able to this case, which is governed by the U. P. General Clauses Act of 1904. Under section 6 of that Act, unless a different intention appears, the repeal of an Act cannot affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or affect any remedy or any investigation or legal proceeding commenced before the repealing Act shall have come into operation, and any such remedy may be enforced, and any such investigation or legal proceeding may be continued and concluded, as if the repealing Act had not been passed. It is clear to us that an appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, and that the right to continue that proceeding cannot be affected by a new Act, unless it expressly says so. The U. P. General Clauses Act does not operate differently.

Our answer to the reference is that the right to appeal to the court of the District Judge was governed by the law prevailing at the date of the institution of the suit, and not by the law that prevailed at the date of its decision, or at the date of the filing of the appeal.

The case will go back to the Bench concerned with this opinion.

Before Mr. Justice Boys, Mr. Justice Kendall and Mr. Justice King.

JAGAT NARAIN AND ANOTHER (PLAINTIFFS) *v.* MATHURA DAS AND OTHERS (DEFENDANTS).*

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June, 12.

Hindu law—Joint Hindu family—Alienation of family property by managing member—Benefit to the estate—Whether transaction must necessarily be of a defensive nature—Criteria for judging propriety of transaction.

In order to sustain an alienation of joint family property made by the managing member of the family the transaction

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*First Appeal No. 421 of 1925, from a decree of Rup Kishen Agha, Subordinate Judge of Moradabad, dated the 25th of July, 1925.

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must be one which is for the benefit of the estate and such as a prudent owner would have carried out with the knowledge available to him at the time. Transactions justifiable on the principle of "benefit to the estate" are not limited to those transactions which are of a "defensive nature".

The transaction must be judged, not by its actual results, but by what might have been expected to be its results, at the time it was entered into. The degree of prudence which might fairly be required from a person who was not the sole owner of the property might naturally be somewhat greater than that which might be expected in the case of a sole owner and might well be held to be that which would be demanded in ordinary cases from a trustee.

Hunooman Persaud Panday v. *Babooee Munraj Koonweree* (1), *Sahu Ram Chandra* v. *Bhup Singh* (2), *Palaniappa Chetty* v. *Sreemath Daivasikamony Pandara Sannadhi* (3), *Krishna Chandra* v. *Ratan Ram Pal* (4), *Muneshar Bakhsh Singh* v. *Arjun Singh* (5), *Tula Ram* v. *Tulshi Ram* (6), *Mahabir Prasad Misr* v. *Amla Prasad Rai* (7), *Jado Singh* v. *Nathu Singh* (8), *Sadhu Saran Prasad* v. *Brahmdeo Prasad* (9), *Kalika Nand Singh* v. *Shiva Nandan Singh* (10), and *Sheotahal Singh* v. *Arjun Das* (11), referred to. *Shankar Sahai* v. *Bechu Ram* (12), *Bhagwan Das Naik* v. *Mahadeo Prasad Pal* (13), *Inspector Singh* v. *Kharak Singh* (14) and *Rattan Chand* v. *Sri Thakur Ram Kishan Murarji* (15), not followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi *Panna Lal*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

BOYS, KENDALL and KING, JJ. :—This case has been referred to a Full Bench by an order of reference of the Acting Chief Justice, Mr. Justice SULAIMAN, and Mr. Justice KENDALL. The question with which

(1) (1856) 6 Moo. I. A., 393.
(2) (1917) I. L. R., 39 All., 437.
(3) (1917) L. R., 44 I. A., 147; I.L. R., 40 Mad., 709.
(4) (1915) 20 C. W. N., 645.
(5) (1916) 19 Oudh Cases, 100.
(6) (1920) I. L. R., 42 All., 559.
(7) (1924) I. L. R., 46 All., 364.
(8) (1926) I. L. R., 48 All., 592.
(9) (1921) 61 Indian Cases, 20.
(10) (1921) 63 Indian Cases, 625.
(11) (1920) 56 Indian Cases, 879.
(12) (1925) I. L. R., 47 All., 381.
(13) (1923) I. L. R., 45 All., 390.
(14) (1928) I. L. R., 50 All., 776.
(15) (1928) 26 A. L. J., 777.

we are concerned is the meaning and implications of the term "benefit of the estate" as used in reference to transfers made by the manager of a Hindu joint family. The facts are simple and admitted. Nityanand had two sons, Rameshwar Prasad and Babu Partap Singh. Rameshwar Prasad had two sons, Jagat Narain and Krishna Narain. In 1864 certain property was purchased by Nityanand in the name of his wife. After the death of the parents, Rameshwar Prasad and Babu Partap Singh on the 20th of January, 1912, executed two sale-deeds of this property, each purporting to sell a half of one-third of mauza Kashipur by each sale-deed. By the two transactions jointly, then, these two persons purported to transfer the whole of one-third of mauza Kashipur.

It is admitted that two-thirds of mauza Kashipur had previously been sold for Rs. 15,000, and the sale price of this remaining one-third was Rs. 10,000. In view of these facts it is admitted that there can be no question but that the property fetched a full and fair value. The reason given for the sale of the property was that it was inconvenient to manage it, and again it is admitted that the property was situated 19 miles away from Bijnor; that neither of the two brothers lived in the locality, both had their permanent occupations elsewhere, and it was very difficult for them to manage the property successfully and to the benefit of the family. This is tantamount to saying, and it is frankly admitted, that in the ordinary sense of the term the transactions of sale were for the benefit of the family. The only question calling for decision is whether the transactions were for "the benefit of the estate", as the expression is used in Hindu law. One further fact calls for mention and that is that it is not disputed that the intention of the vendors was to devote the proceeds to the

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purchase of other landed property in a more accessible situation. The Rs. 10,000 was in fact placed in a Bank and for one year drew a substantial interest, and then the Bank failed. But it is not denied that the intention with which the property was sold was to buy other property, and the fact that the money was actually lost owing to the failure of the Bank is only an incident which can have no bearing on the question we have to decide.

It is admitted that the family was a joint family, and that the property transferred by the two sale-deeds of 1912 was joint family property. The present suit has been brought by the two sons, Jagat Narain and Krishna Narain, of Rameshwar Prasad to set aside the sales on the ground that they were not justified by Hindu law.

The case has been referred to us because of a conflict between certain rulings of this Court. As their Lordships in referring the case to this Full Bench have put it: "A wider meaning was attached to the expression 'benefit of the estate' in *Tula Ram* v. *Tulshi Ram* (1), *Mahabir Prasad Misr* v. *Amla Prasad Rai* (2), *Jado Singh* v. *Nathu Singh* (3), *Sadhu Saran Prasad* v. *Brahmdeo Prasad* (4), *Kalika Nand Singh* v. *Shiva Nandan Singh* (5) and *Sheotahal Singh* v. *Arjun Das* (6). On the other hand the expression has been taken in a narrower sense in the cases of *Shankar Sahai* v. *Bechu Ram* (7) and *Bhagwan Das Naik* v. *Mahadeo Prasad Pal* (8)." The "narrower sense" referred to is that in the last two cases mentioned (and also in *Inspector Singh* v. *Kharak Singh* (9) and *Rattan Chand* v. *Sri Thakur Ram Kishan Murarji* (10), cases also mentioned in the referring order) it has

(1) (1920) I. L. R., 42 All., 559.
(2) (1924) I. L. R., 46 All., 364.
(3) (1926) I. L. R., 48 All., 592.
(4) (1921) 61 Indian Cases, 20.
(5) (1921) 63 Indian Cases, 625.
(6) (1920) 56 Indian Cases, 879.
(7) (1925) I. L. R., 47 All., 381.
(8) (1923) I. L. R., 45 All., 390.
(9) (1928) I. L. R., 50 All., 776.
(10) (1928) 26 A. L. J., 777.

been suggested that joint family property can only be transferred when the transfer is in the nature of a "defensive transaction, e.g. for the purpose of saving the estate from some threatened injury." This view we shall have to express more precisely when referring to the cases in which that view has been taken.

We will proceed to examine the history of this question. We have proceeded to that examination by considering first the pronouncements of their Lordships of the Privy Council, and only in the event of finding those pronouncements otherwise than quite clear were we prepared to consider any departure from or amplification of those pronouncements justifiable. The earliest authoritative pronouncement is to be found in the well-known case of *Hunooman Persaud Panday* v. *Babooee Munraj Koonweree* (1). In that case their Lordships were dealing with the power of the manager for an infant heir. But it is accepted that the same principles will govern the powers of a manager of a joint Hindu family, and also, it may be added, the *shebait* of a temple. The passage which we proceed to quote has been quoted in numberless judgements, but we have no hesitation in quoting it again as it is indubitably the source of the law on this point. We were invited to consider passages from the *Mitakshara*, but their Lordships had those passages before them and they interpreted them in certain language and that language we must, and do of course, readily accept. Their Lordships said at p. 523 :—

"The power of the manager for an infant heir to charge an estate not his own, is, under the Hindu law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance,

(1) (1856) 6 Moo. I. A., 393.

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the charge is one that a prudent owner would make, in order to benefit the estate, the *bonâ fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded."

Here we have what is to us a quite unambiguous direction. The power to charge the estate can only arise "in a case of need" *or* "for the benefit of the estate." Further, it arises where "the charge is one that a prudent owner would make, in order to benefit the estate." Again, the elements to be considered are: "the actual pressure on the estate, the danger to be averted, *or* the benefit to be conferred on it, in the particular instance." We have emphasised ourselves, by placing the word "or" in italics, the fact that benefit of the estate such as a prudent owner would endeavour to effect is by itself a sufficient justification for the creation of the charge. Nowhere is there a hint in this pronouncement of their Lordships that there need be necessarily any element of "danger to be averted." In other words, we cannot find in this pronouncement any justification whatever for the suggestion that the transaction must necessarily be of a "defensive nature." There are only three comments which we think should be made here. We think that it is sufficiently obvious in itself that when their Lordships used the words "that a prudent owner would make" they did not mean to suggest that the presence or absence of prudence was to be determined by what the manager chose to say he thought to be prudent, but by what the ordinary man, knowing all the facts that were or could properly be within his knowledge at the time the charge was created, would consider to be prudent. Secondly, the prudence or otherwise of the transaction must not be judged by its

result, whether to the benefit or the injury of the estate, but must be judged in the light of the circumstances which were within the knowledge of the manager, or knowledge which he could reasonably be expected to have acquired. Thirdly, in view of the fact that he was not the sole owner of the property, but others had an interest in the property, the degree of prudence required of him would be greater, as in the case of a trustee, than if he were the sole owner.

In *Krishna Chandra* v. *Ratan Ram Pal* (1) and *Muneshar Bakhsh Singh* v. *Arjun Singh* (2) their Lordships' judgement was interpreted in the sense that we have interpreted it. Again, in *Sahu Ram Chandra* v. *Bhup Singh* (3) their Lordships of the Privy Council said:—

"In all of the cases where it can be established that the estate itself that is under administration demanded, or the family interest justified, the expenditure, then those entitled to the estate are bound by the transaction."

We next come to the case of *Palaniappa Chetty* v. *Sreemath Daivasikamony Pandara Sannadhi* (4). It is, as we hold, a misconception of their Lordships' pronouncement in this case that has given rise to the restricted view of the phrase "benefit of the estate" to which we have referred. Their Lordships said at p. 155:—"It is impossible, their Lordships think, to give a precise definition of it" (benefit to the estate) "applicable to all cases, and they do not attempt to do so. The preservation, however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits."

(1) (1915) 20 C. W. N., 645.
(2) (1916) 19 Oudh Cases, 100.
(3) (1917) I. L. R., 39 All., 437.
(4) (1917) L. R., 44 I. A., 147; I. L. R., 40 Mad., 709 (718).

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It is apparently in this passage alone that the theory has found its origin that the transaction must be of a defensive nature. It is true that the three or four instances given by their Lordships are all instances where the transaction was of a defensive nature, but we think there is no justification for the suggestion that their Lordships meant to say that transactions justifiable on the principle of "benefit to the estate" are limited to those transactions which are of a defensive nature. In the first place their Lordships were clearly merely giving certain cases where the objects to be attained "would obviously be benefits", and, secondly, they expressly went on to say, "The difficulty is to draw the line as to what are, in this connection, to be taken as benefits and what not." We cannot find in the quotations that we have made any justification for holding that the principles laid down in *Hunooman Persaud Panday* v. *Babooee Munraj Koonweree* (1) were being modified.

From this period onwards we find a number of cases in which the principles laid down in *Hunooman Persaud's* case were strictly followed, and a number of cases in which the proposition began to be shadowed forth, and in some beause crystallized, that the transaction must be of a defensive nature. This phrase "defensive nature" we have taken from some of those cases.

We do not intend to extend this judgement to undue proportions by considering all of those cases. We propose to limit ourselves to a reference to the cases in which that theory has found expression in this Court. The first of those cases is *Bhagwan Das Naik* v. *Mahadeo Prasad Pal* (2). It was a judgement of Mr. Justice RAFIQUE and Mr. Justice LINDSAY. That was a case of a speculative litigious suit, and

(1) (1856) 6 Moo. I. A., 393. (2) (1923) I. L. R., 45 All., 390.

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it was held that such a suit was not for the benefit of the estate. With this view we think there can be no possible ground for disagreement. But their Lordships did say, when discussing the case of *Palaniappa Chetty* v. *Sreemath Daivasikamony Pandara Sannadhi* (1), after quoting the remarks to which we have already referred: "There is nothing in these remarks to encourage the notion that an adventure in the shape of a speculative suit which might possibly bring profit to the estate could properly be regarded as a 'benefit to the estate' or a 'legal necessity'. Their Lordships' observations rather import that any act for which the character of 'legal necessity' or 'benefit to the estate' can be claimed must necessarily be a defensive act, something undertaken for the protection of the estate already in possession, not an act done with the purpose of bringing fresh property into possession and which may or may not be successful under the chances attending upon litigation." We are satisfied, as we have already said, that a speculative litigation does not come within the principles laid down in *Hunooman Persaud's* case, nor do we think it could be justified by any other of the pronouncements of their Lordships. But we cannot agree with the further conclusion drawn that there is anything in *Palaniappa Chetty's* case to justify holding that the transaction "must necessarily be a defensive act." In considering that case we have already given our reasons for this view. The same considerations apply to the case of *Shankar Sahai* v. *Bechu Ram* (2), where their Lordships held that the litigation was in fact of the nature of a speculative litigation. Whether the particular circumstances indicate in our view that the litigation was speculative we need not consider. That was a question for

(1) (1917) L. R., 44 I. A., 147; I. L. R., 40 Mad., 709.

(2) (1925) I. L. R., 47 All., 381.

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determination in the particular suit and not a question of the principles to be applied. It is this idea of the necessity that the transaction should be of a defensive nature (which, so far at any rate as this Court is concerned, found definite expression in the two cases with which we have just dealt) that started the current of opinion which is followed in the case of *Inspector Singh* v. *Kharak Singh* (1) and is reluctantly accepted in the case of *Rattan Chand* v. *Sri Thakur Ram Kishan* (2).

We, therefore, hold that we are bound and wholly bound by the pronouncements of their Lordships in *Hunooman Persaud Panday* v. *Babooee Munraj Koonweree* (3), *Sahu Ram Chandra* v. *Bhup Singh* (4) and *Palaniappa Chetty* v. *Sreemath Daivasikamony Pandara Sannadhi* (5); that there is nothing in *Palaniappa's* case which justifies the opinion that their Lordships were laying down that the transaction must be of a defensive nature or that they were in any way modifying the pronouncements made in *Hunooman Persaud's* case; that in *Hunooman Persaud's* case their Lordships merely laid down the law in the phrases that we have quoted; that they indicated that one of the elements which would justify the transaction is to be found in "benefit to the estate" and that there is not a hint in that judgement that if the transaction was to the benefit of the estate and was such as a prudent owner would have carried out with the knowledge that was available to him at the time, it could be set aside by anybody. We have already indicated that the degree of prudence would be the prudence which an ordinary man would exercise with the knowledge available to him; and that the transaction would have to be

(1) (1928) I. L. R., 50 All., 776. (2) (1928) 26 A. L. J., 777.
(3) (1856) 6 Moo. I. A., 393. (4) (1917) I. L. R., 39 All., 437.
(5) (1917) L. R., 44 I. A., 147; I. L. R., 40 Mad., 709.

judged not by its results but by what might have been expected to be its results at the time it was entered into; and that the degree of prudence which might fairly be required from a person who was not the sole owner of the property might naturally be somewhat greater than that which might be expected in the case of a sole owner. The degree of prudence to be demanded might well be held to be that which would be demanded in ordinary cases from a trustee.

As the whole case has been referred to us and the facts as we have set them out at the commencement of this judgement are admitted, it follows that the plaintiffs' appeal fails. The simple facts are that the adult managers of the family found it very inconvenient and to the prejudice of the family's interests to retain property, 18 or 19 miles away from Bijnor, to the management of which neither of them could possibly give proper attention, that they considered it to the advantage of the estate to sell that property and purchase other property more accessible with the proceeds, that they did in fact sell that property on very advantageous terms, that there is nothing to indicate that the transaction would not have reached a profitable conclusion but for the unfortunate accident that a Bank closed its doors. Judging these facts by the tests that we have held must be applied, we find ample reason for holding that the transaction was such a one as a prudent owner and even a prudent trustee might rightly have considered to be for the benefit of the estate, and that, therefore, that transaction cannot be impeached.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.