

of the conflicting views as to the effect of a withdrawal from an application for execution is right, the present case is not affected by either. There was not, in fact, any withdrawal from or of the application of 22nd April, 1882. What the pleader of the judgment-creditor did, was to request the Subordinate Judge to dispose of the application, as he proposed to make a fresh one. The Subordinate Judge thereon struck it off, or, in effect, dismissed it. If an application duly made so as to satisfy the terms of article 179, paras. 4 and 5, of Schedule II of Act XV of 1877 could, by any means, be unmade, those means were not adopted here. The application having been made and continuing to exist, was dismissed by the Subordinate Judge. Such dismissal did not prevent the application from furnishing a point of time for the beginning of a new term of limitation computed under article 179 of the Act.

We, therefore, reverse the order of the Subordinate Judge, with costs, and direct that he dispose of the application on its merits.

Order reversed and case remanded.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

PADGAYA SOMSHETTI, DECEASED, BY HIS SON AND HEIR, NAGYA, (ORIGINAL DEFENDANT NO. 2), APPELLANT, v. BA'JI BA'BA'JI, DECEASED, BY HIS SON AND HEIR, GOVIND, (ORIGINAL PLAINTIFF), RESPONDENT.*

1887.
February 7.

Dekkhan Agriculturists' Relief Act—Act XVII of 1879, Sec. 12—Act XXIII of 1881, Sec. 4—Act XXII of 1882, Sec. 3—Definition of "agriculturist"—Change in the definition—Effect of a change of status on the rights of parties to litigation.

A change in the law does not generally affect any proceeding begun when it comes into force. But a change of *status* or legal capacity generally operates at once to extinguish, diminish, or vary the extent to which a party may claim the aid or protection of a Court.

The plaintiff, who was earning his livelihood partially by agriculture within the districts to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) applied, brought a suit for redemption. At the time of the institution of the suit he was

* Second Appeal, No. 168 of 1885.

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an agriculturist as defined by Act XXIII of 1881 (1). During the pendency of the suit the definition of agriculturist was changed by Act XXII of 1882 (2).

Held, that if the plaintiff was not an agriculturist within the meaning of Act XXII of 1882 at the time of adjudication, he had no right to redeem on the special terms of section 12 of Act XVII of 1879, as he had lost, *pendente lite*, the specific personal character on which the right depended.

Shamlal v. Hirachand (3) followed.

THIS was a second appeal from the decree of S. Tágore, District Judge of Sholápur-Bijápur, confirming the decree of Ráv Sáheb R. D. Paránjape, Second Class Subordinate Judge of Sholápur.

The plaintiff sought to redeem a portion of a shop mortgaged to defendant No. 1 for Rs. 301 on the 21st October, 1828. Defendant No. 2 was sued, because he had taken a mortgage of the shop from defendant No. 1, and was in possession. Plaintiff also prayed for an account under the provisions of section 12 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

Defendant No. 1 did not appear.

Defendant No. 2 replied that the plaintiff's principal occupation was not agriculture; that, therefore, he was not entitled to invoke the provisions of the Dekkhan Agriculturists' Relief Act; that by the terms of the mortgage-bond he could not demand an account of the principal and interest of the mortgage-debt, and of the rents and profits of the mortgaged shop; that defendant No. 1 had mortgaged the shop to him for Rs. 1,600 in A.D. 1856 with the full knowledge and consent of the plaintiff, and that, therefore, he was not entitled to recover possession without payment of the principal and interest due upon this last mortgage.

The suit was filed on the 18th July, 1882. At that time the Dekkhan Agriculturists' Relief Act as amended by Act XXIII of

(1) Under section 4 of Act XXIII of 1881 " agriculturist means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants, or tenants earned or earns his livelihood wholly or partially by agriculture carried on within the limits of the said districts."

(2) Section 3 of Act XXII of 1882 provides as follows:—

" Agriculturist shall be taken to mean a person who by himself, his servants or tenants, earns his livelihood *wholly or principally* by agriculture carried on within the limits of the said districts, or who ordinarily engages personally in agricultural labour within those limits."

(3) I. L. R., 10 Bom., 637.

1881 was in force. Section 4 of this Act defined an "agriculturist" as "a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants, or tenants earned or earns his livelihood *wholly or partially* by agriculture carried on within the limits of the said district."

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While the suit was pending, Act XXII of 1882 was passed, which came into force on the 1st February, 1883. Section 3 of this Act alters the definition of "agriculturist" to mean "a person who by himself, his servants, or tenants earns his livelihood *wholly or principally* by agriculture within the limits of the said districts, or who ordinarily engages personally in agricultural labour within those limits."

The Court of first instance held that as the plaintiff was admittedly earning his livelihood partially by agriculture he was an agriculturist within the meaning of Act XXIII of 1881; and that though the definition of agriculturist was changed, *pendente lite*, by Act XXII of 1882, the suit was to be tried according to the law in force at the date of its institution, as provided by section 6 of the General Clauses Act I of 1868. He, therefore, held that the plaintiff had a right to redeem on the special terms provided by section 12 of the Dekkhan Agriculturists' Relief Act. On taking an account he found that the defendants had received more than the principal and interest of the mortgage-debt. He, therefore, directed two-thirds of the shop to be restored to the plaintiff's possession.

This decree was confirmed on appeal.

Defendant No. 2 preferred a second appeal to the High Court. *Ganesh Rámchandra Kirloskar* for the appellant.

Mánesháh Jehángirsháh and *G. M. Tripáti* for the respondent.

WEST, J.:—The judgment of the District Court gives to the mortgagor in this case, suing to redeem, the advantageous position of an agriculturist debtor, because, at the institution of the suit, he was an agriculturist as at that time defined by the law (Act XXIII of 1881). But while the suit was pending, the definition of agriculturist was changed by Act XXII of 1882,

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and thus when a decree had to be made, the plaintiff, living but partially by agriculture, was no longer an agriculturist (it might be) under the new law. It is provided by Act I of 1868 that a change in the law shall not generally affect any proceeding begun when it comes into force, and this principle was applied in the case of *Ratansi Kaliánji*⁽¹⁾; but a change of *status* or legal capacity generally operates at once, as in the case of *Le Bret v. Papillon*⁽²⁾, when it either extinguishes, enlarges, diminishes, or varies the extent to which a party may claim the aid or the protection of a Court. See *Guláb Narotam v. The Secretary of State*⁽³⁾ and *Nabokishore Dey v. Rámkishen Mohurir*⁽⁴⁾. It would be hard to say that a man suing as son of AB could continue the suit in that character after his adoption by CD; and as a right may be lost, so it may be gained *pendente lite* by the acquisition of a particular *status* with reference to the object of the suit, as in the case of *Rámabhat v. Lakshman Chintáman*⁽⁵⁾. In the recent case of *Shámlál v. Haráchand*⁽⁶⁾ it was laid down that, although at the institution of the suit the defendant had been an agriculturist, yet, as at the time of adjudication he was not so, the provisions of the Dekkhan Agriculturists' Relief Act could not be invoked by him to defeat the claim of his creditor. "The very special nature of the legislation embodied in section 12" of the Act must limit its operation in the present case as much as in the one just referred to. The right of the plaintiff to redeem on special terms could not exist when he had, even *pendente lite*, lost the specific personal character on which the right depended. We must, therefore, reverse the decree of the District Court, and remand the cause for retrial and adjudication after the Court shall have determined whether under Act XXII of 1882 the plaintiff is an agriculturist entitled, as such, to specially favourable terms of redemption. Costs to follow the final decision.

Decree reversed and the case remanded.

(1) I. L. R., 2 Bom., 148.

(2) 4 East, 502.

(3) I. L. R., 8 Bom., 596

(4) 9 Calc. W. R., Civ. Rul., 131.

(5) I. L. R., 5 Bom., 630.

(6) I. L. R., 10 Bom., 367.