

(1950) 08 MP CK 0008
In the Madhya Pradesh High Court
Case No : Special Appeal No. 5 of 1949

Gulabchand Gambhirmal

APPELLANT

Vs

Kudilal Govindram Seksaria and another

RESPONDENT

Date of Decision : 29-08-1950

Acts Referred:

Madhya Bharat High Court of Judicature Act, 1949 — Section 25

Citation : (1950) 08 MP CK 0008

Hon'ble Judges : Kaul, C.J;Shinde, J;Dixit, J;Chaturvedi, J;Abdul Hakim Khan, J

Bench : Full Bench

Advocate : K.A. Chitale, S.M. Samvatsar, V.R. Newaskar and S.R. Joshi, for the Appellant; Amin, Chandra Bhan Sanghi and N.M. Dravid, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—In this appeal by the plaintiff in the suit against a decree in appeal of a Division Bench of this Court dated 2-12-1918, after hearing the arguments of counsel for the appellant and the respondents, the Court announced that the preliminary objection of the respondent as to the incompetency of this appeal roust prevail and that this appeal would be dismissed and the reasons for this conclusion would be abated at a later date. Accordingly, I am stating my reasons in this judgment.

2. The suit out of which this appeal arises was instituted on 6-11-1947, by the plaintiff against the respondents in the Original Side of the Indore State High Court to obtain a specific performance of a contract and in the alternative damages. The suit was tried by Sanghi J., who on 11-6-1948, made a decree in favour of the plaintiff with some modification in the form of relief claimed by him. Against this decision, the defendants filed an appeal to a Division Bench of this Court on 24-8.1948. The plaintiff also preferred on 7.9.1948, a cross appeal against the decision of the trying Judge for his claim being decreed in full. These two appeals were filed under the Indore State Civil Procedure Code. The Division Bench accepting the defendant's appeal reversed the judgment and the decree

of Sanghi J., and dismissed the plaintiff's suit, as well as his cross-appeal.

3. Both under the Indore CPC and under the Madhya Bharat High Court Ordinance (ordinance No. 2 of 1948) no further appeal lay against the judgment and decree dated 2-12-1948, of the Division Bench, This Ordinance was replaced by the Madhya Bharat High Court of Judicature Act (Act NO. VIII [8] of 1949) which came into force on 18-1-1949. This Act which was enacted for the continuance of the Madhya Bharat High Court established under the Ordinance embodied substantially the provisions of the Ordinance, and S. 25 of the Act contained a new provision introducing for the first time a right of appeal to a Full Bench of this Court against the decisions of a Division Bench in civil and criminal matters. The right of appeal was subject to certain conditions prescribed in S. 25. The appellant filed this appeal on 31-3-1949, and claims it as one under S. 25, High Court of Judicature Act.

4. On the basis of a Full Bench decision of this Court in Daulat Singh v. The State (Special Criminal Appeal No. 1 of 1949, dated 14-4-1949, reported in 1 M.B. L.R. 229 : (A.I.R. 1950 M.B. 112 F.B.) Mr. Amin, who appeared for the defendant-respondents took the preliminary objection that as the judgment and decree appealed from were passed by the Division Bench on 2-12-1948 i.e., before the Act viii [8] of 1949 came into force and as S. 25 of the Act is not retrospective, this appeal is incompetent. There is no doubt that if the decision of the Full Bench in Daulat Singh v. The State, 1 M.B.L.R. 229: (A.I.R. 1950 M.B. 112 F.B.) is correct this appeal cannot be entertained. But when this appeal first came up for admission before a Full Bench consisting of Shinde, Regeand Saigal JJ., my learned brothers apparently felt some doubt as to the correctness of that decision and admitted the appeal. After the admission of the appeal on 6-10-1949, Mr. Chitale, the learned counsel for the appellant made an application to the Court praying for the constitution of a larger Bench for the hearing of the appeal on the ground that the view taken by the Full Bench in Daulat Singh v. The State (1 M.B. L.R. 229: AIR 1950 M.B. 112 F.B.) that S. 25 High Court of Judicature Act has no retrospective effect requires reconsideration, and that other important questions of law also involved in the appeal. The application was accepted and this appeal has accordingly been heard by this Bench of five Judges. It may, however be mentioned in passing that the motion to refer a matter to a Full Bench or to a larger Bench should normally come from the Judges themselves and not from counsel when they find that they are fettered by a decision in a previous case which appears to them to require further consideration.

5. In order to appreciate the able and exhaustive arguments of the learned counsel for the parties, it is necessary to refer to certain material dates in the formation of the Madhya Bharat Union and to the relevant provisions of the Covenant entered into by the Balers of Gwalior, Indore and certain other States in Central India for the formation of the Union of Ordinance 2 of 1943 establishing the Madhya Bharat High Court and of the Madhya Bharat High Court

of Judicature Act (VIII [8] of 1949). The Covenant was signed by the Ruler as of the Covenanting States on 22-4-1949. Clause (1) (a) of Art. (vi) of the Covenant laid down that when the Ruler of the Covenanting State makes over the administration of his State to the Raj Pramukh, then all rights, authorities and jurisdiction belonging to the Ruler which appertain or are incidental to the Government of his State shall vest in the Madhya Bharat and shall, thereafter be exercisable only as provided by the Covenant or by the Constitution to be framed thereunder. The Covenant also contained a provision to enable States other than the Covenanting States to be included in the Madhya Bharat Union (Art. 2 (b)) By cl. (2) of Art. 6 the rights, authorities or jurisdiction belonging to the Ruler of a State which is included in the Union subsequent to the Covenant are also made to vest in the Madhya Bharat from the date of making over the administration of such State to the Raj Pramukh. The administration of the Indore State was made over to the Raj Pramukh on 16-6-1948. The suit out of which this appeal arises originated in the former Indore State and was decreed by the Indore High Court on 11-6-1948.

6. The Madhya Bharat High Court was constituted by the Raj Pramukh by Ordinance a of 1948, which came into force on 29-7-1948. Section 4 of the Ordinance provided that:

(a) This Ordinance shall apply to the territories of any of the Covenanting States and of any other State the Ruler of which agrees with the approval of the Government of India to the merger of that State in the United State from the date of taking over of the administration of the Covenanting States under Art. (iv) of the Covenant, or from the date of inclusion of the State under Art. II, as the case may be, and it shall apply to all persons within those territories over whom the Courts having jurisdiction in the said States, had jurisdiction.

(b) This Ordinance shall apply to all Criminal and Civil Proceedings, including those under testamentary and intestate, matrimonial, divorce and insolvency jurisdiction, pending in the Courts in any State on the date of which the administration of the State is taken over by the Raj Pramukh, or on the date on which the State is included in the United State, as the case may be, and to such proceedings, arising in the said States, after those dates.

7. By S. 35 (a) of the Ordinance it was provided that the tribunal functioning as the High Court or any authority exercising the powers of a High Court of any State included in the Union shall cease to exist from the date of the taking over the administration of the State by the Raj Pramukh and all cases pending before the High Court or the authority shall be transferred to the Madhya, Bharat High Court for disposal. There was no provision with regard to appeals against the decisions of a Division Bench of the Madhya Bharat High Court in any matter. Ordinance 2 of 1948 was amended in October 1948, by ordinance NO. 14 of 1948. This amending Ordinance only amended S. 35 and made the amendment effective as from the date of the original Ordinance 3 of 1948. After the amendment the material portion of S. 36 read as follows :

The High Court, or the Tribunal functioning as the High Court or the Authority exercising the powers of the High Court for any of the Covenanting States the administration of which may be taken over by the Raj Pramukh, shall cease to exist or function --

(a) in the case of States the administration of which may be taken over before the establishment of the High Court of the United State, from the date of the establishment of the said High Court; and

(b) in the case of States the administration of which may be taken over after the establishment of the Court of the United State, from the date of the taking over of the administration.

8. Then we come to the Madhya Bharat High Court of Judicature Act (VIII [8] of 1949), which, as the preamble of the Act says,

is an Act to provide for the continuance of the Court of Judicature of Madhya Bharat established under Ordinance No. 2 of 1948.

This Act came into force on 18-1-1949, S. 2 of the Act is in these terms :

(a) It shall extend to the whole of the United State of Gwalior, Indore and Malwa (Madhya Bharat) and shall apply to all persons within the said United State over whom the Courts having jurisdiction in the Covenanting States forming part of the said United State had jurisdiction.

(b) This Act shall apply to all Criminal and Civil Proceedings, including those under testamentary, intestate, matrimonial, divorce and insolvency jurisdiction pending in the Courts in any State on the date on which the State is included in the United State and to such proceedings, arising in the said States, after those dates.

9. It will be seen that this section is substantially the same as S. 4 of the Ordinance. There is, no doubt, a slight difference in the language of the two sections, While S. 4 of the Ordinance makes a distinction between the Covenanting States and the States which subsequent to the signing of the Covenant are merged in the Union, S. 2 of the Act does away with this distinction and refers to any State which is included in the Union whether as a Covenanting State or whether as a result of merger in accordance with Art. II (i)(b) and Art. vi (2) of the Covenant. The difference in the language of these two sections is of no practical importance because under Art. VI of the Covenant the date of inclusion in the Union whether of a Covenanting State or of a "merged" State is the date on which the administration of the State is handed over to the Raj Pramukh. The change in the language of the two sections is clearly not intended to restrict the application of S. 2 (b) of the Act only to the merged States, to the exclusion of the Covenanting States. Section 25 of the High Court Act provides for the first time a right of appeal under certain conditions against the decisions of a Division Bench in civil and criminal cases. Sub-section (1) of S. 25 of the Act says:

Special appeal shall lie to the Full Bench of the High Court from

(1) a decree or an appealable order passed by the Divisional Bench of two Judges of the High Court in the exercise of extra-ordinary or appellate civil jurisdiction:

Provided that such appeal shall lie only in the case where the value of the suit in the Court of the first instance is Rupees ten thousand or upwards and the value of the subject matter in dispute in appeal also is Rupees ten thousand or upwards :

Provided further that the appeal involves some question of principle pertaining to law.

10. Section 37 of the Act like the amended S. 35 (I) of the Ordinance contains provisions relating to the cessation of the High Courts or authorities functioning as High Courts in the several States. Section 40 of the Act is the repealing and saving section. That section repeals ordinance No. 2 of 1948 and the amending Ordinances. Having repealed it, it proceeds to save notifications made, powers conferred, jurisdiction assigned, orders given under the repealed Ordinance. The proviso to this section states:

Provided, however, that all notifications issued, powers conferred, jurisdiction assigned, forms prescribed, orders given, rules framed, appointments made or actions taken under these Ordinances shall, so far as they are not contrary or repugnant to the provisions of this Act be deemed to have been issued, conferred, assigned, prescribed, given, framed, made or taken under this Act and shall continue to exist unless and until superseded or amended expressly or impliedly and the High Court established under the said Ordinance shall continue to exist and function as the High Court established under this Act.

11. The argument of the learned counsel for the appellant as to the High Court Act being retrospective in operation, briefly stated, is that the High Court should construe according to the natural meaning of the language of the Act which is plain and clear, and that in the construction of the Act any considerations derived from the previous state of law, namely, Ordinance 2 of 1948 should not be taken into account. So construing the necessary implication of S. 2 (b), High Court Act is to make the Act retrospective so as to affect even vested rights. That although the Act came into force under S. 3 on its publication in the gazette on 18-1-1949, by virtue of S. 2 (b) the operation of the Act as regards any component State of Madhya Bharat Union is made to commence as from the date on which the administration of the State is taken over by the Raj Pramukh. The administration of the Indore State was taken over by the Raj Pramukh on 16-6-1948, and, therefore, it is argued that the High Court Act should be taken to have become operative with effect from 16-6-1948, in so far as the territory of the former Indore State is concerned, and the Act would apply to any decision, order or judgment made by the Madhya Bharat High Court on or after 16-6-1948, in any civil or criminal proceedings pending on this date in Indore State Courts or originating in Indore State subsequent to 16-6-1948. It is maintained that as the

decision under appeal was made by the Division Bench after 16-6-1948, in a proceeding arising in the former Indore State after this date, the decision is appealable under S. 25 of the Act. Mr. Chitale further strengthened his arguments by pointing out that the effect of the proviso to S. 40 of the Act is to place by legal fiction orders, judgments or decrees given by the Madhya Bharati High Court under Ordinance 2 of 1948, exactly on the same footing as those made by the High Court under Act 8 of 1949, and treat them alike for all purposes of the Act. Therefore, even though the decision under appeal of the Division Bench may have been final and not open to any appeal under the Ordinance, the finality of that decision is destroyed by the proviso to S. 40 of the Act and the decision is appealable under B. 25 of the Act. The learned counsel for the appellant does not dispute the well established principles referred to in the Full Bench decision in *Daulat Singh v. The State* (1 M.B. L.R. 229: AIR 1950 M.B. 112 F.B.) which are applicable in determining whether a Statute is retrospective in operation. He assails the Full Bench decision on the ground that the Full Bench in that case erred in construing the High Court Act with reference to the language of ordinance 2 of 1948, and in coming to the conclusion that S. 2 (b) of the Act merely extends the jurisdiction of this Court even to those proceedings which before the establishment of this Court on 29-7-1948 were pending in any State on the date on which the administration of the State was taken over by the Raj Pramukh, and to such proceedings arising in a State subsequently but before the establishment of this Court on 29-7-1948. Mr. Chitale says that as in accordance with the principle of international law relating to State Succession the system of law existing in Indore State would have continued in operation and the Courts therein including the High Court would have continued to function until the enactment of new laws by the Madhya Bharat Union and the establishment of new Courts by the Union, there was no necessity of making any provision for extending the jurisdiction of this Court to cases pending in the State Courts before this Court was established and that this conclusion also follows from S. 37 of the Act. It is also said that the Full Bench decision did not consider the effect of the proviso to S. 40 High Court Act.

12. Being myself a party to the decision in *Daulat Singh v. The State* 1 M.B.L.R. 229: AIR 1950 M.B. 112 P.B.), I must candidly admit that while dealing with that case I had not the advantage of the full discussion on the question of the retrospectivity of the Madhya Bharat High Court Act as on this occasion. But even on a full and mature consideration of the arguments of the learned counsel for the appellant, I am not persuaded to resile from my earlier opinion. I have in that decision given in some detail the reasons for holding that S. 25 of the Act does not apply to the decision given by the Madhya Bharat High Court before the Act came into force. I do not propose to go over the same grounds again except when it may be necessary in dealing with the arguments of the learned counsel for the appellant.

13. In support of his contention that a statute is to be interpreted as it stands and re course is not to be had to the former law except upon the some special

ground, such for instance, as an ambiguous provision, learned counsel for the appellant read to us passages from pp. 1, 2 and 26 of Maxwell on Interpretation of Statutes, 9th Edn., and drew our attention to the often-quoted and well-known observations of Lord Herschell in *Bank of England v. Vagliano*, (1891) A.C. 107 : (60 L.J. Q.B. 145). I do not think these passages and observations are of much help in the construction of the Act before us. In the case of the *Bank of England v. Vagliano*, (1891) A.C. 107 : (60 L.J. Q.B. 145), the question of the interpretation of certain provisions of the English Bills of Exchange Act, 1682, which was a codified enactment relating to Negotiable Instruments, was under consideration. The method of interpretation of a codifying Act was laid down by Lord Herschell thus:

I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear interpretation in conformity with this view Of course I am far from asserting that resort may never be had to the previous state of the law for the purpose of adding in the constructions of the provisions of the Code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate.

In that case Lord Halsbury also observed that:

I am wholly unable to adopt the view that where a statute is expressly said to codify the law you are at liberty to go outside the Code so created because before the existence of that Code, another law prevailed.

14. The essence of a Code is to consolidate the statutory, customary and case law on a particular subject into a Code and to be exhaustive in the matters in respect of which, it declares the law. It seems to me that this rule of interpretation relating to a Codifying Act cannot be of any guide when we have to deal not with an Act codifying the law but with an Act which alters the form of Ordinance 2 of 1948, but not its substance which although it repeals the Ordinance, simultaneously re-enacts all its provisions together with an amendment as to appeals against the decisions of a Division Bench, and which provides for the continuance of the Madhya Bharat High Court established under the Ordinance. The High Court Act, viii [8] of 1949, in fact makes the Ordinance it [2] of 1948, perpetual with the amendment referred to above.

15. I think in construing such an Act as we have here it is legitimate to refer to the previous state of law for the purpose of ascertaining the intention of the Legislature, when it is contended that the legislature intended to give retrospective effect to the Act so as to interfere with existing rights. For clearly the question whether the legislature contemplated by change in the law to disturb the existing rights acquired under the previous law can only be determined after considering the former state of law. It is stated in Maxwell on

Interpretation of Statutes, 9th Edn. at p. 22 that:

That literal construction then, has in general, but prima facie preference. To arrive at the real meaning it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider according to Lord Coke : (1) What was the law before the Act was passed ? (2) What was the mischief or defect for which the law had not provided ? (3) What remedy Parliament has appointed; and (4) The reason of the remedy.

According to another authority -- "in order properly to interpret any statute it is as necessary now as it was when Lord Coke reported Heydon's case to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief.

16. Counsel for the appellant placed reliance on two decisions of the Privy Council reported in *Mt. Ramanandi v. Mt. Kalawati*, AIR 1928 P.C. 2 : (7 Pat. 221) and *Tumahole Bereng V. The King*, AIR 1949 P.C. 172 : (60 Cri. L.J. 642) to show that when there is a positive enactment of the Legislature, a reference to the previous state of law is not permissible for the purpose of interpreting the statute. The case in *Mt. Ramanandi v. Mt. Kalawati*, AIR 1928 P.C. 2 : (7 Pat. 221) is distinguishable on the ground that in that case their Lordships were dealing with the question of the interpretation of the Indian Succession Act, 1925 which is a consolidating and codifying enactment. In a subsequent case reported in *Abdur Rahim v. Abu Mohammad Barkat Ali*, AIR 1928 P.C. 16 : (55 Cal. 519), their Lordships indicated a modification of the principle laid down in *Mt. Ramanandi v. Mt. Kalawati*, AIR 1928 P.C. 2 : (7 Pat. 221) in the following words :

It is a sound rule of interpretation to take the words of a statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded; but when it is contended that the Legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the statute can be taken to effect the change that is suggested as intended.

17. The observations of the Privy Council are very much pertinent to the point under consideration in the present appeal, as here also it is contended that by introducing S. 25 in the High Court Act the Legislature intended to make a substantial change in the pre-existing law and destroy the finality that attached to the decisions given by the Division Bench in certain cases. In *Tumahole Bereng v. The King*, AIR 1949 P.C. 172 : (50 Cri. L.J. 612), the Privy Council had to consider the question whether an amendment made in 1944 to S. 231 of Basutoland Criminal Procedure and Evidence Proclamation of 1938 gave to the Court; the power to convict an accused person on the evidence of two accomplices standing alone and unconfirmed in any material respect by other

evidence. By the amendment two provisos to S. 231 were deleted, and in lieu of them a new proviso was substituted. In determining the scope and meaning of the amended section the Privy Council resorted to the terms of the section before the amendment. Their Lordships gave two reasons for adopting the course. They said :

In the first place, the terms of the section as it now stands are sufficiently difficult and ambiguous to justify the consideration of its evolution in the statute book as a proper and the logical course; and secondly, the object of the instant inquiry is to ascertain the true meaning of that part of the section which remains as it was and which there is no ground for thinking the substitution of a new proviso was intended to alter.

18. This case, in my opinion does not help the appellant in any way. As I have indicated above in the appeal before us also, the question for determination is whether the addition of & provision in the High Court Act with regard to appeals against the decisions of a Division Bench is intended to alter the meaning of the provisions of the Ordinance re-enacted in the High Court Act so as to effect existing rights.

19. In *Daulat Singh v. The State*, (1 M.B. L.R. 229 : AIR 1950 M.B. 112 F.B.) I relied on a Full Bench decision of the Bombay High Court, *Emperor v. Ranchhodlal*, AIR 1948 Bom. 370 : (49 Cri. L.J. C77 F.B.) in support of the view that in construing a statute the Court is entitled to look at the history of prior legislation and look at statutes which are in pari materia and which deal with the same subject. Mr. Chitale tried to distinguish the Bombay case by urging that Ss. 7 and 17, Essential Supplies (Temporary Powers) Act, 1916, which called for an interpretation in the case were ambiguous and, therefore, in construing that Act the Bombay High Court referred to the provisions of the Essential Supplies (Temporary Powers) Ordinance, 1946, which was repealed by S. 17 (1) of the Act. As I understand the Bombay decision, I think the Bombay High Court in construing the Essential Supplies Act took into consideration the Ordinance that was repealed by the Act firstly because it was contended in that case that the difference in the language used in S. 8 of the Ordinance and that in S. 7 of the Act led to the inference that while the Ordinance made penal the contravention of any order deemed to be made, the Legislature in passing the Essential Supplies Act intended only to punish the contravention of any order made under S. 3 and not the contravention of any order deemed to be made under S. 17, and secondly it was necessary to understand the orders made or deemed to be made under the Ordinance, which under S. 17 (2) of the Act were continued in force and treated as deemed to have been made under the Act. The circumstances in which the Bombay High Court looked at the history of the prior legislature and referred to the Essential Supplies Ordinance are not in any way different from those present in this case. Indeed, if the argument of the learned counsel for the appellant that the object of the proviso to S. 40 of the High Court Act is to put decisions given by the Madhya Bharat High Court under the Ordinance II [2] of

1948 on the same footing as those given by the High Court under the Act and make them appealable under S. 25 of the Act is to be considered, a reference to the Ordinance is inevitable in order to understand the nature of the decisions made while the Ordinance was in force. In *Daulat Singh v. The State* (1 M.B. L.R. 229 : AIR 1950 M.B. 112 F.B.) a reference was made to a Full Bench decision of the Allahabad High Court, *Dila Ram and Others Vs. Atma Ram and Others*, In this case in considering the question whether S. 45 (2-a), U.P. Encumbered Estates Act, 1934, was retrospective so as to give a right of second appeal against orders or decrees passed after 30-9-1939, even though the proceedings under the Act were started before that date, the learned Judges of the Allahabad High Court referred to the observations of Lord Hatherley in *Pardo v. Bingham*, (1869) 4 Ch. 736 : (20 L.T. 464). I wish to emphasise those observations by reproducing them here. Lord Hatherley observed:

The question is.....whether on general principles the statute ought in this particular section to be held to operate retrospectively, the general rule of law undoubtedly being that except there be a clear indication, either from the subject-matter or from the wording of the statute, the statute is not to receive retrospective construction. In fact we must look at the general scope and purview of the statute, and the remedy sought to be applied, and consider what was the former state of the law and what it was the legislature contemplated.

20. In my opinion, when the question for consideration is whether a statute is retrospective so as to affect existing rights, it is impossible to determine the question without considering "the prior state of the law.

21. It is mainly on S. 2 (b), High Court Act that the learned counsel for the appellant founds his argument that in so far as proceedings in the Indore State Courts pending on 16-4-1948, or arising subsequently therein are concerned, the Act should be taken to have been operative from 16-6-1943. I am unable to accede to this argument. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act is understood to be retrospective. This is not the position here. I do not find any words in S. 2 (b) of the Act to show the effect contended for. Section 2 (b) of the Act only says that the Act shall apply to all civil and criminal proceedings including those mentioned therein pending:

in the Courts in any State on the date on which the State is included in the United State and to such proceedings arising in the said State after those dates.

It does not Bay that the Act shall apply to those proceedings as from the date the State concerned is included in the Union by the taking over of its administration by the Raj Pramukh. We are not entitled to read S. 2 (b) of the Act as if words indicating the point of time in the past from which the Act is to apply those proceedings, were there From the mere fact that the Act is to apply to the proceedings mentioned in S. 2 (b) it does not follow that the application of this Act to these proceedings is from a particular date in the past. There is no

reason whatever to import this implication. For, it is not as if the Madhya Bharat High Court was established for the first time on 18-1-1949 when the Act came into force and that from the dates on which the respective States were included in the Union until 18-1-1949, there was no High Court to exercise jurisdiction in all this proceedings and to deal with them. Before the Act came into force, the Madhya Bharat High Court existed under the Ordinance. The Act, no doubt, repealed the Ordinance but if it did not abolish the High Court created by the Ordinance, it did not wipe out every thing that was done by the Madhya Bharat High Court under the Ordinance. On the other hand, the High Court established under the Ordinance was continued by the Act, and the proviso to S. 40, preserved all that was done under the Ordinance. Learned counsel for the appellant, however, relied on the proviso to stress the point that as the matters enumerated in the proviso which were done under the Ordinance are by the proviso deemed to have been done under the Act, the High Court Act is retrospective in operation as from the date of the Ordinance, I am not impressed by this contention. The statutory fiction resorted to in the proviso to S. 40 of the Act is merely designed to safeguard the validity of the matters mentioned in the proviso and done under the Ordinance, and prevent the Act from interfering with rights already acquired by a party. A saving clause does not give to a party any further right than he already had. Nor does it give retrospective effect to an enactment. A reference may be made here to the observations of Sir Page Wood V.C. in *Fitzgerald v. Champneys*, (1862) 30 L.J. ch. 777: (5 L.T. 233), which are quoted in Beal's Cardinal Rules of Legal Interpretation: The observations are :

The insertion of a saving clause is never a safe ground for determining the construction of an Act of Parliament, whether local or general. We all know the anxiety which there is on the part of every one who imagine that his rights may be infringed by the passing of an Act, whether general or local, to procure the insertion of a saving clause to protect them, even where the ordinary rules of construction supersede the necessity of any such protection.

22. I may also refer to a decision of a Division Bench of the Bombay High Court in *Habib & Sons v. Commissioner of income tax*, AIR 1947 Bom. 80 (2): (49 Bom. L. R. 200) which is directly in point. In the Bombay case it was submitted on behalf of the assessee that the income tax and Excess Profit Tax (Validity of Notices) Ordinance, 1944 and the amending ordinance xvi [16] of 1945 were ultra vires as the Governor General could not in the exercise of his emergency powers under S. 72 of sch. 9, Government of India Act, 1936, promulgate law which was retrospective in its effect. The argument about the retrospectivity of the Ordinance was based on the use of the expression "shall be deemed" in the wording of the Ordinance which stated that every notice published or issued whether before or after the commencement of the Ordinance but not later than 19-5-1945 under the sub-sections there is mentioned requiring a return to be furnished within 30 days of the receipt of the notice shall, notwithstanding any judgment or order of any Court, appellate tribunal or income tax authority to the contrary, be deemed to give or have given a period of notice in full compliance

with law. Rejecting the contention of the assessee Stone C.J. observed :

"Deeming" a past event or thing to be something other than what it was or is, may be an interference with the course of nature, since it creates artificial date in the place of existing fact. But it is not in my opinion a retrospective changing of the statute law.

23. I respectfully agree with these observations, of Stone C.J. as to the meaning and effect of the words "shall be deemed."

24. To my mind, having regard to the scope and object of the Act, S. 2, High Court Act, does no more than define the jurisdiction of this Court. Sub-section (a) of this section defines the jurisdiction in relation to persons and territory while sub-s. (b) defines the jurisdiction in relation to subject-matter. In *Daulat Singh v. The State* (1 M.B. L.R. 229 : AIR 1950 M.B. 112 F.B.), I pointed out that the jurisdiction of the Madhya Bharat High Court which would ordinarily have been confined to cases pending at the time of the establishment of the Court was extended to those pending in the State Courts on the date on which the States were in the Union because the Madhya Bharat High Court was established some months after the administration of the integrating States was taken over by the Raj Pramukh. Learned counsel for the appellant contested this view by saying that as under the principle of International Law relating to State Succession, the State High Courts would have continued to function until the establishment of the Madhya Bharat High Court, and as the amended S. 35 of the Ordinance, 2 of 1948, and S. 37, High Court Act also made it possible for these State High Courts to function, the object of S. 2 (b) could not be simply to give jurisdiction to the Court over the cases mentioned in S. 2 (b). Counsel for the appellant, therefore, sought to infer that the object of S. 2 (b) of the Act could be no other than to give the Act retrospective operation. This argument of the learned counsel on behalf of the appellant does not take into account certain material facts, which, in my opinion, cannot be ignored. Section 35 of the Ordinance, before it was amended provided that on the taking over of the administration of any State by the Raj Pramukh, the tribunal or any authority functioning as the High Court in that State shall cease to exist. The several State High Courts having been thus forbidden to exercise jurisdiction in any matter by a law of the new Sovereign Authority, it cannot be maintained that these Courts could function under the principle of international law invoked by the counsel for the applicant. For, even under that principle, the laws of the old Sovereign Authority continue only until they are altered or changed by the new Sovereign Authority. It, therefore, became necessary to give the newly created Superior Court jurisdiction in respect of all proceedings pending in any State on the date on which the State is included in the United State and over such proceedings arising in the said State, after that date but before the establishment of this Court. As a matter of fact, the several State High Courts did, however, continue to function until the establishment of the High Court by the Ordinance. As S. 35 of the Ordinance rendered illegal the functioning of these Courts, it then became necessary to

validate it. The amended S. 35 of the Ordinance and S. 37 of the Act purport to do this. Section 37 of the Act does not affect the meaning of S. 2 (b) which is simply to define the jurisdiction of the High Court. Nor does S. 2 (b) with this meaning become one overlapping with S. 37 of the Act which merely makes a provision for the abolition of the several State High Courts, the validation of their existence in the period between the inclusion of the States in the Union and the establishment of the Madhya Bharat High Court, and for the transfer of the records of cases pending in the several Courts so abolished to the High Court for disposal.

25. In my opinion the real question in the appeal before us is as to the scope and ambit of S. 26 of the Act and not as to the date as from which the High Court Act is to be taken to have been the law. It is whether the language of S. 25 (1) of the Act covers the decisions of a Division Bench of the High Court made before the Act came into force on 18-1-1949. As I have stated previously, the right of appeal under S. 25 was given for the first time by the High Court Act. Prior to it, the decisions of a Division Bench of the High Court were final under Ordinance 2 of 1948. The question under consideration, therefore, falls within the principle laid down by the Privy Council in AIR 1927 242 (Privy Council) I referred to this case in some detail in *Daulat Singh v. The State* (1 M.B. L.R. 229 : AIR 1950 M.B. 112 F.B.). I will here only quote again the principle laid down by their Lordships of the Privy Council. The Privy Council observed :

.....Provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force it must be clearly so provided.

26. The question, therefore, is whether there are any express words in S. 25 of the Act to show that the section is to apply to the decisions of a Division Bench made before the Act came into force and final at that date. Or again whether it is a necessary implication of the language of S. 25 to make it applicable to such decisions. I do not find in the language of S. 26 either express words or the necessary implication to compel me to hold that the section is to apply also to decisions final at the date of the coming into force of the Act.

27. This section read with S. 2 (b) of the Act does not lead to any definite conclusion one way or the other. The combined effect of these two sections is to state in general terms that a decision given by a Division Bench of this Court in the proceedings mentioned in S. 2 (b) is subject to certain conditions, appealable to a Full Bench. This is not an express provision making the decisions of a Division Bench final at the date when the Act came into force appealable. Nor is it the necessary implication of the two sections that such decisions are appealable. For, it does no violence to the language of the two sections if S. 25 of the Act is taken to apply only to decisions given after the Act came into force. In *Daulat Singh v. The State* (1 M.B. L.R. 229: AIR 1960 M.B. 112 F.B.), I referred to the well-known cases *Colonial Sugar Refining Co. Ltd. v. Irving* (1905 A.C.

369: 74 L.J. P.C. 77) and of *Moon v. Durden* (1848-2 EX. 22) to show that in these cases the Privy Council and the Court of Exchequer declined to infer retrospective operation so as to affect vested rights from a language which was much more specific than the language of Ss. 2 (b) and 25, High Court Act.

28. I should have thought it impossible successfully to contend the contrary view of the language of these, two sections of the Act. But during the courser of his argument learned counsel for the appellant asked as to look into these leading cases and said that the language of the statutes which were considered in those cases was not so strong as in the language of Ss. 2 (b) and 25, High Court Act. I am unable to accept this reading of the learned counsel. In *Colonial Sugar Refining Co. v. Irving* (1905 A.C. 369: 74 L.J. P.C. 77) the strong language consisted in S. 39 (2) (b), Commonwealth Judiciary Act, 1903, on the basis of which it was contended that no appeal lay to the Privy Council from the decision of the Supreme Court of Queensland. Section 39 (2) (b) provided:.

Every decision of the Supreme Court of a State, or any other Court of a State, from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be final and conclusive except so far as an appeal may be brought to the High Court.

29. Inspite of the use of the words "every decision" and of the words "from which at the establishment of the Commonwealth an appeal lay to the Queen in Council" and further of the words "shall be final and conclusive" the Privy Council held that the Judiciary Act is not retrospective so as to take away a right of appeal to the King in Council in a suit pending when this Act was passed and decided by the Supreme Court afterwards. In *Moon v. Durden* (1848-1 Ex. 22), S. 18, Gaming Act was under interpretation. It contained the words "no suit shall be brought or maintained in any Court of law or equity for receiving any sum of money, etc." The words "or maintained" would ordinarily have been held to be applicable to a pending suit. Still the Court held that the section did not apply to pending suits. I do not see such clear and specific language in Ss. 2 (b) and 25, High Court Act and a fortiori these sections cannot be construed so as to deprive of the existing finality decisions which when the High Court Act came into force were final.

30. For all these reasons, I still think that the view taken by the Full Bench in *Daulat Singh v. The State* (1 M.B. L.R. 229: AIR 1950 M.B. 112 F.B.) the decisions of a Division Bench made before the High Court Act came into force are not appealable under S. 25, is correct. As in the present case the decision under appeal was given by a Division Bench before the High Court Act came into force, it follows that the preliminary objection of the learned counsel for the respondents as to the competency of this appeal must be upheld and this appeal fails. As the appeal is being dismissed on a preliminary point I think the appellant should pay to the respondents half of the full costs of this appeal.

Shinde, J.

31. This is a special appeal under S. 25 (1), High Court of Judicature Act, 8 of 1949. The material facts of the case out of which this appeal has arisen are as follows; One Seth Gulabchand s/o Gambhirmal Tongya filed a suit on the original side of the Indore High Court against Seth Kudilal s/o Govindram and Sethani Basantibai w/o Seth Govindram Sekearia for specific performance of an agreement dated 28-2-1941 made between the plaintiff and the deceased Seth Govindram Seksaria or in the alternative for damages to the amount of Re. 15,00,000. The suit was decreed by Sanghi J. Against this decree appeals were filed by both the parties. A Division Bench of this Court allowed the appeal of the defendants and dismissed the suit of the plaintiff on 2-12-1948. Against the decree and judgment of the Division Bench, this special appeal has been preferred by the plain tiff appellant on 31-3-1949.

32. The learned counsel for the respondents has raised a preliminary objection that as the appeal was decided on 2-12.1948, the decision of the Division Bench has become final under Ordinance 2 of 1948, and consequently the High Court of Judicature Act, 8 of 1949, which came into force on 18-1-1949, cannot deprive the decision of 2-12-1948 of its finality. Hence this appeal cannot be entertained. The learned counsel for the appellant argues that although the High Court of Judicature Act 8 of 1949, came into force on 18-1-1949, by the operation of S. 2 (b) of the said Act it has a retrospective effect and hence by legal fiction it must be presumed that the Act came into force on 16-6-1948, when Indore was included in the United State of Gwalior, Indore and Malwa. Consequently, S. 25 of the High Court Act is applicable to this case and this appeal, therefore, is perfectly valid.

33. Before proceeding to examine the validity of the preliminary objection it is necessary to sketch the history of events, which ultimately led to the passing of the High Court of Judicature Act, 8 of 1949, so that the point at issue may be appreciated in its proper perspective.

34. On 22.4.1948, the rulers of the States of Gwalior, Indore and certain other States in Malwa agreed to unite and integrate their territories into one State with a common executive, legislature and judiciary and to call it The United State of Gwalior, Indore and Malwa. In compliance with Art. 6 of the Covenant, Indore State merged its territories in the United State on 16-6-1948. To provide for the establishment of a High Court of Judicature for the said United State, ordinance 2 of 1948 was promulgated by the Rajpramukh, which came into force on 29-7-1948. This Ordinance was followed by the High Court of Judicature Act Samvat 2005, which came into force on 18-1-1949.

35. Ordinance 2 of 1948 provided no appeal against the decision of a Division Bench. But the High Court of Judicature Act, 8 of 1949 incorporated a new section viz., S. 25 and thereby provided for an appeal against the decision of a Division Bench in matters both civil and criminal. The learned counsel for the respondents contends that as the judgment of the Division Bench was delivered on 2-12-1948, it became final as there was no appeal provided against the

decision of a Division Bench under ordinance 2 of 1948. The learned counsel for the appellant argues, on the other hand, that by the operation of S. 2 (b), High Court of Judicature Act, the Act has a retrospective effect and hence S. 25 of the Act is applicable even to those cases, which were decided finally before the High Court of Judicature Act came into force.

36. It is evident from the contentions of the learned counsel that the determination of the question as to whether S. 25 is applicable to the case under appeal or not depends upon the construction of S. 2 (b) of the High Court of Judicature Act. It is essential, therefore, to examine some cardinal rules of construction applicable to statutes. It is a well established rule of construction, that no statute, unless it be a statute dealing with the procedural law, shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. Another rule of construction is that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. A third rule of construction is that a statute is not to be construed to have a greater retrospective operation than its language renders necessary. (Vide Maxwell on Interpretation of Statutes, 9th Edn., pp. 221 and 222). These rules of construction of statutes have been so well established that it is hardly necessary to cite any other authority.

37. It is an admitted fact that the judgment under appeal was delivered before the High Court of Judicature Act came into force. The argument so ably advanced by the learned counsel for the appellant can briefly be stated thus: Although the Act came into force on 18-1-1949, by the operation of S. 2 (b) it is to be presumed that it came into force in this particular case on 16.6.1948, when the Holkar State was included in the United State. Section 2 (b), High Court Act, on which so much reliance is placed by the learned counsel for the appellant, read thus:

This Act shall apply to all criminal and civil proceedings, including those under testamentary, intestate, matrimonial, divorce and insolvency jurisdiction, pending in the Courts in any State on the date on which the State is included in the United State and to such proceedings, arising in the said State, after those dates.

38. The learned counsel for the appellant put special emphasis on the words pending in the Courts in any State on the date on which the State is included in the United State and strenuously argued that as the case under appeal was pending on 16-6.1948, this Act applies to this case. He goes a step further and contends that the legislature intended that the High Court of Judicature Act was to be deemed to have come in force on the date on which the State was included in the United State. An analysis of this argument leads to the conclusion that all judicial proceedings (except perhaps orders not inconsistent with the Act) taken during the life time of the Ordinance are a nullity. If that be the case, the

decision of the Division Bench under appeal becomes a nullity and hence the appellant cannot prefer an appeal against that decision. Instead of filing an appeal against the decision of the Division Bench he should have requested the Court to proceed with the case from the stage at which it stood on 39-7-1918. The learned counsel for the appellant does not, however, question the validity of the said decision. He only claims the benefit of S. 25, High Court Act as the case under appeal was pending on the date on which Indore was included in the United State, The procedure adopted by the appellant is thus inconsistent with the stand taken by him.

39. As a corollary it follows from the same proposition that the High Court was established anew. But the High Court of Judicature Act 8 of 1949, states clearly in the preamble that the object of the Act was to provide for the continuance of the High Court of Judicature established under ordinance 2 of 1948. That a preamble of a statute can be referred to, to ascertain the object of an enactment is a proposition which cannot be disputed. Maxwell on Interpretation of Statutes summarises the proposition as follows:

A preamble of a statute has been said to be a good means of finding out its meaning and as it were a key to the understanding of it, and as it usually states, or professes to state, general object and intention of the legislature in passing an enactment it may be legitimately consulted to solve any ambiguity or to fix the meaning of the words which may have more than one or to keep effect of the act within its real scope whenever the enacting part is in any of these respects open to doubt. (Maxwell on Interpretation of Statutes, page 46).

40. It is, therefore, quite clear that the preamble can be referred to find out the object of the Act. As the object of the Act is to provide for the continuance of the High Court established under ordinance 2 of 1948, construction of S. 2(b), which leads to the conclusion that the High Court is established anew cannot be correct. This construction also offends against the provisions of S. 40, High Court Act, in so far as the proviso to S. 40 specifically states that the High Court established under the said Ordinance shall continue to exist and function as the High Court established under this Act. As a general rule the grammatical and ordinary sense of the words is to be adhered to; but if that were to lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency. (Vide Maxwell on Interpretation of Statutes, 9th Edn., at page 5). On the same subject Maxwell further comments :

It is a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular, that is they must be understood as used with reference to the subject matter in the mind of the legislature, and limited to it. (Vide Maxwell on Interpretation of Statutes, 9th Edn., page 63).

Mr. Herbert Broom, in his noted book of Legal Maxims, has expressed his opinion on the subject in the following words:

In interpreting an Act of Parliament likewise it is not always a true line of construction to decide according to the strict letter of the Act; but subject to the remarks already made, the Courts may consider what is the fair meaning and expound it differently from the letter, in order to preserve the intend. The meaning of particular words, indeed, in statutes, as well as in other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used and the object that is intended to be attained. (Vide Broom's, Legal Maxims, 10th Edn. page 467).

The construction, tried to be put on S. 2 (b) of the Act by the learned counsel for the appellant, leads to inconsistency in so far as it conflicts with the provisions of S. 40 of the Act and also with the intention clearly expressed in the preamble. The argument, addressed by the learned counsel for the appellant, therefore, does not carry conviction.

41. Turning now to examine the language of S. (2) (b) itself, it has to be determined whether the words pending proceedings include also those proceedings, which, though pending on 16-6-1948, have been finally decided under Ordinance 2 of 1948. As a general rule a party who has acquired vested rights under the repealed law is not deprived of them. Maxwell referring to this matter opines that:

Although the effect of repealing a Statute is to obliterate it as completely as if it had never been passed, this rule must be taken with the qualification that it does not deprive persons of vested rights acquired by them in actions duly determined under the repealed law. (Maxwell on Interpretation of Statutes at page 7)

That final orders create vested rights is a proposition, which cannot be controverted. The point came up for determination before their Lordships of the Privy Council in AIR 1927 242 (Privy Council) Their Lordships held that provisions which if applied retrospectively, would deprive of their existing finality, orders which when the statute came into force, were final, are provisions which touch existing rights. It cannot be, disputed, therefore, that final orders create existing rights.

42. The first canon of construction stated above lays down that in order to give retrospective operation to a statute, it is necessary that the statute should make an express provision or its language should convey a necessary and distinct implication to that effect. This rule of construction has been uniformly followed in a number of cases both in India and England. (Tide Colonial Sugar Refining Co., Ltd. v. Irving, (1905) A.C. 369 : (74 L.J. P.C. 77); Dila Ram and Others Vs. Atma Ram and Others, (1948 A.L.J. 652 F.B.); D.C.G. Mills Co., Ltd. v. Income tax Commr. Delhi, AIR 1927 P.C. 342: (9 Lab. 231).) Examining the language of S. 2 (b) in the light of this canon, there is no doubt that there is no express

provision in the section to the effect that proceedings pending on 16-6-1948, but determined before the Act came into force, are also to be included in the words "pending proceedings." The language of the section does not raise any such necessary and distinct implication either. In *Moon v. Durden* (1848-2 Ex. 22), it was held that although the Gaming Act of 1835 made all wagers void and enacted that no action should be brought or maintained for a wager it applied only to wagers made after the Act was passed : *Moon v. Durden*, (1848) 2 EX. 22. Although the Gaming Act enacted that no action should be maintained for a wager, it was held that the Act is applicable only to wagers made after the Act was passed. The word "maintain" strongly suggests that no action was to be entertained after the Act was passed; even then retrospective effect was not given to the, Act. The Gaming Act, 1898, prevented a betting agent from recovering from his employer sums paid for bets and yet it was held that the Act did not prevent recovery of money where the sum had been paid before the passing of the Act (*Knight v. Lee*, (1893) 1 Q.B. 41 : 62 L.J. Q.B. 28). Another instance of strong bias against giving retrospective effect to a statute is furnished by the *Colonial Sugar Refining Co., Ltd. v. Irving* (1905 A.C. 369 : 74 L.J. P.C. 77). Sub-section (2) of S. 39 of the Judiciary Act, 1903 provides that the several Courts of the States in Australia shall be invested with federal jurisdiction in all the matters above mentioned except those specified in S. 38 subject to certain conditions and restrictions, one of which is that every decision of a Court of a State from which, at the establishment of the Commonwealth, an appeal lay to the Queen-in-Council, shall be final and conclusive except so far as an appeal may be brought to the High Court. In spite of the fact that the Judiciary Act, 1903, clearly and expressly stated that every decision of a Court of a State from which, at the establishment of the Commonwealth, an appeal lay to the Queen-in-Council, shall be final and conclusive, it was held by the Privy Council that the Judiciary Act is not retrospective by express enactment or by necessary intendment: *Vide Colonial Sugar Refining Co., Ltd. v. Irving*, (1905) A.C. 369: (74 L.J. P.C. 77). In S. 2 (b) there are no such words as would even indicate that the legislature intended to include in pending proceedings, those cases which had been finally decided under Ordinance 2 of 1948.

43. The second rule of construction already stated does not permit a statute to be construed retrospectively so as to impair an existing right unless that effect cannot be avoided without doing violence to the language of the enactment. Can S. 2 (b) be so construed as to exclude existing rights without doing violence to the language of the enactment? Can S. 2 (b) be so construed as to exclude existing rights without doing violence to the language ? If existing rights are excluded from the purview of the pending civil proceedings it would be doing no violence to the language of the section whatsoever. Pending civil proceedings can be safely interpreted to mean only those which had not been determined under the Ordinance. I see no harm, therefore, in interpreting S. 2 (b) so as to exclude orders which had become final before the Act came into force.

44. According to the third rule of construction stated above, retrospective effect

of a statute may be partial in its operation. The language of S. 2 (b) does not render it necessary to give retrospective effect to S. 2 (b) so as to include even decided cases in pending proceedings.

45. It must also, be borne in mind that the legislature by enacting S. 2 (b) could not have intended to do injustice. Maxwell referring to the question of presumption against intending injustice has stated his opinion as follows :

Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. (Vide Maxwell on Interpretation of Statutes, 9th Edn., p. 207).

46. On the same subject at page 223 Maxwell writes as follows :

Every statute, it has been said, which takes away or impairs vested rights 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 presumed, out of respect to the legislature, to be intended not to have a retrospective operation.

Legislature, therefore, cannot be presumed to have intended to do injustice to those who have already acquired vested rights by giving retrospective operation to S. 2 (b). Apart from this, the Act was intended to maintain the continuity of the proceedings started under the Ordinance. It is clear both from the preamble and S. 40, High Court Act.

47. For all these reasons I am convinced that the words "pendings proceedings" occurring in S. 3 (b) do not include cases, which had been determined and had thus become final under the Ordinance.

48. Proceeding now to consider why S. 2 (b) was so framed as to include proceedings which were pending on the date on which the State was included in the United State, I find that the reason is not far to seek. If S. 2 (b) had not extended the jurisdiction of the Act to proceedings pending on the date on which the State was included in the United State, the effect clearly would have been to give the Act prospective operation. The High Court Act by Ss. 23, 24 and 25 confers certain rights of appeal. That rights of appeal are matters of substantive right is now a well established law. (Vide the Colonial Sugar Refining Co. Ltd. v. Irving, (1906 A.C. 369 : 74 L.J.P.C. 77) ; Jai Jai Ram and Others Vs. Janki and Others ; Nagendra Nath Bose Vs. Mon Mohan Singha Roy and Others, ; AIR 1928 627 (Lahore) and In re In Re: Vasudeva Samiar alias Vasudeva Pillai, Section 87, High Court Act, only provides for the transfer of cases pending before the High Court or the tribunal, or authority exercising powers of the High Court in component States to the High Court of the United State for disposal; but it does not state which High Court Act is to govern these cases. If, therefore, the High Court Act had not been made applicable to the proceedings pending on the date

on which the State was included in the United State, it might have been argued that as the proceedings had started before the High Court Act came into force, the High Court Act or the like measure applicable to these proceedings is the one, which was in force in the component State, in which the proceedings had started because rights of appeal being matters of substantive right, the High Court of Judicature Act, VIII [8] of 1949, cannot apply retrospectively in the absence of a specific provision or necessary and distinct implication. The High Court acts in the component States, inter alia, provided as a general rule either for an appeal before a Judicial Committee or for a review by the Ruler. To avoid this contingency, the legislature introduced S. 2 (b), so that the High Court of Judicature Act, viii [8] of 1949, could be uniformly applied to all the proceedings that came before the High Court.

49. To sum up, the construction Suggested by the learned counsel for the appellant is inconsistent with the intention of the legislature and also conflicts with the provisions of S. 40 of the Act. According to the well established rule of constructions statute can only be given a retrospective operation if the statute provides for it expressly or by necessary and distinct implication. Section 2 (b) neither provides expressly, nor by necessary and distinct implication, for including in pending proceedings, cases, which had become final under ordinance 2 of 1946. It does no violence to the language of S. 2 (b) if cases pending on 16-6-1948, but decided finally before the High Court Act came into force, are excluded from the words "pending proceedings." It is quite in keeping with canons of construction of statutes to give partial retrospective effect to a statute. When the language of a statute is capable of two constructions, that construction can be adopted which is in keeping with justice unless the intention of the legislature to the contrary is manifested in express words Section 2 (b), therefore, cannot be so construed as to deprive persons of their vested rights. As the object of the High Court Act is to maintain continuity of the High Court established under ordinance 2 of 1948, it would not be the intention of the legislature to disturb the rights acquired during the life time of the Ordinance.

50. For the reasons given above, I am clearly of the opinion that S. 2 (b), High Court of Judicature Act, does not make the Act applicable to those cases which had been determined and thus become final under ordinance 3 of 1948. In the result I agree with the conclusions arrived at by my learned brothers Dixit, Mehta and Chaturvedi JJ. in Special Criminal Appeal No. 1 of 1949, *Doulatsingh v. State*, 1 M.B. L.R. 229 : (A.I.R. 1950 M.B. 112 F.B). The preliminary objection raised by the learned counsel for the respondents, therefore, must prevail. The appeal fails and should be dismissed. As to costs, I agree with my learned brother Dixit J. that as the appeal is being dismissed on a preliminary point the appellant should pay to the respondents only half of the amount of full costs of this appeal.

Chaturvedi, J.

51. As a member of the Full Bench responsible for the decision which has given

rise to the present reference, I have no hesitation in differing now from what I said then. In order to appreciate the true significance of the question raised in this Special Appeal we have to bear in mind the following dates :

6-11-1947--Suit instituted in the Indore State High Court (Original Side).

22-4-1943--Covenant signed, by the Rulers of the Covenantee States for integrating their States in Madhya Bharat.

11-6-1948--Plaintiff's suit decreed by Sanghi J. 16-6-1948. Raj Pramukh of Madhya Bharat took over the administration of Indore State.

19-6-1948--Ordinance 2 of 1948 for the establishment of a High Court in Madhya Bharat gazette.

29-7-1943--Ordinance 2 of 1948 came into force and the Madhya Bharat High Court came into existence.

24-8-1948--Defendants filed their appeal to the Division Bench of the Madhya Bharat High Court against the decision of Sanghi J.

2-12-1948--Defendant's appeal allowed, Sanghi J.'s decision reversed and plaintiff's suit dismissed.

18-1-1949--Madhya Bharat High Court of Judicature Act (8 of 1949) came into force repealing the High Court Ordinance (2 of 1948) and under S. 25 giving a new right of Special Appeal against a decision of the Division Bench under certain circumstances.

31-3-1949--Appellant plaintiff filed this appeal against the decision of the Division Bench purporting to be under S. 25, Madhya Bharat High Court of Judicature Act (8 of 1949).

52. It is well settled now that the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings connected by an intrinsic unity: *Sadar Ali and Others Vs. Doliluddin Ostagar*, . In other words, the right to enter the Superior Court in appeal arises at the date of the institution of the suit. According to the law in force in Indore State on 6-11-1947, the parties had no right of second appeal, and the decision of the Division Bench of the Indore State High Court was final. The Madhya Bharat Ordinance 2 of 1948, did not disturb this arrangement and under the provisions of the said Ordinance the decision of the Division Bench of this Court on 2-12-1948, was also final. There was no further right of appeal to any party.

53. On behalf of the appellant, learned Advocate General contends that the Madhya Bharat High Court of Judicature Act (8 of 1949) disturbed the existing finality of the decision of the Division Bench and created a new right of appeal by S. 25 which did not previously exist.

54. Now, it is conceded on all sides that the initial presumption is that an Act is not retrospective; that it deals with future and not with past events, and strong

and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. In the absence of clear words to that effect, a statute will not be considered as taking away a vested right acquired before it was passed. "It is not in accordance with sound principles of interpreting statutes to give them a retrospective effect", observed the Privy Council in *Muhammad Abdus Samad v. Quarban Hussain*, 26 ALL. 119 at p. 129 : (31 I.A. 30 P.C.).

55. In *Modern Rly. Co. v. Pye*, (1861) 30 L.J.C.P. 314 at p. 318, Earle C.J. said :

Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation unless the intention of the Legislature that it should be so construed is expressed in clear, plain and unambiguous language.

56. So if an Act is not clearly retrospective, if there is any doubt upon the point, the intention of the legislature must be taken to have been that it should not be retrospective.

57. Learned Advocate General, however, contends that the language of SS. 2 (b), Madhya Bharat High Court of Judicature Act (VIII [8] of 1949) is unambiguous and should be so construed as giving the Act a retrospective operation, The said S. 2 (b) is as follows :

This Act shall apply to all criminal and civil proceeding.....pending in the Courts in any State on the date on which the State is included in the United State, and to such proceedings, arising in the said States, after those dates.

58. Now, the wording of this section is quite clear to show that it deals only with future and not with past events. "The Act shall apply" clearly means that the Act shall apply in future (i.e., after its coming into force) to the proceedings. Of course, it says that the Act shall apply to those proceedings which were pending in the Courts in any State on the date of its merger in Madhya Bharat; but it does not say on what particular date it shall apply to those proceedings. The words "date of merger relate to and qualify the Civil and Criminal Proceedings" not the "application" of the Act, It could have said that the Act would apply with retrospective effect from the data of merger to those proceedings which were pending in the Courts of any State on those dates. It has not clearly mentioned it in this form. It does not also any that the existing finality of an unascertained number of decisions of the Division Bench will now be disturbed. Has the Legislature exhibited any such intention in clear terms? In my opinion, there is nothing in S. 2 (b) or in any other section either expressly or by necessary intendment to show this intention. The Legislature, if it intended the Act to have a retrospective effect carefully avoided expressing the intention in unmistakable terms. It refrained even from the ambiguous hint that the Act might have a retrospective effect.

[59] In AIR 1943 75 (Federal Court) it was observed :

It is necessary to refer to a certain ambiguity in the use of the expression "retrospective operation. It was observed by Buckley L.J. in *West v. Gwynne*, (1911) 2 Ch. at pp. 11-12 : (80 L. J. Ch. 578). Retrospective operation is one matter. Interference with existing rights is another, if an Act provides that as at a past date the law shall be taken to have been what it was not--that I understand to be retrospective..... The question here is as to the ambit and scope of the Act and not as to the date from which the new law is to be taken to have been the law.

60. Section 2 (b), High Court of Judicature Act (VIII [8] of 1949) only extends the jurisdiction of this High Court to all criminal and civil proceedings pending in the Courts of merged States on the dates of merger. It does not do any thing more. It does neither give retrospective operation i.e., neither provides that as at a past date the law shall be taken to have been what it was not, nor is it intended to interfere with the existing rights.

61. Thus the view taken by the Full Bench in *Daulat Singh v. State*, 1 M.B.L.R. 929 : (A.I.R. 1950 M.B. 112 F.B.), to which I was a party, does not need revision. In that decision, my brother Dikshit J. and also myself, traced the history of the Madhya Bharat High Court and Act, viii [8] of 1949, and came to the conclusion that the effect of S. 2 (b) of the Act is the same as that of the similarly worded S. 4 (b) of the Ordinance, II [a] of 1948, and that the re-enacted words and expressions must be read in the same sense as in the previous enactment. Learned Advocate-General, in his arguments, took objection to this mode of approach and strenuously urged that it is not open to us to consider the previous history of the matter. I think it is too late in the day to raise this sort of objection. It is now the universal practice when, interpreting a new Act, any clause of which gives rise to any difficulty, to consider the Act whose place it takes, and I am not aware if the correctness of this practice has ever been seriously challenged.

62. In 1882 before a Full Bench of five Judges of Allahabad High Court in *Gopal Pande v. Parsotamdas*, 5 ALL. 121: (1882 A.W.N. 128 F.B.) the question for determination was : whether on hypothecation by an occupancy tenant was or was not a "transfer" within the meaning of S. 9 of the N.W.P. Rent Act of 1873. The following observations of Mahmood J. at p. 135 are both opposite and weighty :

In considering the arguments addressed to us as to the policy of the Rent Act, I think we are bound, as much as Courts of Justice in England to recognise the rule of construction which prohibits Judges from taking into consideration the history of an individual clause in an Act, or the policy of Government with reference to any particular legislation. Nor can we, in interpreting the Act, seek any help from the statement of objects and reasons which accompanied the bill, nor from the debates in the Legislative Council, or any other proceeding which preceded the passing of the Act. It is for the Legislature to consider and determine whether the words which they employ in framing the Acts will give

effect to the object and policy which the State has in view. We are no doubt at liberty to consider the general state of the law which prevailed in part materia prior to the enactment of any statute under consideration. In the present case all we can refer to for the purpose of comparison to ascertain the policy of the Legislature consists of the law which preceded Act X [10] of 1859, the provisions of that Act itself, and, lastly, the various authoritative judgments passed under that Act, in regard to the right of occupancy.

63. That this is the correct enunciation of the principles of interpretation admits of no doubt (49 ALL. 25 at p. 47). In determining such questions whether the Musalman Waqf Validating Act of 1913 was retrospective, whether the Transfer of Property Amendment Acts, Tenancy Law Amendment Acts, new clauses in the Letters Patents of various High Courts were retrospective or not, the High Courts in India have invariably considered the former state of the law in order to arrive at what it was that the Legislature had contemplated. It is unnecessary to multiply authority for this proposition. Reference to former state of law has been in such cases the rule rather than the exception.

64. I have, therefore, no hesitation in holding that the previous history of the matter was rightly considered in Daulat Singh v. State, 1 M.B. L.R. 229 : (A.I.R. 1950 M.B. 112 F.B.) and that the construction put up on S. 2 (b) Madhya Bharat High Court of Judicature Act (Act VIII [8] of 1949) in that Full Bench judgment was the only legal construction that could be put.

65. For the reasons stated above I am of opinion that the preliminary objection should prevail and the appeal be dismissed.

Kaul, C.J.

66. A preliminary objection was taken to the hearing of this appeal which was preferred under S. 25, High Court of Judicature Act, viii [8] of 1949 (Madhya Bharat).

67. We heard the counsel for the parties on the objection thus raised and by a short order, dictated at the close of argument we uphold the objection. The statement of detailed reasons for the view taken by us was postponed to a later date we proceed to do so now.

68. The following statement of facts will show how that preliminary objection arises.

69. After India become a dominion the Government of India set before themselves with regard to the Indian States the objective of integration of all the elements in the country in a free united democratic India. Their policy towards Indian States has, during the last 2 years, had this objective in view (White Paper on Indian States, July. 1948). In furtherance of this policy, the Rulers of the States of Gwalior Indore and certain other States in Central India entered into a Covenant for establishment of a United State comprising the territories of their respective States with a common Executive, Legislature and Judiciary. This

State when established was to be called the United State of Gwalior, Indore and Malwa (Madhya Bharat). The executive authority of the United State was to be exercised by the Raj Pramukh either directly or through officers subordinate to him. The Raj Pramukh was, not later than 16-6-1943 to execute on behalf of the United State an instrument of accession in accordance with the provisions of S. 6, Government of India Act, 1935. The Ruler of each Covenanting State was, under the provisions of the Covenant, to make over the administration of his State to the Raj Pramukh and thereupon all rights, authority and jurisdiction belonging to the Ruler which appertained or were incidental to the Government of the Covenanting States were to rest in the United State, A constitution for the United State was to be framed by an interim Legislative Assembly or a Constituent Assembly but until this could be done the Raj Pramukh was given the power to make and promulgate ordinance for the peace and good government of the United State. Any ordinance promulgated by the Raj Pramukh was to have like force of the law as an Act passed by the Legislative Assembly or the Constituent Assembly envisaged by the Covenant. The Covenant was signed by the Rulers of the Covenanting States and by the Secretary to the Government of India Ministry of States on behalf of the Government of India who concurred in the above Covenant and guaranteed all its provisions.

70. His Highness the Maharaja of Gwalior was chosen the Raj Pramukh of United State. On 19-6-1948, the Raj Pramukh in exercise of the powers conferred upon him by this covenant promulgated ordinance No. 2 of 1948, to provide for the establishment of a High Court of Judicature for Madhya Bharat. This Ordinance applied to the territories of every Covenanting State from the date of taking over the administration of such State as also to all persons within those territories over whom the Courts having jurisdiction in the Covenanting States forming part of the said United State had jurisdiction. It was further provided that the Ordinance shall apply to all criminal and civil proceedings including those under testamentary intestate, matrimonial, divorce and insolvency jurisdiction pending in the Courts in any State on the date on which the administration of the State was taken over by the Raj Pramukh (S. 4).

71. The administration of Holkar State was taken over by the Raj Pramukh on 16-6-1948. At this period there existed in Holkar State a High Court of Judicature which exercised original civil jurisdiction in respect of suits of a certain valuation. The suit out of which the present special appeal arises was heard by a learned Judge of Indore High Court in exercise of its ordinary original civil jurisdiction. It was a suit for specific performance of an agreement entered into between certain parties. It is sufficient for our present purposes to state that the claim was decreed on 11-6-1948, 5 days before the administration of Holkar State was handed over to the Raj Pramukh of Madhya Bharat. The High Court of Judicature established under ordinance 2 of 1948 was the highest Court of appeal and revision in the United State. It had jurisdiction to entertain and dispose of such appeals, revisions and other cases civil and criminal as it was empowered to do under that Ordinance or any enactment in force in the State (S. 22). Under the

then existing law both parties preferred appeals against the decision of the learned single Judge of Indore High Court. These appeals were heard and disposed of by a Division Bench of Madhya Bharat High Court by a common judgment on 2-12 1948. The defendants' appeal was allowed and the suit was dismissed the appeal preferred by the plaintiffs was also dismissed.

72. Under the Ordinance there could be no further appeal and but for the legislation to which reference will be made presently the Bench decision finally closed the matter.

73. Ordinance 2 of 1948 could remain in force only for six months from the date of its promulgation. Accordingly, there was passed by the Madhya Bharat Legislature, High Court of Judicature Act, VIII [8] of 1949. It came in force on 18-1-1949 when it was published in the Madhya Bharat Government Gazette. The preamble of the Act reads as follows :

Whereas it is necessary to provide for the continuance of the High Court of Judicature for the United State of Gwalior, Indore and Malwa (Madhya Bharat) established under Ordinance 2 of 1948 (Samvat 2005), It is hereby enacted as follows.

74. The Act, with certain additional provisions and some change in language at places, reproduced practically all the provisions of Ordinance 2 of 1948, which it repealed. It will be remembered as already stated, that Ordinance 2 of 1918, did not provide for any Special Appeal against a decision given by a Division Bench of the High Court in exercise of its appellate jurisdiction. Section 26 of Act VIII [8] of 1949, how ever, provided a Special Appeal to a Full Bench against a decree or an appealable order passed by the Division Bench of two Judges of High Court in the exercise of extra-ordinary or appellate civil jurisdiction.

75. Taking advantage of this provision in the new Act the present appeal was preferred.

76. Mr. Amin who appeared for the respondents raised the objection to which reference was made in the opening portion of this judgment that the appeal could not be entertained. His contention was that the decision of the High Court was given while Ordinance 2 of 1948 was in force that the Ordinance did not allow any further appeal and the rights of the parties with regard to the matter in dispute were finally settled by that decision. The subsequent Act according to his contention could not be given retrospective effect so as to create a right of appeal in a matter which was finally closed before the Act came into force and in respect of which the Ordinance gave no right of further appeal.

77. Mr. Chitale learned counsel for the appellants to whom we are indebted for an elaborate and able argument on the other hand relied on the provisions of S. 2 of the Act and strenuously argued that his client could take advantage of the provision relating to special appeal contained in S. 25 of the new Act. In short his case was that in the matter of appeals the Act has retrospective effect ; and that

a decision of a Division Bench of the High Court established under the Ordinance given in exercise of its appellate jurisdiction before the new Act came into force could after the passing of that Act be challenged by way of special appeal.

78. It may be mentioned at this stage that a Full Bench of Madhya Bharat High Court overruled this contention in *Daulatsingh v. State*, 1 M.B. L.R. 229 : (A.I.R. 1960 M.B. 112 F.B.). But on a representation made to the officiating Chief Justice that the view taken in that case required further consideration, it was ordered that the present appeal be heard by a Bench of five Judges. Accordingly a larger bench was formed and we heard the counsel for parties.

79-80. The argument of the appellants as presented by their Counsel may be summarised thus : In view of the provisions of S. 40 of Act VIII [8] of 1949, which repealed Ordinance 2 of 1948, and its amending Ordinances the decree under appeal should, in law be deemed to have been passed under the new Act. That in interpreting any provisions of Act VIII [8] of 1949, if the language is clear any reference to the law as it existed before the Act was passed must be ruled out of consideration, and the provisions of the repealed Ordinances, cannot be looked into (1) either to show that the decree under appeal had become final or (2) to establish that S. 2 (b) of the new Set was passed with the same object and for the same purpose as S. 4 (b) of the repealed Ordinance 2 of 1948. That Act VIII [8] of 1949, was retrospective in its operation and even if the decree under appeal had become final under the Ordinance, it could be challenged by way of special appeal under S. 25 of the new Act read with S. 2 (b) which gave it retrospective effect. That we cannot read into S. 25 any words like "provided the decision had not become final" which are not there.

81. I will deal with all these arguments though not necessarily in the order in which they have been stated above. To begin with, I am clear, that the argument that while interpreting any section of Act VI [6] of 1949, if the language is clear we cannot properly refer to the repealed Ordinance, stated in this bald form, is not sound. In support of his contention Mr. Chitale invited our attention to a number of passages in Maxwell on the Interpretation of Statutes e.g.

"If the words of the Statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature" (page 1) or "when the language is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise" (page 3) or "the rule of construction is to intend the legislature to have meant what they have actually expressed."

It matters not in such a case, what the consequences may be (page 4) and certain other passages to similar effect. He also referred to *Tumahole Bereng v. The King*, AIR 1949 P.C. 172 : (50 Cri. L.J. 642), *MI. Ramanandi v. Mt. Kalawati*, AIR 1928 P.C. 2 : (7 Fat. 221) and to certain other authorities laying down the same general rule on construction of statutes. He further invited our attention to

the following observation of Lord Watson in *Bradlaugh v. Clarke*, (1883) 8 A.C. 354 : (52 L.J.Q.B. 505) (from the English and Empire Digest).

It appears to me to be an extremely hazardous proceeding to refer to provisions which have been absolutely repealed, in order to ascertain what the legislature meant to enact in their room and stead.

82. Before considering these cases I should like to observe, that the passages relied on from Maxwell are all right so far as they go but were never intended by the author to contain the whole of the law on the subject, It would be easy to cite an equal number of passages from the same author to show that the statement of the law contained in those passages must in order to get at the learned author's correct meaning, be read along with what he has said at other places in the book, For instance we find it stated at p. 22.

The literal construction then, has, in general, but *prima facie* preference to arrive at the real meaning, it is always necessary to get an exact conception of the aim, the scope and object of the whole Act to consider according to Lord Coke: (1) What was the law before the Act was passed (2) what was the mischief or defect for which the law had not provided (3) what remedy Parliament has appointed and (4) the reason of the remedy.

According to another authority

in order properly to interpret any statute it is as necessary now as It was when Lord Coke reported *Heydon's case* to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided to cure the mischief (Lindley M.R. In *re Mayfair Property Co.*, (1898) 2 Ch. 28 at p. 35: (67 L.J. Ch. 337).

83. It will thus be seen that citation of such passages stating general propositions is not likely to be helpful I may further point out that the question for consideration before us is not what meaning the words of S. 25 of the Act bear but whether a decree which according to the respondent's contention had become final under ordinance II [2] of 1948 which was in force when it was passed, falls within the scope of the section relating to special appeal in the new Act by which that Ordinance was repealed. We have really to determine the effect of repeal of ordinance II [2] of 1948, and the effect of S. 25 of the new Act on the finality of a decision which but for the new Act could not be challenged by an appeal. For obvious reasons, it is idle to suggest that in such circumstances the provisions of the repealed ordinance cannot be referred to. In any appeal where an objection is raised as to its maintainability the first thing we have to consider is under what law the decision was given and naturally, therefore, we must refer to ordinance II [2] of 1948, It is one thing to say that the ordinance under which the decision was given having been repealed, we should, in view of S. 40 of the new Act deem the decree in question as one passed not under the ordinance but under the Act, and quite another, that you cannot refer to the ordinance for any purpose whatsoever not even to show whether a decision given

under it was open to appeal or if it was final and not open to challenge by any appeal under the provisions of the Ordinance. To accept this contention of the learned counsel would, mean, that we are precluded from ascertaining whether the action was concluded or not before the Ordinance ceased to be the law.

84. It may be conceded that the effect of the repeal without any express saving provisions is to wipe out the repealed law altogether. But it will be noted that all dicta laying down that rule make it clear that the repeal does not touch transactions which were finally closed, before the repeal took effect. It was said by Tindal C.J., in *King v. Godwin*, (1830) 6 Bing. 576 :

I take the effect of repealing a statute to be to obliterate it as completely from the records of the Parliament as if it had never been passed, and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.

To the same effect are the observations of Lord Tenterden in *Surtees v. Ellison*, (1829) 6 B. & G. 750. It has long been established that, when an Act of Parliament is repealed, it must be (except as to the transactions past and closed) as if it never existed. It will be noted that the general rule as to the effect of a repeal set out in the opening portion of this paragraph is independent of any provisions of the Interpretation Act which corresponds to our General Clauses Act. It is, therefore, essential that before we apply the new Act to any suit or proceeding which was commenced before it came into force, it should be determined, whether such suit or proceeding was still pending or if it was finally closed before the new Act became the law.

85. As already stated, reference was in the course of argument made to certain observations of Lord Sinha in *Mt. Ramanandi v. Mt. Kalawati* AIR 1928 P.C. 2 : (7 Pat. 221) and to *Tomahole Bereng v. The King*, AIR 1949 P.C. 172 : (50 Cri. L.J. 642).

Lord Sinha observed in *Ramanandi Kuer*'s case,

Where there is a positive enactment of the Indian legislature the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any considerations derived from the previous state of the law or of the English law upon which it may be founded.

Attention may, however, be drawn to the observations made by the same noble lord, only a few weeks later, in the case of *Abdur Rahim v. Abu Md. Barkat Ali*, AIR 1928 P.C. 16 : (65 Cal. 619), His Lordship said at p. 18 of the report :

It is a sound rule of interpretation to take the words of a statute as things stand and to interpret them ordinarily without any reference to the previous state of the law or the subject or the English Law upon which it is founded; but when it is contended that the legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously.

This brings home in a pointed manner the error of treating any single general proposition of law as embodying in itself the whole law, on the subject. I may well adapt for our present purpose language used elsewhere, that every general statement of the law, however, true in itself, yet, taken apart from other statements, made on the same subject which at once limit and complete it "becomes a snare to bind the intellect and misleading dogma." Perhaps the case that is most often cited in support of the contention put forward by the appellants learned counsel is *Bank of England v. Vagliano*, (1891) A.C. 107 at p. 114 : (60 L.J. Q.B. 145) where Lord Herschel observed :

I think the proper course is in the first instance, to examine the language of the Statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it un-altered, to see if the words of the enactment will bear an interpretation in conformity with this view.

But he took care to add,

I am, of course far from asserting that recourse may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the Code. If, for example, a provision be of doubtful import, such result would be perfectly legitimate. Or, again, if in a Code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one in relation to such instruments, the same interpretation might well be put upon them in the Code. I give these as examples only. They do not, however, exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground.

I have already stated the special ground which justifies a reference to the previous law in the present case. On the point under consideration we are concerned not so much with construing the language of S. 25 of the new Act as with determining the effect of repeal of Ordinance 2 of 1948, and the enactment of the new law on a decision given under the Ordinance which under the provisions of the Ordinance was final. This was a transaction which as the law then stood, was finally closed I am for the reasons given, of opinion, that not only is it legitimate to refer to the repealed ordinance to determine the scope of S. 25 of the new Act, but am further clear that it is impossible to come to a right conclusion on the matter under discussion without examining the previous law i.e. Ordinance 2 of 1948 and other Ordinances by which it was amended from time to time.

86. I will next consider whether, as contended by Mr. Chitale, the effect of the provisions" of S. 40 of the new Act is that the decree under appeal "should in law be deemed to have been passed under the new Act." Section 40 reads thus:

As soon as this Act comes into force Ordinance 2 of 1948 (Samvat 2005) of the United State together with its amending Ordinances, shall stand repealed.

Provided, however, that all notifications issued, powers conferred, jurisdiction assigned form prescribed, orders given, rules framed, appointments made, or actions taken under those ordinances shall, so far as they are not contrary or repugnant to the provisions of this Act be deemed to have been issued, conferred, assigned, prescribed, given, framed, made or taken under this Act and shall continue to exist unless and until superseded or amended expressly or Impliedly and the High Court established under the said Ordinance shall continue to exist and function as the High Court established under this Act.

87. The section, it will be seen, consists of two portions a main part and a proviso. The main part is, a repealing and the proviso a saving clause. The main part repeals ordinance 2 of 1948, together with its amending ordinances. From the time the repeal takes effect that the new Act comes into force. Then we have the proviso, which saves from the effect of the repeal all notifications issued, powers conferred, rules framed, appointments made, or actions taken under the repealed ordinances, and further lays down that they shall be deemed to have been issued, conferred, assigned, prescribed, given, framed, made or taken under the new Act. But this is subject to an important limitation, "so far as they are not contrary or repugnant to the provisions of this Act." Any orders given or actions taken which are contrary or repugnant to the provisions of the Act are not within the purview of the proviso. It was contended for the respondent that the section would not apply to decrees. Conceding, however, for the moment, that the decree under appeal is an order passed or an action taken under the ordinance, it is not covered by the proviso and cannot be deemed to have been passed under the new Act, because it is contrary to the provisions of that Act. The High Court passed a decree which under the repealed ordinance was final and could not under its terms be challenged by any appeal. Such a decree could not be passed by a Division Bench of the High Court in exercise of its appellate jurisdiction under the new Act. It is, therefore, contrary and repugnant to the provisions of the Act. The decree in question could, therefore, not be deemed to be passed under the new Act.

88. Another argument advanced on behalf of the appellants was that the High Court established by the Ordinance should be deemed to be established under the new Act. I may examine this contention at the stage, when we are dealing with S. 40. The last clause of the proviso to that section says that the High Court established under the said ordinance "Shall continue to exist and function as the High Court established under this Act." It is noteworthy that under the section the High Court is only to continue to exist and to function as the High Court established under the new Act. This is not the same thing as to say, that the High Court established under the Ordinance shall be deemed to have been established under the new Act. The High Court established under the ordinance existed under the old Constitution till the new Act came into force. With the repeal of the

ordinance the Constitution under which the High Court was brought into existence ceased, and but for some such provision as is contained in the latter part of the proviso to S. 40, it would come to an end and cease to function. But it was provided, that it shall continue to exist and to function as the High Court established under this Act. It cannot be said, however, that the High Court established under the repealed ordinance should be deemed to have been established under this Act--or that the High Court as constituted under Act viii [8] of 1949, should be deemed to have come into existence on the day that the first Madhya Bharat High Court was established under Ordinance 2 of 1948.

89. It was strenuously argued by Mr. Chitale that under S. 2 (b) the Act applied to all proceedings pending in the Courts in any State on the date on which the State was included in the United State and to such proceedings, arising in the States, after those dates. Thus the Act was made applicable to pending suits and proceedings, and was obviously given retrospective effect. There was, he contended, therefore, no reason why a decision given by a Division Bench of the High Court in exercise of its appellate jurisdiction, in a civil appeal which was pending in Indore High Court on 16-6-1948, when the administration of Holkar State was taken over by the Raj Pramukh of Madhya Bharat, be not open to challenge by way of special appeal under S. 25 of the Act.

90. Sections 2 and 25 on which the learned counsel relied read as follows :

Section 2--(a) It shall extend to the whole of the United State of Gwalior, Indore and Malwa (Madhya Bharat) and shall apply to all persons--within the said United State over whom the Courts having jurisdiction in the Covenanting States, forming part of the said United State had jurisdiction.

(b) This Act shall apply to all Criminal and Civil Proceedings, including those tinder testamentary intestate, matrimonial, divorce and insolvency jurisdiction, pending in the Courts in any State on the date on which the State is included in the United State and to such proceedings arising in the said States, after those dates.

Section 25. -- Special appeal shall lie to the Full Bench of the High Court from :

(1) a decree or an appealable order passed by the Divisional Bench of two Judges the High Court in the exercise of extra-ordinary or appellate civil jurisdiction :

Provided that such appeal shall lie only in the case where the value of the suit to the Court of the first instance is Rupees ten thousand or upwards and the value of the subject-matter in dispute in appeal also is Rupees ten thousand or upwards :

Provided further that the appeals involve some question of principle pertaining to law.

(2) a judgment passed by the Divisional Bench of two Judges of the High Court convicting the accused In the exercise of extra-ordinary or appellate jurisdiction :

Provided that such appeal shall lie only in the case where the sentence of death or of life imprisonment for not less than fourteen years, is passed or confirmed by the Divisional Bench.

91. Section 37 of the new Act which corresponds to S. 35 of Ordinance II [2] of 1948 and provides for the transfer of cases pending in the High Courts of Covenanting States to the High Court established under the Act may also be reproduced here. It reads thus :

(1) The High Court or the Tribunal functioning as the High Court or the Authority exercising the powers of the High Court for any of the Covenanting States, the administration of which has been or may be taken over by the Raj Pramukh shall cease, or be taken to have ceased, as the case may be to exist and function --

(a) in the case of States the administration of which has been taken over before the establishment of the High Court of the United State, from the date of the establishment of the said High Court under Ordinance 2 of 1948, and

(b) In the case of States the administration of which has been or may be taken over after the establishment of the High Court of the United State, from the taking over of the administration;

And all cases pending before the said High Court, Tribunal, or Authority, shall be transferred to the High Court of the United State for disposal, and all appeals petitions for revision, etc, which lay or lie to the said High Court, Tribunal or Authority, according to the laws in force in that State, shall lie to the High Court of the United State.

(2) The subordinate Courts in such States shall continue to function as Courts of the United State and shall exercise the same jurisdiction administer the same laws and follow the same procedure as before, until and change in this respect is made by a competent authority.

Provided, however, that the pecuniary jurisdiction of the District Judges Courts in Civil cases in any such State, if it be restricted at present to cases upto a particular value, shall become unlimited when the High Courts or the Tribunals functioning as the High Court or the Authorities exercising the powers of the High Courts in such States cease to exist or function.

92. Before examining Mr. Chitale's argument on retrospective operation of the Act, I may make a reference to certain well established rules pertaining to the subject i.e., the retrospective operation of statutes in general.

93. It was said by Lindlay L.J. in *Lauri v. Renaud*, (1892) 3 Ch. 402 : (61 L.J. Ch. 580), that:

It is a fundamental rule of English Law that no Statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such construction. And the same rule involves another subordinate rule, to the effect that a statute is not to be construed so as to have a greater

retrospective operation than its language renders necessary.

There are many cases upon the general doctrine whether an Act of Parliament may be read retrospectively or not, and there are many oases upon the meaning of statutes. But one has the general law concisely stated by Lord Hatherley in his judgment in *Pardo v. Bingham*, (1870) 4 Ch. 735 at pp. 739, 740 : (20 L.T. 464), where he says the question is secondly, whether on general principles the statute ought in this particular section to be held to operate retrospectively, the general rule of law undoubtedly being, that except there be a clear indication either from the subject-matter or from the wording of the statute, the statute is not to receive retrospective construction In fact we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was the legislature can template. In *re Chapman ; Cocks v. Chapman*, (1896) 1 Ch. 323 at p. 327 : (65 L.J. C.H. 170).

94. No one denies the competency of the legislature to pass retrospective statutes if they think fit:

But before giving effect to such, a construction to an Act it should either appear very clearly in the terms of the Act or arise by necessary and distinct interpretation. *Smith v. Callender*, (1901) A.C. 297 at p. 305 : (70 L.J. P.C. 53).

As observed by Craies in his work on Statute Law (Fourth Edition at page 231)

and perhaps no rule of construction is more firmly established than this--that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment.

The learned author quotes the following passage from the judgment of Strong C.J. in *Sebmidt v. Ritz*:

That the legislature has demonstrated an intention to enact retrospectively to a certain extent is not sufficient to warrant a retrospective operation carried beyond the meaning of the terms used strictly construed It is said that to restrict the latter part of the amending clause is to attribute to it a very insignificant modicum of relief. The answer must be that it is the very intent of this rule of interpretation, designed to prevent interference with rights of property except in cases where the unmistakable language of the legislature demands an ex post facto construction.

95. The general principles to which reference has been made above are not peculiar to English Law. They have been freely applied by the Judicial Committee to cases from India. It was laid down by Lord Lindley in *Mohammad Abdussamad v. Quarban Husaain*, 31 I.A. 30 at p. 37 : (26 ALL. 119 P.C.) that it was not in accordance with sound principles of interpreting statutes to give them a retrospective effect. In this case the appellants claimed one-half of certain

villages in Oudh as the statutory heirs, of one Murtaza Baksh. Murtaza Baksh died on 18.1.1865. Section 8, Act I [1] of 1869 (The Oudh Estates Act) laid down that within six months after passing of this Act the Chief Commissioner of Oudh subject to such instructions as he may receive from the Governor General of India in Council shall cause to be prepared six lists, namely:

First.-- A list of all persons who are to be considered Taluqdars within the meaning of this Act;.....

96. Section 10 of the Act runs as follows :

No person shall be considered Taluqdars or Grantees within the meaning of this Act other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists and shall regard them as conclusive evidence that the persons named therein are such Talukdars or Grantees.

97. Murtaza Bakhsh died in 1865. Under the Mohomedan Law, his estate vested in his two widows one of whom was Imtiaz Fatima. She died in December 1894. The suit was brought by the respondents before their Lordships on the allegation that Imtiaz Fatima was in possession as absolute owner, and that on her death the estate, of which the appellants had taken unlawful possession, devolved by the Mahomedan Law of inheritance upon the plaintiffs as her brother and sister. The appellants in their defence relied on the preparation of the lists of Taluqdars under S. 8, Act I [1] of 1869. The name of Murtaza Bakhsh was entered in lists 1 and 3. List 1 being a list of all persons who were to be considered Taluqdar within the meaning of the Act; and list 3 being a list of the Taluqdars not included in the second of such lists to whom Sanads or Grants have been or may be given or made by the British Government upto the date fixed to prepare such lists, declaring that the succession to the estates comprised in such Sanads or grants shall thereafter be regulated by the rule of primogeniture. Section 32 of the Act provided a special rule of descent for Taluqdars, whose names were entered in list 3, which under the circumstances of the case carried the estate to the widows for life, with reversion to the heirs of the husband as that term is interpreted by the Act. It was contended by the appellants that on the death of Murtaza Bakhsh the estate vested in the widows for life, and that on the death of Mt. Imtiaz Fatima, they, as next heirs of her husband, were entitled to succeed.

98. The Courts in India decreed the claim. An appeal was preferred to the Privy Council. Lord Lindley who delivered the judgment of the Board observed as follows :

Their lordships have no hesitation in affirming it (the decision). The whole case turns on the entry of Murtaza Bakhsh's name in two of the lists ordered to be made by the Act of 1869. Section 10 of the Act compels the Courts to regard such lists as conclusive evidence that the persons named therein are Taluqdars or Grantees within the meaning of the Act. When the lists referred to are looked at, it will be found that there are six lists (see S. 8). Murtaza Bakhsh's name is

in the first and third. The entries, therefore, by Ss. 8 and 10 are conclusive evidences (1) that he is to be considered as having been a Taluqdar within the meaning of the Act (see Ss. 2, 8, list 1); and (2) that he was a Taluqdar to whom a Sanad had been made declaring that the succession to the estate comprised in it should be regulated by the rule of primogeniture (See Ss. 2, 8, list 8).

These enactments are clear and peremptory, and would, be decisive if they applied to this case.

It is not however, in accordance with sound principles of interpreting statutes to give them a retrospective effect. The Court cannot construe Ss. 8 and 10 so as to deprive the successors of the estates of a person who had died before those sections came into operation of rights which they acquired on his death In this case, the death occurred in 1865, and the successors then acquired their rights under the ordinary Mahomedan Law. The Oudh Estates Act did not come into operation until 1869 ; and to construe its provisions as altering the succession would be not only unjust, but plainly contrary to well settled legal principles.

99. To the same effect are the observations of Lord Blanesburgh in AIR 1927 242 (Privy Council)

while provision of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence as the passing of a statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Provisions which, if applied retrospectively, deprive of their existing finality orders which, when the statute came into force, are provisions which touch existing rights.

These principles have been applied to Indian cases for a hundred years. See *Deolubdass v. Ramlall* 5 M.I.A. 100 : (7 wco, P. C. 289 P.C.). See also *Javanmal Jitmal v. Muktalai*, 14 Bom. 516 at p. 525 In the case of *Deolubdass*, (5 M.I.A. 169 : 7 Mco. P.C. 239 P.C.) there were certain wagering contracts entered between the parties. After the contracts were entered into, an action in respect of them was commenced in Supreme Court. Wagering contracts were declared invalid by an Act of the Indian Legislature (No. 21 of 1948). It laid down,

that all agreements whether made in speaking, writing or otherwise, by way of gaming or wagering, shall be null and void, and no suit shall be allowed in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager or entrusted to any person to abide the event of any game, or on which any wager is made.

It was held by the Judicial Committee that this Legislative enactment did not affect the existing contracts or actions already commenced upon such contracts. There being no words in the Act sufficient to show the intention of the legislature to affect the existing rights,

100. The principle is based on the maxim "nova constitutio futures formam imponere debet non praeteritis" (a new state of the Law ought affect the future, not the past). Another point which has to be borne in mind is that a right of appeal is substantive right and not a mere matter of procedure (Colonial Sugar Refining Co. v. Irving, (1905) A.C. 369 ; (74 L.J. P.C. 77).

101. I may now proceed to consider the main argument advanced by the appellants' counsel; but before doing so I should like to restate the question to be determined in this appeal, The suit to which this appeal relates was instituted in the High Court established by Holkar State and disposed of by a Judge of that Court on 11.6.48 in exercise of the ordinary original Civil jurisdiction of the Court. Under the provisions of the Covenant to which reference has already been made earlier in this judgment, administration of Holkar State was handed over to the Raj Pramukh of Madhya Bharat on 16-6-1948. The Raj Pramukh promulgated ordinance 2 of 1948, which came into force on 29-7-1948. It established the High Court of Madhya Bharat on that date. Under the then existing law an appeal against the decree passed by the single Judge on the original side or the Indore High Court was preferred by either side. The two appeals were disposed of by one common judgment, by a Division Bench of Madhya Bharat High Court in exercise of its appellate jurisdiction. The claim was dismissed on 2-12-1948. No appeal lay against that decision under the law as it stood on that date, and the rights of the parties in respect of the matter in dispute were finally determined. The defendant acquired a right in respect of the matter in dispute which could not be questioned in any Court of Law. On 18-1-1949, there came into force Act (viii [8] of 1949), which repealed ordinance 2 of 1948, but provided that the High Court established under it "shall continue to exist and function as the High Court established under" the said Act. With same additions and alterations the provisions of the repealed Ordinance were re-enacted by this Act. Among the changes effected was the provision giving a right of special appeal to a Full Bench of the High Court against a decree passed by a Division Bench of two Judges in exercise of appellate civil jurisdiction in a particular class of cases (see S. 25). The question for determination is whether the finality of the decree dated 2-12-1948, passed by the Division Bench of the High Court which was established by the Ordinance 2 of 1948, before the new Act came into force is taken away by this provision. Is the right acquired by the defendants under that decree affected by the new Act and can it be challenged by a special appeal to a Full Bench of the new High Court?

102. Mr. Chitale relies mainly on Ss. 2, 25 and 37 of the new Act which I have reproduced at pages 20 to 23. [see pages 8-9]. He contended, that S. 2 (b) makes the Act (and this includes each and every section of the Act) applicable to all the proceedings that were pending in any Court in a Covenanting State on the date on which it was included in the United State. Hence it is retrospective in its operation. A special appeal as provided by S. 25, he argued was, therefore, entertainable in the present case. There appears to be some misapprehension as to the right connotation of the term retrospective. The word is somewhat

ambiguous. According to Sedgwick (quoted by Craies at page 829 of his book) a statute is deemed to be retrospective which takes away or impairs any vested right acquired under the existing law or creates a new obligation or attaches a new disability in respect of transactions or considerations already passed:

But a statute is not properly called retrospective because a part of the requisites in its operation is drawn from time antecedent to its passing. *R. v. Whitechapel*, (1848) 12 Q.B. 120 at p. 127: (116 E.R. 811).

103. It is true that by S. 2 the new Act is made applicable to the proceedings which were pending in the Courts of any Covenanting State on the date it was included in the United State. But no provision of the Act lays down that any right vested in any person under the existing law should be impaired or taken away. On the other hand, it expressly provides that the High Court shall apply the law and usages prevailing in any State forming part of the United State to civil, criminal and other proceedings in the State till such time as a duly constituted authority modifies them (S. 6).

104. There could be no special appeal against an appellate decision of a Division Bench of the High Court either under the law in force in Holkar State before its inclusion in the United State, or under Ordinance 2 of 1948. A decision of a Division Bench was final under both. As soon as it was pronounced the respondents acquired a vested right in regard to the contract whereof specific performance was sought. This right was indefeasible and could not be open to controversy either by way of an appeal or a fresh suit.

105. It might possibly be argued that the old law relating to appeals was modified by S. 25 of the new Act and the law thus modified should now be applied. It cannot be denied that S. 25 of the Act confers a right of special appeal which did not exist previously, but being a right of appeal it is a matter of substance and not one relating to mere procedure. This new provision would, on general principles not be applicable to proceedings which finished before the new Act came into force and the decisions made wherein had become final. In view of the authorities to which reference has already been made earlier in this judgment, before we can apply S. 25 to the present case it must be shown that the statute has made the intention of the legislature in this behalf clear either by express words or by necessary implication.

106. The argument that the Act has retrospective operation is based on the language of S. 2 (b) of the Act. I will, therefore, consider the true scope of that section and examine whether it can support the argument founded on its phraseology. The High Court Act opens with a preamble which gives the scope and purpose of the enactment. It was "to provide for the continuance of the High Court established under Ordinance II [2] of 1948." The preamble is followed by S. 1 which as customary in modern statutes gives the short title of the Act. Then we have S. 2 which defines the "extent and application" of the enactment, As the purpose of the new Act was to provide for the continuance of the existing High

Court it was necessary to lay down what jurisdiction the High Court shall have in future. This is the whole scope and purpose of S. 2. Just as in the Ordinance which was repealed by the new Act, this section defines the jurisdiction to be exercised by the High Court under the new Act in a three fold manner in relation to its local limits, in relation to the persons who would be amenable to such jurisdiction and in relation to the proceedings in respect of which that jurisdiction can be invoked. The whole of S. 2 is only a reproduction of S. 4 of the Ordinance with slight verbal alterations which do in no way affect its substance, scope or purpose. The High Court as it continues to function under the new Act is to exercise jurisdiction in relation only to those proceedings over which it was exercised under the ordinance. The only difference is that while formerly the source from which the High Court derived its authority was Ordinance II [2] of 1948, now it is Act VIII [8] of 1949 There is nothing in the section to suggest that the Act or any section thereof was to have retrospective effect.

107. It will be noticed that under S. 3, the new Act was to come into force when it was published in the Government Gazette of the United State. There is nothing in the Act to show, or to suggest that the enactment shall be deemed to have come into operation at an earlier, date, so as to take away or impair rights which became vested antecedent to its publication in the Government Gazette of the United State. Section 25 does not say that it shall have retrospective operation so as to be applied to cases which were finally decided by the highest Court in which appeals pertaining to them could lie under the then existing law. It is well settled that general provisions in an enactment cannot be relied on to give it retrospective operation so as to take away vested rights. In *Moon v. Durden*, (1846) 2 Ext. 22, an action to recover a sum of money alleged to have been won upon a wager was brought in June 1845. The Gaming Act of 1815 was passed in August the same year. It was provided by S. 18 of the Act that, "no suit shall be brought or maintained for recovering" any such sum of money, and the question arose whether the Act was retrospective so as to defeat the claim. It was held in spite of the use of the words "brought or maintained" that the Act could not be given retrospective operation. Parke B, said in his judgment :

It seems a strong thing to hold that the legislature could have meant that a party who under a contract made prior to the Act had as perfect a title to recover a sum of money as he has to any of his personal property, should be totally deprived of it without compensation.

108. Under S. 2, Gaming Act, 1835, money paid to the holder of securities given for consideration arising out of gaming transactions was recoverable from the persons to whom the securities were originally given. This section was repealed by S. 22, Gaming Act, 1822, which laid down that "no action for recovery of money under S. 2, Gaming Act, 1835, shall be entertained by any Court." It was held by Macardie J. in *Henshall v. Porter*, (1923) 2 K.B. 193: (92 L.J. K.B. 866) that in accordance with well established rules of construction as well as by virtue of S. 38 (2), Interpretation Act, 1889, the Act of 1922, does not prevent the

bringing of an action under the repealed S. 2 of the Act of 1835 after the date when the repealing Act came into force in respect of a cause of action which arose before that date.

109. The same principle was followed by Wadia and Watson JJ. of Bombay High Court in *Hasan Abdulkarim v. Emperor*, AIR 1944 Bom. 252; (46 Cri. L.J. 328). By reason of cl. 25 of Letters Patent (Bombay) no appeal lay to the High Court from a sentence or order passed or made in any criminal trial before a Court exercising original criminal jurisdiction. That clause permitted reservation by a Judge or Judges exercising original jurisdiction of a point or points of law for the opinion of the High Court. Clause 26 gave the High Court power to review a case on point or points of law so reserved or upon a certificate of the Advocate General that in his judgment the decision on a point or points of law was wrong or should be further considered. By Ss. 2 and 7 of the Act of 1943 which added S. 411 (A) to the Code of Criminal Procedure there was substituted for this limited power of review a right of appeal to a person convicted and sentenced to imprisonment exceeding six months or fine exceeding Rs. 200. The amendment came into force on 27-11-1943. TWO persons who were convicted by Blagden J., sitting with a Special Jury under S. 302, Penal Code, before the amendment of the Code, filed appeals after November 27. The appeals were held to be incompetent. The principle laid down in *Colonial Sugar Refining Co., Ltd. v. Irving*, (1905) A.C. 369; (74 L.J. P.C. 77) was followed and it was held that inasmuch as the amendment of the Code gave a substantive right it could not have retrospective operation.

110. An attempt was made during the course of argument before us to distinguish the case of *Colonial Sugar Refining Co., Ltd. v. Irving*, (1905) A.C. 369; (74 L.J. P.C. 77) on the ground that a distinction should be drawn between an act taking away a right of appeal and one by which a fresh right of appeal was given. Support for this view was sought in the majority decision of a full Bench of Chief Court of Oudh in AIR 1942 291 (Oudh) (18 Luck 1 F.B.). In this case the decision of the majority (Bennet, Agarwal and Madeley JJ.) was based mainly on a supposed distinction between an amendment taking away an existing right of appeal and one by which a fresh right of appeal was granted. With the greatest respect I may point out, that the crucial question is not whether a right of appeal is granted or taken away. It is whether there is interference with rights already vested. If I am right in this view, the grant of a fresh right of appeal by a new enactment, against a decision which was final under the then existing law, is clearly interference with vested right with the decision of an appeal a right in relation to the particular case becomes vested in the respondents, I respectfully agree with the view expressed by the minority (Thomas C.J., and Ghulam Hasan J.), in the case and decline to follow the Full Bench decision.

111. Another case to which reference may with advantage be made in this connection, is AIR 1927 242 (Privy Council). Certain references were made to the High Court of Judicature at Lahore under S. 66 (2), income tax Act, 1922. The

High Court disposed of the references by its orders, which in all the cases, were passed before 1-4-1926. Previous to that date there was no statutory right of appeal to His Majesty in Council from an order passed by the High Court on a preference made to it under S. 66 (a), income tax Act. By an amendment of income tax Act, 1922, which came into force on 1st of April 1926 a statutory right of appeal was given from such orders. Petitions for special leave to appeal were made to Privy Council against the orders passed by the High Court of Lahore to which reference has been made above. It was contended before the Judicial Committee that the amendment of the Act giving a fresh right of appeal could not have retrospective operation so as to cover orders which were passed before the amendment came into force.

112. Lord Blanesburgh who delivered the judgment of the Board made the observations which have already been referred to at page 29 [see page 11] of this judgment and added:

Accordingly if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided.

113. It has been mentioned already that S. 2 (b) of Act VIII [8] of 1949, is only a re-enactment of S. 4 (b) of Ordinance 2 of 1918, without any material change. It was never intended by the last mentioned section that any provision of the Ordinance should have retrospective operation. In these circumstances having regard to the scope and purpose of S. 2 of Act VIII [8] of 1949, which was simply to define the jurisdiction of the High Court, there is, in my opinion, no good ground to read into the generality of the expressions used an intention to give retrospective effect to S. 25 or to any other provision of the statute. To do so, would be to interfere with vested rights. Were it intended that the section should apply to decrees that had been passed before Act VIII [8] of 1949, came into force and had become final under the then existing law, I have no doubt, that the legislature would have said so in specific and clear terms. Such intention would not have been left to be inferred by resort to the general expressions employed in a section laying down the extent and application of the Act.

114. These are my reasons for upholding the preliminary objection.

A.H. Khan, J.

115. This is a special appeal against the judgment and decree of a Division Bench of this Court, under S. 25, Madhya Bharat High Court of Judicature Act (Act VIII [8] of 1949). A preliminary objection, raised by the respondents is that because the judgment under consideration was pronounced when the Madhya Bharat Ordinance 2 of 1948, was in force, and, it provided no special appeals, so the present appeal is incompetent. Before considering the objection, it is necessary to state a few facts in order to show how the land lies.

116. On 6-11-1947, a suit for specific performance of contract was filed on the original side of the Indore High Court, and, was partly decreed by a Single Judge

of that Court on 11-6-1948.

117. In the meanwhile, a step of great moment had been taken and consequent upon the political changes in India, about 22 States of Central India, agreed to integrate and form the United State of Gwalior, Indore and Malwa otherwise known, as Madhya Bharat. The Madhya Bharat Government Gazette established the Madhya Bharat High Court on 29-7-1948, under Ordinance 2 of 1948. This changed the complexion not only of the Indore State as a political unit, but also the Indore High Court as well ceased to exist and, all cases that were pending there were transferred to the Madhya Bharat High Court for disposal, and, so was this case, which is now under consideration.

118. An appeal against the judgment of a Single Judge of the Indore High Court, was heard by a Division Bench of the Madhya Bharat High Court, consisting of Bhide C.J. and Mehta J. and on 2-12-1948, the appeal was allowed and the plaintiff's suit was dismissed.

119. The Ordinance 2 of 1948, continued till 18-1-1949, when it was replaced by Act No. 8 of 1949, known as the Madhya Bharat High Court of Judicature Act of Samvat 2005. This Act provides, as its preamble shows, for the "continuance of the High Court of Judicature of Madhya Bharat established under the Ordinance 3 of 1948. It substantially reproduced the provisions of the Ordinance, which it sought to repeal, with one notable change, which was embodied in S. 25 of the Act, to the effect that in cases, the valuation of which was over Rs. 10,000, and, which involved a point of law, a special appeal was further provided from the judgment and decree of a Division Bench to a Full Bench of the Madhya Bharat High Court.

120. The plaintiff lost his suit by a decision of a Division Bench, and, in an endeavour to avail himself of the special provision under S. 25 of the Act, he has now filed this appeal.

121. Although it would amount to a repetition, yet it will tend to a better appreciation of the case, if some dates are remembered. First, the suit which gives rise to this appeal, was decided by a Single Judge of Indore High Court on 11-6-1948. Two, the High Court of Madhya Bharat came into existence on 29-7-1948, under Ordinances 2 of 1948. Three the Division Bench of the Madhya Bharat High Court; decided the appeal on 2-12-1948, when ordinance 2 was in force and when the High Court Act, (containing the special provision in S. 25 for a further appeal) had not made its appearance. Fourth, that subsequent to the decision of the Division Bench on 2-12-1948, the High Court Act came into force from 18-1-1949, and, it is S. 25 of this Act which contains a provision for a further special appeal.

122. For a decision on the preliminary point, we have to consider the scope and ambit of S. 25 of the Act and determine whether its provisions can be availed of ex post facto by the appellant.

123. It is an admitted fact that the judgment under consideration was pronounced when Ordinance 2 was in force and when the High Court Act had not been put on the Statute Book. Let us see what the position of a judgment given under the Ordinance is.

124. As the Ordinance provided, no further appeal against the judgment of a Division Bench, the proposition cannot be disputed that it became final on 2-12-43, the very day the judgment was pronounced. Not only that, but I venture to suggest that it became doubly final.

125. The reason is that according to S. 5 of the Ordinance, it was incumbent on the Madhya Bharat High Court "to apply the laws and usages prevailing in any state forming part of Madhya Bharat till such time as a duly constituted authority modifies them." Prior to integration, the Indore High Court (Act No. IV [4] of 1948) provided an appeal from the judgment of a Single Judge to a Division Bench of the High Court, and, it also provided that no further appeal would lie anywhere, Please see Ss 21 and 23, Indore High Court Act. Thus we see that the law prevailing at Indore was that the judgment of a Division Bench was final. And according to S. 5 of Ordinance 2, we are to apply this law to the present case. What we find is that even according to Indore law, the judgment of a Division Bench became final. The conclusion is that first because no further appeal was provided against the judgment and decree of a Division Bench in the Ordinance the Division Bench judgment became final, Secondly, because the Indore law also made it final, (and this law was to be applied to Indore case by virtue of S. 5 of the Ordinance), the judgment under consideration acquired a double finality.

126. Mr. Chitale, learned counsel for the appellant, to whom we are grateful for an able exposition of his case, wants us to ignore the Ordinance altogether and argues that although the High Court Act came into being on 18-1-1949, yet it must be deemed to operate from July 1943 (the time when the High Court was established under the Ordinance) and that we must think that the Ordinance did not exist at all and that it is not open to us to seek any assistance from the Ordinance. In support of his contentions he has cited some passages from "Maxwell"

[127] The passages that have been quoted from Maxwell on the Interpretation of Statutes (9th Edn.) appear on pp. 1, 2 and 26 to the effect that where the words of a statute are in themselves precise and unambiguous, no help need be taken in their interpretation from the earlier statutes. These passages, coming as they do from an eminent authority, are entitled to great respect but I should like to say that I deprecate the tendency of merely quoting an isolated passage, and, then declaring that that is the whole law on the subject. In the same book a very valuable piece of advice is given, which is that:

It is an elementary rule that construction (of any law) is to be made of all the parts put together, and, not one part only by itself.

Lord Blackburn in *Turquand v. Board of Trade*, (1886) 55 L.J. Q.B. 417: (11 A.C.

286) is responsible for the dictum. A passage torn from its context does not always express the meaning which the author intends to convey. It is, perhaps, for this reason that Sir Gilbert Jackson, a Judge of the Madras High Court had occasion to advise that "Maxwell" is rather a work to be read as a "whole". Lord Mansfield in *Rix v. Loxdale*, Burr. 447, has made the following observation, which is quite useful to remember:

Where there are different statutes in *pari materia*, though made at different times, or even expired and not referring to each other, they shall be taken and constructed together, as one system and as explanatory of each other.

129. Regarding the three passages quoted by Mr. Chitale, (the gist of which I have already given) I would only say that it is nothing but a rule of common sense that when the law is clear and unambiguous, there is need to take the help of any other law to interpret it. But what is "clear and unambiguous" would depend on the nature of each case. I may venture to state that mere citation of such passages does not carry us very far. Great emphasis has been laid on Lord Sinha's observations in *Mt Ramanandi v. Mt. Kulvati*, (A.I.R. (15) 1923 P.C. 2 : (7 Pat. 221) to the effect that in order to ascertain its proper meaning, it is the language of the statute which should be examined, uninfluenced by considerations derived from the previous state of the law. But subsequent to it in *Abdur Rahim v. Abu Mohammad Barkat Ali*, AIR 1928 P.C. 16: (55 Cal 519) their Lordships of the Privy Council permitted the consideration of what the law was previously.

129. After considering some English and Indian authorities, I feel inclined to lay down as a proposition of sound law that as an aid to discovering and comprehending the true position of any law previous law or laws, might be looked into, If necessary.

130. In considering the provisions of ordinance No. 2, which created the High Court and, the provisions of the Act, under which the High Court continues, a question suggests itself; are these two laws so different from each other, that by looking at the Ordinance we are liable to be misled in the interpretation of the Act?

131. Although in point of time and as a matter of sequence, the Ordinance and the Act are two separate entities, yet in truth (making allowance for the fact that the life of an Ordinance is limited to six months only) the Act which followed the Ordinance, has substantially reproduced the Ordinance, and, as such the Act may be regarded as one granting a fresh lease of life to the Ordinance. Of course, any changes in the Act would be an exception, and, would be on a different footing. But in so far as the other provisions are identical, the Act may be looked upon as a continuation of the Ordinance.

132. We may well ask why the learned counsel contends that the Ordinance should be overlooked. The reason is that if we look into it, we come to an irresistible conclusion that the judgment dated 2-12-1948, is final (as I say

doubly final) and, this, of course, is a submerged rock which causes a ship wreck.

133. I shall now examine the proposition advanced by Mr. Chitala that S. 25 of the High Court Act which provides a special appeal against the judgment of a Division Bench is retrospective in its operation.

134. First, let us see S. 25 of the Act itself. There is nothing in the section itself to convey that it is retrospective. It has been held that a statute is *prima facie* prospective and does not interfere with existing rights, unless it contains express words, or there is plainest implication to that effect. There being no express words, we have now to turn our attention to find out if by necessary intendment this section can operate *ex post facto*.

135. It is contended that S. 2 (b) and S. 40 (which contains the repealing and saving clause) express the intention of the Legislature to make the Act retrospective in its scope. Let us first examine S. 2 (b) of the Act which runs as follows:

Section 2 (b): "This Act shall apply to all Criminal and Civil cases, including those under testamentary, intestate, matrimonial, divorce and insolvency jurisdiction, pending in the Courts in any States on the date on which the State is included in the United States and to such proceedings, arising in the said States after those dates...

136. It is urged on behalf of the appellant that "pending in the Courts on the date on which the State is included" are the words which go to show that the whole Act is retrospective and because the whole contains a part, therefore, S. 25 is also retrospective.

137. I may point out that S. 4 (b) of the Ordinance NO. 2, which preceded the High Court Act, contained precisely the same words. And to me they seem to imply that in its scope, the Ordinance as well as the Act would apply to all pending cases, but the Act does not indicate anything as to whether the pending cases, already decided under the Ordinance, would still continue to be regarded as pending under the Act. In ordinary parlance, a case which is decided is finished and it will be doing violence to the language to call it "pending." At the time when the High Court Act appeared (18-1-1949) the case under consideration cannot by any stretch of imagination be called "pending," because not only was it heard and determined, but it was also struck off the register of pending cases. As a result of its disposal, the respondents had acquired the vested right to treat the decision as final and conclusive. Did the Legislature really intend to take away the right from the respondent? It has been said that in determining what the intended scope of a statute is it is permissible to assume that in the absence of express language (and I find no express language in the High Court Act) Parliament did not intend to abrogate the ordinary rules of law and that Parliament did not intend to do a palpable injustice *River Wear Commrs. v. Adamson*, (1876) 1 Q.B.D. 546 : (35 L.T. 118) ; *Ex parte Corbett*; *In re Shand*, (1680) 14 Ch. D. 122 at p. 129 : (49 L.J. Bk. 74). Similarly in *Middlesex Justices*

v. R., (1884) 9 A.C. 757 at p. 770 : (53 L.J. Q.B. 505), it was laid down by their Lordships that judicial interpretation should be directed to avoiding consequences which are inconvenient and unjust.

138. That final orders or decisions result in the creation of vested rights is a proposition which cannot be challenged. That finality is a right, may be authoritatively stated on the strength of observations of their Lordships of the Privy Council in AIR 1927 242 (Privy Council)

139. Maxwell in his treatise on the Interpretation of Statutes affirms it as a doctrine of equitable construction that statutes which either takes away or impairs a vested right must be presumed out on respect to the Legislature, to be intended not to have a retrospective operation.

140. Another reason advanced by the learned counsel for the appellants is that the effect of S. 40 of the Act is to construe by legal fiction orders given by the High Court under the Ordinance as orders made under the Act, and as such the finality of orders under the Ordinance (No. 2) is destroyed.

141. Let us see what S. 40 of the Act is, It consists of a repealing and saving clause. In Halsbury's Laws of England (Hailsham Edn. 2) it has been said that a saving clause is inserted where one statute is replaced by and reenacted by another. The effect is that the portions of the repealed statute remain in force and all that has been done under the repealed statute does not become invalid. Its object is to protect transactions which were complete at the date of repealing statute. R. v. Justices of the West Biding of Yorkshire, (1876) 1 Q.B.D. 220.

142. A saving clause, as its name implies, is a clause which is inserted in the repealing statute in order to protect or save a person as regards rights which may have acquired under the then existing law. But to use it in determining the construction of the Act, or to extend it so as to give a wider scope to the Act, amounts to ignoring the very purpose for which a saving clause is inserted.

143. After considering the question in all its aspects, I am of opinion that S. 25 of the Act VIII [8] of 1949, is not retrospective, and, that in consequence the preliminary objection should prevail. The appeal is being dismissed on a preliminary point, and so I consider it just and proper that the respondents be awarded half of their costs.

144. The preliminary objection having been upheld, the appeal is dismissed as incompetent. There being no hearing on merits, we direct that the appellants shall pay the respondents half their costs.