

On this view of the case I allow this appeal, set aside the order of the learned District Judge and direct him to substitute the appellant for the petitioning creditor, Damodar Dass, and to proceed with the application according to law. The appellant will get his costs of this appeal.

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Appeal allowed.

FULL BENCH

*Before Mr. Justice G. H. Thomas Acting Chief Judge,
 Mr. Justice Ziaul Hasan and Mr. Justice A. H. deB. Hamilton*

BABU KUNDAN LAL (DEFENDANT-APPELLANT) v. HAJI
 SHEIKH FAQIR BAKHSH (PLAINTIFF-RESPONDENT)*

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Transfer of Property Act (IV of 1882), as amended by Act (XX of 1929), section 92—Section 92 as amended, whether has retrospective effect—Section 63, Transfer of Property Act as amended—Sections not mentioned in section 63, whether have retrospective effect—Interpretation of statutes—Retrospective effect of acts—General rule about provisions of an Act having retrospective effect.

(*Per Full Bench*)—The provisions of the amended section 92 of the Transfer of Property Act have retrospective effect except in regard to acts done before the 1st of April, 1930, in any proceeding pending in any court on that date. *Janki v. Kanhaiya Lal* (1), overruled. *Hira Singh v. Jai Singh* (2), followed. *Ko Po Kun v. C. A. M. A. L. Firm* (3), *Bank of Chettinad, Ltd. v. Ma Ba Lo* (4), *Kanji and Moolji Brothers v. T. Shunmugan Pillai* (5), *Gauri Shankar v. Gopal Das* (6), *Jagdeo Sahu v. Mahabir Prasad* (7), *Cooverjee H. Plumber v. Vasanti Theosophical Co-operative Housing Society, Ltd.* (8), *Young v. Adams* (9), referred to.

(*Per THOMAS, A. C. J.*)—The general rule of law is that an Act has no retrospective effect unless it is so specifically provided

*Second Civil Appeal No. 194 of 1935, against the decree of Mr. Sheo Gopal Mathur, 1st Additional Judge, Small Cause Court, Lucknow and Additional Civil Judge, Lucknow, dated the 9th of April, 1935, reversing the decree of Mr. Akhtar Ahsan, Munsif, South, Lucknow, dated the 9th of August, 1934.

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| (1) (1935) O.W.N., 1238. | (2) (1937) I.L.R., All., 880(F.B.). |
| (3) (1932) I.L.R., 10 Rang., 465. | (4) (1935) I.L.R., 14 Rang., 494. |
| (5) (1932) A.I.R., Mad., 734. | (6) (1934) A.I.R., All., 701. |
| (7) (1933) I.L.R., 13 Pat., 111. | (8) (1935) Bom., 91 |
| (9) (1898) A.C., 469. | |

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but there are certain exceptions, for instance, declaratory statutes passed to remedy defects in form have retrospective effect. Whenever the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed, even though the consequences may appear unjust and hard.

So far as the provisions of section 63 of the Amending Act are concerned, all the sections which have not been specifically mentioned stand on the same footing and have retrospective effect. So far as the sections specified in section 63 are concerned, they have no retrospective effect.

The case was originally heard by a Bench consisting of the Hon'ble the Chief Judge and Mr. Justice MADELEY who referred an important question of law involved, to a Full Bench for decision. The referring order of the Bench is as follows:

SRIVASTAVA, C.J. and MADELEY, J.—The main question raised by the defendant-appellant in these appeals is that his position being admittedly that of a redeeming co-mortgagor he had acquired a charge over the shares of the plaintiffs and that his position was not that of a person subrogated to the rights of the mortgagee. The learned Counsel for the parties are agreed before us that before the amendment made in the Transfer of Property Act by the Amendment Act of 1929 the rule was settled, at least in this province, that a co-mortgagor who redeemed the mortgage had only a charge on the shares of the other mortgagors for the proportionate share of the expenses incurred by him in redeeming and obtaining possession. The learned Counsel for the parties are also agreed that under section 92 as amended a co-mortgagor on redeeming property subject to the mortgage acquires the rights of the mortgagee by subrogation. The only point in controversy between the parties is whether the present case is to be governed by the old law as it obtained before the amendment made in 1929 or by the provisions of the amended section 92. The lower court relying on the Full Bench decision of the Allahabad High Court in *Tota Ram and another v. Ram Lal and another* (1) has held that section 92 has retrospective effect and applies to the present case. The learned Counsel for the appellant, on the other hand, maintains that section 92 has no retrospective effect and does not govern the present case. He relies on the decision of a Bench of this Court in *Janki v. Kanhaiya Lal and another* (2). It was held in this case that section 53A of the Transfer of Property Act had no retrospective effect and had no application to leases executed before the 1st

of April, 1930. The reasoning on which this conclusion is based was that the language of clause (d) of section 63 of the Amending Act XX of 1929 was so obscure that it was not possible to say that the intention of making any provisions of the Act retrospective was expressed even by necessary implication. If this reasoning is applied to the present case it would certainly follow that section 92 of the Transfer of Property Act also has no retrospective effect. The learned Counsel for the appellant admits that the result of the interpretation placed by the Bench in this case is that none of the provisions of the Amending Act will have any retrospective effect. We are not free from doubt about the soundness of this decision. In the circumstances we think it desirable that the matter should be decided once for all by a Full Bench of this Court. We accordingly refer the following question for decision by a Full Bench:

Have the provisions of the amended section 92 of the Transfer of Property Act retrospective effect or not?

Messrs. *Radha Krishna Srivastava, L. S. Misra and P. L. Varma* for the appellant.

Messrs. *Hyder Husain, Rameshwar Dayal and H. H. Zaidi* for the respondent.

THOMAS, A.C.J.:—The following abstract question of law has been referred by a Division Bench to a Full Bench:

“Have the provisions of the amended section 92 of the Transfer of Property Act retrospective effect or not?”

The general rule of law is that an Act has no retrospective effect unless it is so specifically provided but there are certain exceptions, for instance, declaratory statutes passed to remedy defects in form have retrospective effect. Whenever the intention is clear that the Act should have a retrospective operation, it must unquestionably be so construed, even though the consequences may appear unjust and hard.

The answer to the question, which has been referred to the Full Bench depends on the interpretation to be put on section 63 of the Transfer of Property (Amendment) Act (XX of 1929). The whole trouble has arisen on account of the obscure language of clause (d) of

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section 63 of the Amending Act. The section runs as follows:

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“Nothing in any of the following provisions of this Act, namely, sections 3, 4, 9, 10, 15, 18, 19, 27, 30, clause (c) of section 31, sections 32, 33, 34, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to affect—

(a) the terms or incidents of any transfer of property made or effected before the 1st day of April, 1930.

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April, 1930, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted, or continued as the case may be, as if this Act had not been passed.”

This section deals with the question whether the provisions of the Act have or have not the retrospective effect and certain sections of the Act have been mentioned as not having retrospective effect.

Clause (a) of section 63 refers to the interpretation

Clause (b) to the right,

Clause (c) to the liability and obligation.

Clause (d) to remedy or proceeding.

Section 47, which has introduced section 92 into the Transfer of Property Act, has not been mentioned in section 63. In my opinion so far as the provisions of section 63 of the Amending Act are concerned, all the sections which have not been specifically mentioned stand on the same footing. So far as the sections specified in section 63 are concerned, clauses (a), (b), (c) and the first part of clause (d) show that the provisions contained in those sections have no retrospective effect.

The real question is with regard to those sections of the

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Amending Act, which are not specified in section 63, and there is a conflict of opinion on the point with regard to those sections among the various High Courts. This conflict of opinion is due to the fact that the language of the latter portion of clause (d) of section 63 is obscure and in my opinion the clause has been misplaced.

The learned Counsel for the appellant has contended that section 92 of the Act has no retrospective effect and does not govern the present suit. He relies on the decision of a Bench of this Court reported in *Janki v. Kanhaiya Lal and another* (1) in which it was held that section 53-A of the Transfer of Property Act, which is also a section not specified in section 63 of the Amending Act, had no retrospective effect and had no application to leases executed before the 1st of April, 1930. The main reasoning on which this conclusion was based was that the language of clause (d) of section 63 of the Amending Act (XX of 1929) was so obscure that it was not possible to say that the intention of making any provisions of the Act retrospective was expressed even by implication, and in my opinion if this reasoning is accepted and applied to the present case, it would necessarily follow that section 92 of the Transfer of Property Act also had no retrospective effect. The result will be that none of the provisions of the Amending Act will have any retrospective effect. With due respect to the Honourable Judges, who decided *Janki's* case (1), I beg to differ with their conclusions. In my opinion the decision is not sound. My learned brother the Hon'ble Mr. Justice Ziaul Hasan, who was a member of that Bench, after further considering the wording of section 63 of the Amending Act has now come to a contrary conclusion.

In my opinion there can be no doubt that the words "such right, title, obligation or liability" in clause (d)

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refer to the right, title, obligation or liability mentioned in clause (c), namely, any right, title, obligation or liability already acquired, accrued, or incurred before the 1st of April, 1930.

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The difficulty in interpreting section 63 arises from the fact that part 3 of clause (d) follows part (2) from which it is concluded that it refers to part 2 also. In my opinion the second part of clause (d) is independent of the rest of section 63 and deals only with the provisions of the Amending Act other than those specified in the section.

That part 3 of clause (d) does not refer to part 2 is borne out by the fact that mention is made therein of "any such remedy and any such proceeding as is herein referred to," but no remedy or proceeding has been referred to in the second part of clause (d). The word 'herein' means the first part of clause (d) and does not refer to the second part of that clause or to the Act itself, and that "any such remedy and any such proceeding as is herein referred to" means the remedy or proceeding in respect of the right, title, obligation or liability as is mentioned in clause (c).

The learned Counsel for the appellant also relied on the following cases:

Ko Po Kun v. C. A. M. A. L. Firm (1), *The Bank of Chettinad, Ltd., v. Ma Ba Lo* (2), *Kanji and Moolji Brothers v. T. Shunmugan Pillai* (3), *Gauri Shankar v. Gopal Das* (4), *Jagdeo Sahu v. Mahabir Prasad* (5) and *Cooverjee H. Plumber v. Vasant Theosophical Co-operative Housing Society, Ltd.* (6).

A careful reading of the cases nos. 2 to 6 will show that they were not decided on a consideration of section 63 of the Amending Act.

In the case reported in *Ko Po Kun v. C. A. M. A. L. Firm* (1) it was conceded that the argument, that the

(1) (1932) I.L.R., 10 Rang., 465.

(2) (1935) I.L.R., 14 Rang., 494.

(3) (1932) A.I.R., Mad., 734.

(4) (1934) A.I.R., All., 701.

(5) (1933) I.L.R., 13 Pat., 111.

(6) (1935) Bom., 91.

fact that certain sections are definitely made not retrospective implies that the remaining sections must be regarded as having retrospective effect, has force, the question whether or not section 101 has retrospective effect was decided mainly on the general principle that no retrospective effect should be given to an enactment unless there appears a clear intention that it should have retrospective effect. But as I have shown above, the language of section 63 does show an intention that sections not specified in it were meant to have retrospective effect.

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The second case reported in *The Bank of Chettinad, Ltd., v. Ma Ba Lo* (1) simply follows the first case. It does not contain any discussion either of section 63 or the interpretation to be put upon it.

The considered opinion of the five Judges of the Allahabad High Court is that the sections not specified in section 63 of the Transfer of Property Act have re-transpective effect—vide *Hira Singh v. Jai Singh* (2).

Therefore, my answer to the question referred to the Full Bench is that the provisions of the amended section 92 of the Transfer of Property Act have retrospective effect, except in regard to acts done before the 1st April, 1930, in any proceeding pending in any Court on that date.

ZIAUL HASAN, J.—This is a reference by a Division Bench of this Court to a Full Bench and as the question referred is an abstract question of law, it is not necessary to mention the facts of the case which has given rise to the reference.

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The question referred to us is as follows:

“Have the provisions of the amended section 92 of the Transfer of Property Act retrospective effect or not?”

The answer to this question depends on the interpretation to be put on section 63 of the Transfer of

(1) (1935) I.L.R., 14 Rang., 494.

(2) (1937) I.L.R., All., 880.

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Property (Amendment) Act (XX of 1929). That section runs as follows:

“Nothing in any of the following provisions of this Act, namely, sections 3, 4, 9, 10, 15, 18, 19, 27, 30, clause (c) of section 31, sections 32, 33, 34, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to affect—

(a) the terms or incidents of any transfer of property made or affected before the first day of April, 1930.

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April, 1930, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued as the case may be, as if this Act had not been passed.”

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It will be noted that this section deals with the question whether the provisions of the Act have or have not retrospective effect and that certain sections of the Act have been specified as not having retrospective effect. The other sections of the Act have not been mentioned in section 63 and among them is section 47, which has introduced section 92, as it now stands, into the Transfer of Property Act. It may be conceded that so far as the provisions of section 63 of the Amending Act are concerned, all those sections which have not been specifically mentioned in that section stand on the same footing. Now, although I was a party to the decision in *Janki v. Kanhaiya Lal* (1) in which it was held that section 53-A of the Transfer of Property Act (which is also a section not specified in section 63 of the Amending Act) has no retrospective effect, I must confess that after further considering the wording of

section 63 of the Amending Act I have come to a contrary conclusion.

So far as the sections specified in section 63 are concerned, there can be no doubt that clauses (a), (b), (c) and the first part of (d) clearly show that the provisions contained in those sections have no retrospective effect at all. The question arises only with regard to those sections of the Amending Act which have not been specified in section 63 and there is a sharp conflict of opinion on the point with regard to those sections among the various High Courts. It seems to me that this conflict of opinion is due to the fact that the last portion of clause (d) of section 63 have been somewhat misplaced. For the sake of easy reference I would divide clause (d) into three parts, each separated from the other by a semi-colon, and would call them parts 1, 2 and 3 of clause (d) respectively. If we place part 3 of this clause beginning from the word "and" and ending with the word "passed" in place of the second part beginning with "and" and ending with "date" and the second part in place of the third, the difficulty in the interpretation of clause (d) to my mind entirely disappears. I would read the clause thus—

"Any remedy or proceeding in respect of such right, title, obligation or liability, and any such remedy and any such proceeding as is herein referred to may be enforced, instituted, or continued, as the case may be, as if this Act had not been passed; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April, 1930, in any proceeding pending in a Court on that date."

There can be no doubt that the words

"Such right, title, obligation or liability" in clause (d) refer to the right, title, obligation or liability mentioned in clause (c), namely, a right, title, obligation or liability already acquired, accrued or incurred before the 1st April, 1930. If therefore we place the third part of clause (d) just after the first part, there

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can be no difficulty in the interpretation of that part, for in that case the entire part 3 of clause (d) will refer to clause (c) and the first part of clause (d), that is to say, to remedies and proceedings in respect of rights, titles, obligations or liabilities acquired, accrued or incurred before the 1st day of April, 1930. After this will follow the second part of clause (d) which deals with sections of the Amending Act not specifically mentioned in section 63 and all that that part of clause (d) provides is that the said sections of the Act will have no operation in those cases only in which a proceeding was pending in a Court on the 1st of April, 1930 and in those proceedings also to those acts only which had been done before the 1st of April, 1930. In other cases they will have full effect. Section 47 of the Amending Act is one of the unspecified sections and therefore it will have, in my opinion, full effect except on an act done before the 1st of April, 1930 in any proceeding pending in any Court on that date.

The difficulty in the interpretation of section 63 arises from the fact that part 3 of clause (d) follows part (2) and from this it is naturally concluded that it refers to part 2 also. In *Janki v. Kanhaiya Lal* (1) referring to part 3 of clause (d) it was said—

“This passage cannot we think be held to relate only to proceedings pending in a Court on the 1st day of April, 1930. The word ‘instituted’ shows that the proceeding can be not merely continued but that it may be instituted as if the Act had not been passed.”

This shows that the third part of clause (d) was in that case considered to refer to the second part and the use of the word ‘instituted’ in my opinion shows that the third part was not intended to refer to the second part. The second part of clause (d) appears to me to be totally independent of and unconnected with the rest of section 63 and it deals only with the provisions

of the Amending Act other than those specified in the section.

That part 3 of clause (d) does not refer to part 2 is also apparent from the fact that mention is made therein of

“any such remedy and any such proceeding as is herein referred to,”

but no remedy or proceeding has been referred to in the second part of clause (d). To my mind the word ‘herein’ means the first part of clause (d) only and does not refer to the second part of that clause or to the Act itself, so that—

“any such remedy and any such proceeding as is herein referred to”

means the remedy or proceeding in respect of the right, title, obligation or liability as is mentioned in clause (c). The interpretation put upon part 3 of clause (d) by the learned counsel for the appellant leads to the conclusion that no provision of the Amending Act was intended to have retrospective effect and in that case it was entirely purposeless to specify some provisions of the Act in section 63 and omit the others. This anomaly was noticed by us in *Janki v. Kanhaiya Lal* (1) where it was said—

“If this is the correct interpretation then it is no doubt difficult to see why certain sections have been expressly mentioned as not having retrospective effect because the result of this interpretation should seem to be that none of the sections would have retrospective effect.”

It was, however, thought that the language of section 63 is by no means clear on the point whether the new section 53-A of the Transfer of Property Act has or has not retrospective effect and in view of their Lordships of the Judicial Committee’s pronouncement in *Young v. Adams* (2) that retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language, it was

(1) (1935) O.W.N., 1238.

(2) (1898) A.C., 469.

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held that section 53-A could not be said to have been given retrospective effect. If, however, clause (d) of section 63 is read as I have mentioned above, section 63 does show by necessary implication that sections other than those specifically mentioned in it were meant to have retrospective effect.

The learned Counsel for the appellant has referred us to the following cases—

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Ko Po Kun v. C. A. M. A. L. Firm (1), *The Bank of Chettinad Ltd., v. Ma Ba Lo* (2), *Kanji and Moolji Brothers v. T. Shunmugan Pillai* (3), *Gauri Shankar v. Gopal Das* (4), *Jagdeo Sahu v. Mahabir Prasad* (5), *Cooverjee H. Plumber v. Vasant Theosophical Co-operative Housing Society, Ltd.*, (6) and *Janki v. Kanhaiya Lal* (7).

In the first case though it was conceded that the argument, that the fact certain sections are definitely made not retrospective implies that the remaining sections must be regarded as having retrospective effect, has force, the question whether or not section 101 has retrospective effect, was decided mainly on the general principle that no retrospective effect should be given to an enactment unless there appears a clear intention that it should have retrospective effect. The learned Judge who decided this case said—

“In my opinion section 101 is a section which affects existing rights and therefore despite section 63 of Act XX of 1929 I must hold that the new section 101 has no retrospective effect.”

This goes to show that in the learned Judge's opinion section 63 of the Amending Act gives section 101 retrospective effect.

The second case simply follows the first and contains no discussion either of section 63 or the interpretation to be put upon it.

(1) (1932) I.L.R., 10 Rang., 465.

(2) (1935) I.L.R., 14 Rang., 494.

(3) (1932) A.I.R., Mad., 734.

(4) (1934) A.I.R., All., 701.

(5) (1933) I.L.R., 13 Pat., 111.

(6) (1935) Bom., 91.

(7) (1935) O.W.N., 1238.

In the third case it was said—

“Their Lordships of the Judicial Committee in *Young v. Adams* have stated that retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language. Judged by that test Act XX in our opinion fails to disclose an intention that section 53-A was to have a retrospective effect”;

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but as I have shown above, the language of section 63 does show an intention that sections not specified in it were meant to have retrospective effect.

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In the fourth case, the learned Judge who decided that case contented himself with following the case of *Kanji and Moolji Brothers v. Shunmugan Pillai* (1) and the following passage is all that we find in his judgment on the point—

“As regards the second point it has been held in *Kanji and Moolji Brothers v. Shunmugan Pillai* (1), that section 53-A has no retrospective effect. I take the same view, as in that case.”

In the fifth case it was simply assumed that section 92 of the Transfer of Property Act was not applicable to the case as it came into force in 1930, while “all such rights as the defendant had were already vested before that date.” Section 63 of the Amending Act was not at all considered in this case.

The above remark applies to the sixth case also in which Murphy and Sen JJ. respectively dealt with the question with the following remarks only—

“It has been pointed out by the other side that section 53-A, T. P. Act, as now amended, came into force in 1930, and can have no application to the present appeals, the facts of which happened before that date. It also has no retrospective effect,”

and

“It has also been pointed out by Mr. Jayakar that the receipts in the case show that the amounts were paid by the appellants between the years 1924 and 1927, while the new section 53-A T. P. Act came into operation on the 1st of April, 1930, so that the alleged part performance took place before the section came into operation.”

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The last case is the case of our own Court to which I have already referred.

It will be seen, therefore, that none of the cases relied on by the learned Counsel for the appellant, except the case of our own Court, was decided on a consideration of section 63 of the Amending Act and I have already stated the reasons for the decision in *Janki v. Kanhaiya Lal* (1).

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Owing to the view I take of section 63 of the Amending Act, it is not necessary to refer to the decisions of the various High Courts relied on by the learned counsel for the respondent in which it has been held that sections not specified in section 63 have retrospective effect but I may mention that that is the considered and concurrent opinion of five Judges of the Allahabad High Court—vide *Hira Singh v. Jai Singh* (2).

I would therefore answer the question referred to the Full Bench as follows:—

The provisions of the amended section 92 of the Transfer of Property Act have retrospective effect, except in regard to acts done before the 1st April, 1930, in any proceeding pending in any Court on that date.

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HAMILTON J.—I have had the advantage of seeing the judgments of my learned brothers and I agree with their answer to the question referred.

It appears to me that when section 63 of the Amendment Act states that the sections of which the numbers are given shall not be deemed to affect what is contained in (a), (b), (c) and in (d) “any remedy or proceeding in respect of such right, title, obligation or liability” (i.e. what is contained in (c) the Legislature meant it to be understood that what is not specified in (a), (b), (c) and that part of (d) which I have quoted is affected. Similarly when in the middle part of (d) it is stated that “nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April, 1930, in any proceeding pending in Court on that date” the Legislature meant

(1) (1935) O.W.N., 1238.

(2) (1937) I.L.R., All., 880.

it to be understood that anything which is not a thing already done before the first day of April, 1930, in any proceeding pending in a Court on that date is rendered invalid or is affected.

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Hamilton,
J.

The last part of clause (d) then appears to me explanatory of what will happen when any section is by virtue of this section 63 deprived of retrospective effect, namely, the whole of the Amendment Act will be regarded as non-existent as regards any remedy or proceeding which would have been affected but for the provisions of section 63.

As my learned brothers have pointed out the wording of the last part of (d) is such that it would appear as if it referred to the first and not the middle part of (d) and was misplaced.

Supposing, however, it applies also to the middle part then in my opinion the meaning is that when a section of the Amendment Act other than one of those of which the number has been given in the first part of section 63 does not render invalid or affect something because that thing is a thing already done before the first day of April, 1930 in a proceeding pending in a Court on that date then the whole of the Amendment Act must be considered as non-existent.

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By the Court—Our answer to the question referred to the Full Bench is that the Provisions of the amended section 92 of the Transfer of Property Act have retrospective effect, except in regard to acts done before the 1st of April, 1930, in any proceeding pending in any Court on the date.

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