taking of produce must be remedied by a suit for account or a suit for partition. In such a case the Mámlatdár has no jurisdiction to interfere. The exercise by a joint owner of the right he has over the joint property is not a dispossession of the other joint owners.

We make the rule absolute, reverse the decree, and dismiss plaintiff's suit with costs throughout.

Rule made absolute.

ORIGINAL CIVIL.

Before Mr. Justice Fulton.

YONOSUKE MITSUE AND ANOTHER (PLAINTIFFS) *v.* OOKERDA KHETSY (DEFENDANT).*

1897. *July* 31.

Costs—Right of successful plaintiff to costs—Plaintiff recovering less than Rs. 2,000—*Presidency Small Cause Court Act (XV of* 1882), *Sec.* 22—*Amending Act (I of* 1895)—*General Clauses Act (I of* 1868), *Sec.* 6—*Construction—Practice—Procedure.*

In this suit the plaintiffs recovered a total sum of Rs. 1,907 from the defendant for breach of contract. The suit was brought in 1894. It was contended for the defendant that section 22 of the Presidency Small Cause Court Act (XV of 1882), which was in force at the date of the institution of the suit, applied to the case, and that under that section the plaintiffs although successful were not entitled to their costs.

Held, that the plaintiffs were entitled to recover costs. The power to award costs is derived entirely from Acts of the Legislature, and in making the award the Court cannot base its decision on provisions which have been repealed and are no longer effective at the time its order is passed.

Held, also, that section 6 of the General Clauses Act (I of 1868) did not apply to this case.

Ismail v. *Leslie* (1) not followed.

THE plaintiffs, who were residents of Tokio in Japan, sued by their agent in Bombay to recover from the defendant two sums, *viz.*, Rs. 129-14-7 and Rs. 5,835-3-5.

The first sum (Rs. 129-14-7) was alleged to be due in respect of a consignment of cotton made by the defendant to the plaintiffs, the sale of which did not realize sufficient to cover the amount of the bill drawn by the defendant against it.

* Suit No. 187 of 1894.

(1) I. L. R., 24 Cal, 399.

1897.

YONOSUKE v. OOKERDA.

The second sum (Rs. 5,385-3-5) was damages claimed by the plaintiffs in respect of another consignment of cotton made by the defendant not according to sample.

Starling and *Russell* for plaintiffs.

Lang (Advocate General) and *Macpherson* for defendant.

The Court held that the plaintiffs were entitled to recover the said sum of Rs. 129-14-7 and also the sum of Rs. 1,778 as damages in respect of the second claim of the plaintiffs.

Lang (Advocate General) contended that, under section 22 of Act XV of 1882, the plaintiffs were not entitled to their costs, having recovered less than Rs. 2,000; that the amending Act I of 1895 did not apply to this suit, which was instituted in 1894. He relied on section 6 of the General Clauses Act (I of 1868).

Starling, contra.

On the question of costs the judgment was as follows:—

FULTON, J.:—The question whether the plaintiffs are entitled to costs is one of considerable nicety. The learned Advocate General contended that they were not entitled, inasmuch as the suit having been instituted in 1894 was governed by section 22 of Act XV of 1882 as it stood before its amendment by section 11 of Act I of 1895. On the other hand, Mr. Starling urged that the question of costs being one of procedure must be determined by the law in force at the time of the decision.

The material part of section 22 of Act XV of 1882 is as follows:—"If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than Rs. 2,000,.....no costs shall be allowed to the plaintiff. The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court."

Section 11 of Act I of 1895 provides that in section 22 of the said Act for the words "two thousand" the words "one thousand" shall be substituted.

It is not disputed that the case is one falling under section 22. The plaintiff has got a decree for more than Rs. 1,000 and less

than Rs. 2,000. And I do not think it is a case in which I could properly certify for costs if it were governed by the unamended section.

The question, then, to be decided is simply whether the law to be applied in this matter of costs is the law in force at the commencement or that in force at the termination of the suit.

In *Ismail Ariff* v. *Leslie*(1) the Calcutta High Court have lately decided in similar circumstances that the old law must be applied. Their Lordships' decision was based mainly on section 6 of the General Clauses Act of 1868, which is as follows :—"The repeal of any Statute, Act, or Regulation shall not affect anything done or any offence committed or any fine or penalty incurred or any proceedings commenced before the repealing Act shall have come into operation."

Now it appears to me that it is impossible in this Presidency, having regard to the previous course of decisions, to adopt this ruling. It cannot, I think, be said, without using the language of the section in a sense not hitherto generally attributed to it in this Presidency, that the amendment of a section of an Act is the repeal of a Statute, Act, or Regulation. In one sense no doubt the alteration of a law always necessitates the repeal, *pro tanto*, of the older law. But in this Presidency it has, I believe, been the practice of this Court, in cases not expressly falling within the wording of section 6 of the General Clauses Act, to apply the principle that when new arrangements come into force for regulating procedure they operate on pending as well as on future suits. This principle was adopted in *Framji* v. *Hormasji*(2) and has been followed in later cases since the passing of Act I of 1868; as for instance in *Shivram* v. *Kondiba*(3); and in *Jasraj* v. *Chudasama Vakhatsang*(4), in which Sargent, C. J., said: "I cannot doubt that the general rule, as stated by Lord Blackburn in *Gardner* v. *Lucas*(5) that alterations in the form of procedure are always retrospective unless there is some good reason or other why they should not be, is applicable." In the case of *Ratanchand* v. *Hanmantrao*(6), it is true, when certain regulations

(1) I. L. R., 24 Cal., 399.
(2) 3 Bom. H. C. Rep. (O. C. J.), 49.
(3) I. L. R., 8 Bom., 345.
(4) P. J. for 1891, p. 294.
(5) 3 Ap. Ca., 582.
(6) 6 Bom. H. C. Rep., 166.

1897.

YONOSUKE v. NOKERDA.

governing appeals from decrees of Subordinate Courts had been repealed by Act XIV of 1869, it was held that the case of pending suits was governed by section 6 of the General Clauses Act, but in that case the language of the section was apparently applicable, and, besides, the new Act contained no provision for appeals from decrees already passed, and, therefore, left it to be inferred that they were to be treated under the old law. In *Gangaram* v. *Punamchand*[1], which came before Chief Justice Farran and myself, we held that the repeal in an amending Act of section 73 of the Dekkhan Agriculturists' Relief Act was not the repeal of a Statute, Act or Regulation within the meaning of section 6 of the General Clauses Act and applied the principle above referred to, which it is obvious could have no effect whatever if every amendment of the law fell within the provisions of section 6.

Possibly if the matter were *res integra* it might reasonably be urged that every amendment of the law of procedure falls within the spirit of the section, but it is too late, I think, in this Presidency to entertain any such argument. Hereafter in dealing with Acts affected by the new General Clauses Act (X of 1897), in which the word "enactment" is substituted in section 6 for the words "Statute, Act or Regulation," and in which "enactment" is defined so as to include any provision in any Act or Regulation, a different course of interpretation may perhaps prevail. But even though the construction hitherto put in this Presidency on section 6 of Act I of 1868 may seem somewhat narrow, consistency, I think, requires that it shall be followed when dealing with the few remaining cases in which the meaning of that section may come under consideration hereafter. However, attention must be called to the fact that when in section 9 of Act I of 1887, the words "wholly or partially" were inserted before the word "repealed" in clause (1) of section 3 of the General Clauses Act, 1868, no similar amendment was made in section 6. If it had been the intention of the Legislature to make the section applicable to all amendments of the law, it would have been very easy to say so.

In these circumstances I am not prepared to hold that this case is governed by section 6.

(1) P. J., 1896, p. 212; *infra* p. 822.

1897.

YONOSUKE v. OOKERDA.

The only other question for determination is whether a question of costs is one of procedure or one affecting vested rights. The answer appears to be supplied by the cases of *Freeman* v. *Moyes*[1]; *Grant* v. *Kemp*[2]; *Wright* v. *Hale*[3]; *Kimbray* v. *Draper*[4]. Of these *Wright* v. *Hale* is most frequently referred to. It has been doubted and questioned, but apparently never overruled, and I can see no good reason for not following it in this country. The Legislature when amending section 22 of the Small Cause Court Act doubtless considered it more reasonable to reduce the limit below which costs in the High Court were not to be allowed, than to retain the former limit. It is difficult, then, to see on what principle the concession should be refused to litigants before the Court at the time it was made, and confined merely to future litigants. The policy of the law being to relieve from the restriction plaintiffs getting decrees for over Rs. 1,000, there seems, in the absence of any statutory bar like section 6 of the General Clauses Act, no good reason for refusing the relief to persons whose suits were instituted before, but not decided till after the 1st April, 1895.

Moreover, it is difficult to see how it is possible to apply any but the existing law. The power to award costs is derived entirely from Acts of the Legislature, and in making the award the Court cannot base its decisions on provisions which have been repealed and are no longer effective at the time its order is passed. Of course, if *pro hâc vice* the old provisions were kept in force by section 6 of the General Clauses Act, the case would be otherwise, but in the absence of legislative authority for relying on the old law the Court must, I think, be guided entirely by the terms of the existing law. Its decision cannot be controlled by a law which no longer exists.

I am, therefore, of opinion that the plaintiffs are entitled to their costs.

Attorney for the plaintiffs :—Mr. *M. N. Saklatwala.*

Attorneys for the defendant :—Messrs. *Ardesir Hormasji and Dinsha.*

(1) 1 Ad. and El., 338.
(2) 2 C. and M., 636.
(3) 30 L. J. (Ex.), 40.
(4) L. R., 3 Q. B., 160.