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within the specified area, and must not make an exception in favour of any particular group or class of prostitutes.

In view of this last consideration we are of opinion that the bye-law, inasmuch as it failed to lay down an absolute prohibition within the specified area, was *ultra vires* and illegal. The Municipal Board would be well advised to reconsider the bye-law so as to make it of a general application within the specified areas where it intends that prostitutes should be prohibited from residing.

We accordingly accept this reference, though on a ground different from that on which it was based, and setting aside the conviction of the accused acquit her of the offence with which she was charged.

APPELLATE CIVIL.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Young.

1932 February, 25.

OFFICIAL RECEIVER, MORADABAD (APPLICANT) *v.* MURTAZA ALI AND OTHERS (OPPOSITE-PARTIES).*

Insolvency law—Applicability to suits and proceedings in revenue courts—Provincial Insolvency Act (V of 1920), section 28—Agra Tenancy Act (Local Act III of 1926), section 264—U. P. General Clauses Act (Local Act I of 1904), section 6(a)—Interpretation of statutes—Previous history of the law.

Before the present Tenancy Act, III of 1926, came into force the law undoubtedly was that the provisions of the Insolvency Act did not apply to suits and proceedings in the revenue courts. But that portion of section 193 of the former Tenancy Act, II of 1901, which had the effect of making the Insolvency law inapplicable to cases under the Tenancy Act having been deleted from section 264 of the present Act, there is no law now in force which makes the Insolvency law inapplicable to suits and proceedings under the Tenancy Act. So, where in execution of a decree under the Agra

* Second Appeal No. 4 of 1931, from an order of D. C. Hunter, District Judge of Moradabad, dated the 20th of December, 1930.

Tenancy Act, 1926, for arrears of rent against a thekadar certain zamindari property belonging to the judgment-debtor was attached and sold, although prior to the attachment the judgment-debtor had been declared an insolvent, it was *held* that section 28 of the Provincial Insolvency Act applied to the case and therefore the property in question had become vested in the official receiver and as against him the auction purchaser had acquired no title.

Section 6(*a*) of the U. P. General Clauses Act had no bearing on the case.

When the sections themselves are clear the court cannot allow its mind to be influenced by the previous history of the law and draw any inference as regards the supposed policy of the legislature. It is only in the case of ambiguity that previous legislation may be referred to in order to throw light on the interpretation of a particular section.

Mr. *S. N. Seth*, for the appellant.

Mr. *Mushtaq Ahmad*, for the respondents.

SULAIMAN and YOUNG, JJ. :—This is an appeal by the official receiver in insolvency from an order under section 4 of the Provincial Insolvency Act. It appears that the respondent Murtaza Ali held a simple money decree for arrears of rent against Ahmad Ali, a thekadar. This decree was in execution; but before the property was attached the judgment-debtor was declared an insolvent on the 1st of May, 1929. In spite of his insolvency, the decree-holder proceeded to attach certain zamindari properties belonging to his judgment-debtor, and they were put up for sale by the revenue court and sold at auction on the 25th of March, 1930. When the sale was confirmed, the official receiver moved the insolvency court under section 4 of the Act for deciding the question whether any title had passed to the auction purchaser by the revenue court's sale. The original insolvency court decided the point in favour of the official receiver, holding that as a result of the insolvency of the judgment-debtor his estate had become vested in the official receiver and no court other than the insolvency court was seised of the jurisdiction to sell the property. On appeal the

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learned District Judge came to a contrary conclusion. He pointed out that up to the 7th of September, 1926, when the new Tenancy Act came into force, the law undoubtedly was that provisions of the insolvency law did not apply to proceedings in the revenue court. He then proceeded to ask himself the question whether the authors of the Tenancy Act really intended to alter the law which had stood for at least 30, if not 50, years and whether the omission of all reference to the insolvency law was deliberate. He was also influenced in his view by a note in a certain pamphlet issued under the authority of the Government and by there being no reference to the alteration of the law in the reported debates held in the Legislative Assembly. He, therefore, came to the conclusion that it was very difficult to suppose that the legislature really intended that the law should be altered. He accordingly disallowed the application of the official receiver.

We agree entirely with the view taken by the learned District Judge that up to 1926 the law was as he has stated. We may briefly summarise the previous enactments, in order to make the point of view pressed by the District Judge clear.

Chapter XX of the Code of Civil Procedure of 1877 (Act X of 1877) contained provisions relating to the insolvency of debtors. In the Rent Act of 1881 special procedure was laid down for suits between landlords and tenants, and the rules of the Civil Procedure Code were applicable in some cases only. The Civil Procedure Code of 1882 (Act XIV of 1882), chapter XX, dealt with insolvency proceedings. In section 4 there was an express provision that nothing contained in the Code shall be deemed to affect any law prescribing special procedure for suits between landlords and tenants. Thus chapter XX of the Code dealing with insolvency matters was not applicable to suits between landlords and tenants. In the Tenancy Act of 1901 section 193 in express terms made chapter XX of the

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Code inapplicable to all suits and proceedings under the Tenancy Act. It was accordingly held by a Full Bench of this Court in *Kalka Das* v. *Gajju Singh* (1) that the provisions of the insolvency law did not apply to revenue cases. Section 56(2) of the Provincial Insolvency Act (Act III of 1907) expressly enacted that where in any enactment in force at the time of the commencement of the Act reference is made to chapter XX of the Code of Civil Procedure of 1877 or of 1882, such reference, so far as may be practicable, shall be construed as applying to this Act. Under the same section chapter XX of the Code was repealed because the provisions relating to the insolvency of debtors were embodied in a separate Act. It, therefore, followed that the provisions of the Provincial Insolvency Act were inapplicable to cases under the Tenancy Act, in view of the exception contained in section 193 of the latter Act. The new Code of Civil Procedure of 1908 did not alter the position in any way. The Provincial Insolvency Act (Act V of 1920) also contained section 83, in which it was again provided that where in any enactment at the time of the commencement of the Act reference is made to chapter XX of the Code of Civil Procedure of 1877 or 1882, the reference shall, so far as may be practicable, be construed as applying to this Act. The result obviously was that the Insolvency Act of 1920, by virtue of the exception contained in section 193 of the Agra Tenancy Act of 1901, remained inapplicable to cases in the revenue courts. The learned District Judge was, therefore, perfectly right in holding that this was the state of the law up to 1926, when the new Tenancy Act was passed.

But in order to interpret the provisions of the new Tenancy Act, when the sections themselves are clear we cannot allow our minds to be influenced by the previous history of the law and draw any inference as regards the supposed policy of the legislature. It is

(1) (1921) I.L.R., 43 All., 510.

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only in the case of ambiguity that previous legislation may be referred to in order to throw light on the interpretation of a particular section. But where the Act itself is clear, the presumption is that the legislature deliberately intended to alter the law, and we must interpret the sections as they now stand. If our interpretation in any way conflicts with the policy of the legislature, it is open to it to amend the Act.

Section 264 is the new section which in some ways corresponds to section 193 of the old Act. It is the only section which makes the provisions of the Code of Civil Procedure of 1908 applicable to suits and proceedings under the Tenancy Act, subject to certain exceptions. The legislature had before it the previous provision in section 193, under which chapter XX of the Code of Civil Procedure dealing with insolvency matters had been expressly excluded. But in enacting the new sections the legislature omitted any further reference either to that chapter of the old Code of Civil Procedure, or to the new Provincial Insolvency Act. Whether the omission was deliberate or accidental, it is not for us to speculate. The fact remains that that portion of section 193 which had the effect of making the insolvency law inapplicable to cases under the Tenancy Act has been deleted from section 264 of the new Act. The Provincial Insolvency Act is an Imperial Act and applies to all proceedings, except those which are excepted by it. Section 28 of the Act, which lays down that the property of an insolvent shall vest in the court or the receiver, as the case may be, itself contains an exception in sub-section (5) as regards any property which is exempted by the Code of Civil Procedure, or "by any other enactment for the time being in force, from liability to attachment and sale in execution of any decree". There is no law in force which now makes the proceedings in insolvency inapplicable to a revenue suit or proceeding. The inapplicability of the insolvency law to revenue cases depended mainly on

the provision in section 193 which made such law inapplicable. By deleting that provision from section 264 of the new Act, that bar has been automatically removed. There is, therefore, nothing to prevent the applicability of the insolvency law to proceedings under the Tenancy Act. Whether the result is unfortunate or not, there can be no doubt that this is the result of the language of section 264 as it now stands.

The learned District Judge himself felt this difficulty, and therefore suggested that "it is possible that section 6 of the United Provinces General Clauses Act covers the point". Sub-clause (*a*) of that section, which has been referred to, merely provides that when any Act repeals any enactment hitherto made, then, unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect. This sub-section merely implies that a repealing Act does not bring into existence the previous Act which had been itself repealed by the repealed Act. For instance, the mere fact that the Tenancy Act of 1926 repealed the Tenancy Act of 1901 would not revive the Rent Act of 1881. The effect of the section in the General Clauses Act undoubtedly is that the fact of repealing the Tenancy Act of 1901 does not by itself revive anything not in force at the time when the repeal took effect. But the applicability of the insolvency law to revenue cases does not depend on the repealing Tenancy Act of 1926. The Insolvency Act applies, unless there is a bar to its application. It is that bar which has been removed in the new Tenancy Act.

We are, therefore, clearly of opinion that the Provincial Insolvency Act must now be held to be applicable to suits and proceedings under the Tenancy Act, because there is no bar to its applicability in existence. In this view of the matter it is wholly unnecessary for us to consider what would be in accordance with public policy.

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We are accordingly of opinion that the order passed by the original insolvency court was correct, and that the official receiver's application for a declaration that the auction sale held by the revenue court outside the insolvency proceedings did not pass any title to the auction purchaser and that the sale proceeding was null and void as against him, should be allowed. We direct that the appellant shall have his costs from the respondents in all courts.

Before Mr. Justice Mukerji and Mr. Justice Bennet.

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February, 27.

FAQIR CHAND AND ANOTHER (DECREE-HOLDERS) *v.* KUNDAN SINGH AND OTHERS (JUDGMENT-DEBTORS).*

Civil Procedure Code, section 48—*Limitation Act (IX of* 1908), *article* 182—*Amendment of decree—Time from which the period of* 12 *years will be counted.*

Although article 182 of the Limitation Act provides that where a decree has been amended the period of limitation for executing the decree begins to run from the date of the amendment, yet that does not affect the provisions of section 48 of the Civil Procedure Code or give a new start from the date of the amendment to the period of 12 years provided by that section. The meaning of the words "not provided for by section 48" in the first column of article 182 is that where execution is barred by section 48 of the Civil Procedure Code, execution cannot be allowed under article 182 of the Limitation Act. In other words, article 182 is subject to the provisions of section 48 of the Civil Procedure Code. The period of 12 years under section 48 is final and cannot be extended by any amendment of the decree, whether the amendment is made before or after the expiry of the period of twelve years.

Mr. *G. S. Pathak*, for the appellants.

Mr. *A. Sanyal*, for the respondents.

MUKERJI and BENNET, JJ.:—This is an appeal from an order in execution dismissing an application of the decree-holder for execution. The application has

*First Appeal No. 517 of 1930, from a decree of Makhan Lal, Subordinate Judge of Moradabad, dated the 17th of May, 1930.