with which I also respectfully agree). Had this rule of law been brought to the notice of the Court, one would have expected to find some reference to it in the judgment, for, it is not possible to imagine that such a point, if canvassed, would have been ignored or left out of consideration by the learned Chief Justice. I am, accordingly of the view that the decision in *Radha Kishan's* case does not lay down a rule of law which applies to the case before me and it constitutes no binding precedent for holding that the petitioner in this Court is debarred or precluded from raising the question of want of inherent jurisdiction of the Rent Controller.

The decisions in *Sardha Ram's* case, namely, 1961, P.L.R. at pages 716 and 769 have been relied upon by the counsel for the petitioner in his attack on the jurisdiction of the Controller and the Appellate Authority, but in reply, no attempt has been made by the respondent's counsel to meet the ratio of these cases. I would, however, set aside the order of the Appellate Authority on the short ground that it should have allowed the point of jurisdiction to be raised and that its failure to do so was wrong and contrary to law.

Setting aside the order of the Appellate Authority, I send the case back to it for re-deciding the appeal according to law and in the light of the observations made above. There would, however, be no costs in this Court. The parties should appear before the Appellate Authority on 11th December, 1961, when another date would be given for further proceedings.

R.S.

CIVIL MISCELLANEOUS

Before D. Falshaw and S. S. Dulat, JJ.

JAGAN NATH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Writ Application No. 1051 of 1960.

1961

Nov., 13th

Punjab Security of Land Tenures Act (X of 1953)—Purpose and scope of—Sections 2(2) and 10A—Land owned by

a Hindu Joint family but recorded in the name of one member—Whether to be considered to belong to one land-owner for deciding the question of surplus area—Section 10A—Partition of joint Hindu family propery—Whether amounts to "transfer or other disposition of land".

Held, that the Punjab Security of Land Tenures Act, 1953, provides in the main, for four matters. The Act does not expressly provide for a general re-distribution of land but it is certainly designed to have that tendency, and the intention is to leave each individual owner and similarly each individual tenant in possession of no more than the permissible area. The Act expressly contemplates the case of joint owners and tenants, and provides, in the case of owners in the Explanation to section 2(2) and in the case of tenants in the Explanation to sub-section (2) of section 9, that only the share of each individual shall be taken into account.

Held, that when land is owned jointly by members of a joint Hindu family and the question of surplus area under the Punjab Security of Land Tenures Act (X of 1953) arises, the share of each individual owner in the land is to be considered.

Held, that when a member of a joint Hindu family owning land jointly with others claims that he has only a particular share in it, he is entitled to prove that fact by all legal evidence and such proof cannot be confined to the entries in the Record-of-Rights.

Held, that the transactions desired to be hit by section 10A of the Punjab Security of Land Tenures Act are such as have the effect of passing some interest from the existing owner of land to another. It does not constitute a general or total bar against any kind of dealing with his land by the owner. When a partition of joint Hindu family occurs, no one takes any property not previously belonging to him nor does any of them pass any interest in such property to another. Hence on such partition there is in law no transfer or other disposition of property within the meaning of the Act.

Petition under Article 225 of the Constitution of India praying that a Writ of Mandamus, Certiorari or Prohibi-

tion or any other Writ, Direction or Order be issued quashing the order of Commissioner, dated 4th April, 1960, and of the Collector, dated 4th January, 1960.

SOM DUTTA BAHRI, SHAMAIR CHAND AND P. S. JAIN ADVOCATES, *for the Petitioner.*

S. M. SIKRI, ADVOCATE-GENERAL, for the Resondents.

JUDGMENT

DULAT, J.—In these nine cases (Civil Writs Nos. 1051, 1052, 1053, 1054, 1222, 1223, 1224, 1225 and 1306 of 1960), only one question of law, which is common to all of them, has been argued before us and it is agreed that after the decision of that question the cases can go to a Single Bench for final disposal as the facts in each case are somewhat different. Dulat, J.

The question of law agitated before us involves the interpretation of certain provisions of the Punjab Security of Land Tenures Act, 1953. This Act was first enacted in April, 1953, but it has since then been amended and added to on several occasions and some of the amendments are fairly recent. Speaking broadly, the Act places a ceiling on land holdings, both in respect of owners as well as tenants. The ceiling is mostly at 30 standard acres, and the Act calls it "permissible area." Land-owners are divided into two categories—(1) Small land-owners and (2) other owners. A "small land-owner" is defined as a "a land-owner whose entire land in the State of Punjab does not exceed the 'permissible area' ". To this is added an Explanation in these words—

> "In computing the area held by any particular land-owner, the entire land owned by him in the State of Punjab, as entered in the record-of-rights, shall be taken into account, and if he is a joint owner only his share shall be taken into account."

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Again, speaking broadly, small land-owners are not much affected by the Act but the others, that is, those who are not small land-owners, are placed under several disabilities. They are entitled to reserve to themselves an area out of their holding not exceeding the 'permissible area', but the remaining area of land becomes 'surplus area' which expression the Act defines as "the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C". Section 10-A of the Act, which was added in 1955, authorises the State Government to utilise the 'Surplus area' for the resettlement of certain tenants ejected from other land. This scheme is seemingly simple. Difficulty has however, arisen in connection with land owned by members of a joint Hindu family and in this way. Suppose a father and a son form a joint Hindu family and jointly own ancestral land measuring 50 standard acres. Are they both to be considered small land-owners, or, is the holding to be considered as one and, therefore, 20 standard acres to be deemed as surplus area ? In the revenue records prepared in this State, in most cases the name of the father alone is entered as the owner, for, although a Hindu son, if joint with his father, acquires interest in ancestral property from his very birth, no notice of this fact is taken by the revenue authorities and no mutation is entered on the birth of such a son and his name finds no place in the revenue records till his father's death. He is, all the same, an owner jointly with his father. The question is whether his claim as a joint owner is to be ignored for the purpose of deciding the question of surplus area, or whether his claim has to be given effect to ? That is the situation in some of the cases before us. A slightly different situation has arisen in some of the other cases. Suppose a Hindu father and his son jointly owning an area of land decide to separate without actual partition by metes and bounds. Is the fact of such separation to be recognised or has it to be ignored in view of the provision in the Act which says that "no transfer or

other disposition of land" which is comprised in a surplus area at the commencement of this Act shall affect the utilization thereof, the question thus being whether such separation is to be considered 'a transfer or other disposition of land.'

On behalf of the petitioners the contention is that a Hindu father who alone may be shown in the revenue records as holding 50 or 60 standard acres, is still entitled to show that he is not the owner of the entire holding but owns only a share in it jointly with others and is himself only a small land-owner owning no more than the permissible area and, therefore, no part of his land is surplus. The revenue authorities have not accepted this view and have declined to enquire whether in fact his ownership is joint with others or not, and they have proceeded to declare the area in excess of 30 standard acres as surplus ignoring altogether the ownership rights of the other members of the joint family in the joint property. The learned Commissioner of Ambala, who has finally dealt with the present cases, has expressed his view (in the case of Madan Lal out of which Civil Writ No. 1054 of 1960 arises) thus :—

> "This position would have been all right had there been two land-owners. According to the joint family system Madan Lal may be the shareholder in the ancestral property but, so long as the head of the family is alive, under the revenue law he shall be recorded as land-owner. The other claimants will be recorded in their due places when the succession would open, i.e., not in the lifetime of the original head of the family, in this case Dewat Ram. As such the proposition put forward by the counsel of the appellant that in the lifetime of Dewat Ram both Dewat Ram and Madan Lal were the joint holders is not in consonance with the existing revenue law. Madan Lal might be a shareholder according to the joint Hindu family but the property would come to his share

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only when Dewat Ram would die. During the lifetime, so far as revenue record is concerned, Madan Lal has no place and is not entitled to one-half share in the property. If I were to accept the proposition put forward by the learned counsel for the appellant, in that case in the revenue records mutations would have to be entered separately for each son when born. This has never happened so far. The fundamental principle is that the land is mutated in favour of one's heirs after his death. As such I am not prepared to accept the position that Madan Lal has any claim to the property, so far as revenue law is concerned, to be recorded as owner during his father's lifetime. As such for purposes of revenue law and the Punjab Security of Land Tenures Act, Dewat Ram would be taken as the land-owner and the total land, 57 standard acres and $15\frac{3}{4}$ units would be his property."

It is this view of the Act which the petitioners before us seek to challenge.

Regarding the second question the petitioners submit that a partition of joint family property by assigning a separate share to each joint owner is neither a transfer nor a disposition of property and the separation must be given effect to when proved and cannot be ignored on the ground that a transfer or disposition of property after a certain date is to be ignored under the Punjab Security of Land Tenures Act. Again, the revenue authorities have not accepted this view and have treated such partition or separation of shares as disposition of property and have in this connection completely ignored the declaratory decrees obtained by some of the petitioners from the civil courts. The petitioners concerned naturally question this view.

To appreciate the arguments advanced in this case it is helpful to understand the general scheme of the Act in question. After the first section dealing with the title and extent of the statute and the second section, which contains certain 'definitions' to some of which I have already referred, comes section 3. That authorises a small land-owner who, because of an allotment made after the commencement of the Act, comes to hold more than the permissible area, to select an area not exceeding the permissible area out of the entire holding by giving appropriate information to the appropriate authority. Section 4, similarly, authorises a land-owner, who may have made a lawful reservation under a previous Act of 1950 and whose allotment may subsequently have been modified after the commencement of th present Act, to make a fresh reservation. The expression 'reserved area' is in section 2 of the Act defined as area lawfully reserved under the present Act or similarly reserved under the previous Act of 1950 called the Punjab Tenants (Security of Tenures) Act (XXII of 1950), and sections 3 and 4 are intended to cover that matter. Section 5 then declares that a reservation before the commencement of the present Act will cease to have effect, and subject to the provisions of sections 3 and 4 any land-owner who owns land in excess of the permissible area may make a reservation of area for himself not exceeding, of course, the permissible area. Section 5-A of the Act, which was inserted by an amending Act of 1957, requires every land-owner and every tenant holding land in excess of the permissible area to give information within a period of six months. Section 5-B, also inserted at the same time, authorises a land-owner, who has not previously exercised his right of reservation, to select the permissible area for his own purposes, and sub-section (2) provides that if this is not done the prescribed authority may make the selection. Section 5-C then provides that if a land-owner or a tenant fails to furnish the information required by section 5-A, the prescribed authority may direct that the whole or part of the land of such land-owner or tenant in excess of '10 standard acres

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shall be deemed to be surplus area' and that surplus area shall be utilised by the State Government for the resettlement of tenants under section 100-A of the Act. Then comes section 6 which says—

> "6. For the purposes of determining under this section the area owned by a land-owner, all transfers of land, except bona fide sales or mortgages with possession, or transfers resulting from inheritance, made after the 15th August, 1947, and before the commencement of this Act, shall be ignored."

This has reference to transfers prior to the commencement of the present Act. Section 7 has now been omitted from the Act and section 8 provides for the continuity of a tenancy in spite of the death of a land-owner or the death of a tenant except in certain circumstances. Then comes section 9 concerning the ejectment of tenants. It says:—

> "9. (1) Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant—
>
> (i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner ; or
>
> (ii) fails to pay rent regularly without sufficient cause ; or
>
> (iii) is in arrears of rent at the commencement of this Act."

Then follow four more clauses which it is not necessary to mention and which contain certain other grounds justifying eviction. The point to notice is that the protection against ejectment does not extend to a tenant under a small land-owner.

Section 9-A then enacts that a tenant liable to be ejected under clause (i) of sub-section (1) of section 9 will not be dispossessed unless he is accommodated on surplus area in accordance with the provisions of section 10-A. Section 10 of the Act provides for the restoration of tenants previously evicted but not covered by section 9. Then follows section 10-A thus—

> "10-A. (a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected under clause (i) of sub-section (1) of section 9.
>
> (b) Notwithstanding anything contained in any other law for the time being in force, and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).
>
> *Explanation.*—Such utilization of any surplus area will not affect the right of the land-owner to receive rent from the tenant so settled."

Much of the controversy has been round the meaning of clause (b) of this section. The next section 11 prohibits a landlord from curtailing the supply of canal water to a tenant, and section 12 provides for the maximum rent payable by tenants. Section 13 deals with charges payable for services or facilities provided by land-owners, while section 14 requires a land-owner to furnish receipts for rent paid to him. Section 14-A prescribes the procedure for eviction of tenants. Section 15 has been dropped from the Act. Then comes section 16, also dealing with certain transfers. It says—

> "16. Save in the case of the land acquired by the State Government under any law

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for the time being in force, or by an heir by inheritance, no transfer or other disposition of land effected after the 1st February, 1955, shall affect the rights of the tenant thereon under this Act."

Section 17 then deals with the right of certain tenants to pre-empt certain sales, and section 17-A makes certain sales unpre-emptible, while under section 17-B certain mortgagees are to be considered as tenants under the Act. The next is section 18 which authorises certain tenants to purchase land held by them on certain payment by easy instalments. The operative words of this section are—

"18. (1) Notwithstanding anything to the contrary contained in any law, usage or contracts a tenant of a land-owner other than a small land-owner—

* * * * *

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land owner * * * * * * * * *".

It will be observed that a small land-owner is again out of the mischief of this provision. Section 19 provides a general exception in the case of evacuee property. Section 19-A prohibits the acquisition of land in excess of the permissible area and says that "no person, whether as land-owner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land, which with or without the land already owned or held by him, shall in the aggregate exceed the permissible area," and sub-section (2) dealing with the same matter expressly provides that "any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1) shall be null and void." Then follows section 19-B which runs thus—

"19-B. (1) If, after the commencement of this Act, any person, whether as land

owner or tenant, acquires by inheritance or bequest or gift from a person to whom he is an heir any land or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land, which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he shall, within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain and if the land of such person is situated in more than one *patwar* circle, he shall also furnish a declaration required by section 5-A."

Sub-section (4) of this section says—

"19-B. (4) The excess land of such person shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A or for such other purposes as the State Government may by notification direct."

It will be observed from what I have mentioned that in the main the Punjab Security of Land Tenures Act provides for four matters—

(1) a ceiling on individual land holding;

(2) a certain security of tenure to tenants;

(3) resettlement of tenants lawfully evicted; and

(4) a right given to certain tenants to purchase land held by them.

The Act does not expressly provide for a general re-distribution of land but it is certainly designed to have that tendency, and so far as I can see the intention is to leave each individual owner and similarly each individual tenant in possession of

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no more than the permissible area. I say 'individual' because the Act expressly contemplates the case of joint owners and tenants, and provides, in the case of owners in the Explanation to section 2(2) and in the case of tenants in the Explanation to sub-section (2) of section 9, that only the share of each individual shall be taken into account. Can it then be the intention of the Act that in the case of jointly owned land by members of a joint Hindu family no heed is to be paid to the actual fact of joint ownership just because the revenue records do not correctly represent that fact? I hesitate to think that the Legislature intended in this manner to ignore, by implication, such rights of joint ownership.

It is urged on behalf of the State that a joint Hindu family is a juristic person and if it owns land it has to be treated like any other land-owner and the area held by it in excess of the permissible area treated as surplus. This contention, however, is open to the very serious objection that the courts in India have never treated a joint Hindu family as a juristic person, and as far as I am aware the only two statutes which call a joint Hindu family a 'person', namely, the Income-Tax Act and the Excess Profits Tax Act had to expressly provide for that definition, which would have been wholly unnecessary if a joint Hindu family was in law understood to be a 'person'. Mr. Sikri, referred to the definition of 'person' contained in the General Clauses Act, which says that a person "shall include any company or association or body of individuals, whether incorporated or not", but that certainly cannot mean that any and every body of individuals becomes by that fact a juristic person. This matter was considered by the Supreme Court in *Messrs Kshetra Mohan Sannyasi Charan Sadhukhan* v. *Commissioner of Excess Profits Tax, West Bengal* (1), and S. R. Das, J., delivering the judgment of the Court observed—

> "A Hindu undivided family is no doubt included in the expression 'person' as

(1) A.I.R. 1953 S.C. 516.

> defined in the Indian Income-tax Act as well as in the Excess Profits Tax Act but it is not a juristic person for all purposes."

More recently a Full Bench of this Court in *Khairati Ram and another* v. *Firm Balak Ram Mehr Chand and others* (1), had occasion to consider the same matter and said at page 886—

> "From the above discussion it follows that a joint Hindu family occupies a peculiar position in law. It is, no doubt, a body of persons, but it is not the sort of body which has a single entity as a juristic person."

The Full Bench found in that particular case that for the purposes of the Partnership Act a joint Hindu family could not be treated as a person. There is, in the circumstances, no force in the suggestion that a joint Hindu family is a juristic person or should be so treated for the special purposes of the Punjab Security of Land Tenures Act, and I have little doubt that if the intention of the Act had been to treat a joint Hindu family as a person, it would have contained an express provision to that effect as the Income-tax Act does. Nor do I find any other indication in any part of the Act to suggest that such was the legislative intent.

Reliance is then placed on the Explanation to section 2, sub-section (2) defining a small land-owner which is in these words—

> "In computing the area held by any particular land-owner, the entire land owned by him in the State of Punjab as entered in the record-of-rights, shall be taken into account and if he is a joint owner only his share shall be taken into account."

The argument is, and that has been the view of the revenue officers, that what has to be seen is only

(1) 1959 P.L.R. 881.

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the entry in the record-of-rights and no other enquiry into the actual fact of ownership can be made. This argument seems to assume that the Explanation says "rightly or wrongly entered in the record-of-rights." There is, however, no ground for such an assumption and the implication, on the other hand, is that the land owned by a particular owner as entered in the record-of-rights, assuming that the record is correct, should be taken into account. A presumption of correctness, of course, attaches to the record-of-rights, but it is wholly unreasonable to think that the Explanation to section 2, sub-section (2), intends to make the entries in the record-of-rights either conclusive or sole evidence of ownership. It has to be remembered that the Explanation merely explains and cannot override the definition contained in section 2 of the Punjab Security of Land Tenures Act, and what the definition emphasises is the fact of ownership, and where it is joint ownership the emphasis is on the share of each individual owner. In my opinion, therefore, the petitioners were entitled to prove before the revenue officers the actual facts concerning the ownership of the land in question notwithstanding the entries in the record-of-rights, and the revenue officers were wrong in disallowing such proof.

It is said, then, that in the case of joint Hindu family property no member can be said to own any specific share and it would, therefore, be useless to permit him to prove that he owns a particular share in any area of land. This really presents no practical difficulty as the members of a joint Hindu family owning joint property can separate at any time they wish to and no act outside their own volition is involved in such separation, and at any point of time, therefore, the share of each individual is readily determinable. I am consequently of opinion that a member of a joint Hindu family jointly owning land with other members can insist that for the purposes of deciding the question of surplus area his share in the joint land alone should be considered and he is entitled to prove the extent of his share by all legal

evidence not confined merely to the entry in the record-of-rights.

The question next is whether a partition of joint Hindu family property amounts to a transfer or other disposition of property within the meaning of section 10-A of the Punjab Security of Land Tenures Act. The expression "transfer or other disposition of land" occurs at two places in this Act, namely, section 10-A and section 16, and the context in which it is used at both these places leaves little doubt that the intention is to prohibit only certain transactions concerning land. In section 10-A the prohibition is against such transfer or other disposition of land as might possibly affect the utilization of surplus area, and in section 16 the prohibition is against similar transfer or other disposition of land which might affect the rights of a tenant on that land. The transactions thus desired to be hit are obviously such as have the effect of passing some interest from the existing owner of land to another, and there is little force in the suggestion that these provisions constitute a general or total bar against any kind of dealing with his land by an owner. We have, therefore, to consider whether at the time the members of a joint Hindu family decide to partition their property by assigning specific shares in it to individual members, any one of them passes any interest in any property to another. It is difficult to agree that any such thing happens when joint Hindu family property is partitioned. No one by that partition takes any property not previously belonging to him nor does any of them pass any interest in such property to another. As head-note (6) (b) in *Sonatan Poddar and others* v. *Sreenath Chakravarty and others* (1), puts it correctly quoting from the judgment of Mitter, J.—

> "The true character of partition is that it converts joint enjoyment into enjoyment in severalty. Partition is not an exchange of the undivided share of a

(1) A.I.R. 1946 Cal. 129.

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co-sharer over the whole common property in exchange of the 16 annas share in a definite portion thereof, namely, the portion that was allotted to him in exchange thereof. By the partition a co-sharer gets a separate allotment by virtue of his antecedent title as co-sharer. There is thus no acquisition of property in another independent right. It is not a conveyance; it is not an exchange."

The same view was expressed by the Madras High Court in *Gutta Radhakrishnayya* v. *Sarasamma* (1), where Subba Rao, J., said—

> "Each one of the sharers had an antecedent title and, therefore, no conveyance is involved in the process as a conferment of a new title is not necessary."

I find myself in agreement with these views, and it is, therefore, clear that when land, which is joint family property, happens to be partitioned no interest passes from one owner to another, and it is neither a transfer nor such disposition as is mentioned in section 10-A, or for that matter in section 16, of the Punjab Security of Land Tenures Act.

To sum up my conclusions on the arguments presented before us are—

(1) that when land is owned jointly by members of a joint Hindu family and the question of surplus area under the Punjab Security of Land Tenures Act (X of 1953) arises, the share of each individual owner in the land is to be considered;

(2) that when a member of a joint Hindu family owning land jointly with others claims that he has only a particular

(1) A.I.R. 1951 Mad. 213.

share in it, he is entitled to prove that fact by all legal evidence and such proof cannot be confined to the entries in the record-of-rights; and

(3) that when a partition of joint family property occurs, there is in law no transfer or other disposition of property within the meaning of the Punjab Security of Land Tenures Act.

With these conclusions the present writ petitions can be placed before a Single Bench for final decision.

D. FALSHAW, J.— I agree.

K.S.K.

FULL BENCH

Before D. Falshaw, Mehar Singh and A. N. Grover, JJ.

THE COMMISSIONER OF INCOME TAX, PUNJAB,— *Applicant*

versus

RAM SARUP,—*Respondent*

Income-Tax Reference No. 3 of 1960

1961

Nov., 14th

Income-tax Act (XI of 1922)—Sections 10 and 24(1) proviso—Loss suffered in speculation business—Whether can be set off against profits earned in a business other than a business consisting of speculation transactions.

Held, that an assessee is not entitled to claim a set-off of the loss sustained in speculation business against the profits of the assessee in a business other than a business consisting of speculative transactions. The question of set-off under section 24 of the Income-tax Act, 1922, only arises when there is a loss under one head, the loss having been arrived at in the manner of computation laid down in Chapter III and there is a profit under another head, the profit having been arrived at in the manner laid down in the same Chapter. It is entirely unnecessary to compute the profits and gains of a business, profession or vocation for the purpose of section 24(1) because that has already been done under section 10. In view of the clear language employed in the proviso to section 24(1) which expressly