CRIMINAL REVISION.

Before Coxe and N. R. Chatterjea JJ.

1913

March 13.

BANGALI SHAH

v.

EMPEROR.*

Ostensible means of subsistence—Conducting the play of "ring" game—Criminal Procedure Code (Act V of 1898), s. 109.

The conducting of the "ring" game is an ostensible means of subsistence within the meaning of s. 109 of the Criminal Procedure Code.

Hari Sing v. *King-Emperor* (1) referred to.

THE petitioner conducted the game known as the "ring" game. He was arrested by the police, on the 11th December, 1912, and put up before the District Magistrate of Rungpore, with a report requesting the institution of proceedings under s. 109 of the Criminal Procedure Code. The Magistrate drew up a proceeding thereunder on the same day, and, after examining certain witnesses, postponed the case to the 17th. The petitioner contended that the play of the "ring" game was his means of subsistence and was legal. On the 17th, the Magistrate directed him to be bound down, in the sum of Rs. 100, with one surety in the like amount, to be of good behaviour for the period of one year, by the following order:—

The accused admits that he has no ostensible means of subsistence, except the play of what is known as the "ring" game. From what I have seen of this game, it appears to be one of cheating the ignorant and the gambler. Such a means of subsistence is neither honest nor sufficient. I, therefore, direct that the accused do execute a bond of Rs. 100, with one

* Criminal Revision, No. 275 of 1913, against the order of K. C. De, District Magistrate of Rungpore, dated Dec. 17, 1912.

(1) (1907) 6 C. L. J. 708.

surety of Rs. 100, to be of good behaviour for one year. In default, he shall suffer rigorous imprisonment for one year.

Babu Ramesh Chandra Sen, for the petitioner. The play of the "ring" game is not illegal: see *Hari Singh* v. *King-Emperor* (1). It is an ostensible means of subsistence within s. 109 of the Code. Under the section, if the means of subsistence is ostensible, the question of its honesty does not arise. The Magistrate has come to the conclusion that the game was one of "cheating the ignorant and the gambler" from his own knowledge. We had no opportunity of cross-examining him thereon, and there is no evidence on the record to support his view.

No one appeared for the Crown.

COXE AND N. R. CHATTERJEA JJ. This was a Rule to show cause why the order binding the petitioner down to be of good behaviour, on the ground that he had no ostensible means of subsistence, should not be set aside on the ground that the facts found did not justify it. It appears that the petitioner's means of subsistence is the conduct of what is known as the "ring" game. Such a means of subsistence is certainly ostensible, and it will appear from the decision in the case of *Hari Sing* v. *King-Emperor* (1) that it is not an offence under the Gambling Act to conduct such a game. It is quite clear also that the game can be honestly conducted. The mere fact that the petitioner lives by this means does not justify the conclusion that he has no ostensible means of subsistence. The Rule is accordingly made absolute, and the order set aside.

E. H. M. *Rule absolute.*

(1) (1907) 6 C. L. J. 708.

APPELLATE CIVIL.

Before Jenkins C.J., and Mullick J.

1913

March 19.

BISSESWAR SONAMUT

v.

JASODA LAL CHOWDHRY.*

Execution of Decree—Mortgage-decree passed before the Code of 1908—Application for execution made after the Code of 1908 came into force, if governed by the new Code—Civil Procedure Code (Act V of 1908), ss. 1(2), 48, 154—General Clauses Act (X of 1897), s. 6.

S. 48 of the new Code of Civil Procedure (Act V of 1908) governs an application for the execution of a mortgage-decree obtained even before that Code came into force.

S. 154 of the new Code clearly contemplates a retrospective effect of the Code and an interference with rights acquired under the old Code.

S. 1, cl. (2) of the new Code afforded ample opportunity to all persons having rights under the old Code to enforce them before the new Code came into operation.

Kaunsilla v. *Ishri Singh* (1) not followed.

SECOND APPEAL by Bisseswar Sonamut, the judgment-debtor.

In this matter, the preliminary mortgage-decree was passed on the 22nd September, 1896, in favour of the respondent in the present appeal. The decree for sale was made absolute on the 27th April, 1897. The decree-holder made several applications to execute the decree, the seventh being made on the 28th April, 1908. That application was finally set aside by the High Court on the 9th May, 1911. The next application was

* Appeal from Appellate Order, No. 498 of 1912, against the order of A. J. Chotzner, District Judge of Backergunge, dated Sept. 10, 1912, affirming the order of R. C. Sen, Subordinate Judge of Barisal, dated June 29, 1912.

(1) (1910) I. L. R. 32 All. 499.

also rejected, on appeal, by the District Judge, leaving the decree-holders to file a fresh application. The present application was made on the 18th December, 1911. One of the points raised by the judgment-debtor was that the decree was barred inasmuch as the application would not be governed by section 230 of the former Code, which excluded mortgage-decrees from its purview, but by section 48 of the present Code, which does away with the distinction between mortgage and money-decrees. The Subordinate Judge overruled the objection of the judgment-debtor and allowed execution. The District Judge, on appeal, affirmed the decision of the Subordinate Judge. The judgment-debtor thereupon preferred this second appeal.

Babu Ram Chandra Majumdar (with him *Babu Abinash Chandra Guha*), for the appellant. The right acquired by the decree-holder was not such a right as he could enforce at any time. On this point and generally as to the effect of subsequent legislation, see *Starey* v. *Graham* (1), *The Iduna* (2), *Parker* v. *London County Council* (3), *King* v. *Chandra Dharma* (4) and *Wright* v. *Hale* (5). It is a general principle of law that the law of limitation is a law relating to procedure having reference only to the *lex fori*: *Her Highness Ruckmaboye* v. *Lulloobhoy Mottichund* (6), *Ram Churn Bysack* v. *Luckhee Kant Bornick* (7). See also *Jogodanund Singh* v. *Amrita Lal Sircar* (8). The present law should govern the period of limitation: *Towler* v. *Chatterton* (9), *Reg.* v.

(1) [1899] 1 Q. B. 406, 411.
(2) [1899] P. 236.
(3) [1904] 2 K. B. 501.
(4) [1905] 2 K. B. 335.
(5) (1860) 6 H. & N. 227; 123 R. R. 477.
(6) (1852) 5 Moo. I. A. 234, 265, 266.
(7) (1871) 16 W. R. F. B. 1, 8.
(8) (1895) I. L. R. 22 Calc. 767.
(9) (1829) 6 Bing. 258; 130 E. R. 1280; 31 R. R. 411.

1913

BISSESWAR SONAMUT v. JASODA LAL CHOWDHRY.

Leeds and Bradford Railway Co. (1), *Colonial Sugar Refining Co., Ld.* v. *Irving* (2). See also Maxwell "On the Interpretation of Statutes," 4th Ed., p. 336.

There cannot be a vested interest in the course of procedure: *Republic of Costa Rica* v. *Erlanger* (3), *In re Joseph Suche & Co., Ld.* (4). Maxwell "On the Interpretation of Statutes," pp. 338 and 339, *et seq.* Section 48 of the Code of 1908 must now govern cases on the question of procedure: *Queen* v. *Inhabitants of St. Mary, Whitechapel* (5).

There is no chance of an injustice in this case from change of law, as there was sufficient interval between the passing of the new Code and its coming into operation. It was passed on the 21st March, 1908, and it came into operation on the 1st January, 1909. See in this connection, *Ex parte Rashleigh* (6), *Williams* v. *Harding* (7) and General Clauses Act, I of 1868, s 6 and VII of 1897, sec. 6. The Allahabad case of *Kaunsilla* v. *Ishri Singh* (8) is not good law. See *Robinson* v. *Currey* (9).

The general principle is that alterations in procedure have always retrospective effect: *Attorney-General* v. *Sillem* (10), *Warner* v. *Murdoch* (11). See also in this connection the cases above cited: *Towler* v. *Chatterton* (12), and *Wright* v. *Hale* (13).

The present application for execution cannot be said to be a continuation of the previous application of 1908.

(1) (1852) 21 L. J. M. C. 193.
(2) [1905] A. C. 369.
(3) (1876) 3 Ch. D. 62, 69.
(4) (1875) 1 Ch. D. 48, 50.
(5) (1848) 12 Q. B. 120, 127; 116 E. R. 811.
(6) (1875) 2 Ch. D. 9.
(7) (1866) L. R. 1 H. L. 9.
(8) (1910) I. L. R. 32 All. 499.
(9) (1881) 7 Q. B. D. 465.
(10) (1864) 10 H. L. 706, 764; 11 E. R. 1220, 1225.
(11) (1877) 4 Ch. D. 750.
(12) (1829) 6 Bing. 258; 130 E. R. 1280; 31 R. R. 411.
(13) (1860) 6 H. & N. 227; 123 R. R. 477.

The Indian cases on the point are: *Amlook Chand Parrack* v. *Sarat Chunder Mukerjee* (1), *Arayil Kali Amma* v. *Palappakkara Manakal* (2), *Hope Mills, Ld.* v. *Vithaldas Pranjivandas* (3), *Srimati Raikishori Dasya* v. *Mukunda Lal Dutt* (4), *Government of Bombay* v. *Dorabji Balabhai* (5), *Chajmal Das* v. *Jagadamba Prasad* (6), *Abdul Karim* v. *Manji Hansraj* (7), *Chidambaram Chetty* v. *Karuppan Chetty* (8), and *Molam Chand* v. *Askuran Boid* (9).

Babu Dwarkanath Chakrabarti (with him *Dr. Saratchandra Basak*), for the respondent. It is no use citing English cases on the point. The case of *Kaunsilla* v. *Ishri Singh* (10) is exactly in point and in my favour.

JENKINS C.J. This is an appeal from an appellate order made in execution proceedings. The decree-holder, who had obtained a decree on a mortgage, applied successfully to the Court for sale of the property. Thereupon, the judgment-debtor presented the application out of which the present appeal arises. He sought to have this sale-order set aside on the ground that the application was barred under section 48 of the Code of Civil Procedure. His application was dismissed by the Subordinate Judge, and this order has been confirmed by the lower Appellate Court. It is from this last order of the lower Appellate Court that the present appeal is preferred. It is necessary to set out a few facts to explain the case. The preliminary decree on the mortgage was passed on the

(1) (1911) I. L. R. 38 Calc. 913.
(2) (1910) 20 Mad. L. J. 347.
(3) (1910) 12 Bom. L. R. 730.
(4) (1911) 15 C. W. N. 965.
(5) (1874) 11 Bom. H. C. 117.
(6) (1889) I. L. R. 11 All. 408.
(7) (1876) I. L. R. 1 Bom. 295.
(8) (1910) I. L. R. 35 Mad. 678.
(9) (1912) R. A. Nos. 86, 87 of 1912, (unreported.)
(10) (1910) I. L. R. 32 All. 499.

1913

BISSESWAR SONAMUT v. JASODA LAL CHOWDHRY

JENKINS C.J.

22nd of September, 1896, and it was made absolute on the 27th of April, 1897. The application for sale which is impugned by the application now under consideration was made on the 18th of December, 1911, more than twelve years beyond the date of the decree. This, it is said, brings into play the provisions of section 48 of the present Code of Civil Procedure, which provides that "where an application to execute a decree (not being a decree granting an injunction) has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from the date of the decree sought to be executed." By way of answer to this, it is brought to our notice that there were many applications for execution, and that on the 28th of April, 1908, the seventh application was preferred. On that application there was a sale, but on the 9th of May, 1911, that sale was set aside by the High Court. The decree-holder again sought to make his decree fruitful and made an application for sale. That was allowed by the Subordinate Judge, but on appeal the District Judge dealt with the matter in this way: He said—"It is urged on behalf of the judgment-debtor that inasmuch as the original prayer was superseded by the amended application there was only one prayer which was for the sale of half the property, and that having been declared illegal there is no application at all of which the Court can take cognizance. This argument appears to me to be well-founded. There can be no doubt that the amended application took the place of the original application, which is therefore to all intents and purposes non-existent. That being so, I cannot see how, when the amended application has been dismissed, the decree-holders can now fall back on the original as though it were still unamended. I would, therefore, allow this

appeal, leaving the decree-holders to file a fresh application." The just result of that order was that the application of the 28th of April, 1908, was dismissed. It is the order of dismissal that has occasioned the trouble in this case. The first question that we have to consider is whether the application for sale, which was subsequently granted and is now being impugned, is a fresh application within the meaning of section 48, or a continuation of the application of the 28th of April, 1908. Seeing that the application of the 28th of April was dismissed, it appears to be impossible to treat this as a continuation of that dismissed application. Is it then a fresh application within section 48? It has been argued before us that it is not, or at any rate, that the bar that arises after the expiration of twelve years, as provided by that section, does not apply. There is authority for this view in *Kaunsilla* v. *Ishri Singh* (1). But I must confess that I feel some difficulty as to the decision in that case. When it was put to the learned vakil for the respondent in this case whether he was making his application under the Code of 1908. or the repealed Code of 1882, he had to concede that it was the new Code of 1908. If so, then section 48 is an integral part of that Code, and no application under that Code, as it appears to me, can be made in disregard of its express conditions. I say that, bearing in mind the provisions of section 6 of the General Clauses Act. In this connection it is important to observe that the Legislature evidently considered this Code might and would interfere with rights, for there is an express provision in section 154 that "nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement," a provision that would have been unnecessary unless the Code as framed would

(1) (1910) I. L. R. 32 All. 499.

1913

BISSESWAR SONAMUT v. JASODA LAL CHOWDHRY

JENKINS C.J.

affect existing rights under the old Code. It has been urged before us that this view would involve hardship, that rights would be imperilled, if not confiscated; but this overlooks the provision which prescribed that, though the Code was passed in March 1908, it should not come into operation until January 1909. That provision afforded ample opportunity to all persons having rights under the old Code to enforce them before the new Code came into operation.

In my opinion the decision of the District Judge is erroneous, and I think his order must be reversed, and the application for sale set aside as barred by section 48 of the Code of Civil Procedure.

The respondent must pay the appellant's costs.

MULLICK J. I agree.

S. M. *Appeal allowed.*

ORIGINAL CIVIL.

Before Fletcher J.

1913

March 26.

NANDA LAL ROY

v.

DHIRENDRA NATH CHAKRAVARTI.*

Damdupat, rule of—Decree in mortgage-suit between Hindus—Interest accruing after date fixed for redemption, whether rule applicable to.

The rule of *damdupat* applies to Hindus only so long as the relation between the parties is contractual, and ceases to apply when the matter has passed from the realm of contract into that of judgment. Where a decree has been passed on a mortgage, the rule does not apply to the interest accruing after the date fixed for redemption.

* Original Civil Suit No. 935 of 1908.