Supreme Court of India
Indira Sohanlal vs Custodian Of Evacuee ... on 28 October, 1955
Equivalent citations: 1956 AIR 77, 1955 SCR (2)1117
Author: B Jagannadhadas
Bench: Das, Sudhi Ranjan, Bose, Vivian, Jagannadhadas, B., Imam, Syed Jaffer, Aiyar, N. Chandrasekhara

PETITIONER:
INDIRA SOHANLAL

Vs.

RESPONDENT:
CUSTODIAN OF EVACUEE PROPERTY,DELHI & OTHERS.

DATE OF JUDGMENT:
28/10/1955

BENCH:
JAGANNADHADAS, B.
BENCH:
JAGANNADHADAS, B.
AIYAR, N. CHANDRASEKHARA
DAS, SUDHI RANJAN
BOSE, VIVIAN
IMAM, SYED JAFFER

CITATION:
1956 AIR 77 1955 SCR (2)1117

ACT:
Evacuee Property-Custodian-General-Revisional powers-Administration of Evacuee Property Act, 1950 (XXXI of 1950), ss. 2 7, 58(3)-Transaction before the passing of the Act-Application for confirmation-East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947), ss. 5-A, 5-B-Order of confirmation after passing of Act XXXI of 1950-Revision-Validity-General Clauses Act (X of 1897), s. 6-Applicability.

HEADNOTE:
The appellant, a displaced person from Lahore, was the owner of a house there and on the 10th of October, 1947, she arranged to have it exchanged with certain lands in a village in the State of Delhi, belonging to M, an evacuee. On the 23rd of February, 1948, she made an application to the Additional Custodian of Evacuee Property (Rural), Delhi, for confirmation of the transaction of ex-
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change under s. 5-A of the East Punjab Evacuees'

(Administration of Property) Act, 1947, as amended in 1948 and applied to the State of Delhi. Under s. 5-B of the Act an order if passed by the Custodian or Additional Custodian would not be subject to appeal or revision, and would become final and conclusive. But the application was not disposed of until the 20th of March, 1952, and on that date the Additional Custodian passed an order confirming the exchange. In the meanwhile, there were changes in the law relating to evacuee property by which the East Punjab Act as applied to the State of Delhi witness repealed and re-enacted, and ultimately Central Act XXXI of 1950 was passed which, among other things, conferred by s. 27 revisional powers on the Custodian-General. The Custodian-General issued a notice under s. 27 to the appellant and, after hearing her, set aside the order of confirmation and directed the matter to be reconsidered by the Custodian. It was contended for the appellant that the order of confirmation by the Additional Custodian was not open to revision, on the ground that on the filing of the application in 1948 the appellant got a vested right to have it determined under s. 5-A, with the attribute of finality and conclusiveness under s. 5-B attaching to such determination, and that the subsequent repeal and re-enactment of these provisions cannot affect such a right, in view of s. 6 of the General Clauses Act, and s. 58(3) of Act XXXI of 1950.

Held (i) that s. 6 of the General Clauses Act (X of 1897) was not applicable to the case, as s. 58(3) of Act XXXI of 1950 was a self-contained provision indicative of the intention to exclude the operation of s. 6;

(ii)that the right to a determination with the attribute of finality, assuming that such a right exist,.;, is not a vested right and it does not accrue until the determination is in fact made, when alone it becomes an existing right.

Colonial Sugar Refining Co. Ltd. v. Irving ([1905] A.C. 369) and Delhi Cloth & General Mills Co. Ltd. v. Income-Tax Commissioner ([1927] I.L.R. 9 Lah. 284; 54 I.A. 421), distinguished;

(iii)that the words "the repeal shall not affect the previous operation of the repealed law" in s. 58(3) of Act XXXI of 1950 cannot be construed as meaning "the repeal shall not affect the future operation of the previous law"; and

(iv)that the scheme underlying s. 58(3) is that every matter to which the new Act applies has to be treated as arising, and to be dealt with, under the now law except in so far as certain consequences have already ensued or acts have been completed prior to the new Act, to which it is the old law that will apply.

In view of s. 58, the application of the appellant for confirmation pending on the date when Act XXXI of 1950 came into force, had to be dealt with and disposed of under this Act and the order of confirmation passed in 1952 was subject

to the revisions -power of the Custodian-General under s, 27 of the said Act,
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Quaere.- Whether a right of appeal in respect of a pending action can be treated as a substantive right vesting in the litigant on the commencement of the action.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 195 of 1954. Appeal by special leave from the judgment and order dated the 20th May, 1953 of the CustodianGeneral of Evacuee Property, New Delhi in Revision No. 387-R/Judl/53. Achhru Ram, (Ganpat Rai, with him) for the appellant. C. K. Daphtary, Solicitor-General of India, (Porus A.Mehta and R. H. Dhebar, with him) for respondents Nos. 1 & 2. 1955. October 28. The Judgment of the Court was delivered by JAGANNADHADAS J.-This is an appeal by special leave against the order of the Custodian-General of Evacuee Property dated the 20th May, 1953, revising an order of the Additional Custodian of East Punjab, Delhi, dated the 20th March, 1952. The two questions raised before us on the facts and circum- stances, to be stated, are (1) whether the Custodian-General had the revisional power which he purported to exercise, and (2) was the order of the Custodian-General on its merits such as to call for interference by this Court. The appellant before us, one Mrs. Indira Sobanlal, is a displaced person from Lahore. She was the owner of a house. at Lahore known as 5, Danepur Road. Malik Sir Firoz Khan Noon of West Pakistan owned 766 bighas of agricultural land in a village called Punjab Khore within the State of Delhi. An oral exchange is said to have taken place between these two., of the said properties, on the 10 th October, 1947. In pursuance of that exchange Malik Sir Firoz Khan Noon is said to have taken possession of the Danepur Road House. The appellant is also said to have been put in possession of the said agricultural lands in Punjab Khore presumably by way of attornment of tenants who were in actual cultivating possession of the lands. Under section 5-A of the East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947), as amended in 1948 and applied to the State of Delhi, such a transaction required confirmation by the Custodian. In compliance with this section the appellant made an application on the 23rd February, 1948, to the Additional Custodian of Evacuee Property (Rural), Delhi, for confirmation of the above transaction of exchange and of the consequent transfer to her of the property in agricultural land. In view of certain rules which came into force later and which prescribed that the application was to be in a set form furnishing certain particulars, the appellant filed an amended application dated the 14th August, 1948, furnishing the required particulars. This application was not disposed of by the Additional Custodian, for reasons not clear on the record, until the 20th March, 1952. On that date he passed an order confirming the exchange. Meanwhile, however, a, proposal was put up to the Additional Custodian by his Revenue Assistant to allot agricultural lands of the village Punjab Khore, including those covered by this exchange, to a number of refugee-cultivators. The proposal was approved by the Additional Custodian on the 12th June, 1949. In pursuance thereof a detailed allotment was made to twenty six individual allottees on the 27th October, 1949. There is a report of the Rehabilitation Patwari dated the 27th February 1950, on the record showing that the allottees entered into possession of the land and cultivated their respective lands and settled down in the village. After the order confirming the exchange was passed by the Additional Custodian on the 20th

March, 1952, the appellant filed an application on the 5th May, 1952, asking to be placed in possession, and for a warrant of delivery of possession to be issued against the various allottees and tenants of the land. The Naib Tehsildar recommended that possession may be given to the appellant and that the Patwari may be informed accordingly to take the necessary action in the matter. But it does not appear from the record whether this was done, or whether possession was in fact delivered. At this stage, a notice under section 27 of the Administration of Evacuee Property Act, 1950 (Central Act XXXI of 1950), appears to have been issued to the appellant by the Custodian-General to show cause why the order of the Additional Custodian dated the 20th March, 1952, confirming the exchange and the further orders dated the 20th and 28th July, 1952, sanctioning mutation and other consequential and incidental orders made in connection therewith be not set aside. This notice appears to have been issued asking the appellant to show cause on the 4th May, 1953. The case was adjourned to the 12th May, 1953, at the request of counsel for the appellant and thereafter a more detailed notice dated the 14th May, 1953, was issued setting out the various grounds on which the previous orders were sought to be set aside. The learned Custodian-General passed the order now under appeal on the 20th May, 1953, setting aside the order of confirmation. He directed the Custodian to decide the case after giving notice to all those who might be affected by the confirmation of this transaction. As the earlier part of his order shows, the reference to the persons affected was to those who were allotted the lands in question by virtue of the order of the Additional Custodian of the year 1949 above referred to.

To appreciate the first question that has been raised as to the validity of the exercise of revisional powers by the Custodian-General on the above facts, it is necessary to set out the course of the relevant legislative measures from time to time.

To meet the unprecedented situation of sudden migration of vast sections of population on a large scale from West Punjab to East Punjab and vice versa, leaving most of the properties which they had, moveable and immoveable, agricultural and nonagricultural, the concerned Governments bad to take wide legislative powers to deal with the situation, to set up the necessary administrative machinery, and to evolve and give effect to their policies in regard thereto from time to time. The earliest of these legislative measures so far as we are concerned, was the East Punjab Evacuees (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947), which came into force on the 12th December, 1947. This Act was amended by the East Pun- jab Evacuees' (Administration of Property) (Amendment) Ordinance, 1948 (East Punjab Ordinance No. II of 1948) and later by East Punjab Evacuees' (Administration of Property) (Amendment) Act, 1948, (East Punjab Act XXVI of 1948), which inserted two new sections, 5-A and 5-B I prescribing the requirement of confirmation Of transactions relating to eva- cuee property and providing a right of appeal or revision therefrom. These sections were specifically made applicable to transactions on or after the 15th August, 1947. The above Punjab Legislative measures were extended to the State of Delhi by Central Government notifications under the Delhi Laws Act, dated the 29th December, 1947, the 28th January, 1948, and the 22nd April, 1948, respectively. In so far as these measures applied to Chief Commissioners' Provinces they were repealed by the Administration of Evacuee Property (Chief Commissioners' Provinces) Ordinance, 1949, (Central Ordinance No. XII of 1949) which came into force so far as Delhi is concerned on the 13th June, 1949. This Ordinance, in its turn, was repealed and a fresh Central Ordinance came into force in its place, applicable to all the Provinces of India except Assam

and West Bengal. That was Administration of Evacuee Property Ordinance., 1949, (Central Ordinance No. XXVII of 1949), which came into force on the 18th October, 1949. This Central Ordinance in its turn was repealed and replaced by the Administration of Evacuee Property Act, 1950 (Central Act XXXI of 1950) which came into force on the 17th April, 1950.

It is necessary to notice at this stage that until the Central Ordinance XXVII of 1949 was passed, the Evacuee Property law was regulated by the respective Provincial Acts and were -under the respective Provincial administrations. Central Ordinance No. XXVII of 1949 provided for a centralised law and centralised administration which was continued by Central Act No. XXXI of 1950. One of the main steps taken for such centralised administration was to create the office of Custodian-General with powers of appeal and revision as against the orders of Provincial Custodians. Section 5 of the Central Ordinance No. XXVII of 1949 authorised the Central Government to appoint a Custodian-General of Evacuee Property in India for the purpose of discharging the duties imposed on him by or under the Ordinance, while the appointment of Provincial Custodians, Additional, Deputy or Assistant Custodians, was still left to the various Provincial Governments. These provisions were continued by sections 5 and 6 of Central Act XXXI of 1950. As regards the transactions by evacuees relating to evacuee property, the first legislative interference in East Punjab and Delhi appears to have been by virtue of East Punjab Evacuees (Administration of Property) (Amendment') Ordinance, 1948 (East Punjab Ordinance No. II of 1948) and the East Punjab Evacuees' (Administration of Property) (Amendment) Act, 1948 (East Punjab Act XXVI of 1948) which inserted two new sections 5-A and 5-B into the East Punjab Act XIV of 1947. The said sections were as follows:

"5-A. (1) No sale, mortgage, pledge, lease, exchange or other transfer of any interest or right in or over any property made by an evacuee or by any person in anticipation of his becoming an evacuee, or by the agent, assign or attorney of the evacuee or such person, on or after the fifteenth day of August, 1947, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorised by him.

(3) The Custodian shall reject any application made after the thirty first day of March, 1948 or after the expiration of two months from the date the transaction was entered into, whichever is later.

(4) The Custodian shall hold a summary enquiry into an application, which is not rejected under subsection (3) and may decline to confirm the transaction if it appears to the Custodian that-

(a) the transaction was not a bona fide one for valuable consideration; or

(b) the transaction is in the opinion of the Custodian prejudicial to the prescribed objects; or (c) for any other reason, to be given by the Custodian in writing, the transaction ought not to be confirmed.

(5)If the Custodian confirms the transaction, he may confirm it unconditionally or subject to such conditions and terms as he may consider proper.

(6)The Custodian, if the order is not pronounced in the presence of the applicant, shall forthwith give notice in writing to the applicant of any order passed by him under sub-sections (3), (4) or (5).

" 5-B. If the original order under section 5-A is passed by an Assistant or Deputy Custodian of Evacuee Property, any person aggrieved by such order may appeal within sixty days from the date of -the order to the Custodian of]Evacuee Property who may dispose of the appeal himself or make it over for disposal to the Additional Custodian of Evacuee Property; and subject only to the decision on such appeal, if any, the order passed by the Assistant or 'Deputy Custodian of Evacuee Property, or any original or appellate order passed by the Custodian or Additional Custodian of Evacuee Property shall be final and conclusive". It will be seen that these two sections-enjoined that transfers by an evacuee or intending evacuee relating to his property from and after the 15th August, 1947, required confirmation and provided for appeal or revision from the orders passed on applications therefor and subject thereto, such orders were made final and conclusive. The requirement as to confirmation has been substantially continued in more or less the same form by sections 25, 38 and 40 respectively of the successive legislative measures with certain modi- fications which are not material for this case. But so far as the appealability or revisability of an order passed on an application for confirmation is concerned., there have been changes from: time to time. It will be seen from section 5-B of the East Punjab Act, XIV of 1947, as quoted above, that any original order passed by the Custodian or Additional Custodian is not subject to appeal or revision and it is specifically declared to be final and conclusive. Central Ordinance No. XII of 1949 by section 30(1) (b) thereof provided for an appeal to the High Court against an original order of a Custodian or Additional Custodian or authorised Deputy Custodian but there was no provision for revision of such an order. Under the Central Ordinance No. XXVII of 1949 the position was substantially different. Section 24 thereof, inter alia, provided that. any person aggrieved by an order made under section 38 (which corresponds to the previous section 5-A of the East Punjab Act XIV of 1947) may prefer an appeal in ,such manner and within such time as may be prescribed, to the Custodian-General where the original order has been passed by the Custodian, Additional Custodian or an Authorised Deputy Custodian. Section 27 thereof provided for revisional powers of the Custodian-General but it was specifically confined to appellate orders and there was no power given thereunder for revision by the Custodian-General of an original order passed by the Custodian. But under Central Act XXXI of 1950 which repealed and replaced this Ordinance the position became different. The provision for appeal under section 24 thereof was virtually the same as before, in so far as it is relevant here. But as regards revision, however, section 27 of the Act provided for the revisional powers of the Custodian-General in the following terms: "27. (1) The Custodian-General may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any district judge or Custodian has passed an order for the purpose of satisfying him-

self as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit: Provided that the Custodian-General shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard. ....." The question relating to the validity of the revisional powers exercised by the Custodian-General in the present case arises with reference to the provisions above mentioned.

It is not disputed that Malik Sir Firoz Khan Noon was an evacuee. Nor is it disputed that this property in Punjab Khore which was the subject-matter of the exchange was evacuee property. Though the exchange in question was alleged to have taken place on the 10th October, 1947, at a time when there was no restriction against any evacuee dealing with the property he left behind, it is indisputable that section 5-A of the East Punjab Act XIV of 1947 which has been specifically made retrospective from the 15th August, 1947, operates in respect of the present transaction also. It, therefore, requires confirmation under the said section and under the corresponding sections in the subsequent legislative measures in this behalf. It was in compliance with this requirement that the appellant made an application for confirmation on the 23rd February. 1948, and that a subsequent amended application was filed on the 14th August, 1948. It is these applications that were disposed of on the 20th March, 1952, by the Additional Custodian, Delhi, by an order confirming the exchange, which has since been revised by the Custodian-General on the 20th May, 1953. The main contention of the learned counsel for the appellant is to the powers which are vested in the Custodian-General to revise the original orders of the Custodian or Additional Custodian under section 27 of the Central Act XXXI of 1950 are not applicable to an order passed by the Custodian or Additional Custodian on an application made long prior to the time when the office of the Custodian-General was set up and he was clothed with powers of revision. It is urged that on the date when the application for confirmation was first made on the 23rd February, 1948, an order passed under section 5-A by the Custodian or Additional Custodian is final and con- clusive under section 5-B. It is strongly -urged that the subsequent repeal and re-enactment of these provisions cannot affect the right vested in the appellant to obtain a final and conclusive order from the Custodian or Additional Custodian on her application for confirmation. Section 6 of the General Clauses Act and the Privy Council case in the Colonial Sugar Refining Co. Ltd. v. Irving(1) were relied on in support of this contention. To determine the validity of this contention, it is necessary to trace the course of the various relevant statutory provisions from time to time which repealed the prior corresponding legislative measures and to determine the effect thereof.

The East Punjab Act XIV of 1947 was replaced by the Central Ordinance No. XII of 1949 relating to Chief Commissioners' Provinces. Section 40 thereof which repealed the prior Act was as follows:-

"40. (1) The East Punjab Evacuees' (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947), as in force in Ajmer-Merwara and Delhi, is hereby repealed. (2)Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by the Act aforesaid shall, in relation to the Provinces of Ajmer- Merwara and Delhi, be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance, and any penalty` incurred or proceeding commenced under the said Act shall be deemed to be a penalty incurred, or proceeding commenced under this Ordinance as if this Ordinance were in force on the day when such thing was done, action taken, penalty incurred or proceeding commenced". When this Ordinance was in turn repealed by (1) [1905] A.C. 369.

Central Ordinance No. XXVII of 1949, the repealing section 55 was as follows:

"55. (1) The Administration of Evacuee Property Ordinance, 1949 (XII of 1949), as in force in the Chief Commissioners' Provinces is here by repealed.

(2).....

(3)Notwithstanding the repeal by this Ordinance of the Administration of Evacuee Property Ordinance, 1949, or of any corresponding law, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under this Ordinance as if this Ordinance were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced". Ordinance No. XXVII of 1949 was in its turn repealed by Central Act XXXI of 1950. This Act was amended by an Ordinance and later by an Act of, the same year. Section 58 is the repealing provision of this Act as so amended. The material portion thereof is as follows:

"58. (1) The Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949) is hereby repealed.

(2).....

(3)The repeal by this Act of the Administration of Evacuee Property Ordinance, 1949 (XXVII of 1949)..... shall not affect the previous operation thereof, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under that Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken".

Thus in the transition of the Evacuee Property law relating to Delhi, from the East Punjab Act XIV of 1947 to the present Central Act XXXI of 1950, there have been three repeals. The first two repealing provisions are in almost identical terms but the third is somewhat different. The difference is in two respects. (1) The provision in the previous repealing sections that "any penalty incurred or proceeding commenced under the repealed law shall be deemed to be a penalty incurred or proceeding commenced under the new law as if the new law were in force on the day when the penalty was incurred or proceeding commenced" is now omitted. (2) The provision that "anything done or any action taken in exercise of any power conferred by the previous law shall be deemed to have been done or taken in exercise of the powers conferred by the new law as if the new law were in force on the day when such thing was done or action taken" is continued. But it is specifically provided that this is subject to the repeal not affecting the "previous operation of the repealed law" which in the context clearly means the previous operation of the repealed law in respect of "anything done or any action taken". The question thus for consideration is what is the result brought about by these provisions.

Before proceeding to determine it, it is desirable to consider whether section 6 of the General Clauses Act can be relied on. The position as regards section 6 of the General Clauses Act in the case of repeal and re-enactment has been considered by this Court in State of Punjab v. Mohar Singh(') and laid down as follows at page 899: "Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section

itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining -whether they indicate a different intention.

(1) [1955] 1 S.C.R. 893, 899.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or con- trary to the provisions of the section. Such incom- patibility would have to be ascertained from a consideration of all the relevant provisions of the new law.....".

In the present case sub-section (3) of section 58 of Central Act XXXI of 1950 purports to indicate the effect of that repeal, both in negative and in positive terms. The negative portion of it relating to "the previous operation" of the prior Ordinance appears to have been taken from section 6(b) of the General Clauses Act, while the positive portion adopts a "deeming" provision quite contrary to what is contemplated under that section. Under the General Clauses Act the position, in respect of matters covered by it, would have to be determined as if the repealing Act had not been passed, while under section 58 of Central Act XXXI of 1950, the position-so far as the positive portion is concerned-has to be judged as if the repealing Act were in force at the earlier relevant date. Therefore where, as in this case, the repealing section which purports to indicate the effect of the repeal on previous matters, provides for the operation of the previous law in part and in negative terms, as also for the operation of the new law in the other part and in positive terms, the said provision may well be taken to be self-contained and indicative of the intention to exclude the application of section 6 of the General Clauses Act. We are, therefore, of the opinion that the said section cannot be called in aid in this case. Now, as to the meaning of section 58(3) of Central Act XXXI of 1950, it must be admitted that this is not free from difficulty. This kind of provision in a repealing Act appears rather unusual. Learned counsel for the appellant urges that the positive portion of this provision, i.e., "anything done or any action taken in exercise of any power conferred by or under, the Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken" applies only to purely administrative matters and that his case falls within the scope of the first portion, viz., "the repeal..... shall not affect the previous operation of the (repealed) Ordinance". His contention is that the application for, confirmation which was made by the appellant in 1948 and which remained pending until Act XXXI of 1950 came into force and superseded the earlier legislation in this behalf, had to be disposed of in accordance with sections 5-A and 5-B of the East Punjab Act XIV of 1947, as amended in 1948; that the order of confirmation passed by the Additional Custodian in such a pending application was not open to appeal or revision but became final and conclusive. It is urged that on the filing of the application in 1948, the appellant got a vested right to have it determined under section 5-A with the attribute of finality and conclusiveness under section 5-B attaching to such determination. According to the learned counsel

this follows from the "previous operation" of the repealed law and is in consonance with the principle laid down by the Privy Council in Colonial Sugar Refining Co. Ltd. v. Irving(1). It appears to us that these contentions are unsustainable. Colonial Sugar Refining Co. Ltd. v. Irving(1) relates to the case of a right of appeal against an order passed or to be passed in a pending action. Their Lordships treated the right of appeal to a superior tribunal in a pending action as an existing right and held that the suitor cannot be retrospectively deprived of it except by express words or by necessary implication. This doctrine was affirmed by the Privy Council in Delhi Cloth & General Mills Co. Ltd.

(1) [1905] A.C. 369.

v.Income Tax-Commissioner, Delhi(1) in its application to the converse case in the following terms:

"Their Lordships can have no doubt 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 may be noticed that in the case in Delhi Cloth & General Mills Co. Ltd. v. Income-Tax Commissioner(1), the orders of the High Court from which appeals were sought to be filed to the Privy Council were dated the 6th January, 1926 and 12th January, 1926. As the Indian Income-tax Act stood at the time and according to the interpretation of section 66 thereof by the Privy Council in Tata Iron & Steel Co. v. Chief Revenue Authority, Bombay(2) there was no appeal to the Privy Council. The legislature by an amendment of the Income-tax Act, which came into force on the 1st April, 1926, inserted therein section 66-A and gave a right of appeal against such orders as provided therein. In this situation the Privy Council repelled the contention that the litigant could avail himself of the new provision by pointing out the finality of the orders fought to be appealed against and referring to it as an existing right. This is obviously so because finality attached to them., the moment orders were passed, prior to the new Act. In the present case, the position is different. The action was still pending when Central Act XXXI of 1950 came into force. No order was passed which could attract the attribute of finality and conclusiveness under section 5-B of the East Punjab Act XIV of 1947. Further the possibility of such finality was definitely affected by the repealing provision in Central Ordinance No. XII of 1949 and Central Ordinance No. XXVII of 1949, which specifically provided that a pending action was to be deemed to be an action commenced under the new Ordinance as if it were in force at the time and therefore required to be continued under the new Ordinances. Each of these Ordinances provided for (1) [1927] I. L.R. 9 Lahore 284.

(2) (1923] L.R. 50 I.A. 212.

appeal against such an order and the second of them provided for the exercise of revisional power against an appellate order of the Custodian. Learned counsel for the appellant contends that, even so, the finality and conclusiveness, which would have attached to an order made under section 5- A, if made before Ordinance XII of 1949 was promulgated, was affected only to the extent of its being subject to an appeal and not to revision. But once the attribute of finality in respect of such an order is affected by subsequent legislation, it does not appear to be of consequence that it was affected first by a provision for appeal and later by provisions for appeal and revision. It is difficult to see that such provisions, in those cir- cumstances, are anything more than alterations in procedure. However

this may be, it appears to be clear that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action-though we do not so decide-no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. By the very terms of section 5-B of East Punjab Act XIV of 1947, finality attaches to it on the making of the order. Even if there be, in law, any such right at all as the right to a determination with the attribute of finality, it can in no sense be a vested or accrued right. It does not accrue until the determination is in "fact made, when alone the right to finality becomes an existing right as in Delhi Cloth and General Mills Co. Ltd. v. IncomeTax Commissioner(1). We are, therefore, of the opinion that the principle of Colonial Sugar Refining Co. Ltd. v. Irving(2) cannot be invoked in support of a case of the kind we are dealing with.

Nor can this be brought under the ambit of the phrase "previous operation of the repealed law". What in effect, learned counsel for the appellant contends for is not the "previous operation of the repealed law" but the "future operation of the previous (1) [1927] I.L.R. 9 Lahore 284, (2) [1905] A.C. 369.

law". There is no justification for such a construction. Besides, if in respect of the pending application in the present case, the previous repealed law is to continue to be applicable by virtue of the first portion of section 58(3) the question arises as to who are the authorities that can deal with it. The application can be dealt with by the Custodian and on appeal by the Custodian-General only as functioning under the previous law. But as such Custodian or Custodian-General they have disappeared by virtue of the repeal. It is only the second portion of section 58(3) which continues them as though the appointments were made under the new Act a position which could scarcely be controverted. To the extent of the future operation, if any, of the repealed law they can have no function. Indeed, a comparison of the wording of section 58 of Act XXXI of 1950 with the wording of section 6 of the General Clauses Act would show that if the legislature intended either that pending -proceedings were to be continued under the previous law or that anything in the nature of vested right of finality of determination or some right akin thereto was to arise in respect of such pending proceedings, the negative portion of section 58(3) would not have stopped short with saving only the "previous operation" of the repealed law. It would have borrowed from out of some portions of the remaining sub-sections (c), (d) and (e) of section 6 of the General Clauses Act, and provided in express terms for the continuance of the previous law in respect of pending pro- ceedings. Obviously no particular sub-section of section 6 of the General Clauses Act could be borrowed in toto as that would contradict the positive portion of section 58(3) of Act XXXI of 1950 and would be inconsistent with the idea underlying it. We are,therefore, clearly of the view that the appellant cannot call in aid the principle of the case in Colonial Sugar Refining Co. Ltd. V. Irving(1), nor can his case fall within the ambit of the first portion of sub- section (3) of section 58 of Act XXXI of 1950. The next question for consideration is how the (1) [1903] A.C. 369.

second and positive portion of section 58(3) of Act XXXI of 1950 is to be understood. This portion says that "anything done or any action taken in exercise of any power conferred by or under the (repealed) Ordinance, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or

action was taken". To appreciate the meaning of this it is desirable to have a general idea of the scheme of the repealed Ordinance, the powers exercisable thereunder, and the nature of the things that may be done, or action that may be taken, thereunder. The powers exercisable are to be gathered from various sections and broadly speaking fall under the follow- ing categories.

1. To make appointments-sections 5 and 6.

2. To make enquiries-sections 7, 16, 19 and 38 and to make declarations or issue notifications as a result thereof.

3. To make various kinds of consequential or administrative order such as those under sections 9, 10, 11, 12 and 21.

4. To hear and dispose of appeals, reviews or revisions- sections 24, 25, 26 and 27.

5.Power of the Central Government, to exempt, to give directions, to take action with regard to evacuee property, to delegate powers and to make rules-sections 49, 50, 51, 52 and 53.

In addition there are provisions which bring about various consequences such as vesting in the Custodian, valid discharge by payment to the Custodian, attachment, and so forth, sections 7 (2), 8, 11, 13, 16 (3), 19 (3), 20 and 22, etc. The above enumeration is by no means intended to be exhaustive but is merely to illustrate the scheme of the various provisions in the Ordinance with reference to which section 58 of the Act has to be understood. There are also rules framed by virtue of section 53 of the Ordinance under which various powers may be exercised, things done, and action taken.

If section 58 (3) of Central Act XXXI of 1950 which repealed the prior Ordinance is understood with reference to the above scheme, there is no reason to confine the operation of the second portion of section 58(3) to administrative action as suggested by learned counsel for the appellant. Broadly speaking, the second portion of section 58(3) refers to the whole range of, things that may be done, or action that may be taken, under the previous Ordinance and the rules framed thereunder, while the first portion of section 58(3) relates to the legal consequences resulting under the Ordinance or the rules from certain facts or from completed acts or things done thereunder. Without attempting to be meticulously accurate, it may be stated in general terms, that the scheme underlying section 58(3) appears to be that every matter to which the new Act applies has to be treated as arising, and to be dealt with, under the new law except in so far as certain consequences have already ensued or acts have been completed prior thereto to which it is the old law that will apply. In this view of section 58, the application of the appellant for confirmation pending on the date when Central Act XXXI of 1950 came into force had to be dealt with and disposed of under this Act and the order of confirmation passed in 1952 would clearly be subject to the revisional power of the Custodian-General under section 27 of the said Act. It is next contended that the revisional power cannot be exercised when there was an appeal provided but no appeal was filed, that it was open to the Assistant Custodian who appeared before the Custodian-General in support of the notice for revision or to the allottees of the property in whose interest the revisional order appears to have

been passed, to file an appeal under the Act as persons aggrieved. Section 27 however is very wide in its terms and it cannot be construed as being subject to any such limitations. Nor can the scope of revisional powers be confined only to matters of jurisdiction or illegality as is contended, because under section 27, the Custodian-General can exercise revisional powers "for the purpose of satisfying himself as to the legality or 1137-

propriety of any order of the Custodian". We are thus clearly of the opinion that the contention of the learned counsel for the appellant that the exercise of revisional powers in this case by the Custodian-General is without jurisdiction or is illegal, must fail.

The next question to be considered is as regards the merits of the revisional order of the Custodian-General which is under appeal before us. Learned counsel for the appellant attacked it on various grounds. He urged that the ground on which the learned Custodian-General set aside the Additional Custodian's order, viz., absence of notice to the prior allottees is wholly untenable. He contended that the allottees had no kind of interest in the land which entitled them to contest the application for confirmation, that they were at best only lessees for three years which was due to expire very shortly after the order of confirmation was passed by the Additional Custodian. He pointed out that as soon as the application for confirmation was filed on the 23rd February, 1948, general notice by beat of drum and affixture in the locality and by publication in the Indian News Chronicle article was given, that the persons in possession at the time were only the previous tenants on the land, who either attorned to the appellant or left the village, that the allottees came into possession much later and pending the disposal of the confirmation proceedings and presumably subject to its result. He also pointed out that even when the rules in this behalf came into force under Act XXXI of 1950, it was discretionary with the Custodian to give notice to persons other, than the transferor and transferee, if he considered them to be interested, and urged that since the same officer, Shri R. Dayal, made the allotment as also the confirmation, he must be taken to have exercised his discretion properly in not giving any notice to them, in view of the imminent expiry of the three years term for which they were put in possession. It is strongly urged that having regard to the above considerations and to the categorical findings of the Custodian-General himself that the transaction which was confirmed, was perfectly bona fide, the setting aside of the order of confirmation against which no appeal was filed by any one, and the consequential disturbance of the vested property rights of the appellant, was in the nature of perverse exercise of revisional power. The learned Solicitor General appearing for the respondent contended that the finding of the CustodianGeneral about the bona fides of the transaction was only tentative, that the allottees, though provisionally placed in possession for three years had, what has come to be recognised as, a quasi- permanent interest, that they had a genuine interest in opposing the confirmation sought, which related to a large tract of agricultural land, and which would reduce the pool of agricultural lands available for rehabilitation of displaced agriculturists and that confirmation of transactions relating to such land was opposed to the policy and directives of the Government and that the confirmation should not, in the circumstances, have been lightly granted by the Additional Custodian without notice to the allottees and a proper consideration of the policies and directives in this behalf. In reply thereto learned counsel for the appellant urged that the alleged policies or directives are not relevant matters for consideration by the Custodian in these proceedings which must be taken to be quasi-judicial, if not judicial, unless such policies or directives are embodied in

rules made by the Central Government under section 56(2) (q) and that no such rules were prescribed by the relevant dates and that even the Custodian-General himself in his order under appeal discounted the usefulness of any reference to notifications and directives for the purposes of this case. It was also urged that the matters which could be taken into consideration are regulated by section 40(4) of Act XXXI of 1950 and that clause (c) thereof must be construed as referring to matters ejusdem generis with clauses (a) and (b) But in the view we take of the order under appeal and the course we propose to adopt, we do not wish to express any opinion on the merits of the above arguments.

The order under appeal is one passed by virtue of the wide powers of revision vested in the Custodian-General under section 27 of the Act. The jurisdiction which has been challenged having been found in favour of the Custodian- General, this Court would normally be slow to interfere with the order on its merits. But with respect to the learned CustodianGeneral, his order is such that it is difficult to maintain it. The learned Solicitor-General himself has been obliged to put forward arguments in support of it which cannot be clearly gathered from the order itself. It is also difficult together from it whether the remand to the Additional Custodian for reconsideration, after notice was a general and open remand where all questions on the merits are to be reconsidered or was only a limited remand and if so what the limitations are. If it was meant to be an open general remand, as the concluding portion of his order seems to indicate, his definite findings on points (1) and (2) which he formulated for himself and the doubt he has expressed in his order about the usefulness of examining afresh the various notifications and directives to which his attention was drawn by the Assistant ,Custodian, would render it difficult for any Custodian on remand to consider any of those matters. If so, the remand would appear to serve no substantial purpose. In the circumstances, and in fairness to the learned Custodian-General, the only proper course would be to set aside his order under appeal and to remit the matter back to him for fresh consideration. On such fresh consideration he will give full opportunity to both sides for presentation of their respective points of view. If on the rehearing, he decides to remand the case to the Custodian, he will clearly indicate what are the matters to be considered by him. The learned Custodian-General may also consider the feasibility of his dealing with the matter finally by himself, calling for a report, if need be, from the Custodian on specified matters, in order to obviate any further delay by appeal and revision in this already protracted matter.

The appeal is allowed and the order of the CustodianGeneral is set aside. The case is remanded to him so that he may reconsider and dispose of the same in the light of this judgment. There will be no order as to costs,