

that the annual receipt of Rs.4,500 under the agreement is "income, profits and gains," and that it is not exempt from assessment under section 4 (3) (*vii*). I think, however, that this is a fit case in which the parties should be left to bear their own costs in this Court.

ABDUL RASHID J.—I agree.

A. N. C.

Question answered against the assessee.

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ANANT RAM-
KHEM CHAND
v.
COMMISSIONER,
INCOME-TAX,
PUNJAB.

TEK CHAND J.

ABDUL
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LETTERS PATENT APPEAL.

Before Coldstream and Din Mohammad JJ.

JOINT HINDU FAMILY SIDHU RAM, ETC.,
(DECREE-HOLDERS) Appellants,

versus

NUR MOHAMMAD AND OTHERS (JUDGMENT-
DEBTORS) Respondents.

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June 29.

Letter Patent Appeal No. 52 of 1937.

Punjab Debtors' Protection Act (II of 1936) S. 5 — whether the provisions of the Act have retrospective effect — Jurisdiction of District Judge in appeal — in respect of orders of executing Court passed before the Act came into force.

A temporary alienation of the judgment-debtor's land was sanctioned by the executing Court on 20th December, 1935. The Punjab Debtors' Protection Act, 1936, came into force during the pendency of an appeal from the orders of the executing Court and relying on the provisions of the new Act, the District Judge set aside the order of the executing Court and remanded the case for disposal in accordance with that Act.

Held, that S. 5 of the Punjab Debtors' Protection Act, 1936, does not embody a matter of mere procedure, but creates a new right in favour of the judgment-debtor by exempting a part of his land for his maintenance, etc., and

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cannot therefore have retrospective operation in the absence of an express provision to that effect which the Act does not contain.

Haidar Husain v. Puran Mal (1), *Sheopujan Rai v. Bishnath Rai* (2), *Ata-ur-Rahman v. Income-tax Commissioner* (3), *Gurmukhdas Rangalmal v. Hassomal Tharumal* (4), and *Nepra v. Sayer Pramanik* (5), relied upon.

Bishen Chand v. Bakhshish Singh (6), distinguished.

Held also, that it was not open to the District Judge to reverse the order of the executing Court, which when delivered could not be questioned on the ground on which the District Judge proceeded to set it aside.

Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commissioner, Delhi (7), *Skinner v. Skinner* (8) and *Sri Rajah Satrucherla v. Maharaja Jaypur* (9), relied upon.

Letters Patent Appeal from the judgment of Skemp J. passed in First Appeal (from Order) No. 193 of 1936, dated 5th February, 1937, affirming that of Mr. H. Asghar, District Judge, Dera Ghazi Khan, dated 29th June, 1936, remanding the case to the trial Court.

HAZARA SINGH, for Appellants.

B. H. ALI, for Respondents.

DIN
MOHAMMAD J.

DIN MOHAMMAD J.—In execution of a decree held by a Hindu joint family consisting of Chandar Bhan and others against Nur Muhammad and others, a temporary alienation of the judgment-debtors' lands was sanctioned by the executing Court in favour of the decree-holders on the 20th December, 1935. Against

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- (1) I. L. R. (1936) 58 All. 63 (F. B.). (5) I. L. R. (1928) 55 Cal. 67.
 (2) I. L. R. (1930) 52 All. 886. (6) 1937 A. I. R. (Lah.) 52.
 (3) 1934 A. I. R. (Lah.) 1013. (7) 1927 A. I. R. (P. C.) 242.
 (4) (1932) 139 I. C. 589. (8) 1930 A. I. R. (Lah.) 1004.
 (9) 1928 A. I. R. (Mad.) 1194.

this order, the judgment-debtors presented an appeal to the District Judge, which, however, could not be heard until the 29th June, 1936. In the meantime, the Punjab Debtors' Protection Act, 1936, came into force. By the terms of section 4 of this Act, a civil Court was enjoined to transfer the proceedings of attachment and alienation to the Collector whenever it made an order that land be attached and alienated temporarily in the execution of a decree. By section 5, such portion of the judgment-debtor's land was exempted from temporary alienation as in the opinion of the Collector was required to provide for the maintenance of the judgment-debtor and the members of his family who were dependent on him. The District Judge relying upon these two provisions of law set aside the order of the executing Court and remanded the case for disposal in accordance with those provisions. From that order, the decree-holders preferred an appeal to this Court, which came on for hearing before Skemp J. Relying on a judgment of this Court reported as *Bishan Chand v. Bakhshish Singh* (1), the learned Judge maintained the order of the District Judge and dismissed the appeal. Hence this Letters Patent Appeal.

After hearing counsel on both sides at length, I have come to the conclusion that this appeal must succeed. It is true that enactments relating to procedure have a retrospective effect, if not expressly stated otherwise; but I am not convinced, in the first instance, that the exemption provided for in section 5 of the Act is a mere matter of procedure and, secondly, I am satisfied that, even if it were so, the stage at which the new provision of law was applied by the

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District Judge was not the stage at which it could be applied. I am aware of the fact that in the judgment relied upon by Skemp J., Bhide J. has remarked that sections 4 and 5 relate to procedure only and that Skemp J. has agreed with him, but, with all respect, I am disposed to think that the exemption contained in section 5 in so far as it creates a new right in favour of the judgment-debtor so as to protect a part of his land from his decree-holder or attaches a disability to a decree-holder in so far as to debar him from proceeding against a part of his judgment-debtor's land deals with something more than a mere procedure. In my view, it brings into existence a right which the judgment-debtor can claim henceforth and as such the new provision of law creating that right cannot have a retrospective effect unless an express provision had been made therefor. There is abundant authority in support of the proposition that such enactments are not retrospective in their effect. Reference in this connection may be made to *Haidar Husain v. Puran Mal* (1), *Sheopujan Rai v. Bishnath Rai* (2), *Ata-ur-Rahman v. Income-tax Commissioner* (3), *Gurmukh-das Rangalmal v. Hassomal Tharumal* (4) and *Nepra v. Sayer Pramanik* (5).

In *Haidar Husain v. Puran Mal* (1) a question arose whether a new proviso added to a section of the Agra Pre-emption Act governed pending cases. A majority of the Full Bench of the Allahabad High Court held that the proviso added to section 19 of the Agra Pre-emption Act by the Amending Act of 1929 which came into force after the deed of gift in favour

(1) I. L. R. (1936) 58 All. 63 (F. B.). (3) 1934 A. I. R. (Lah.) 1013.

(2) I. L. R. (1930) 52 All. 886. (4) (1932) 139 I. C. 589.

(5) I. L. R. (1928) 55 Cal. 67.

of the defendant vendee did not prevent him from defeating the plaintiff's claim by virtue of having obtained that deed of gift prior to the passing of the decree. The learned Judges further remarked that it was a well established rule of construction that a retrospective operation was not to be given to a statute so as to impair an existing right or obligation otherwise than as regards the matter of procedure unless that effect could not be avoided without doing violence to the language of the enactment. If the new Act touched a right in existence at the passing of the Act then it should not be held to be applicable to a pending action concerning that right. Reliance was placed on a quotation from Maxwell on the Interpretation of Statutes and on another from Craies on Statute Law. The first quotation runs as follows:—

“ In general when the law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights.”

The latter quotation is as follows:—

“ In the absence of anything in an Act to show that it is to have a retrospective operation it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed.”

In *Sheopujan Rai v. Bishnath Rai* (1), a Division Bench of the Allahabad High Court observed that a new enactment or amendment of already existing enactment passed during the pendency of an action has not a retrospective effect unless either it expressly says so or it lays down a mere rule of procedure which it is the duty of Courts to follow.

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(1) I. L. R. (1930) 52 All. 886.

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In *Ata-ur-Rahman v. Income-tax Commissioner*

(1). a Division Bench of this Court observed that provisions which touch a right in existence at the passing of the statute were not to be applied retrospectively in the absence of express enactment or necessary intendment. This quotation was taken from a judgment of their Lordships of the Privy Council reported as *Delhi Cloth & General Mills Co., Ltd. v. Income-tax Commissioner, Delhi* (2).

In *Gurmukhdas Rangmal v. Hassomal Tharumal* (3) and *Nepra v. Sayer Pramanik* (4) similar principles were enunciated.

In my opinion, the question that was involved in these execution proceedings was whether the decree-holder had or had not a right to proceed against the whole of the judgment-debtor's land without making any reservation for his maintenance or, in other words, whether a judgment-debtor could claim as a matter of right an exemption for a part of his land for his maintenance, and as this matter had been decided by the executing Court in December, 1935, any change of law effected subsequent to that order could not alter the conditions as they existed at the time the order was made.

Even if it were possible to hold that this view of the matter is open to doubt and that the provisions contained in sections 4 and 5 of the Debtors' Protection Act relate to a mere matter of procedure, I am further of opinion that it was not open to the District Judge to have reversed the order of the executing Court merely on the ground that since then a new enactment had been passed which effected a change in the existing

(2) 1927 A. I. R. (P. C.) 242

(3) (1932) 139 I. C. 539.

(1) 1934 A. I. R. (Lah.) 1013.

(4) I. L. R. (1928) 55 Cal. 67.

law. As observed by their Lordships of the Privy Council in *Delhi Cloth & General Mills Co., Ltd. v. Income-tax Commissioner, Delhi* (1) "Provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final are provisions which touch existing rights" and as such they cannot have a retrospective effect unless it is clearly so provided. The only thing that is contended on behalf of the respondents is that as the matter was still pending in the appellate Court, it had not been finally decided and that therefore it could be treated as a pending proceeding liable to be affected by any change made in the law. In my view, there is no force in this contention. An appeal may for certain purposes be a continuation of the original proceeding; but it cannot be reasonably urged that an appellate Court will be justified in setting aside the judgment of a trial Court which when delivered was not open to any objection on the ground on which the appellate Court seeks to set it aside. In *Skinner v. Skinner* (2), it was remarked by a Division Bench of this Court, "An alteration in procedure may have retrospective effect and while proof is a part of procedure the stage of proof has been passed in the present case and it does not exist except under particular and special circumstances during appeal. In short a change in procedure cannot retrospectively affect a decided matter." A similar question came before a Division Bench of the Madras High Court in a case reported as *Sri Rajah Satrucherla v. Maharaja Jaypur* (3) and the learned Judges had arrived at the same conclusion as has been

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(1) 1927 A. I. R. (P. C.) 242. (2) 1930 A. I. R. (Lah.) 1004.

(3) 1928 A. I. R. (Mad.) 1194.

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arrived at by a Bench of this Court in the case referred to above. The following quotation is to the point :—

“ The argument that because this appeal may be regarded for certain purposes as a continuation of the Lower Court’s proceedings and that we must therefore apply to it the amended procedure now in force does not seem to us tenable. It would involve this result that on every alteration of processual law, all proceedings taken under the previous law within a period allowing of an appeal when the new law came into force, would be contrary to law. The mere statement of this result is sufficient to demonstrate that the argument cannot be sustained.”

I am in respectful agreement with the remarks quoted above and would hold that even if the exemption claimed in these proceedings were a mere matter of procedure, the order made by the executing Court at a time when no such exemption existed could not be held to be wrong on the subsequent enactment of that exemption. I would, therefore, allow this appeal, set aside the order of the learned Judge of this Court as well as that of the District Judge and restore the order of the executing Court. In view of the fact, however, that none of the authorities mentioned above was cited by counsel for the appellants and that he failed to present his case in a proper manner, I would not allow the appellants any costs against the respondents.

COLDSTREAM J.

COLDSTREAM J.—I agree.

A. N. K.

Appeal accepted.