

## APPELLATE CIVIL

*Before Kapur, J.*

KANSHI RAM,—Appellant

*versus*FIRM KNOWN AS L. VISAKHI RAM-HUKAM CHAND  
AND OTHERS,—Respondents

First Appeal from Order No. 114 of 1952

1953

June, 2nd

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 36—Reference to section 8 of the Displaced Persons (Institution of Suits) Act (XLVII of 1948)—Whether to the original section of that Act or to the substituted section 8 as enacted by the Displaced Persons (Institution of Suits and Legal Proceedings) Act (LXVIII of 1950). Interpretation of Statutes—Reference to a section of an Act in a subsequent Act—How to be interpreted.*

(1) 1942 (1) A.E.R. 587

V. R. executed a pronote in favour of K. R. on 4th March, 1946, for Rs. 20,000 and made a part payment of Rs. 5,000 on 14th January, 1949, by making an entry on the pronote. K. R. made an application, under section 10 of Displaced Persons (Debts Adjustment) Act (LXX of 1951), on 28th July, 1952, against V. R. An objection was taken that the application was barred by time. This objection was given effect to by the Tribunal and K. R. filed an appeal in the High Court.

Held, that the application was not barred by time by virtue of section 36 of Act LXX of 1951, wherein reference has been made to section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948). This reference is not to the original section 8 of Act XLVII of 1948, but to section 8 of that Act as substituted by the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act (LXVIII of 1950). The Act of 1950 is previous to the Act of 1951, and when reference was made in Act LXX of 1951 to section 8, it was necessarily to the substituted section 8, which was then in force and not to the original section 8.

Held, that where in an Act a reference is made to a section of a previous Act, the reference is to that section as is in force immediately before the subsequent Act and not to the section as originally enacted in the previous Act.

*The Queen v. Stock* (1), *R. v. Merionethshir* (2), *The Queen v. Smith and others* (3), and *The Secretary of State v. The Hindustan Co-operative Insurance Society, Limited* (4), relied upon.

*First Appeal from the order of Shri D. P. Sodhi, Senior Sub-Judge, with power of Tribunal, Rohtak, dated the 31st October, 1952, dismissing the petition with costs.*

S. L. PURI, for Appellant.

H. R. SODHI, for Respondents.

#### JUDGMENT

KAPUR, J. This is an appeal against an order passed by Mr. D. P. Sodhi, acting as a Tribunal dismissing the petitioner's application made under section 10 of Act LXX of 1951.

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(1) 112 E.R. 892

(2) (1844) 6 Q.B. 334

(3) 8 Q.B. 146

(4) I.L.R. 59 Cal. 55 at page 64

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In order to understand the case it is necessary to give briefly the facts of the case. Between the petitioner Kanshi Ram and the respondent Firm Visakhi Ram business dealings had started on 19th September, 1944. A pronote for Rs. 20,000 was executed on the 4th of March 1946, by Firm Visakhi Ram in favour of the petitioner, Kanshi Ram, and the interest agreed upon was annas six per centum per mensem. This pronote represented the amount which was due to the petitioner on that date. On the 14th of January 1949, Firm Visakhi Ram paid a sum of Rs. 5,000 and they made an entry in their own hand in writing on the pronote. On the 28th of July 1952, Kanshi Ram made an application under section 10 of Act LXX of 1951, the Displaced Persons (Debts Adjustment) Act, 1951. An objection was taken that the application was barred by time. This objection was given effect to by the Tribunal and the petitioner has now come up in appeal to this Court.

The period of limitation was extended by Act LXX of 1951, in certain cases which are given in section 36 of this Act, which provides for extension of period of limitation and is as follows :—

“ 36. *Extension of period of limitation.* Notwithstanding anything contained in the Indian Limitation Act, 1908 (IX of 1908) or in any special or local law or in any agreement,

(a) any suit or other legal proceedings in respect whereof the period of limitation was extended by section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (XLVII of 1948), and

(b) \* \* \* \* \*  
 may be instituted at any time within one year from the commencement of this Act.”

This Act makes a reference to section 8 of the Displaced Persons (Institution of Suits) Act, 1948.

In the original Act XLVII of 1948, as it was enacted on the 4th of September 1948, section 8 which also provided for extension of period of limitation was in the following terms—

“8. *Extension of period of Limitation.* Notwithstanding anything contained in section 3 of the Indian Limitation Act, 1908 (IX of 1908), or in any special or local law, any suit instituted in pursuance of section 4 of this Act may be admitted after the period of limitation prescribed therefor, when the plaintiff satisfies the Court that he was unable to institute the suit within such period owing to causes connected with his being a displaced person.”

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On the 9th of December, 1950, the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, Act LXVIII of 1950, came into force. By this section 8 of Act XLVII of 1948 was removed and a new section was substituted in its place which is in the following terms—

“8. *Extension of period of Limitation.* Notwithstanding anything contained in section 3 of the Indian Limitation Act, 1908 (IX of 1908), or in any special or local law, any suit or other legal proceeding by a displaced person—

(a) \* \* \* \* \*

(b) where such suit or other legal proceeding is instituted otherwise than in pursuance of section 4 in respect of a cause of action which arises or has arisen in a place now situate within the territories of Pakistan and the period of limitation expires after the commencement of the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950,

Kanshi Ram may be instituted at any time before the expiry of this Act."

Firm Visakhi This Act was to expire on the 31st day of March  
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The learned Senior Subordinate Judge, acting as Tribunal was of the opinion that reference in section 36 of Act LXX was to section 8 of Act XLVII of 1948, and he, therefore, read section 8, as it existed before the substitution made in 1950. There, in my opinion, the learned Judge was in error. The Act of 1950 is previous to the Act of 1951 and reference in the Act of 1951 must, therefore, be to section 8, as substituted by the Act of 1950.

Reference has been made by Mr. Sodhi in support of the view taken by the learned Senior Subordinate Judge, acting as Tribunal to a passage from Maxwell at page 406, where it is stated—

"Where the provisions of one statute are, by reference, incorporated in another and the earlier statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of second enactment."

This passage is based on two cases *The Queen v. Stock* (1), and *R. v. Merionethshir* (2), but in neither of these two cases was a statute to which reference was made in subsequent statute repealed previous to the subsequent statute. And the statement of law as contained in Maxwell also refers to state of things when the subsequent amendment in the previous Act is made after the Act, in which a provision of the previous Act is incorporated. As a matter of fact the view that I am taking of the passage in Maxwell is supported by the Queen's Bench Division in *The Queen v. Smith and others* (3), which is stated by Maxwell as follows:—

"Thus, when the Wine and Beerhouse Act, 1869 (C.27) repealed Licensing (Consolidation) Act, 1910 (C.24) S. 112, Sch. VII

(1) 112 E.R. 892

(2) (1844) 6 Q.B. 334

(3) (1873) L.R. 8 Q.B. 146

enacted that certain provisions as to appeals to quarter sessions comprised in the Alehouse Act, 1828 (C.61), should have effect respecting the grant of certificates under the new Act and the Licensing Act, 1872 (C.24), repealed the Alehouse Act, 1828, it was held that those provisions remained in full force so far as they formed part of the Wine and Beerhouse Act, 1869 (C.27) *R. v. Smith* (1).”

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Mr. Sodhi then referred to a Judgment of their Lordships of the Privy Council in *The Secretary of State v. The Hindustan Co-operative Insurance Society, Limited* (2)—

“ In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of this first statute does not affect the second ; see the cases collected in ‘*Craies on Statute Law*’, 3rd edition, pages 349-50. This doctrine finds expression in a common form section which regularly appears in the Amending and Repealing Acts which are passed from time to time in India. The section runs, ‘The repeal by this Act of any enactment shall not affect any Act \* \* in which such enactment has been applied, incorporated or referred to.’ The independent existence of the two Acts is, therefore, recognised ; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is applicable in India as it is in this country. ”

In this case also it will be noticed that the amendment of the Act to which reference was

(1) (1873) L.R. 8 Q.B. 146  
(2) I.L.R. 59 Cal. 55, 66

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made in the local Act was after the enactment of the local Act. The Land Acquisition Act to which reference was made in the Calcutta Improvement Act of 1911, was enacted in 1894. The amendment in the Land Acquisition Act was made in 1921 and it was held that the later amendment cannot affect the Calcutta Improvement Act. But in the present case, as I have said before, Act XLVII of 1948 was amended by Act LXVIII of 1950, by which in place of section 8 in the Old Act of 1948, a new section was substituted and when reference was made in the Act now under consideration, that is, Act LXX of 1951, reference must necessarily be to the substituted section and not to the old section. In this view of the matter I am of the opinion that the learned Judge has taken an erroneous view.

Mr. Puri also refers to section 8 of the General Clauses Act, but it is not necessary to refer to that because in my opinion the words of the section are quite clear.

I, therefore, allow this appeal, set aside the order of the learned Judge and hold that the application made by Kanshi Ram is within time.

In the circumstances of the case I leave the parties to bear their own costs throughout.

I direct that the parties should appear in the Tribunal on the 29th of June, 1953.