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MORO v. ANANT.

Balaji A. Bhagavat for the respondent (plaintiff):—Under section 54 (*e*) of the Specific Relief Act we are entitled to sue for an injunction. A *vritti* can be sold—*Mancharam* v. *Pranshankar*[1]. There is nothing in the present case to show that the *yajamáns* are unwilling to allow us to officiate.

PARSONS, J.:—This case is distinguishable from *Raja* v. *Krishnabhat*[1]. There the Court would not force a joshi on unwilling *yajamáns*. The *yajamáns* here were employing and willing to employ the plaintiff, but the defendants obstructed him in the performance of his duties. We think that under section 54 of the Specific Relief Act he is entitled to an injunction under these circumstances. Decree confirmed with costs.

Decree confirmed.

(1) I. L. R., 6 Bom., 298.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

1896. *March* 24.

GANGARAM (ORIGINAL DEFENDANT), APPLICANT, *v.* PUNAMCHAN NATHURAM (ORIGINAL PLAINTIFF), OPPONENT.*

Construction—Acts relating to procedure—Retrospective operation of—Practice—Procedure—Dekkhan Agriculturists' Relief Act (XVII of 1879) *Sec.* 73† *—Act VI of* 1895.‡

In this suit the Subordinate Judge of Karmála held that the defendant was an agriculturist, and that, therefore, the suit could not be maintained without a certificate under section 47 of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879). Under section 73 of that Act the finding of the Subordinate Judge upon the point was final. The plaintiff appealed, the appeal including other points of objection to the decree as well as that with regard to the status of the defendant. Pending his appeal, Act VI of 1895 was passed, which repealed section 73. At the hearing of the appeal the Judge considered the question of the status of the defendant, and held that he was not an agriculturist, overruling the decision of the Subordinate Judge upon that point.

* Application No. 1 of 1896 under the Extraordinary Jurisdiction.

† Section 73 of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879)—

73. The decision of any Court of first instance, that any person is or is not an agriculturist, shall for the purposes of this Act be final.

‡ Amending Act VI of 1895—

Sections 8, 9, 14, 15, 19 and 73 are hereby repealed.

Held, that the Judge in appeal was right in entertaining the question. The provisions of Act VI of 1895 altered the procedure and were, therefore, applicable to proceedings already commenced at the time of their enactment.

Held, also, that even if the General Clauses Act (I of 1868), section 6, applied to Acts not conferring rights, but simply concerning judicial procedure, it could not affect the present case, as the repeal is not one of the Act itself, but only of a section in the same relating to procedure.

APPLICATION under the extraordinary jurisdiction of the High Court (sections 586 and 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Bahádur Narhar Gadadhar Phadke, First Class Subordinate Judge of Sholápur with appellate powers.

The plaintiff sued to recover rupees one hundred and forty, the balance including interest due on a current account.

The defendant took a preliminary objection that he was an agriculturist and, therefore, the suit could not be maintained without a conciliator's certificate under section 47 of the Dekkhan Agriculturists' Relief Act.

The Subordinate Judge allowed the defendant's plea and dismissed the suit. He rejected the plaintiff's application for time to produce a conciliator's certificate.

The plaintiff appealed, alleging (*inter alia*) that the defendant was not an agriculturist.

On the 29th August, 1895, the Judge reversed the decree. He held that the defendant was not an agriculturist, and partially allowed the plaintiff's claim. The following is an extract from his judgment :—

"The present suit was filed on 14th December, 1893, and was disposed of on 8th March, 1894. The appeal under disposal was made on 10th April, 1894. The appeal embodies other grounds for it than that in respect of the status of the defendant as an agriculturist or otherwise. n appeal on these grounds evidently lay and lies even now. The Dekkhan Agriculturists' Relief Acts, 1879, 1886, are amended by Act VI of 1895. This Act repeals section 73 of the Act of 1879. The amending Act came into force on the 1st May last. Section 73 made the decision of any Court of first instance that any person is or is not an agriculturist final for the purposes of the Act. In the present case the Karmála Court has held the defendant to be an agriculturist and dismissed the suit for want of a conciliator's certificate. * * The claim here was for Rs. 140

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and was heard by a Subordinate Judge of the second class, and no consent of the parties was obtained by the lower Court for the application of the provisions of Chapter II of the Act to the same. An appeal, therefore, already lay from the decree of the lower Court on grounds other than that in respect of the status of the defendant, as I have said above.

"It is a general principle of law that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made. The repeal of section 73 deprives the decision of the lower Court in the matter of status of its finality from the 1st May last. The present suit was decided in the beginning of 1894, but it is not *res judicata*, since an appeal is made from the decree of the lower Court therein. When the judgment of the Court of first instance upon a particular issue is appealed against, that judgment ceases to be *res judicata* and becomes *res sub judice*."

The defendant applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling on the plaintiff to show cause why the decision of the Judge should not be set aside on the ground (*inter alia*) that the Judge erred in holding that the finding of the first Court with respect to the status of the defendant as an agriculturist could be questioned in appeal.

Trimbak R. Kotwal, for the applicant (defendant), in support of the rule:—Under section 73 of the Dekkhan Agriculturists' Relief Act the finding of the first Court, that the defendant was an agriculturist, was final and could not be appealed against. The Judge was, therefore, wrong in entertaining the appeal. When the appeal was presented to the Judge, the Amending Act had not come into force. It was wrong to re-open the question of the defendant's status. The Amending Act came into force pending the appeal and before it was decided. The Act is not retrospective and does not apply to pending proceedings—section 6 of the General Clauses Act (I of 1868). The principles on which a particular enactment should be considered as retrospective or otherwise are given in *In Re Ratansi Kalianji*[1].

Mahadeo B. Chavbal, for the opponent (plaintiff) to show cause:—The plaintiff had a right to appeal against the decree. The amount of his claim was more than one hundred rupees. The repeal of section 73 by the Amending Act did not confer upon the appellate Court any special jurisdiction with respect to the present case. The appeal came on in ordinary course and the

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

Judge took into consideration the change then made by the repeal of section 73. The repeal merely removed the restriction on the jurisdiction of the appellate Court. This is purely a matter of procedure and does not involve any question as to any substantial right—Maxwell on Statutes, pp. 269, 270 ; *Shivram* v. *Kondiba*[1] ; *Shamlal* v. *Hirachand*[2] ; *Anund Chunder* v. *Nitai Bhoomij*[3] ; *Kondi* v. *Gunda*[4] ; *Padgaya* v. *Baji Babaji*[5]; *Framji* v. *Hormusji*[6]; *Ratanchand* v. *Hanmantrao*[7].

The order of the Subordinate Judge rejecting our application for time to produce a conciliator's certificate was wrong. Thus on this ground also the decree was appealable. The Subordinate Judge ought to have adjourned the hearing for the production of a conciliator's certificate – *Sayad Nyamtula* v. *Nana*[8] ; *Vyankaji* v. *Sarjerav*[9] ; *Nawab Muhammad Azmat Ali Khan* v. *Mussumat Lalli Begum*[10].

FARRAN, C. J. :—We are of opinion that the rule in this case should be discharged.

It has been argued that the District Court had no jurisdiction to entertain an appeal on the question whether the applicant, who was the defendant in the suit, was an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act. When the appeal against the decree of the Subordinate Judge was filed in the Court of the District Judge, section 73 of Act XVII of 1879 made the decision of the Subordinate Judge, that the defendant was an agriculturist for the purposes of the Act, final. Pending the appeal that section was repealed by Act VI of 1895, and when the appeal came on for hearing, there being no longer any restriction upon the jurisdiction of the District Court to enter into the question whether the defendant was an agriculturist or not, the District Court entertained it and came to the conclusion that he was not, thus overruling the decision of the Subordinate Judge upon that point. This course was in accordance with the

(1) I. L. R., 8 Bom., 340.
(2) I. L. R., 10 Bom., 367.
(3) I. L. R., 16 Calc., 429.
(4) P. J., 1882, p. 156.
(5) I. L. R., 11 Bom., 469.
(6) 3 Bom. H. C. Rep., O. C. J., 49.
(7) 6 Bom. H. C. Rep., A. C. J., 165.
(8) P. J., 1888, p. 221.
(9) P. J., 1891, p. 276.
(10) L. R., 9 In. App., 8.

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general rule of law that statutes which effect changes in procedure are in their operation, unless the contrary appears on the face of the enactment, retroactive in the sense that the provisions of such statutes are applicable to proceedings already commenced at the time of their enactment—*In Re Ratansi Kalianji*[1]. This rule has already been recognised by this Court in the case of earlier changes in the same Act. An instance will be found in *Shivram* v. *Kondiba*[2]. And the same principle has been observed in the case of *Anund Chunder* v. *Nilai Bhoomij*[3] recently decided in the High Court of Calcutta. There the circumstances were very similar to those in the present case. An order had been made on 7th July, 1888, from which no appeal lay. Act VII of 1888, which came into force on the 1st July, 1888, gave an appeal from the order. The Court held "the general principle of law to be applicable that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made." See *Attorney General* v. *Sillem*[4].

It is, however, argued that a different rule must be applied in this case by reason of the provisions of section 6 of the General Clauses Act (Act I of 1868) which enacts that "the repeal of any Statute, Act or Regulation shall not affect anything done * * * or any proceedings commenced before the repealing Act shall have come into operation." It may perhaps be doubted whether that section is not confined in its operation to proceedings commenced under an Act conferring a right which has been repealed pending the action to enforce it,—as for example an Act enabling an informer to sue for a penalty,—and whether it is intended to contravene or interfere with the long established principle of law that statutes concerned with judicial procedure, unless such operation be excluded, do affect judicial proceedings pending at the time such statutes come into force, but however that may be, the answer to the argument appears to us to be that the Dekkhan Agriculturists' Relief Act has not been repealed

(1) I. L. R., 2 Bom., 148.
(2) I. L. R., 8 Bom., 310.
(3) I. L. R., 16 Calc., 429.
(4) 10 H. L. Ca., 704.

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by Act VI of 1895. It is still in full operation. An alteration only has by the latter Act been effected in the procedure under it by doing away with the finality which section 73 imposed upon the finding of a Court of first instance as to the defendant being an agriculturist. The repeal of a section in an Act relating to procedure does not appear to us to be the repeal of an Act within the meaning of section 6 of the General Clauses Act. If the change in procedure had been effected by substituting "open to appeal" for "final" in section 73 the argument based on the General Clauses Act would have no application, but every substitution involves *pro tanto* a repeal. We think that the mode adopted by the Legislature in effecting the change of procedure does not affect the result. Rule discharged with costs.

Rule discharged.

APPELLATE CIVIL.

FULL BENCH.

Before Sir C. Farran, Kt., Chief Justice, Mr. Justice Jardine and Mr. Justice Ranade.

IBRAHIMBHAI (ORIGINAL PLAINTIFF), APPELLANT, *v.* FLETCHER AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1896. *March* 31.

Vendor and purchaser—Contract to purchase—Construction—Good title—Property in cantonment—Rights of Government in such property—Contract making no mention of Government rights—Knowledge of purchaser—Suit by purchaser for specific performance or return of earnest-money—Earnest-money when repayable—Amendment of plaint so as to claim refund of earnest-money—Practice—Procedure.

On October 12th, 1887, the first defendant executed the following agreement in favour of plaintiff with respect to certain property situated in the Poona Cantonment:—"I have agreed to sell to you . . . both my bungalows described above, including the sites and buildings together with the compounds,

* Appeal No. 26 of 1893 under section 15 of the Amended Letters Patent.