

account books of a defendant are not liable to seizure or sale. I have not had an opportunity of fully consulting the other Judges sitting on the Original Side of the Court on the subject; but I have mentioned it to them, and have no reason to suppose that they entertain a different opinion. It is desirable that the Sheriff should henceforth refrain from taking books of account in execution.

1866.
September 24.
In re
PESTANJI
CURSETJI
SHROFF.

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Original Suit, No. 372 of 1866; Appeal, No. 88.

THE GU'JARA'T TRADING COMPANY (LIMITED). *Appellants.*

TRIKAMJI' VELJI' and others trading as

Trikamji Velji and Company *Respondents.*

Indian Companies' Acts of 1857 and 1866—Illegal contract—Repeal.

In a suit filed on the 28th of April 1866, and brought by a Joint Stock Company, after registration, to recover damages for breach of a contract made with the defendants before registration:—

Held (by Couch, C. J., and Arnould, J., affirming on appeal the decree of Sargent, J.) that the contract was illegal under Sec. 2 of Act XIX. of 1857, and that the plaintiffs could not sue upon it.

Where the law is altered while a suit is pending, the law as it existed when the action was commenced must decide the rights of the parties; unless the Legislature, by the language used, shew a clear intention to vary the mutual relations of such parties.

THE Original Suit (No. 372 of 1866) was brought by the Official Liquidators of the Gújarát Trading Co., lately carrying on business at Ahmedabád and also in Bombay, but now under liquidation, by an order made by the District Court at Ahmedabád and filed in the High Court (a); and was heard by Sir Charles SARGENT, sitting in a Division Court, on the 5th, 8th, and 9th of October 1866.

1866.
Oct. 5, 8, 9,
Nov. 27.
O. S. No. 372
of 1866.

The plaintiffs sought to recover from the defendants the sum of Rs. 48,400, with interest thereon at 9 per cent. from the 1st of July 1865, in specific performance of an agreement in writing made between the plaintiffs and the defendants on the 18th of March 1865, for the purchase and sale of a share in the Bombay Reclamation Co., Limited, which the

(a) *Ante* p. 20.

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Nov. 27.
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plaintiffs were ready and willing to deliver, but which the defendants had refused to accept. And the plaint was amended, at the trial, by praying for damages, in the event of specific performance not being granted.

Sir Charles SARGENT, on the 27th of November, gave judgment for the defendants with costs, on the ground that the plaintiffs could not sue upon the contract in the plaint mentioned, as the same was void by reason of its having been entered into before the plaintiffs' Company was registered and at a time when it was an illegal association.

Appeal, No. 88. * The grounds of objection taken to the decree on appeal were as follows:—(1) That the contract in the plaint mentioned was not a void or illegal one; (2) that the said contract was not rendered invalid by Sec. 2 of Act XIX. of 1857 of the Legislative Council of India, and was not made in contravention of that or any other Act; (3) that the said contract was one upon which the plaintiffs were entitled to sue; (4) that the said decree was against the weight of the evidence; (5) that the said decree was contrary to law, equity, justice and right; (6) that the Judge ought to have found all the issues in favour of the plaintiffs with costs.

1867.
January 18.

The appeal was heard before COUCH, C.J., and ARNOULD, J. *The Advocate General (Hon'ble L. H. Bailey) and Howard* for the appellants.

Scoble, McCulloch and Green for the respondents.

The following authorities were cited in the course of the argument:—*Cope v. Rowlands (b)*; *Foster v. Bates (c)*; *Langton v. Hughes (d)*; *Surtees v. Ellison (e)*; *R. v. McKenzie (f)*; *R. v. Denton (g)*; *Ex parte Grisewood and Smith (h)*; 1 Lindley on Partnership, 149; *Khatáo Ladhá v. The Bombay Reclamation Co.*; Act XIX. of 1857 and Act X. of 1866.

Our. adv. vult.

February 21. COUCH, C.J.:—In this case we expressed our opinion, in the course of the argument, that we considered the learned Judge was right in deciding, upon the construction of Sec.

(b) 2 M. & W. 149. (c) 12 M. & W. 226. (d) 1 M. & S. 593.
(e) 9 B. & C. 750. (f) R. & R. 429. (g) 18 Q. B. 761.
(h) 28 Law J., N. S., Ch. 769.

2 of Act XIX. of 1857, that the contract was illegal and that the plaintiffs could not sue upon it; and the point which remained to be considered—and which Mr. Howard raised on the part of the appellant—was that Act XIX. of 1857 had been repealed by Act X. of 1866 (the Indian Companies' Act).

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Now, it appears that the plaint in this suit was filed on the 28th of April 1866, and Act X. of 1866 came into operation on the 1st of May; and therefore, at the time of the commencement of the suit, Act XIX. of 1857 was the Act which was in force. And I am of opinion, in accordance with the judgment of the Court of Queen's Bench, in *Hitchcock v. Way* (i) that where the law is altered while an action is pending, the law as it existed when the action was commenced must decide the rights of the parties; unless the Legislature, by the language used, shew a clear intention to vary the mutual relations of such parties.

In the present case, Act X. of 1866 in Sec. 220, far from showing any clear intention to vary the mutual relation of the parties under the previous law, indicates an intention that the relation should be preserved; because,—without going to the extent of saying that the right which the party has to defend himself, in a suit brought upon the contract, on the ground that it was illegal, is a right or privilege acquired under the repealed Act,—the introduction of that provision by the Legislature, in repealing the former Act, shews an intention that the relation of the parties should be preserved.

We think, therefore, that notwithstanding Act XIX. of 1857 has been repealed, the rights of the parties in this suit must be governed by it; and consequently that the point, which was very ingeniously and ably raised by Mr. Howard, fails.

Then the other question which remained to be considered was, whether—as we were asked to do by the learned Advocate General—we should enable the parties, now that the law has been altered, to avail themselves of that alteration, and give leave to withdraw the suit and to bring a fresh one.

(i) 6 A. & E. 943.

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In considering whether we ought to do this, it is important to observe what appears to have been the intention of the Legislature when it repealed Act XIX. of 1857; and I am not at all certain that if the question were raised in a new suit, I should not come to the conclusion (and I believe my learned brother concurs in what I say) that the case came within the words "right or privilege acquired by the Act." It is a right to resist the performance of the contract, or to insist upon the illegality of the transaction, which would seem to come within the word "right." At all events it is so exceedingly doubtful whether that would not be so—and the intention of the Legislature appearing to be not to interfere with the status of the parties under the former law—that I think we should not be acting properly if we allowed a fresh suit to be brought for the purpose of raising that question, the result of which, to say the least, would probably be in favour of the defendants.

I am, therefore, of opinion that the decree of the Court below must be confirmed with costs.

ARNOULD, J.:—I entirely concur in every respect.

Decree affirmed with costs.

Attorney for plaintiffs: *C. Tyabji.*

Attorneys for defendants: *Kelly & Co.*

NOTE.—The following sections of the Acts are material:—

Sec. 2.—Not more than twenty persons shall, after the first day of January 1858, carry on in partnership, in any part of the territories in the possession and under the Government of the East India Company, any trade or business having gain for its object, unless they are registered as a Company under this Act, or are authorised so to carry on business by an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Governor General of India in Council; and if any persons carry on business in partnership contrary to this provision, every person so acting shall be severally liable for the payment of the whole debts of the partnership, and may be sued for the same without the joinder in the action or suit of any other members of the partnership.—*Act XIX. of 1857.*

Sec. 219.—After the commencement of this Act there shall be repealed the several Acts specified in the third Schedule hereto.

Sec. 220.—No repeal hereby enacted shall affect—

(1.) Anything duly done under any Acts hereby repealed: (2.) The incorporation of any Company registered under any Act hereby repealed: (3.) Any right or privilege acquired or liability incurred under any Act hereby repealed: (4.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed: (5.) Table B in the Schedule annexed to Act No. XIX. 1857 or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.—*Act X. of 1866.*