

PUNJAB AND HARYANA HIGH COURT

Gordhan Das, Baldev Das

Vs

The Governor General In Council

(Bhandari and Kapur, JJ. Soni, J.)

19.10.1951

JUDGMENT

Bhandari, J.

1. The short point for decision in the present case is whether it is within the power of this Court to make a rule which has the effect of depriving a litigant of his right of appeal to the Supreme Court.

2. When the High Court at Simla was created in the year 1947 it was called upon to decide a large number of cases relating to the East Punjab which were pending in the High Court at Lahore. These cases could be disposed of either by increasing the number of Judges of this Court or by amending the rules so as to provide that certain second appeals which were being heard and disposed of by Benches of two Judges should in the future be heard and disposed of by a Judge sitting alone. As the second alternative was more in consonance with the financial resources of the State than the first, it was decided that all second appeals in which the value of the appeal does not exceed Rs. 2,000/- in a land suit or Rs. 5,000/- in a money or unclassified suit should in future be placed before and decided by a single judge. The new rule came into force on the 8th May 1951.

3. When the first batch of second appeals which were regulated by the new rule was placed before a learned Judge of this Court an objection was promptly taken that it was not within the competence of this Court to make a rule which was calculated to divest litigants of their vested rights of appeal to the Supreme Court. As the point raised is of considerable importance and as it is likely to affect a large number of appeals which are pending in this Court the following question has been referred to us for decision, namely, "Whether the amendment to Rule 1 Chapter 3-B High Court Rules and Orders Volume V governs appeals arising from cases instituted before the 8th of May 1951?"

4. Prior to the enactment of this rule certain second appeals in which the amount in controversy

did not exceed the figures mentioned above could be heard only by a Bench of two or more Judges and the litigants who were aggrieved by the order of the High Court were at liberty to prefer another or a third appeal to the Supreme Court under Sections 109 and 110 of the Code of Civil Procedure and Article 133 of the Constitution of India. The amended rule, however, provides that those second appeals will in future be heard by a Judge sitting alone. Article 133(4) declares that no appeal shall lie to the Supreme Court from the decree or order of a Judge sitting alone. The combined effect of these provisions is that whereas a litigant governed by the old rules whose case was decided by a Bench of two or more Judges was at liberty to prefer an appeal to the Supreme Court on compliance with the statutory conditions, a litigant governed by the new rules whose case is decided by a single Judge is precluded by the provisions of the Constitution from preferring such an appeal. It is true that technically it is open to a person who is dissatisfied with an order of a single Judge to prefer an appeal to a Bench of two Judges under Clause 10 of the Letters Patent and then to prefer an appeal to the Supreme Court, but it must be remembered that this somewhat lengthy and tortuous procedure is beset with difficulties which are not easy to surmount. In the first place he must go to the trouble and expense of arguing his appeal before the single Judge, and secondly, in the event of an unfavourable decision being given, he must obtain a certificate from the Judge that the case is a fit one for appeal to the Letters Patent Bench. It is contended on behalf of the appellant that if as a result of the new rule his right of appeal to the Supreme Court is taken away altogether or so unreasonably encumbered as to render it useless or impracticable, there is a clear interference with vested rights. It is accordingly argued that the new rule ought not to be construed retrospectively, that is, that it should not be deemed to apply to appeals arising out of cases which were instituted on or before the 8th day of May 1951 as the effect of such construction is to deprive litigants of their vested rights of appeal to the Supreme Court.

5. Subject to such restrictions and limitations as may be imposed by the Constitution, the Legislature of a country has full powers to make laws for regulating the conduct of people. These laws may be prospective, that is those which apply to acts and transactions which come into existence after the statutes are passed, or retrospective, that is those which relate back to a previous transaction and give it some different legal effect from that which it had under the law when it occurred. As laws are usually enacted so as to be effective only in future and as there is a basic presumption that the Legislature does not intend to change the character of past transactions, it is a fundamental rule of interpretation that a statute is presumed to operate prospectively and not retrospectively unless the words used or the objects to be accomplished clearly indicate that a retrospective operation was intended. This is particularly the case when the statute disturbs, damages or destroys existing or vested rights or creates new obligations with respect to past transactions. 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. Even if the language of the statute clearly and imperatively requires a retrospective operation,

such operation must be confined as closely as possible and the statute should not be construed to have a greater retrospective operation than its language renders necessary, '*Lauri v. Renad*¹', A new Act should be presumed to respect vested rights. When a new Act falls to be construed the Courts should lean to a construction which preserves existing rights and when it is not quite clear whether the Act applies to the future or to the past the doubt should be resolved in favour of prospective operation. In '*Moon v. Purden*', (1848) 2 Ex. 22, a question arose whether a certain action upon a wager commenced before the passing of the Gaming Act, 1945 was barred by the provisions of said Act which enacted that all contracts and agreements by way of gaming or wagering should be null and void and that no suit should be brought or maintained for recovering money alleged to be won upon a wager. The Court of Exchequer held that the statute had not a retrospective operation, so as to defeat an action for a wager commenced before the statute was passed. Parke, B. observed as follows:

"The language of the clause, if taken in its ordinary sense, as in the first instance we ought to do, applies to all contracts, both past and future, and to all actions, both present and future, on any wager, whether past or future. But it is, as Lord Coke says, 'a rule and law of Parliament that regularly, 'nova constitutio futuris for mam imponere debet, non praeteritis', 2 Inst. 232. This rule which is in effect, that enactments in a statute are generally to be construed to be prospective, and intended to regulate the future conduct of persons, is deeply founded in good sense and strict justice, and has been acted upon in many cases.....But this rule, which is one of construction only, will certainly yield to the intention of the Legislature; and the question in this and in every other similar case is, whether that intention has been sufficiently expressed."

There is a long string of authorities in support of the proposition that where a statute is passed while an action is pending, strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action, (See '*Mid Ry. Co. v. Pye*²', '*Marsh v. Higgins*³', '*Chappell v. Purday*⁴', '*Hitchcoch v. Way*⁵', '*Paddan v. Bartlete*⁶', See also '*Turnbull v. Forman*⁷', '*Hough v. Windras*⁸', '*Baston Regis Union v. Liverpool Overseers*⁹', '*Young v. Hughes*¹⁰', '*Venugopala Reddiar v. Krishnaswamy Reddiar*¹¹', Again, it has been held that a statute should not be so construed as to deprive a litigant of a vested right of action which accrued to him before it was passed, unless of course the words taking away the right are clear and unambiguous '*Smithies v. National Association of Plasterers*¹²', '*Knight v. Lee*¹³', '*Wright v. Green-royd*¹⁴', '*Jackson v. Woolley*¹⁵', '*Williams v. Smith*¹⁶', '*Wagh v. Middleton*¹⁷', '*Larpent v. Bibbey*¹⁸', '*National Real Estate & Finance Co. v. Hassan*¹⁹,

6. There is at least one exception to the general principle that no statute shall be construed to have a retrospective operation and that is that statute which affect only the procedure and practice of the Court, as distinguished from those affecting substantive and substantial rights, are valid even in their application to pending suits and appeals. Ordinarily, a suitor has no vested right in any course of procedure and he cannot claim that the rules which were in force at the time of the

suit was brought should continue to apply until his suit is finally decided. He must prosecute or defend the suit in accordance with the procedure which has been prescribed by the law for the time being in force and if the law-making or the rule-making authority chooses to alter the procedure and to make it applicable to pending proceedings he has no alternative but to allow his action to be regulated by the new procedure. So long as the new rules are made in exercise of the powers conferred by law and so long as they do not affect or destroy vested rights, no litigant can come forward and say that his case should not be regulated by those rules. The general principle seems to be that alternation in procedure are retrospective, '*Gardner v. Lucas*²⁰', unless they have the effect of disturbing or destroying vested rights. It has been held that even procedural changes cannot be carried to the point of destroying accrued rights.

7. Section 108 of the Government of India Act, 1915, and Clause 26 of the Letters Patent of the High Court of Lahore empower this Court by its own rules to provide that any function which is directed to be performed by this Court in the exercise of its original or appellate jurisdiction may be performed by any Judge or by Divisional Courts constituted by two or more Judges of this Court. It is thus within the competence of this Court to make a rule that certain appeals where the amount in controversy does not exceed a certain figure should be heard and disposed of by a Judge sitting alone and that certain other appeals where the amount exceeds that figure should be heard and disposed of by a Bench of two or more Judges. If, therefore, a rule of this Court provides that a certain type of second appeals shall be heard by a Judge sitting alone the appellant cannot claim that it should be heard by two or more Judges any more than he can claim that it should be heard by a particular Judge. He has a right of appeal to the "High Court" and all that he can claim is that he should be heard by the High Court i.e., by a Judge or Judges who are exercising for the time being the function of the High Court in respect of an appeal of that particular kind or value. He is not concerned with the internal arrangements of the High Court and so long as his appeal is heard by the appropriate Bench, that is, the Bench which is competent to hear the appeal in accordance with the rules framed by the High Court, he can have no legitimate grievance. As the power to make rules carries with it the corresponding power to vary or amend the rules, the High Court has full power to alter or amend the rules made by itself and to provide that certain types of appeals which were being heard and disposed of by a Bench of two Judges should in future be heard and disposed of by a Judge sitting alone. These rules affect only the practice and procedure of the Court and can be made or unmade at the will and pleasure of the rule-making authority '*Har Prasad v. Lala Bool Chand*²¹', '*Sadar Ali v. Doliuddin Ostagar*²²', '*In re Vasudeva Samiar*²³,

8. If alternations in rules or procedure are retrospective and if a rule that a particular type of appeal should be heard by a Judge sitting alone is a matter of appellate procedure it is obvious that, like all other rules of procedure, it would apply not only to appeals which are instituted after the date on which the rule comes into force, but also to appeals which were awaiting disposal on the said date. But it is contended that as rules of procedure cannot operate retrospectively if they interfere with vested rights and as the right of appeal to the Supreme Court is a vested right, the

new rule cannot apply to any appeal arising out of a suit which was instituted before the relevant date.

9. Now, what exactly is a "vested right", which cannot be taken away even by the Legislature unless it manifests its intention of doing so in express terms or by necessary and distinct implication? A right is said to be, vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest, independent of a contingency. It is a right which cannot be taken away without the consent of the owner. Vested rights can arise from contracts, from statutes and from operation of law. A person, for example, who enters into a contract with another acquires a vested right in the performance of the contract and is entitled to claim that the contract should be performed in accordance with the terms thereof. Again, a right to compensation for property actually taken for public use and a right or title to property acquired by adverse possession are vested rights which cannot be impaired by subsequent legislation unless the statute contains clear words to that effect. Again, a right of action conferred by a particular statute is said to be a vested right, and as pointed out in a preceding paragraph; this right cannot be taken away by a later statute unless the Legislature has manifested its intention of doing so in clear and unmistakable language.

10. The question now arises whether a right of appeal is a vested right and, if so, whether in the absence of a particular intention to do so, a statute which is passed during the pendency of a case can be construed so as to deprive a litigant of the right of appeal which accrued to him when the case was instituted. As pointed out in *Attorney General v. Sillem*²⁴, the right of appeal is "the right of entering a superior Court and invoking its aid and interposition to redress the error of the Court below". Although the law as we understand it considers it essential that a litigant who is aggrieved by the order of one Court should be at liberty to have his case examined by a superior tribunal, it is somewhat of a paradox that appeals from one Court to another on the ground that the lower Court has given a decision erroneous in point of fact or law were entirely unknown to the common law of England. The right of appeal is not a natural or an inherent right which is available to every litigant as a matter of course; it is merely a legislative privilege which the law-making authority may confer or withhold as it may think fit. Subject to the provisions of the Constitution the Legislature possesses full powers to grant or take away the right of appeal and to prescribe in what cases, under what circumstances, in what manner and to and from what Court appeals may be taken. It is for this reason that appeals are commonly regarded as creatures of statute. The right of appeal has always been regarded as a valuable and substantial right and it has been held repeatedly that a provision of law which confers, extends or regulates the right of appeal should be liberally construed with the object, if possible of maintaining the right. If, therefore, a statute is fairly capable of two interpretations -- one which preserves the right of appeal and the other which withdraws the said right--the doubt should be resolved in favour of the right of appeal ('4 CJS Appeal & Error S 18'). A statute or a statutory rule ought not to be construed as impliedly taking away the right of appeal previously existing unless the language used clearly shows that to have been the intention of the law-making body. Moreover there is a

presumption in law that the Legislature would not oust or restrict the jurisdiction of a superior Court or deprive it of the jurisdiction which, it possesses for the trial of cases without a very explicit expression of its intention to do so. Indeed Lord Mansfield is reported to have observed that nothing but express words can take away the jurisdiction of the, superior Courts '*R. V. Abbot*²⁶'. A provision of law which deprives a litigant of his right of appeal to a superior tribunal cannot be regarded as a provision which affects only the procedure and practice of the Court; on the other hand it must be regarded as a provision which affects substantive and substantial rights. In '*Colonial Sugar Refining Co. v. Irving*²⁵', their Lordships of the Privy Council expressed the view that an Act of Parliament which took away the right of appeal to the King in Council was not retrospective, as the result of holding the contrary would be to deprive the appellant of a vested right to appeal to a higher Tribunal. In a brief judgment Lord Macnaghten observed that: "To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure."

The decision in this case has been followed by the Courts in India, and it has been held that all rights of appeal which are available to the parties to a case on the date on which the suit is brought continue to be available to him throughout the course of the litigation and until the final orders are passed: '56 Cal 512; 52 Mad 361. The parties can be divested of these vested rights during the pendency of the case if and only if the appropriate legislative authority makes its intention plain by express language or by necessary implication. As statutory rules are regulated by the same rules of construction as are applicable to statutes it is obvious that a right of appeal conferred by a statute cannot be taken away by a rule of procedure by the High Court particularly if, as in the present case, the amended rule is not retrospective in its operation.

11. Now, what exactly were the vested rights of a litigant who brought a suit on or before the 8th May 1951 to prefer an appeal to the Supreme Court? These rights are embodied in Sections 109 and 110 of the Civil P. C. and in Article 134 of the Constitution. Section 109 declares that "an appeal shall lie to the Supreme Court" in cases mentioned in Clauses (a) to (c) of the said section provided that in each of the cases mentioned in Clauses (a) and (b) the conditions set out in Section 110 are complied with. Article 133(4) declares that no appeal shall lie to the Supreme Court from the decree or order of one Judge of a High Court. A perusal of these provisions makes it quite clear that a litigant had a right to prefer an appeal to the Supreme Court if he satisfied the conditions of Sections 109 and/or 110 and if the order sought to be appealed from was not passed by a single Judge of the High Court either in appeal or in second appeal or on revision. 'Prima facie' he is entitled to claim that this right which is clearly a vested right should be safeguarded for him.

12. Unfortunately the situation has been somewhat complicated by the decision of a Full Bench of the High Court at Nagpur in '*Radhakishan v. Shridhar*', ILR (1950) Nag 532(Supra). In this case a second, (appeal?) was filed in the High Court on the 13th October 1945, and in accordance with the rules which were in force on the said date it would have been put up for hearing before a Bench of two Judges. On the 27th May 1949 the High Court promulgated a new rule which

declared that all second appeals should be heard by a Judge sitting alone. As an order passed by a single Judge was not appealable to the Federal Court and as the new rule was calculated to deprive litigants of their right of appeal to the said Court it was contended by the appellant that his vested right to have his case heard by a Division Bench with a right of appeal over to the Federal Court could not be taken away by the rule-making powers of the High Court, and that in any event as the rule was not expressly made retrospective it could not affect the appeals which were pending on the date on which it came into force. The Full Bench came to the conclusion that Clauses (a) and (b) of Section 109 provided for appeals as of right, Clause (c) provided for an appeal in the discretion of the High Court and Section 112 for an appeal as of grace in exercise of His Majesty's prerogative. They accordingly held that only the appeals which a person is entitled as of right at the commencement of the action are to be preserved to him and as Clauses (a) and (b) of Section 109 alone provide for appeals as of right the amendment of the rules effected on the 27th May 1949 would not apply to appeals which satisfied the condition of the valuation prescribed in Section 109, Clauses (a) and (b), read with Section 110 of the Civil P. C., but that it would apply to appeals which satisfied the conditions mentioned in Clause (c).

13. I must confess with very great respect that the reasons given by the learned Judges for classifying appeals into three categories and for holding that the rights of appeal conferred by Clauses (a) and (b) of Section 109 read with Section 110 cannot be taken away, but that the rights conferred by Clause (c) can be taken away, appear to me to be misconceived. Section 109 draws no distinction whatsoever between appeals which can be preferred under any of the three clauses of the said section for it provides that "an appeal shall lie" to the Supreme Court; (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction; (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction; and (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

14. Leave to appeal to the Supreme Court can be granted either when the case fulfils the requirements of Section 110 or when it is 'otherwise' a fit-case for appeal to the Supreme Court. In either case the petitioner has to apply for a certificate either that the case fulfils the requirements of Section 110 and is therefore a fit case for appeal to the Supreme Court, or that for other reasons it is a fit case for appeal to the Supreme Court. Ordinarily it is not difficult to satisfy the Court that the case fulfils the requirements of Section 110 as far as the value of the subject-matter is concerned. It is more difficult to satisfy the Court that the case involves the decision of a substantial question of law. It is still more difficult to satisfy the Court that even though the matter in controversy is not measurable by money the case is a fit one for appeal to the Supreme Court. But the fact that it is more difficult to obtain a certificate in one case than in another does not, in my opinion, alter the fact that a person who procures the certificate under Clause (c) has as much right to prefer an appeal to the Supreme Court as the person who procures a certificate under either of the other two clauses. The only construction that may reasonably be placed on the words "an appeal shall lie to the Supreme Court" is that a person who satisfies any one or more of the conditions specified in Sections 109 and 110 of the Civil P.

C. is entitled to claim that leave to appeal must be given to him as a matter of right. If, for example, he satisfied the Court that his case fulfils the requirements of Section 110 or that the case is a fit one for appeal to the Supreme Court, the Court has no discretion to refuse leave to appeal and must grant it as a matter of course.

15. It is true that in a case covered by Clause (c) of Section 109, the granting of a certificate is said to be in the discretion of the Court, but it must be remembered that this discretion is a judicial discretion and is not the arbitrary will or the individual or personal view of the Judge. It has to be exercised in accordance with recognised principles. As pointed out by Lord Mansfield in 'R. v. Wilkes', (1769) 4 Burr 2527:

"Discretion when applied to a Court of justice means sound discretion guided by law. It must be governed by rule not humour; it must not be arbitrary, vague and fanciful, but legal and regular." In an American case (*Wilson v. Michigan State Board of Registration in Medicine*²⁷), Marshal C. J., observed as follows:

"Courts are mere instruments of the law and can will nothing. When they are said to exercise a discretion it is a mere legal discretion--a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the purpose of giving effect to the will of the Legislature, or, in other words to the will of the law."

16. It will thus be seen that when the High Court is called upon to decide whether the amount or value of the subject-matter of the suit or appeal is above the limits prescribed by Section 110 or whether a substantial question of law has arisen or whether the case is a fit one for appeal to the Supreme Court, the High Court exercises discretion in the sense of being discreet, circumspect and prudent and exercising the best of its judgment. Decisions of eminent Judges have indicated the grooves in which discretion should run and this Court and all other Courts are supposed to ascertain the principles of law and to follow them. Justice is administered in the Courts on fixed and settled principles and does not vary "like the Chancellor's foot". It seems to me, therefore, that as much discretion is involved in deciding that the case is a fit one for appeal to the Supreme Court as in deciding that the appeal involves the decision of a substantial point of law. Rules and analogies of law are as relevant in the decision of the first question as they are in the decision of the second.

17. The conclusions at which I have arrived appear to be supported by judicial cases. In 'Banarsi Parshad v. Kashi Krishna Narain', 23 All 227, Lord Hobhouse observed:

"(a) that the existence of a point of law confers a right of appeal in the ordinary course of procedure under the Code when the amount in dispute exceeds the prescribed figure; and

(b) that to certify that the case is a fit one for appeal though it is left entirely in the discretion of

the Court, is a judicial process which could not be performed without special exercise of that discretion, evinced by the fitting certificate." The decision of the question whether the appeal involves some substantial question of law does not, in my opinion, involve the exercise of a lesser degree of discretion than the decision of the question whether the case is a fit one for appeal to the higher Tribunal. Moreover, if the existence of a point of law confers a right of appeal in the ordinary course of procedure I can see no reason on principle why the existence of a fit case for appeal to the superior Tribunal should not confer a similar right of appeal.

18. In 'Delhi Cloth and General Mills Co. v. Income-tax Commissioner, Delhi', 9 Lah 284 the provisions of S. 67-A of the Income-tax Act, 1922, came up for consideration before their Lordships of the Privy Council. Sub-sections (2) and (3) of this section are in the following terms:

"2. An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under S. 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

3. The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply to cases under this section in a like manner as they apply in the case of appeals from decrees of a High Court."

Their Lordships held that 'the right of appeal' is confined to a case which the High Court certifies to be a fit one for appeal to His Majesty in Council. In the course of their judgment they observed as follows:

"These words are textually the same as the concluding words of Sub-section (c) of Section 109 of the Civil P. C. and coupled with the carefully limited referential words to the Code of Civil Procedure in Sub-section (3) suffice in their Lordships' judgment to exclude from any right of appeal cases which fall within the requirements of Section 110 of the Code and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. It was conceded in arguments that if Sub-section (2) of the section had stood alone it would be difficult to escape from the construction of it which has just been indicated. It was contended, however, that the reference to the Code in Sub-section (3) was made in terms sufficiently comprehensive to include within the class of appealable cases all that are defined in the provisions incorporated by reference. Their Lordships again agree with this contention that the words of qualification "so far as may be" in Sub-section (3) are, in their judgment, apt to confine the 'statutory right of appeal' to the cases described in Sub-section (2). To this extent, therefore, their Lordships are in agreement with the High Court."

If Sub-section (2) of Section 66 of the Income-tax Act confers a statutory right of appeal, I can see no reason for holding that a similar right is not conferred by Clause (c) of Section 109, the

language of which is identically the same as the language of this sub-section.

19. It may perhaps be mentioned in conclusion that the view taken by the learned Judges of the High Court at Nagpur in the Full Bench case referred to above, is not supported by a single authority. The learned Judges appear to have based their decision on the expression "as of right" appearing in the 'Colonial Sugar Refining Co.' case (1905-Ac 369) and to have sought to distinguish it from the expression "in the discretion of the High Court". I need only repeat with all respect that I am unable to concur in this view. As pointed out in an earlier paragraph of this judgment it is an accepted proposition of law that where a statute is passed while an action is pending, strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. The rights of appeal conferred by Sections 109 and 110 of the Civil Procedure Code are vested rights and these rights cannot be taken away by a statutory rule (which does not indicate either expressly or by necessary implication that it was designed to operate retrospectively) and cannot interfere with rights which have already accrued. These two sections confer rights of appeal in the cases mentioned and under the conditions prescribed therein and a person who complies with the said conditions is entitled as of right to ask that leave to appeal to the Supreme Court should be granted to him. A person who satisfies the High Court that his case is a fit one for appeal to the High Court has the same right of appeal to the Supreme Court as a person who satisfies the High Court that he has complied with the provisions of Section 110 of the Civil Procedure Code.

20. The above exposition of law makes it quite clear that a statute is prospective and not retrospective in its operation, that laws which affect only the procedure and practice of the Courts are always retrospective unless there is some good reason to the contrary, that laws which damage or destroy vested rights are not retrospective unless the legislature states clearly or by distinct implication that they are so, that even a rule of procedure cannot "be carried to the point of destroying vested rights, that a right to prefer an appeal is a vested right, that Sections 109 and 110 of the Code of Civil Procedure confer rights of appeal which vest in the parties to the litigation as soon as the action is brought, that even though an application has to be made to the High Court for permission to prefer an appeal to the Supreme Court Sections 109 and 110 of the Civil Procedure Code confer a right of appeal as a matter of right in the cases mentioned and under the conditions prescribed in the statute, that a person who complies with the statutory conditions is entitled as of right to claim that his application for leave to appeal should be granted, that in such a case the Court has no discretion to reject the application for leave to appeal, that authoritative pronouncements made by the highest tribunals show that Clause (c) of Section 109 confers a statutory right of appeal, that the distinction between an appeal as of right and an appeal in the discretion of the High Court is illusory as far as the provisions of Section 109 are concerned, that the Court has as much discretion to say that the appeal involves the decision of a substantial question of law as to say that the case is a fit one for appeal to the Supreme Court, that if a right to prefer an appeal is curtailed or so unreasonably encumbered as to render it useless or impracticable it is said to be taken away, and that the new rule which

provides that certain appeals which were heard by a Bench of two Judges should in future be heard by a Judge sitting alone takes away the vested right of appeal and can therefore be deemed to operate only in respect of appeals which arise out of suits instituted on or after the relevant date.

21. For these reasons I am of the opinion that the new rule framed by this Court cannot apply to any second appeal arising out of a case which was instituted in a Court of law before the 8th day of May 1951. My answer to the question referred to the Full Bench must therefore be in the negative.

Kapur, J.

22. I agree with the opinion of Bhandari, J., in regard to cases falling within Section 109(a) and Section 109(b) of the Code but I entertain some doubts in regard to cases under Section 109(c). No useful purpose will however be served by any elaboration of the doubts as a majority of the Bench has reached a clear conclusion on the point.

Soni, J.

23. I agree with Bhandari, J.

Cases Referred.

1(1892) 3 Ch 402 at p. 421
2(1861) 10 C. B. (N S) 179
3(1850) 9 C B 551
41843) 12 M, & W. 303
5(1837) 6 A & E 943
63 Id. 884
7(1885) 15 Q B D 234
812 Id 224
93 Id 295
10(1859) 4 H & N 76
11AIR (30) 1943 FC 24
12(1909) 1 KB 310
13(1893) 1 Q B 41
14(1881) 1 B & S 758
15(1858) 8 E & B 778
16(1859) 4 II & N 559
17(1853) 8 Ex 352
18(1855) 5 H L Cas 481
19(1939) 2 K B 61
20(1878) 3 AC 582
21ILR (1937) All 191
2256 Cal 512
2352 Mad 361

24(1864) 10 H L C 703 at p. 723

25(1905) A C 369

26(1780) Doug 553

27199 N W 643 to 634