place on section 95 A the construction contended for by counsel for Adampol.

In support of the line of argument I have been

discussing above, counsel relied heavily on a passage in the judgment delivered in the case of R v Inhabitants of St Mary's White Chapel (1848) 12 Q B 120 at 127. There LORD DENMAN said the following:

> "We have before shewn 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."

The words I have emphasized enunciated a principle which has since become trite. (It was applied by SCHREINER JA in R v Grainger 1958 (2) S A 443 (A) at 446 B-D, together with a further dictum of LORD DENMAN, in R v Inhabitants of Christchurch (1848) 12 Q B 149; I shall have occasion to refer again to Grainger's case presently.) In my judgment, however, the principle invoked by counsel cannot be made to fit the facts of the present case. The "action" of section 95 A is to render interest on the amount of compensation payable with effect from a date sixty days after the date of expropriation. With regard

to Adampol's position, that effective date is 1 March 1981, which, of course, is a date prior to the "passing" of the section. To say that the fact of the expropriation and the fact of the lapse of sixty days thereafter constitute "part of the requisites" for the "action" of the section, as counsel's argument would have it, is simply not true. The truth is that those facts are "part" of the section's "action" itself. It is impossible to countenance Adampol's claim to be paid interest for the period from 1 March 1981 to 25 September 1985 on any basis other than by allowing the "action" of the section to operate retroactively. So LORD DENMAN's principle cannot support Adampol's claim.

Counsel for Adampol argued, lastly, that, since section 95 A was an enactment of a remedial nature, the Legislature's intention was to confer a benefit on persons in the position of Adampol, and that the section should accordingly be construed extensively rather than restrictively. In my judgment the considerations

mentioned do not warrant the retroactive application of the section. What is lacking is any clear indication on the part of the Legislature that it intended the section to be interpreted retrospectively. On that basis, too, I do not consider that the case of Ex parte Christodolides 1959 (3) S A 838 (T), on which counsel for Adampol relied, is of any assistance in the present matter.

Having now disposed of the arguments advanced by counsel for Adampol, I turn to a consideration of the two chief pillars on which the main judgment rests, being the passages quoted from Voet (1.3.17) and Bartolus (ad D 1.1.9 no. 47). I deal with the latter first. The case dealt with by Bartolus may be regarded as an ancient illustration of the application of the principle later formulated by LORD DENMAN in the St Mary's White Chapel case supra. What calls for attention in the case discussed by Bartolus, in my respectful opinion, is that the husband's right to retain one-third of the wife's dowry accrued upon her death, which occurred only after the

passing of the statute. The passage in Bartolus is referred to by Schrassert 2 Consultatien etc 69, which is also cited in the main judgment. (In passing it is of interest to note that Schrassert, with reference to the Codex (1.14.7), requires the legislator to express its intention "seer nadruckelijck" before the retrospective operation of the statute will be accepted.) The passages in both Schrassert and Bartolus, as well as some other authorities, were analyzed by STEYN JA in Grainger's case supra at 448 C - 449. The remarks of STEYN JA in this regard are particularly pertinent to the facts of the present case. (I would observe that in STEYN JA's treatment of Schrassert's views relating to negotia pendentia at 448 D/E an error seems to have crept in: the words "nie deur 'n wet getref word nie", should, I think, read "wel deur 'n wet getref word.") The learned Judge of Appeal stated the conclusion to be drawn from his analysis of the authorities in the following terms (at 449 D-E):

> "Uit die voorgaande blyk, meen ek, dat 'n actus pendens deur 'n nuwe Wet beheers word, as die verdere feit of feite wat nodig is alvorens die tersaaklike reg of verpligting uit die handeling of kompleks van handelings ontstaan, na die inwerkingtreding van die nuwe Wet tot stand kom."

Applying this conclusion to the facts of the present case, it is clear, I consider, that no fact or facts occurred after section 95 A came into force on 25 September 1985, which were necessary to give rise to the right of Adampol and the obligation of the Administrator concerning the payment of interest. If such right and obligation arose at all, they could only have been created by the coming into force of the section itself. As I have said before, the mere determination of the amount of the liability (which is the only event that occurred after 25 September 1985 that may be relevant) was no prerequisite for the coming into being of the right and the obligation. This was not a negotium pendens in the sense referred to in the old authorities. For these reasons I do not think with respect, that the passage in Bartolus has any application to the

facts of the present case.

Turning to Voet, it is important to note the positioning in the text of the words quod potissimum fit (Gane: "This particularly happens"). What Voet is referring to here, is the situation posed by him in the immediately preceding sentence, viz where the legislator deals expressly with past and present affairs (as opposed to future affairs). It is such an express legislative provision which is particularly encountered when favorabilia are conferred by new laws. Accordingly it is only in the context of such express legislative provisions that Voet mentions "cases which have indeed already arisen, but have not yet been decided or set at rest by compromise". This is borne out by the examples which Voet states are to be found in Nov. 19, Cod. 1.2.21 and Cod. 1.2.22.1. The whole of the 19th Novel is concerned with decrees expressly stated to have retrospective operation, relating inter alia to the benefit of the legitimation of children born before marriage, by the subsequent marriage of their

parents. Cod. 1.2.21 deals with the prohibition of the alienation of things of a religious nature, pertaining to the Church: an exception is decreed where the alienation is made because of captivity, i e to redeem the freedom of a person (the souls of men are more important than the sacred things of the Church); and in the final part of the decree (which is the part referred to by Voet), it is said:

> hoc obtinente non solum in futuris negotiis, sed etiam in iudiciis pendentibus.

Cod. 1.2.22 is concerned with things belonging to the Church and various kinds of charitable bodies, which are decreed to be "free and immune" (liberas immunesque esse), and in lex 1 (to which Voet refers) the following appears:

> Quae oportet non solum in casibus, quos futurum tempus creaverit, sed etiam in adhuc pendentibus et iudicali termino vel amicali compositione necdum sopitis obtinere.

As I understand Voet, he is dealing with legislative enactments which, because they bestow favours or benefits, expressly provide that they shall apply also to

pending cases which have not yet been disposed of by judicial decision or compromise. He is not dealing with the interpretation of statutes which confer benefits but which are silent as to the manner in which they are to be applied in relation to past, present or future cases. However, even if Voet is to be read in such a broad sense, I do not consider that his remarks can properly be made to apply to the facts of the present case. We have here a transaction which had been completed and which had given rise to a legal obligation with a particular content between the parties, before section 95 A was enacted. The determination of the amount of the compensation and the payment of it, which had still to take place, related merely to the performance of the obligation. If section 95 A were to be applied in the manner contended for by Adampol, the result would be to give a new content to an already existing obligation, with retroactive effect. That, in my judgment, is not warranted by anything that Voet says.

Ultimately, when all is said and done, the decisive question is whether section 95 A reveals a clear intention on the part of the Legislature that its provisions should apply to expropriations that had taken place before its enactment. In my judgment, it does not.

I would dismiss the appeal, with costs.

A.S. BOTHA JA