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the testator's factory is referable to his implied authority as a trustee and not to his position as executor. See the judgment of May, C. J., in *Devitt v. Kearney*⁽¹⁾.

We set aside the decree of the District Court and dismiss the suit with costs throughout on the plaintiffs.

Decree set aside.

G. B. R.

(1) (1883) 13 L. R. Ir. 45 at p. 52.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

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October 15.

SIVLAL JETHABHAI, PLAINTIFF, v. BHIKHA RAMJAN, DEFENDANT.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 12 and 13—
Retrospective effect—Indebtedness existing at the date of the passing of
the Act as well as future indebtedness.*

The plaintiff sued to recover from the defendant a certain sum due on a money bond, dated the 17th May 1904. The suit was cognizable by the Court in its Small Cause jurisdiction. The bond sued on was passed in adjustment of an existing debt which itself was the balance due on previous advances. Some of the provisions including sections 12 and 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) were made applicable to the district on the 15th August 1905 and the present suit was filed on the 26th March 1909. As the several advances which led to the bond were prior in date to the application of the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the district, the following question arose:—

“Whether section 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is retrospective so as to apply to the case of transactions entered into before the date of its extension to the district but the suit in respect of which is instituted after that date?”

Held in the affirmative that section 13 of the Act is retrospective.

Sections 12 and 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) show that it was the intention of the legislature to open up all transactions between the parties having a bearing upon the claim out of which the suit arises from the very commencement. This is one of the means adopted by the legislature to carry out the intention expressed in the preamble of relieving the agricultural classes from indebtedness existing at the date of the passing of the Act as well as future indebtedness.

* Civil Reference No. 5 of 1909.

REFERENCE under Order XLVI, Rule I of the Civil Procedure Code (Act V of 1908), by J. N. Bhatt, Subordinate Judge of Borsad in the Ahmedabad District.

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Small Cause suit.

The plaintiff sued the defendant, who was an agriculturist, to recover Rs. 48 including interest due on a money bond for Rs. 31, dated the 17th May 1904, passed in adjustment of an existing debt. The original advances amounted to Rs. 21-8-9 in 1896 and they were followed by further advances.

Section 13 and several other sections of the Dekkhan Agriculturists' Relief Act (XVII of 1879) were extended to the Ahmedabad District on the 15th August 1905 and the present suit was instituted on the 26th March 1909.

As the advances which resulted in the passing of the bond were made before the application of sections 12 and 13 of the Act to the Ahmedabad District, the Subordinate Judge referred the following question for an authoritative decision under Order XLVI, Rule I of the Civil Procedure Code (Act V of 1908):—

“Whether section 13 of the Dekkhan Agriculturists' Relief Act is retrospective so as to apply to the case of transactions entered into before the date of its extension to this district but the suit in respect of which is instituted after that date?”

The opinion of the Subordinate Judge was in the affirmative. In making the reference he observed as follows:—

If section 13 were to apply and account taken in the manner laid down by it the plaintiff cannot recover more than Rs. 26-8-0. If it were not to apply, the plaintiff would be entitled to recover Rs. 48, the full amount of the claim.

The plaintiff's pleader relying on I. L. R. 31 Bom. 690 contends as follows:—

1. As section 13 of the Dekkhan Agriculturists' Relief Act is held not to be retrospective, it cannot apply to the case of a transaction entered into before the date of its extension to this district, notwithstanding the fact that the suit was instituted considerably after the date of the extension of the section. The Full Bench ruling in I. L. R. 31 Bom. 690 decides that the last sixteen words in section 12 of the Dekkhan Agriculturists' Relief Act ‘and secondly with a view to taking an account between such parties in manner herein-after provided,’ and sections 13 and 71A are not retrospective and do

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not apply to suits instituted before the Dekkhan Agriculturists' Relief Act came into force. This is the rationale of the decision as appears from the fact that when the case was being argued, Chandavarkar, J., remarked that the sections in question did not merely affect procedure but that they affected rights and so could not have retrospective effect. Knight, J., also said that the taking of account might be a matter of a procedure but that the enforcing of accounts was not. These remarks in effect upheld the opinion of the Subordinate Judge at Thana to the effect that the provisions in question should not have "retrospective effect or apply to pending suits," as the creditor had certain vested rights under the law in force before the extension of the Dekkhan Agriculturists' Relief Act.

2. There is no reason why the case of a pending suit should be distinguished from one in respect of which no suit was pending, if the transactions in both the cases were entered into before the date of the application of the Act. Broom in his *Legal Maxims* (page 24, 7th Edition) when discussing the maxim "*Nova constitutio futuris formam imponere debet non præteritis*" says that "every statute which takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past, must be deemed retrospective in its operation." This is the meaning of the word retrospective. There is no reason, therefore, why I. L. R. 31 Bom. 630 should not apply to this case.

3. Even a statute against wagering contracts was held not to apply retrospectively to such contracts entered into before the statute came into force, as appears from the following passage at page 211 in I. L. R. 2 Bom. 148:—

"Hence in *Moon v. Durdan* (2 Ex. 22) the majority of the Court held that a right of action fully acquired before the passing of the Wager's Act was not extinguished by the words, 'no action shall be brought or maintained' on a wager. The public interest was manifestly the motive of the law, yet as between private parties it was not allowed to affect the consequences of acts not at the time they were entered on, forbidden, and capable in themselves at the time of generating a legal right and corresponding obligation."

4. On the analogy of rules contained in clauses C and E and the last paragraph of section 6 of the General Clauses Act (X of 1897) the plaintiff has a vested right to have his case decided according to law as it existed before the coming into force of sections 12, 13 and 71 A of the Dekkhan Agriculturists' Relief Act in this District.

The defendant who is in gaol was not represented by a pleader, owing probably to poverty. The Government Pleader represented the plaintiff. As *amicus curiæ* Mr. Bhanabhai argued the case for the defendant as follows:—

1. The ruling in question (I. L. R. 31 Bombay 630) is not correct. Looking to the course of decisions as to the retrospectivity of section 174 of the Bengal Tenancy Act, time would come for overruling this decision. The question whether section 174 of the Bengal Tenancy Act was retrospective, was first answered in the negative by a Full Bench of the Calcutta High Court in I. L. R. 14 Cal. 636 on the ground that that section conferred upon judgment-debtors a new right which they did not possess under the old Act. But this decision was held wrong by another Full Bench in I. L. R. 22 Cal. 767 which also upset another Full Bench ruling in I. L. R. 21 Cal. 940 as to section 310A of the old Code of Civil Procedure not being retrospective. Thus both section 174 of the Bengal Tenancy Act and section 310A of the Civil Procedure Code were ultimately held to be retrospective.

2. In I. L. R. 25 Bom. 104 it is said that section 310A of the Civil Procedure Code had been drafted on the lines of section 174 of the Bengal Tenancy Act VIII of 1885 which has been passed "in the interest of another unfortunate class; the poor tenure holders whose lands were liable to be sold for arrears of rent." In the Full Bench ruling of I. L. R. 14 Cal. 636 it was said that if the language used had contained a direct implication as to the intention of the legislature to make it retrospective, it would have been so interpreted. Though on the one hand Mr. D. A. Khare argued before the Full Bench in I. L. R. 31 Bom. 630 that section 12 of the Dekkan Agriculturists' Relief Act mixed procedure and rights so inextricably that it was not possible to separate the one from the other and to give retrospective effect to it, it may be argued on the other hand that this inextricable mixing of the two amounts to a direct implication of the kind mentioned in the Full Bench ruling in I. L. R. 14 Cal. 636. If the legislature in order to relieve agriculturists directs the history and merits of their cases to be gone into for two purposes and if the history of a case implies an inquiry into the past why should it be supposed that it intended such an inquiry for one purpose in the case of contracts and other transactions entered into before the extension of the Act and for both the purposes in the case of contracts and other transactions entered into after the extension of the Act.

3. No doubt the general rule is that a statute is not to be retrospectively enforced. There is, however, another principle referred to by West, J., in a case under the Dekkhan Agriculturists' Relief Act (I. L. R. 8 Bom. 340) which requires to be considered—the principle "that a law passed to promote some important public interest may be given on that account a retrospective 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 learned Judge adds: "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

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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" (p. 347). In 7 Bom. L. R. 497 at page 518 Batty, J., refers to the passage and says when the maxim *Salus populi suprema lex* applies and the aim of an Act is to promote important public interests, private interests may justifiably be subordinated and a construction necessary to effectuate the intention of the Legislature must be given effect thereto. In the case of the Dekkhan Agriculturists' Relief Act the point was not whether it created new rights but whether expressly or by direct implication the legislature intended both the things mentioned in section 12 thereof to be done retrospectively or only one of them.

4. The ruling in question (I. L. R. 31 Bom. 630) was arrived at in the case of a pending suit and so it cannot apply to a case like the present where the suit was instituted after the coming into force of section 13. The plain meaning of this section is to affect all transactions whether made before or after the Act came into force. But there is nothing to clearly show that it was intended to operate in pending suits,

These arguments give rise to the following question :—

Whether section 13 of the Dekkhan Agriculturists' Relief Act is retrospective so as to apply to the case of transactions entered into before the date of its extension to this district but the suit in respect of which is instituted after that date?

The question thus formulated does not appear to me free from doubt and difficulty, but as it is very important as affecting the interests of agriculturists and is likely to arise now and then, with diffidence I venture to submit it with the following observations :

The important question for consideration seems to be : what does I. L. R. 31 Bom. 630 actually decide? Does it decide that the last sixteen words of section 12 and section 13 and 71 A of the Dekkhan Agriculturists' Relief Act are absolutely non-retrospective or does it decide that they are only partially non-retrospective so as not to apply to the case of a pending suit. The case was one of a pending suit. All that their Lordships said during the course of the argument or in the judgment had reference to this case of a pending suit. That a statute may be only partially retrospective appears from the following passage in Maxwell on the Interpretation of Statutes (4th Edition, 1905, page 322) :—

"For it is to be observed that the retrospective effect of a statute may be partial in its operation. Thus it has been said that section 35 of the Divided Parishes Act, 1876, which contains a code of transmitted status in relation to settlement, is to be considered as fully retrospective for all purposes, except

only as regards adjudications made before the commencement of the Act: so that for the purpose of determining the settlement of children born after 1876, it may be that their father's settlement is governed by the section, even though his settlement for the purposes of his own removal is not affected by it."

Again West, J., in *In re Ratansi Kalianji* and others (I. L. R. 2 Bombay 148) at page 210, says:

"The general principle of non-retroactivity of new laws need not be insisted on. On the other hand there is in one sense an element of retroactivity in all laws since no law can operate except by changing or controlling what would else have been different capabilities or a different sequence of acts and events having their roots and motives in the past. It would be more important for practical purposes to distinguish if possible the cases and the senses in which the loosely expressed principle does and does not apply and to ascertain the exceptions to which it is subject. That, as has occasionally been argued, there is something universally and essentially wrong and unjust in retrospective laws is not to be admitted. The principle has indeed been accepted as a fundamental one in the written constitutions of some states, but it is properly rejected by Willes, J., in the case of *Phillips v. Eyre* (L. R. 6 Q. B., p. 23) and by Dr. Lushington in the "*Ironsides*." For the legislator the question is always one of the higher as against the lower or of the general against the particular interest. For the judges the question is simply as to the true intention of the Legislature."

There is the further rule "that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. Even in construing a section which is to a certain extent retrospective the maxim ought to be borne in mind as applicable whenever the line is reached at which the words of the section cease to be plain" (Maxwell on the Interpretation of Statutes, p. 322, 4th edition, 1905).

Applying these principles to the section in question it appears that though the words of it convey that the section is meant to have retrospective effect they do not show whether it was meant to include cases of pending suits. Courts are reluctant to extend the application of a statute or its section to the case of a pending suit unless it clearly appears that it was the intention of the legislature to so apply it. The Legislature may intend a section to operate retrospectively and yet may not intend it to operate on pending suits. Section 13 of the Dekkhan Agriculturists' Relief Act appears to be a section of this type. In my opinion I. L. R. 31 Bom. 630 while deciding that the last sixteen words of section 12 and sections 13 and 71 A do not apply to pending suits leaves their retrospectivity otherwise untouched notwithstanding the fact that the Subordinate Judge and their Lordships of the High Court during the course of the argument made general remarks to the effect that the sections were not retrospective. Though their remarks were general it cannot be forgotten that they were made in relation to the case of a pending suit.

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The fact that a particular statute or a section if it is retrospective will not necessarily make it applicable to the case of a pending suit. The question would still have to be considered whether it is so far retrospective as to apply to pending suits. If there is no such intention appearing section 6 of the General Clauses Act will apply if the new enactment repealed any existing one. If the new enactment altered any existing law without repealing any enactment the principle of law enunciated in the *Gujrat Trading Company v. Trikamji Velji* (3 Bom. H. C. R. 45) and followed in 10 Bom. L. R. 625 will apply. In the last case the ruling in *Fatamabibi v. Ganesh* (I. L. R. 31 Bom. 630) seems to have been interpreted as deciding no more than that the last sixteen words of section 12 and sections 13 and 71A are not retrospective so as to apply to a suit instituted before the Act came into force in the particular district (p. 636); thereby the meaning is conveyed that they are otherwise retrospective. If the view of their Lordships in 10 Bom. L. R. 625 had been that I. L. R. 31 Bom. 630 decided that these sections were absolutely non-retrospective there would have been no necessity to set aside the order of the lower Court permitting withdrawal of the suit.

In I. L. R. 17 Bom. 289 a question arose whether section 31, clause 2, of the Talukdars' Act (Bombay Act VI of 1888) was retrospective in operation. In this case a decree upon a mortgage bond was passed on 15th August 1887. The property was sold on 5th August 1889 but the Collector refused to confirm the sale for want of sanction of the Governor, the Talukdars' Act having come into force on the 25th March 1889. The High Court held that the section was not retrospective and that the sale should be confirmed though no sanction had been obtained.

In I. L. R. 19 Bom. 80 which also is a case on the same section of the Talukdars' Act the mortgage was executed before the Act came into force, but a decree for sale was passed after its coming into force. It was held that no sanction of the Governor was necessary.

In I. L. R. 20 Bom. 565 the correctness of the above ruling was doubted. It was however explained and its correctness maintained by Ranade, J., in I. L. R. 22 Bom. 884 on the ground that it was presumably the case of a pending suit. In the last mentioned case the mortgage was executed in 1883 and a suit on the mortgage was brought in 1893. The District Court held that section 31, clause 2, of Bombay Act VI of 1888 did not apply as the mortgage was effected prior to the passing of the Act and so passed an order absolute for the sale of the mortgaged property. The High Court reversed the order holding that the section did apply. The case in I. L. R. 19 Bom. 80 was assimilated to the class of cases referred to in I. L. R. 17 Bom. 289 on the ground that the suit in I. L. R. 19 Bom. 80 was presumably instituted before the date of the application of the Act. Ranade, J., observed —

“There is no particular reason to distinguish cases in which a decree has been obtained from those in which proceedings had been presumably instituted before the Act came into force. In *Doolubdass v. Ramtoll* (5 Moo. I. A. 109)

their Lordships of the Privy Council had to consider how far retrospective effect could be given to the provisions of an Act of 1848 which declared that 'all agreements by way of wager shall be null and void' and it was held that this prohibition did not affect the validity of existing contracts *at all events not those contracts on which actions had already been brought before the new Act came into force*..... (The italics are mine.) In *Shah Kalidass v. Chudasama* (P. J. for 1895, p. 438) as the encumbrance was of a date prior to the Act but the suit was instituted long after the Act came into force, a decree was passed for the amount due, but its enforcement by sale of the property was made subject to the provisions of section 89 of the Transfer of Property Act which would, it was observed, make it possible for the creditor to obtain the sanction of Government before the sale actually took place."

The above decisions on section 31, clause 2, of the Talukdars' Act show that though the section was expressly held not to be retrospective by one Bench, it did not come in the way of another Bench holding subsequently that the section did apply to a case in which the suit was instituted after the coming into force of the Act though the transaction sued on was of a date anterior to its coming into force.

On the strength of these decisions it may be argued that though section 13 of the Dekkhan Agriculturists' Relief Act is held not to be retrospective in I. L. R. 31 Bom. 630 the decision would be no bar to the applicability of the section to the case of a transaction which, though entered into prior to the coming into force of the section in this district, was sued on after its coming into force.

For the above reasons I think that the ruling in I. L. R. 31 Bom. 630 does not come in the way of answering the question I have framed in the affirmative.

If however my interpretation of the ruling in 31 Bombay be not correct and it be interpreted as deciding that section 13 of the Dekkhan Agriculturists' Relief Act is absolutely non-retrospective the arguments in favour of the retrospectivity of the section appear to be very cogent and it is for their Lordships to consider whether another Full Bench should not intervene. Under this latter interpretation it seems difficult to make a distinction between two cases of contracts both of which are entered into, say, a year before the coming into force of a section authoritatively ruled to be a provision not of procedure law but of substantive law but one of which was sued on the day preceding, and the other on the day of, the coming into force of the section. To make myself more clear, suppose a provision of substantive law comes into force on August 1st, 1905. A suit is filed against B by A on July 31st, 1905, and another against C on August 1st, 1905. The contracts with B and C both were entered into on 1st September 1904. The High Court in the former case rules that the provision is of substantive law and affects a vested right, therefore the new law cannot operate retrospectively. The rationale of this ruling is that A and B contracted on 1st September 1904 with reference to a particular state

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of things. They did not know that the interest agreed to could be cut down. Does not the same reasoning apply to the case of A and C who also entered into a similar contract on 1st September 1904?

According to the usual canons of construction governing such enactments as the Dekkhan Agriculturists' Relief Act everything must be done in advancement of the remedy consistently with the plain language of the Legislature so as to afford the utmost relief which the meaning of the language can allow. It appears from the ruling in 10 Bom. L. R. 745 that section 13, Dekkhan Agriculturists' Relief Act, has of necessity to be applied to all cases the history and merits of which have been inquired into under section 12 of it. Thus the application of the two sections is co-extensive. If this view is correct there is a conflict between it and the ruling that the last sixteen words of section 12 and sections 13 and 71A are not retrospective.

On a consideration of the arguments for the plaintiff and the defendant and for the reasons above set forth, I would answer the question framed in the affirmative.

The reference was argued before Sir Basil Scott, C. J., and Batchelor, J.

T. R. Desai (amicus curiæ) for the plaintiff:—So far as pending suits are concerned this Court has, in its Full Bench ruling in *Fatmabibi v. Ganesh*⁽¹⁾, held that the last sixteen words of paragraph 2 of section 12 of the Dekkhan Agriculturists' Relief Act are not retrospective. We submit that section 12 applies only to transactions entered into after the provisions of the Act were extended to the Ahmedabad District. There are no decided cases either way, therefore reference will have to be made to the canons of construction of a statute. The Privy Council have held in *Doolabdass v. Ramloll*⁽²⁾, which was a case of wager, that a new statute cannot affect a transaction entered into before it was enacted, at any rate it cannot affect a transaction in respect of which a suit is already brought. In the above case, the suit was brought before the particular Act was enacted but therein there is an expression of general opinion that anterior transactions are not to be affected. The observations in *Moon v. Durden*⁽³⁾ are to the same effect. We rely on section 6 of the General Clauses Act, 1896. We have a vested right to get a

(1) (1907) 31 Bom. 630.

(2) (1850) 5 Moo. I. A. 109.

(3) (1848) 2 Ex. 22.

decree on our *khata* and no new statute subsequently passed can divest us of that right. No distinction can be made between (1) the case of a transaction admittedly entered into before the Act came into operation and (2) one in respect of which a suit is brought after the enactment of the Act. Relying on the decision of the Full Bench in *Fatmabibi v. Ganesh*⁽¹⁾ we submit that section 12, clause 2, of the Dekkhan Agriculturists' Relief Act is not retrospective and the point referred to should be answered in the negative. The following cases were cited:—

In the matter of the petition of Ratansi Kalianji⁽²⁾, *Javanmal Jitmal v. Muktabai*⁽³⁾, *Manohar Ganesh v. Chutabhai Mithabhai*⁽⁴⁾, *Kalian Moti v. Pathubhai Faljibhai*⁽⁵⁾, *Taylor v. Manners*⁽⁶⁾ and *Phillips v. Eyre*⁽⁷⁾.

G. N. Thakore (amicus curie) for the defendant:—The ruling of the Full Bench in *Fatmabibi v. Ganesh*⁽¹⁾ gave rise to the present question. Therefore it is necessary to see what that case really decides. The reference to the Full Bench was made because there is an apparent conflict between the decisions of this Court in *Pannalal v. Kalu*⁽⁸⁾ and *Suryaji v. Tukaram*⁽⁹⁾. The last case decides that sections 12 and 13 of the Act are applicable only to suits instituted on or after the 1st November 1879 and the former case was supposed to be in conflict with it. The Full Bench held that sections 13 and 71A and the last sixteen words of section 12, clause 2; did not apply to suits instituted before the Act came into force and read *Pannalal v. Kalu*⁽⁸⁾ as indicating a similar construction of the law. The question of the applicability of the Act to anterior transactions was not before the Full Bench and the language used is to be read in the light of the question submitted for decision.

To argue from this that the Act did not apply to anterior transactions is to take a long stride. Pending suits stand on a footing of their own. They are always governed by the law

(1) (1907) 31 Bom. 630.

(2) (1877) 2 Bom. 148.

(3) (1890) 14 Bom. 516.

(4) (1884) 8 Bom. 347.

(5) (1892) 17 Bom. 289.

(6) (1865) L. R. 1 Ch. 48.

(7) (1870) L. R. 6 Q. B., p. 23.

(8) (1906) 8 Bom. L. R. 798.

(9) (1880) 4 Bom. 358.

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obtaining at the date of their institution: *Gujarat Trading Company v. Trikamji Velji*⁽¹⁾. They are understood to have the same force as a decree: *Chudasama Naudhabhai v. Naran Tribhovan*⁽²⁾. The rights created by a decree are of the highest kind and infinitely superior to those created by a contract: *Navlu v. Raghu*⁽³⁾, *Tatya v. Bapu*⁽⁴⁾. It cannot therefore be urged that because the Act does not apply to pending suits, it cannot also apply to past transactions.

Apart from the Full Bench ruling the present case is quite clear. There is no ruling against the view we contend for. On the contrary this Court has always proceeded on the assumption that the Act applies to all transactions. Even the case of *Suryaji v. Tukaram*⁽⁵⁾ supports this contention. The cases of *Navlu v. Raghu*⁽³⁾ and *Tatya Vithoji v. Bapu Balaji*⁽⁴⁾ are further illustrations. In all these cases the transactions were of earlier dates, still the decisions rest on grounds other than that of the non-applicability of the Act to certain transactions. This is because the language is quite clear. The word 'history' in section 12 of the Act can only mean past history and the word 'commencement' is used without any word modifying its natural import. The preamble of the Act again clearly indicates the intention of the legislature which was to relieve the indebtedness, meaning thereby existing indebtedness. The supplementary definition of the word "agriculturist" in clause (2) of section 2 also helps our contention. Both the language and the intention being clear, no canon of construction can help the plaintiff. The Act is to be construed as indicated in *Shivram Udaram v. Kondiba Muktaji*⁽⁶⁾. The cases of *Moon v. Durden*⁽⁷⁾ and *Doolubdass Pettamberdass v. Ramloll Thackoorseydass*⁽⁸⁾ were both cases of pending suits. Those decisions went on the presumed intention of the legislature which was there quite different. The observations relied upon are *obiter dicta* and should be read with reference to the point for decision. We therefore submit that the question referred should be answered in the affirmative.

(1) (1867) 3 Bom. H. C. R. (O. C. J.) 45. (5) (1890) 4 Bom. 358.

(2) (1897) 22 Bom. 884.

(6) (1884) 8 Bom. 340.

(3) (1884) 8 Bom. 303.

(7) (1848) 2 Ex. 22.

(4) (1883) 7 Bom. 330.

(8) (1850) 5 Moo. J. A. 109.

Desai in reply :—The observations in *Manohar Ganesh v. Chutabhai Mithabhai*⁽¹⁾ cannot affect the present case, for they are in conflict with the view of the majority of Judges in *In the matter of the petition of Ratansi Kalianji*⁽²⁾. No doubt the object of the Act was to help agriculturists and relieve them from indebtedness but at the same time some consideration will have to be shown to creditors whose position becomes very hard under the Act.

SCOTT, C. J. :—We answer the question referred in the affirmative.

Sections 12 and 13 of the Dekkhan Agriculturists' Relief Act show that it was the intention of the legislature to open up all transactions between the parties having a bearing upon the claim out of which the suit arises from the very commencement. This is one of the means adopted by the legislature to carry out the intention expressed in the preamble of relieving the agricultural classes from indebtedness. We understand this to mean indebtedness existing at the date of the passing of the Act as well as future indebtedness.

The point referred to us has never, so far as we have been able to ascertain, been raised during the last thirty years which have elapsed since the passing of the Act, and we know of no case which has been decided which is based upon any other reading of the Act than that indicated above.

We are indebted to the pleaders who have argued the case as *amici curiæ* with much keenness and have given great assistance to the Court.

Order accordingly.

G. B. R.

(1) (1884) 3 Bom. 347.

(2) (1877) 2 Bom. 148.