APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

1884 *February* 11.

SHIVRA'M UDA'RA'M, APPLICANT, *v.* KONDIBA' MUKTA'JI AND OTHERS, OPPONENTS.*

Dekkhan Agriculturists' Relief Act XVII of 1879—*Act XXII of* 1882—*General Clauses Act*, 1868—*Decree—Execution—Agriculturist defendants—Attachment—Sale—Proceeding—Collector—Interpretation of statute—Act to promote important public interest.*

On the 7th of September, 1870, the applicant obtained a money decree against agriculturist defendants, and having made five applications for execution up to 1879 realized a part of the judgment-debt.

On the 2nd of September, 1882—that is, after the coming into force of Act XVII of 1879—the creditor made his last application for recovering the balance by attachment and sale of the lands of the debtors.

On the 1st of February, 1883—while the above application was pending—Act XVII of 1879 was amended by Act XXII of 1882 so as to prohibit the sale of the immoveable property of agriculturists in execution of a decree, even though such decree was passed before the date of the Act.

Held, notwithstanding the provision of section 6 of the General Clauses Act I of 1868 and the attachment of the lands before the coming into operation of Act XXII of 1882, that the order for sale, having been made subsequently, was illegal and should be set aside.

The general rule is that a repealed statute cannot be acted on after it is repealed; but, as provided in section 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid.

But a new order of a Court, not ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals.

An Act passed to promote some public important object, such as the protection of the property of the Deccan agriculturists, may be given on that account a retroactive operation, if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Act.

THIS was a reference, under section 617 of the Code of Civil Procedure, from Ráv Sáheb Vishnu Vásudev Phadké, Subordinate Judge of Shevgaon.

The father of the execution-creditor obtained a money decree on the 7th of September, 1870, to recover from the judgment-debtors Rs. 60 and costs of the suit. Up to 1879 five applications

* Civil Reference, No. 47 of 1883.

were made for the execution of that decree, and Rs. 12-8-0 realized. The last application for execution was made on the 2nd of September, 1882, and it prayed for the recovery of the balance by the attachment and sale of certain lands belonging to the debtors, who are agriculturists residing in districts to which the Dekkhan Agriculturists' Relief Act applies. This Act (No. XVII of 1879) first became law on the 9th of November, 1879, and section 22 of it, as it stood at the date of this application, ran thus:—"No agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of his debt to which such decree or order relates, and the security still subsists." On the 26th of April, 1880 the High Court of Bombay interpreted this section in *Dipchand* v. *Gokuldas* [1] thus:—"Neither section 21 nor section 22 of the Dekkhan Agriculturists' Relief Act, 1879, applies to a decree made previously to the 1st day of November, 1879, the day on which the Act came into force; and the holder of such a decree may arrest or imprison his agriculturist judgment-debtor, as well as attach and sell his immovable property not specifically mortgaged." In conformity with the law as here laid down the application made by the judgment-creditor on the 2nd of September, 1882, was granted by the Subordinate Judges; and the property having been attached in December, 1882, a warrant was issued on the 15th of June, 1883, to the Collector of Ahmednagar to sell the lands of the agriculturist debtors. Before this day—that is, on the 1st of February, 1883—Act XXII of 1882 came into force, and by section 9 amended section 22 of the Act of 1879, by the addition of the words "passed whether before or after this Act comes into force" between the words "order" and "unless" in the latter section—the object of the amendment being to exempt the immoveable property of the agriculturists from attachment or sale, irrespective of the date of the decree.

On the strength of this provision the Collector refused to sell the lands.

The Subordinate Judge considered the refusal improper, and referred the case for the orders of the High Court for the following reasons :—

(1) I. L. R., 4 Bom., 363.

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"Properly speaking, it is not within the province of the Collector to see whether a particular order issued by the Court is right or wrong. That right rests entirely in the Appellate and Revisional Courts. But, as the Collector has taken upon himself to set aside the order of the Court, I have thought it necessary to refer the matter for the opinion of the High Court.

"The question for decision is, whether there is any objection to the sale of the attached property.

"I am of opinion that there is no objection to the sale of the property.

"Act XXII of 1882 came into force on 1st February, 1883. There is nothing in the Act to show that the Legislature intended to give a retrospective effect to the Act, and hence cases then pending must, under the provisions of section 6 of the General Clauses Act I of 1868, be dealt with according to the provisions of the law as it stood before 1st February, 1883. The Collector seems to lay much stress on the provision that 'no immoveable property shall be *sold*.' He appears to think that the attachment of the property might be valid as effected prior to the date when Act XXII of 1882 came into force, but that the sale of the property cannot be effected. It is, however, evident that the execution-creditor did not apply for the attachment only of the property. What he applied for, was attachment and sale of the property. This application having been granted, the proceeding thus commenced was for attachment and sale of the property, and that proceeding must, according to section 6 of Act I of 1868, be governed by the provisions of the old law. The case of *Ratansi Kaliánji*[1], decided by the High Court, is also an authority in favour of the above view.

"I admit that, in enacting the amendment Act XXII of 1882, the Legislature intended that no immoveable property of agriculturists, not specifically mortgaged, should be sold in execution. But that intention was not expressed with regard to applications for execution then pending. Perhaps the fact of such application being pending was not brought to their notice.

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

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"This Court has all along acted in this matter according to the intention of the Legislature. Thus, even before Act XXII of 1882 became law, applications for attachment and sale of immoveable property were, as far as possible, discouraged, and very few such applications were accepted for special reasons—such as the decree would shortly be more than twelve years old, and the decree-holder would be debarred from enforcing it, &c.

"Dr. Pollen, the Special Judge, seems to think that the Courts should of their own motion cancel their orders for attachment and sale of the property. This course might be followed with advantage in some cases. But in the present case, if the order be cancelled, the application for execution would have to be struck off the file, and the judgment-creditor will be precluded from ever afterwards presenting a fresh application, because more than twelve years have already elapsed since the date of the decree (*vidé* section 230 of the Civil Procedure Code, Acts X of 1877 and XIV of 1882).

"A similar difficulty is likely to arise in two or three applications for execution pending in this Court. Hence I have thought it necessary to refer the point to the High Court.

"The execution proceeding is not in a decree passed under Chapter II of the Dekkhan Relief Act; but, as I am of opinion that the execution should not be dropped, I am obliged to make the reference, because the Collector refuses to proceed to sell the land."

There was no appearance on either side, but at the request of the Court

Ghanashám Nílkhanth Nádkarni appeared for the execution-creditor.—The attchment gives an interest to the judgment-creditor which enables him to realize it by sale. If a judgment-creditor attaches, and the debtor becomes insolvent after attachment, the attachment holds good for the amount. The attachment creates a right not affected by any subsequent proceeding—*Bholágir* v. *Gamble*[1]. In this case there had been no sale before the vesting in the

(1) 2 Bom. H. C. Rep., 147.

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Official Assignee, and the delivery of the warrants to the Názir was held to bind the property. In construing section 6 of the General Clauses Act, 1868, with the amendment introduced in section 22 of the Dekkhan Agriculturists' Relief Act, 1879, by Act XXII of 1882, the observation of Westropp, C. J., in *Ratansi Kaliánji's* case[1] should, along with the other principles there laid down, be borne in mind, *viz.*, that the provision of the former section prevents any *a priori* argument that the Indian Legislature would lightly set aside or interfere with things done or proceedings pending under Acts which it repeals. The sale ordered in this case is not a new proceeding, but a step towards realizing the interest created by attachment. A judgment-debtor cannot alienate after the attachment, except subject to the debt. If an interest of an undivided Hindu is attached, and the debtor dies, the interest may be sold after the death. The case of *Suraj Bunsee Koer* v. *Sheo Persad Singh*[2] and that of *Ponnappa Pillai* v. *Pappuvay Yangár*[3] show that an attachment before sale creates a charge not defeated by death. The attachment will continue even though there cannot be a sale.

Hon. Ráv Sáheb *Vishvanáth Náráyan Mandlik*, Government Pleader, *contra*.—The Statement of Objects and Reasons for introducing Bill No. 9 of 1882 shows that the intention of the Legislature in enacting Act XXII of 1882 was clearly to give retroactive operation to the Relief Act. The general principle as to retroaction does not prevent the enactment of a law expressly directing retroaction. The subsequent clear direction in Act XXII of 1882 overrides the general provision of Act I of 1868. In *Bholágir's* case the attachment before judgment was held not to give priority to the Official Assignee. The other cases cited, deal with the substantive law. In the present case the decree was one for money, and the attachment cannot be said to create an interest.

The judgment of the Court was delivered by

WEST, J.—The chief difficulty in dealing with the question now before us arises from the provision in section 6 of Act I of 1868,

(1) I. L. R., 2 Bom., at p. 180. (2) I. L. R., 5 Cal., 167.
(3) I. L. R., 4 Mad., at p. 11.

that the repeal of any Act shall not affect any proceeding begun under the Act. If the repeal of an Act is not to affect pending proceedings, much less it may be said should the amendment of an Act have this consequence, and Act XXII of 1882 was intended to amend Act XVII of 1879. The proposition is generally true; but it is to be taken with another one, that when on a general law, especially of procedure, one more specific is superimposed, effect is to be given to the latter as far as possible along with the earlier one, but, if necessary, in partial supersession of it (see *per* Bramwell, B., in *Ex parte Baker*(1); *In re Caruthers*(2)). The more stringent and narrow rule provided by a later Act is not to be deprived of its effect in any of the cases to which it is applicable, because a less narrow rule was applicable to them in their earlier stages.

The question is, whether in the case before us there was a proceeding begun before Act XXII of 1882 came into operation, on which, under the General Clauses Act, it would not operate; and, if so, whether the effect of that Act, or rather of the principle only in part set forth in it, is got rid of by any special declaration of the Legislature. That the Legislature cannot give a retroactive operation, even to a law affecting substantive rights and rights of action, is a proposition strongly denied by Willes, J., in *Phillips* v. *Eyre*(3). That no such effect is to be attributed to legislation without necessity is as strongly affirmed by Jessel, M. R., in the case of *In re Joseph Suche & Co.*(4) But the same learned Judge admits that a different rule may apply to a matter of procedure, and the case *In re Lord*(5) shows that a new statute may be applied to the stages of a litigation subsequent to its coming into force. The general rule is that a repealed statute cannot be acted on after it is repealed, but that, with regard to all matters that have taken place under it before its repeal, they remain valid—Lord Campbell in *R.* v. *Denton*(6). These are the general principles applicable, and the use that has been made of them in the Courts enables us to infer what the intention of the Legislature was in framing the provision in section 6 of Act I of 1868. The case of

(1) 26 L. J., M. C., 164.
(2) 9 Ea., 44.
(3) L. R., 6 Q. B., 23.
(4) L. R., 1 Ch. Div., 48.
(5) 1 K. & J., 90.
(6) 21 L. J., M. C., 203.

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Dipchand v. *Gokuldás*[1], which, perhaps, led to the modification of section 22 of Act XVII of 1879 by Act XXII of 1882, gave a very full operation to the principle of non-retroactivity; and in the case of *Mangul Prasád*[2] the Judicial Committee applied the same principle with equal freedom to cutting down the operation of a new Limitation Act. It might be possible on these and other cases to say that the proceeding in the instance before us having been begun by attachment, was to be governed throughout by the law in force when the attachment was made; but, looking to the general result of the decisions, we think that a new order of a Court, not merely ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding. It is, at any rate, we think, so regarded by the Legislature in this instance, and in construing Act I of 1868 and Act XXII of 1882 together with the Code of Civil Procedure we must ascribe to the Legislature, as far as possible, the congruity of thought necessary for making its enactments work harmoniously together as a system. Not much, perhaps, could properly be built on the mere use, in section 22 of Act XVII of 1879, of the separate specifications of "attached" and "sold", but the elaborate provisions in section 320*ss.* of the Code of Civil Procedure take the execution of a decree out of the hands of the Court just at the point when a sale is ordered; and the laborious and prolonged process enacted in Act XVII of 1879 places the whole execution against immoveable property in the hands of the Collector. We think, then, that the application for an order of sale to be carried out under the Code, and the consequent orders under the Code and the Dekkhan Agriculturists' Relief Act must be regarded as a new proceeding, not a mere continuance of one already begun. New substantive orders are required, and they must be passed in subjection to the new law in force when they are made. The mere fact that the decree was made before the new law was passed, would not, indeed, affect the matter, but an attachment might affect it, seeing that the new law is not made expressly retroactive as to existing attachments. But the general principle is, we think, sufficient to embrace the case as a new proceeding.

(1) I. L. R., 4 Bom., 363. (2) L. R., 8 Ind. Ap., 123.

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There is another principle enunciated by Savigny which, like the *dictum* of Willes, J., already referred to, has an important bearing on the case. It is this, that a law passed to promote some important public interest may be given on that account a retroactive operation if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the statute. The purpose of the Dekkhan Agriculturists' Relief Act was undoubtedly to shield the property of agriculturists against their creditors, and this purpose we cannot but see was considered by the Legislature one of great public importance: thus only are the anomalous provisions of the Act to be accounted for. Such a purpose so manifested we cannot suppose to have extended only to the cases of attachments made after the Act had come into force. No intelligible reason could, we think, be assigned for such a distinction.

For these reasons we are of opinion that in this case, though the immoveable property had been attached before 1st February, 1883, yet, as the order of sale was not made until the 15th June, 1883, that order could not then legally be made, and that it should be set aside without execution.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice West.

March 4.

MANOHAR GANESH TA'MBEKAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* CHUTA'BHA'I MITHA'BHA'I AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Narva tenure—Its history and incidents—Grant of narva village in inám—Alienations by narvádárs—Báhárkhali—Gám majmun—Páti majmun—Revenue survey in a narva village—Suit by inámdár to recover rent as settled by the survey—Landlord and tenant.

The *narva* tenure and its incidents discussed and explained.

The *inámdár* of the *narva* village of Dákor desired that the revenue survey should be introduced into it. The usual measurements and assessments were made, and the Superintendent of the Revenue Survey, following the analogy of the system prevalent in Government villages, held a conference with the *narvádárs* and drew up a scheme to which the *narvádárs* assented for the future management of the village and for settling the future relations between the *narvádárs* and the *inámdárs* as representing the fiscal interests of the Government. The *narvá-*

* Second Appeal, No. 469 of 1882.