and the object of the Act, there can equally be no doubt that the Act was intended to provide for the incorporation of the Institute and matters connected therewith. The services of all the Government servants who were permanently employed there had to be put at the disposal of the Institute apparently because of their special experience and training for work in the Institute and because they were working there. Thus it cannot be said that the tests that have been laid down by their Lordships of the Supreme Court in *Shri Ram Krishna Dalmia, etc.* v. *Shri Justice S. R. Tendolkar, etc.* (1), have not been satisfied. While examining these matters it has also to be borne in mind what has been laid down by their Lordships, namely, that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles and that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

No other point was urged before me.

In the result, these petitions fail and are dismissed, but taking into consideration the entire circumstances, I leave the parties to bear their own costs.

R.S.

FULL BENCH.

Before G. D. Khosla, C.J., Tek Chand and D. K. Mahajan, JJ.

RISALDAR MAJOR AMAR SINGH,—*Appellant.*

versus

R. L. AGGARWAL AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 78 of 1957.

1959

Dec., 10th

Punjab Alienation of Land Act (XIII of 1900)—Section 14—Sale of agricultural land by an agriculturist to a

(1) A.I.R. 1958 S.C. 538

non-agriculturist—Sanction of the Deputy Commissioner not given—Act repealed thereafter—Transaction whether a sale or a usufructuary mortgage for 20 years—Interpretation of Statutes—Unqualified repeal of an Act—Effect of.

Held, (per Khosla, C.J.) that when the Alienation of Land Act was in force, the sale of land by an agriculturist in favour of a non-agriculturist was, in substance, a sale, but it could not take effect as a full-fledged sale unless and until sanction was given to it by the Deputy Commissioner. This sanction could be given at any time, for the Act does not place any bar upon the powers of the Deputy Commissioner with regard to the giving of such sanction. He could give his sanction at any time, and if he did not give the sanction and chose to let the sale have the effect of a usufructuary mortgage, he could impose any conditions which he considered reasonable. It, therefore, follows that the sale was, in no way, void or illegal. It had all the characteristics of a sale, but it could not take effect as such until the Deputy Commissioner gave his sanction. In the meantime the transaction was to take effect as a usufructuary mortgage of the form envisaged in section 6(1)(a) of the Punjab Alienation of Land Act. The Act was repealed because it was against the provisions of the Constitution. Its repeal made the Act wholly non-existent. The Deputy Commissioner had neither refused nor accorded sanction to the sale and, therefore, it cannot be said that upon refusal by him, the sale was to take effect as a mortgage and that the vendor had thereby acquired a right to redeem the land or to enter into possession of it after the expiry of twenty years. Had the Act not been repealed, the vendee or his representative could have asked for sanction and he might well have obtained it. In that event sale in his favour would have taken effect as an absolute sale and the vendor would have been left with no rights whatsoever. It, therefore, follows that the repeal of the Act left the vendor with no rights in the land and the vendee must be treated as full owner.

Held, (*per Tek Chand, J.*) that it is a well-settled rule of interpretation, that an unqualified repeal of a statute, conferring civil rights or powers, operates to deprive the citizen of all such rights or powers which at the time of the repeal are inchoate, incomplete or unperfected or

which have not accrued or become vested. Of course, rights which have become vested, are not extinguished in the absence of express words to that effect, and construction of a statute is always avoided, where the result would be to impair contracts or vested rights, and for this purpose, a repealing statute would not be given a retrospective operation. If the right acquired under a repealed Act has not developed into a *jus in re* and has not yet fully matured, and is merely continuing as a *jus ad rem*, not having progressed beyond an inchoative state, it cannot survive the repealed Act, and must fall with it, unless expressly saved. The distinction between a *jus in re* a right in a thing which implies an absolute dominion, and a *jus ad rem* a right to a thing which signifies an imperfect right, assumes considerable importance in relation to survival, when the statute under which such right has been created, is unconditionally repealed.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Bishan Narain, dated 20th March, 1957, passed in Civil Writ No. 343 of 1956.

S. D. BAHRI with AMRIT LAL BAHRI, for Appellants.

CHETAN DASS, ASSISTANT ADVOCATE-GENERAL, AND A. M. SURI, for Respondents.

JUDGMENT

G. D. KHOSLA, C.J.—This reference to the Full Bench has arisen out of a petition under Article 226 of the Constitution. Briefly stated, the point for our consideration is whether an alienation of land made by an agriculturist to a non-agriculturist before 1947, takes effect as a mortgage even after the repeal of the Punjab Alienation of Land Act, because no sanction to the sale had been given by the Deputy Commissioner as envisaged by section 14 of the Act. G. D. Khosla, C. J.

The facts are as follows :—Risaldar Major Amar Singh was owner of six *biswas* of land in

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

G. D. Khosla, C. J.

the district of Ludhiana. He sold this land to Shera, a Muslim non-agriculturist, sometime before 1947. The Punjab Alienation of Land Act was at that time in force and so the sale could not become absolute until it had been sanctioned by the Deputy Commissioner as required by section 14 of the Act. No such sanction was given, and in 1947, Shera migrated to Pakistan. On 17th May 1948, Sandhur Singh, a collateral of the vendor, Amar Singh, applied to the Deputy Commissioner, Ludhiana, for permission to purchase the land for Rs. 500. Sandhur Singh treated the land as evacuee property. No orders were passed on this application until 4th October, 1951, when the Punjab Alienation of Land Act ceased to exist because it was repealed by the Adaptation of Laws (Third Amendment) Order, 1951, published in the *Gazette of India* on 4th April, 1951. The Deputy Commissioner, Ludhiana, then passed an order rejecting Sandhur Singh's application and holding that the sale in favour of Shera was to be deemed a usufructuary mortgage and the vendor could apply for its redemption. Then on 31st October, 1951, before the vendor could make the application suggested by the Deputy Commissioner, the Evacuee Interest (Separation) Act, 1951, came into force. The vendor, Risaldar Major Amar Singh, applied for the separation of his interest before the Competent Officer appointed under the Act. The Competent Officer on 24th July, 1954 ordered that the land be redeemed on Amar Singh depositing Rs. 500 within one month. The Custodian was present as a party to these proceedings. The amount was deposited, but one Harchand Singh filed an appeal under section 14 of the Act. The Appellate Officer held that Harchand Singh had no *locus standi* but went on to observe that Amar Singh could not redeem the land, because by the repeal of the Punjab Alienation of Land Act the

sale in favour of Shera had become absolute and as Shera was an evacuee, his total interest vested in the Custodian. He thereupon dismissed Amar Singh's application for redemption. Amar Singh came to this Court with an application under Article 226 of the Constitution and this application was heard by Bishan Narain, J., who took the view that the sale in favour of Shera could not take effect as a mortgage after the repeal of the Act and so Amar Singh had no further interest in the land and was not entitled to redeem it. Against this order Amar Singh came up in appeal under clause 10 of the Letters Patent and the appeal was heard by my brother Tek Chand, and myself. Reliance before us was placed upon a Division Bench decision of this Court in *Khazana* v. *Mst. Lachhmi and others* (1), and since it appeared to us that the matter should be considered more authoritatively, we referred it to a Full Bench, and the case has now been argued at considerable length before us by both parties.

The relevant provision of law is section 14 of the Punjab Alienation of Land Act which is in the following terms :—

> "Any permanent alienation which under section 3 or 3-A is not to take effect as such until the sanction of a Deputy Commissioner is given thereto, shall until such sanction is given or if such sanction has been refused, take effect as a usufructuary mortgage in form (a) permitted by section 6 for such term not exceeding twenty years and on such conditions as the Deputy Commissioner considers to be reasonable."

(1) R.S.A. No. 823 of 1949

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

G. D. Khosla, C. J.

To interpret this section properly it is necessary to refer to the definition of 'usufructuary mortgage' as given in section 2(5) which reads—

> "the expression 'usufructuary mortgage' means a mortgage by which the mortgagor delivers possession of the mortgaged land to the mortgagee and authorizes him to retain scch possession until payment of the mortgage money, and to receive the rents and profits of the land and to appropriate them in lieu of interest or in payment of the mortgage money or partly in lieu of interest and partly in payment of the mortgage money ;"

Section 6(1)(a) defines the form of a usufructuary mortgage and reads—

> "6. (1) If a member of an agricultural tribe mortgages his land and the mortgagee is not a member of the same tribe, or of a tribe in the same group, the mortgage shall be made in one of the following forms :—
>
> (a) in a form of a usufructuary mortgage, by which the mortgagor delivers possession of the land to the mortgagee and authorises him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of term agreed on or (if no term is agreed on or if the term agreed on exceeds twenty years), after the expiry of twenty years, the land shall be redelivered to the mortgagor;"

Section 7 sets out certain rules which apply to the permitted mortgages. But a reading of this section makes it quite clear that it relates to mortgages made voluntarily and not to sales which have the effect of mortgages under section 14.

It will be clear from a careful perusal of the abovementioned provisions that when the Alienation of Land Act was in force, the sale of land by an agriculturist in favour of a non-agriculturist was, in substance, a sale, but it could not take effect as a full-fledged sale unless and until sanction was given to it by the Deputy Commissioner. This sanction could be given at any time, for the Act does not place any bar upon the powers of the Deputy Commisioner with regard to the giving of such sanction. He could give his sanction at any time, and if he did not give the sanction and chose to let the sale have the effect of a usufructuary mortgage, he could impose any conditions which he considered reasonable. It, therefore, follows that the sale was, in no way, void or illegal. It had all the characteristics of a sale, but it could not take effect as such until the Deputy Commissioner gave his sanction. In the meantime the transaction was to take effect as a usufructuary mortgage of the form envisaged in section 6(1)(a). It was argued before us that the Deputy Commissioner could give his sanction even after the expiry of twenty years, but whether this be so or not, it is undeniable that a valid sanction could be given within the period of twenty years. In the present case before the twenty years expired, the Act was repealed. It was repealed because it was against the provisions of the Constitution. Therefore, its repeal made the Act wholly non-existent. The question now arises what is the effect of this repeal upon the transaction of sale. The Deputy Commissioner had neither refused nor

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

G. D. Khosla, C. J.

accorded his sanction to the sale and, therefore, it cannot be said that upon refusal by the Deputy Commissioner the sale was to take effect as a mortgage and that the vendor had thereby acquired a right to redeem the land or to enter into possession of it after the expiry of twenty years. Had the Act not been repealed, Shera or his representative could have asked for sanction and he may well have obtained such sanction. In that event the sale in favour of Shera would have taken effect as an absolute sale and the vendor would have been left with no rights whatsoever. In this view of the matter, it follows that the repeal of the Act left Amar Singh with no rights in this land and Shera must be treated as full owner of the property. Since he has gone away to Pakistan, his interest has devolved upon the Custodian, and Amar Singh has no right to redeem the land.

The argument advanced by Mr. Bahri was that the repeal did not take away the vested rights of Amar Singh and that all things done and proceedings taken under the Act remained alive. Stated in the abstract, his argument appears to be plausible, but when the facts of the case are examined, it is found that there was no vested right in Amar Singh at the time the Act was repealed. No proceedings had been taken which could be continued. The Deputy Commissioner under the Act ceased to exist and it could not be said that because the matter had not been taken to the Deputy Commissioner, it must be assumed that the sale took effect only as a usufructuary mortgage. The right of Amar Singh to redeem the property was not a vested right, because it was conditional upon the Deputy Commissioner refusing to sanction the sale. It was an inchoate right and such rights do not remain alive after the repeal of the Act under which they arise. In the Division

Bench case cited above the facts were somewhat different. In that case the twenty years contemplated by section 14 of the Alienation of Land Act had expired and the question was whether, since no sanction had been given within twenty years, the vendor could not get back the land. The case was heard in the original instance by Bhandari, C.J., and Dulat, J. Dulat, J., was of the opinion that even after the expiry of twenty years the right to redeem did not exist. He observed :—

> "In the present case the Deputy Commissioner never refused sanction to the sale, and if I am right in holding that he could at any time accord sanction to it, it would follow that as soon as the necessity for such sanction disappeared by the repeal of the Punjab Alienation of Land Act the sale became effective. I am, therefore, unable to agree that any right to the vendor had accrued in respect of the suit property before the repeal of the Punjab Alienation of Land Act and, in my opinion, the rights of the parties are to be determined in accordance with the law as it now stands. It is clear that today no objection to the sale can be taken and no one has the right to say that the sale cannot take effect as a sale."

Bhandari, C.J., did not agree fully with Dulat, J., and he took the view that after the expiry of twenty years the vendor could claim back the land because the time for giving sanction had expired. On a difference of opinion arising between the members of the Division Bench the matter was referred to Chopra, J., who agreed with the view of Bhandari, C.J. All three Judges were, however, agreed that

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

G. D. Khosla, C. J.

had the sale taken place within twenty years of the repeal of the Act, the vendor could not have claimed to redeem the land. Therefore the Division Bench judgment relied upon by Mr. Bahri does not support his case; it is clearly distinguishable, and the view expressed by all three Judges who considered the case does not support the argument put forward before us by Mr. Bahri, on the the facts of the present case.

Mr. Bahri next contended that the sale automatically became a usufructuary mortgage and it could be converted back into a sale only with the sanction of the Deputy Commissioner. This argument is, however, untenable in view of the wording of section 14. Section 14 does not lay down that the sale is to be deemed as a mortgage. The expression used is "take effect as a usufructuary mortgage". Now, "taking effect" is not the same thing as a sale being 'deemed' as a mortgage. When a transaction is to be deemed as something else, it loses its original character, and though it does not approximate to that something else, it partakes of all its characteristics and consequences. In the present case the sale takes effect as a mortgage only in a limited sense. If sanction is refused, the sale will be treated as a usufructuary mortgage and it can be said that there is no sale and there is only a usufructuary mortgage. If the sale is sanctioned, then the transaction is to take effect as a substantive sale. The rights of the vendor are contingent upon the order of the Deputy Commissioner. He cannot claim that he has a right to redeem the land, because this right can be defeated by the Deputy Commissioner giving his sanction to the sale.

Again, it was argued that the case must be decided according to the law prevailing on the date of the sale. This argument, too, is without any

force. The matter came up for decision after the repeal of the Act and we have to consider what the rights of the parties are and whether the vendor is possessed of any interest in the land at all. The Orissa High Court in *M/s Chakko Bhai Ghelabhai* v. *State of Orissa and others* (1), while dealing with the effects of the repeal of an Act, observed—

> "The effect of the repeal of an enactment is to obliterate it as completely from the records as if it had never been passed, and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law."

In the case before us there were no actions commenced, prosecuted or concluded. The question had not even been agitated. Amar Singh never went to the Deputy Commissioner asking to redeem the land under the provisions of section 14 of the Act. Had he done so, the Deputy Commissioner might well have held that the sale in favour of Sheru should be sanctioned, and on the giving of this sanction Amar Singh would have lost whatever inchoate or contingent rights he held in the land. In *Surajmal* v. *The Rajasthan State,* (2), it was held that when a Government passes an order imposing an obligation upon an individual under valid law, the obligation ceases to exist as soon as the law is repealed. It was observed—

> "The obligation to obey an order is not something duly done or suffered, which will not be affected by the repeal. The obligation to obey the order arises from day to day and so long as the law is in

(1) A.I.R. 1956 Orissa 7
(2) A.I.R. 1953 Raj. 78

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

force, that obligation is there. But when the law has come to an end, the obligation also, in our opinion, comes to an end."

G. D. Khosla, C. J.

The observations of the Orissa High Court have some relevance to the facts of the present case. It may be said that Shera had a conditional obligation to render back the land to the vendor during the pendency of the Punjab Alienation of Land Act. That obligation ceased as soon as that Act was repealed. The obligation had not been recognised and declared by an order of the Deputy Commissioner and so it came to an end with the repeal of the Act.

It, therefore, appears to me that the repeal of the Punjab Alienation of Land Act put an end to whatever interests, contingent or inchoate, which Amar Singh had in this land. There remained no Depuy Commissioner under the Act to give sanction. Sanction had never been refused, and had the Act remained in force, sanction would have been granted. Therefore, Amar Singh has no right now to claim redemption of the land. This petition was rightly dismissed by the learned Single Judge and I would dismiss this appeal, but, in the circumstances, make no order as to costs.

Tek Chand J.

TEK CHAND, J.—I am also of the view that this appeal does not deserve to succeed. As the facts giving rise to this appeal have been stated in the judgment of my Lord the Chief Justice, they may not be reiterated. I, however, wish to state my reasons for arriving at the above conclusion.

The question which calls for decision in this case is whether on the repeal of the Punjab Alienation of Land Act the transaction between Risaldar Major Amar Singh and Shera is to have the effect

of sale or of mortgage in form 6 (1) (a). Mr. Som Datt Bahri, has argued that as the Deputy Commissioner had not in the exercise of his powers under section 3(2) sanctioned the permanent alienation before the repeal of the Act, the transaction of sale should be deemed to have been converted into usufructuary mortgage under section 6(1) (a) and his client, Risaldar Major Amar Singh, had the right to redeem the mortgage during its currency under section 7(2)(3) of the repealed Act. There is an obvious fallacy in this argument. The transaction from its inception is that of an out-and-out sale. The transaction of sale was consensual, there is no doubt that the two contracting parties, intended it to be a sale, and nothing else, despite the petitioner belonging to an agricultural tribe and the purchaser, Shera, to a non-agricultural tribe. The Punjab Alienation of Land Act did not unconditionally inhibit such a transaction but all that it did was, that under section 14 a permanent alienation like a sale, could only take effect as a usufructuary mortgage under section 6 (1) (a) up to a maximum period of twenty years. This provision did not change the nature of the transaction, but it gave to the transaction a different effect. In other words, although the transaction was of sale in fact, but in effect it was to have the incidents of a special kind of a usufructuary mortgage. But in getting the Deputy Commissioner's sanction, under section 3(2), it would have all the original qualities of a permanent alienation as agreed to between the parties. The permanent alienation in the nature of sale was, therefore, not void *ab initio*. On obtaining the sanction of the Deputy Commissioner the transaction could take effect as such. The term "take effect" means "be in force" or "go into operation". All that section 14 specifies is, that if the Deputy Commissioner does

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

Tek Chand, J.

not sanction the permanent alienation, the transaction is to operate, or is to remain in force, as a usufructuary mortgage, in the terms permitted by section 6(1)(a) of the Act; and in that event the longest permissible period of possession for the automatic redemption of the mortgage would not exceed twenty years. By repeal of the Act the statutory compulsion was lifted and the transaction which in its operation had the effect of a usufructuary mortgage resumed its original character of a sale. In *Khazana* v. *Mst. Lachhmi etc* (1), Dulat, J., observed—

> "In the present case the Deputy Commissioner never refused sanction to the sale and if I am right in holding that he could at any time accord sanction to it, it would follow that as soon as the necessity for such sanction disappeared by the repeal of the Punjab Alienation of Land Act the sale became effective. I am, therefore, unable to agree that any right to the vendor had accrued in respect of the suit property before the repeal of the Punjab Alienation of Land Act, and, in my opinion, the rights of the parties are to be determined in accordance with the law as it now stands. It is clear that today no objection to the sale can be taken and no one has the rights to say that the sale cannot take effect as a sale. The vendee, in the circumstances, is entitled to a declaration that he is the owner of the land because of the plain fact that he had bought it from the previous owner. It is clear that on this view the present appeal cannot be resisted."

(1) R.S.A. 823 of 1949

Bhandari, C.J., differed from the view expressed by Dulat, J., to this extent that according to him it was not within the competence of the Deputy Commissioner to accord his sanction after the expiration of the period fixed for redemption. In that case more than twenty years had elapsed and the Deputy Commissioner's sanction had neither been asked for nor given and the sale had taken the form of usufructuary mortgage under section 6 (1) (a). According to Bhandari, C.J., on the completion of the period of twenty years the entire mortgage debt was discharged and in the eye of law the vendor stood in the position of a mortgagor who had been able to redeem the mortgage by the payment of the mortgage money and thus had become full owner of the property. Chopra, J., concurred with Bhandari, C.J. The controversy in that case centred on the question, whether the Deputy Commissioner by giving his sanction after the expiration of the maximum period of twenty years, could give the transaction the character of sale. This controversy is not in point for purposes of the decision of this case. What is significant is, that there was no difference at all, on the question that if the necessity for the sanction of the Deputy Commissioner disappeared, by the repeal of the Punjab Alienation of Land Act, before the time allowed for redemption, then effect would be given to the original transaction of sale. In my view, nothing said by any of the three learned Judges in *Khazana* v. *Mst. Lachhmi etc.*, (1) helps the contention mooted before us by the learned counsel for the appellant. There is no controversy as to the power of the Deputy Commissioner to grant sanction to the original transaction at any time before the land is redeemed.

The next argument which may be examined relates to the effect of an unqualified repeal of a

(1) R.S.A. 823 of 1949

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

Tek Chand, J.

statute. It is a well settled rule of interpretation, that an unqualified repeal of a statute, conferring civil rights or powers, operates to deprive the citizen of all such rights or powers which at the time of the repeal are inchoate, incomplete or unperfected or which have not accrued or become vested. Of course, rights which have become vested, are not extinguished in the absence of express words to that effect, and construction of a statute is always avoided, where the result would be to impair contracts or vested rights, and for this purpose, a repealing statute would not be given a retrospective operation. If the right acquired under a repealed Act has not developed into a *jus in re* and has not yet fully matured, and is merely continuing as a *jus ad rem,* not having progressed beyond an inchoative state, it cannot survive the repealed Act, and must fall with it, unless expressly saved. The distinction between a *jus in re* a right in a thing which implies an absolute dominion, and a *jus ad rem* a right to a thing which signifies an imperfect right, assumes considerable importance in relation to survival, when the statute under which such a right has been created, is unconditionally repealed.

In the words of Tindal, C.J., in *Kay* v. *Goodwin* (1),—

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

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(1) (1830) 6 Bing. 576 (582)=130 E.R. 1403

Lord Tenterden in *Surtees* v. *Ellison* (1), said :—

> "It has been long established that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule; * * *"

Section 38(2) of the English Interpretation Act, 1889, recognises this rule. That provision is reproduced in identical language in section 6 of the General Clauses Act, X of 1897. This section applies even to those cases where the effect of the subsequent legislation is to make an earlier legislation of no effect. This provision has been, in terms, made applicable by Article 367 of the Constitution for the purpose of interpretation of the Constitution and its provisions equally apply to cases covered by Articles 13, 372 and 395 of the Constitution of India, vide *In re Keshav Madhav Menon* (2). The language of para 20 of the Adaptation Order, which says—

> "Nothing in this Order shall affect the previous operation of anything duly done or suffered under any existing law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law and any penalty, forfeiture, or punishment incurred in respect of any offence already committed against any such law.",

is to similar effect, as that of section 6 of the General Clauses Act, so far as the principles laid down above are concerned.

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(1) 9 B. & C. 750 (752)=109 E.R. 278
(2) A.I.R. 1951 Bom. 188 (F.B.)

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

Tek Chand, J.

The right of the appellant Risaldar Major Amar Singh under section 14 of the Punjab Alienation of Land Act could not be deemed a matured or a vested right, as it was still open to the Deputy Commissioner, to grant sanction and thereby give recognition to the contract of sale. Right to redeem in this case was nothing more than an imperfect right. Rights are said to be vested when they are complete and consummated, so that nothing remains to be done to perfect them. A vested right has been defined as "some right or interest in property that has become fixed and established, and is no longer upon to doubt or controversy.",—*vide* Crawford on Statutory Construction page 647, citing *Downs* v. *Blount,* (1).

A right in order to be vested must be perfected in the sense that the person to whom it belongs cannot be divested of it without his consent. In the words of Bhandari, C.J., in *Messrs, Gordhan Das Baldev Das* v. *The Governor-General in Council* (2),—

> "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 or a contingent. It is a right which cannot be taken away without the consent of the owner."

As in this case the repeal of the Punjab Alienation of Land Act was out-right, the result was that all inchoate rights stood abrogated.

Nobody has a vested right in a statute. An act may be very beneficial to a particular person or its repeal may affect him injuriously, the right

(1) 170 Fed. 15
(2) (1952) 54 P.L.R. I (5) (F.B.)

Risaldar Major Amar Singh
v.
R. L. Aggarwal and others

Tek Chand, J.

of the legislature to abrogate an Act by repealing it is absolute. In this case, by repeal, the respondent, who is a successor-in-interest of Shera, the vendee, stands to be benefited and the appellant has been injuriously affected. This cannot be helped as the right claimed by the appellant had not vested in him, being still in the process of completion.

For reasons stated above, I do not find any substance in the contentions raised on behalf of the appellant.

Mahajan, J.

MAHAJAN. J.—I have read the judgment of My Lord the Chief Justice and also of my learned brother, Tek Chand, J. I have nothing to add and I agree with their reasoning and the conclusions.

B. R. T.

CIVIL MISCELLANEOUS.

Before Tek Chand, J.

EXCISE AND TAXATION OFFICER,—*Appellant.*

versus

GAURI MAL BUTAIL TRUST,—*Respondent.*

Liquidation Miscellaneous No. 57 of 1959.

1959

Dec., 10th

Debts—Debts due to the State—Whether entitled to priority over the debts due to citizens—Receiver—Position of vis-a-vis *Judgment-Creditor—Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 16—Whether takes away the State's prerogative—Code of Civil Procedure (Act V of 1908)—Section 73—Object, scope and application of.*

Held, that after the enforcement of the Constitution the situation has not undergone any change as to the priority enjoyed by the State for the debts due to it. The Common Law doctrine, that if the debts due to the Crown