

Obaidul Huq Chowdhury's

Transfer of Property Act

¹[IV of 1882]

[17th February, 1882]

An Act to amend the law relating to the Transfer of Property by Act of Parties.

Preamble—Whereas it is expedient to define and amend certain parts of the law, relating to the transfer of property by act of parties; It is hereby enacted as follows:

Preamble—The true place of a preamble in a statute was at one time the subject of conflicting decisions. In *Mills vs. Wilkins* (a) Lord Holt said—"The preamble of a statute is no part thereof, but contains generally the motives or inducement thereof." On the other hand, it was said that "the preamble is to be considered, for it is the key to open the meaning of the makers of the Act, and the mischiefs it was intended to remedy" (b) The modern rule lies between these two extremes and is that where the enacting part is explicit and unambiguous the preamble cannot be resorted to, to control, qualify or restrict it; but where the enacting part is ambiguous, the preamble can be referred to; to explain and

1. For Statement of Objects and Reasons, see Gazette of India, of 1877, Pt V, p 171; for the Preliminary Report of the Select Committee, see *ibid*, 1878, Pt V, p 48; for the further Report of the Select Committee, see *ibid*, 1879, Pt V, p 106; for the third Report of the Select Committee, see *ibid*, 1881, Pt V, p 395; for Proceedings in Council, see *ibid*, 1877, Supplement., p 1568; *ibid*, 1877, Supplement, p 1690; *ibid*, 1882. Supplement, pp 96 and 169.

Section 54, paras 2 and 3, and sections 59, 107 and 123 extended to every cantonment in Bangladesh, etc see section 287 of the Cantonments Act, 1924 (II of 1924).

This Act shall be deemed to have been amended in its application to the District of Sylhet, see Assam Money Lenders' (Amdt) Act, 1943 (Assam Act VI of 1943), section 1(4).

(a) (1974) 6 Mod. 62.

(b) 4 Co. Inst. 330 (1).

elucidate it (c). In *Powell vs Rempton Park Race Course Co.* (d). Lord Halsbury said—"Two propositions are quite clear—one that a preamble may afford useful light as to what a statute intends to reach and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment." This rule has been applied to Indian statutes also by the Privy Council(e), and by the Courts in India (f).

Headings to groups of section—The headings above different groups of sections in the Act have the effect of preambles to those sections and may be referred to as an aid to construction (g).

Define and amend—The Act was intended to define and amend the existing law and not to introduce any new principle (h). The Indian Succession Act and the Indian Contract Act had already been passed and the chief objects of this Act were, first, to bring the rules which regulate the transmission of property between living persons into harmony with the rules affecting its devolution on death and thus to furnish the complement of the work commenced in framing the law of testamentary and intestate succession; and, secondly, to complete the code of contract law so far as it relates to immovable property(i).

Act not exhaustive—The Act is not exhaustive and it does not profess to be a complete code (j). This is apparent from the omission of the word

-
- (c) Per Tekchand, J., in *Raj Mal v. Harnam Singh* (1928) 9 Lah. 260, 104 I.C. 661, (28) A.L. 35, citing *Doe vs Brandling* (1828) 7 B & C. 643; *Fellows vs Clay* (1843) 4 Q.B. 313 and the *Sussex Peerage case* (1844) 11 Cl. & Fin. 85; *Nag Hoong vs The Queen* (1857) 7 M.I.A. 72, 4 W.R. 109 P.C.
- (d) (1899) A.C. 143, 157.
- (e) *Secretary of State vs Maharaja of Bobbili* (1920) 43 Mad. 529, 46 I.A. 302, 54 I.C. 154 ("the section must govern.")
- (f) *Mani Lal Singh vs Trustees for the Improvement of Calcutta* (1918) 45 Cal. 343, 44 I.C. 770; *Nepra vs Sayer Pramanik* (1928) 55 Cal. 67, 103 I.C. 662, (27) A.C. 763; *Sital Chandra vs Dellanny* (1916) 20 Cal. W.N. 1158, 34 I.C. 450; *Keshab Panda vs Bhubani* (1913) 18 Cal. L.J. 187, 21 IG 538; *Girja Nandan vs Hanuman Das* (1927) 49 All. 25, 99 I.C. 161, (27) A.A. 1 F.B.
- (g) *Dwarka Nath vs Tafazar* (1917) 44 Cal. 267; 39 I.C. 64; *Ram Shankar vs Ganesh Prasad* (1907) 29 All. 385.
- (h) *Tajjo Bibi vs Bhagwan Prasad* (1894) 16 All. 295.
- (i) *Whitley Stokes Anglo Indian Codes*, Vol. 1, p 726.
- (j) *H.V. Low & Co. Ltd. vs Pulin Beharilal Singh* (1933) 59 Cal. 1372, 143 I.C. 193; (33) A.C. 154; *Satyabadi vs Harabati*; (1907) 34 Cal. 223, 228; *Shafikul Huq vs Krishna Gobinda* (1919) 23 Cal. W.N. 284, 47 I.C. 428; *Bhupendra vs Mst Wajihunnissa* (1917) 2 Pat. L.J. 293, 39 I.C. 564; *Kishori Lal vs Krishnakamini* (1910) 37 Ca. 377, 382, 5 I.C. 500; *Jatendra vs Rangpur Tobacco Co.* (1924) 80 I.C. 20, (24) A.C. 990,991. See *Irrawati Flotilla Company of Bhugwandass* (1891) 18 IA 121, at p 129 [a case on the Contract Act where the preamble is exactly in the same terms].

"consolidate", which occurs, for instance, in the preamble to the Indian Evidence Act, 1872 (k). In any case not covered by the Act the Court is entitled to apply rules of English law which are not inconsistent with the Act (l) as the rule of justice, equity and good conscience(m). But in any case covered by the Act, the Act must be applied (n). Some of the sections inserted or amended by the Amending Act of 1929 were borrowed from the Law of Property Act, 1925, and as to their construction it is permissible to refer to English decisions under that Act. But as to cases not covered by the Transfer of Property Act, decisions of the English Courts under the Law of Property Act, 1925, or other English statutes relating to property which were passed in that year will rarely represent rules of English law or be applicable as rules of justice, equity and good conscience. See Appendix V.

By act of parties—These words exclude transfer by operation of law, i.e. by sale in execution (o), forfeiture, insolvency or intestate succession. It also limits the scope of the Act to transfers *inter vivos* and excludes testamentary succession. See section 2, cl. (d).

Rules of interpretation of statutes—Before discussing the provisions of the Act in detail it is advisable to state principal rules for the interpretation of statutes.

(1) A cardinal rule of interpretation of statutes, which is often referred to as the golden rule is that the *grammatical sense of the words* used should be adhered to, technical words being construed according to their technical meaning, and other words in their most ordinary and popular acceptance(p).

(2) "It is a sound rule of interpretation to take the words of a statute as they stand and to interpret them ordinarily without any reference to *the previous state of the law* on the subject or to the English law upon which it may be founded; but

(k) *Collector of Gorakpur vs Palakdhar* (1890) 12 All. 1, 35.

(l) *Mayashankar vs Burjorji* (1925) 27 Bom. L.R. 1449, 91 I.C. 978, (26) A.B. 31; *Kalyan Das vs Jan Bibi* (1928) 51 All. 454, 112 J.C. 765 (29) A.A. 12, 14; *Maharaja of Jeypore vs Rukmini* (1919) 42 Mad. 589, 598, 46 I.A. 109, 50 I.C. 631.

(m) *Maharaja of Jeypore vs Rukmini, Supra; Waghela Rajsanji vs Sheikh Masludin* (1887) 11 Bom. 551, 14 I.A. 89, See. also *Muhammad Faza vs Abbas Bandi* (1932) 59 I.A. 236, 246, 137 I.C. 321, (32) A. PC. 138.

(n) *Venkatacharyulu vs Venkatasubba* (1925) 48 Mad. 821, 824; 90 I.C. 725, (26) A.M. 55 See *Mohori Bibee vs Dhurmodas Ghose* (1903) 30 I.A. 114, at p. 123.

(o) *Dinendranath Sanyal vs Ramcoomar Ghose* (1881) 7 Cal. 107, 8 I.A. 65, 75.

(p) *Queen Empress vs Abdullah* (1885) 7 All. 385, 398 F.B.

when it is contended that the legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the statute can be taken to effect the change that is suggested as intended" (q).

(3) If the meaning is clear the Court is not at liberty to look to *the presumed intention of the Legislature*. The question for the Court is not what the Legislature meant, but what its language means, i.e. what the Act has said that it meant (r). In *Salomon vs Salomon & Co.* (s). Lord Watson said—"Intention of the Legislature is a common but very slippery phrase, which properly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity what the Legislature intended to be done, or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication." In *Administrator-General of Bengal vs Prem Lal Mullick* (t) their Lordships of the Privy Council said—"A positive enactment, in a statute of 1874, cannot be qualified or neutralised by indications of intention gathered from previous legislation upon the same subject."

(4) When the literal construction would lead to some *absurdity, repugnance or inconsistency* the grammatical sense may be modified so as to avoid that difficulty but no further (u). For it is a well-known rule that a *casus omissus* cannot be supplied by a Court of Law (v). In *Crawford vs Spooner* (w) the Judicial Committee of the Privy Council said—"We cannot aid the Legislature's defective phrasing of the Act; We cannot add and mend and by construction make up deficiencies which are left there".

(q) *Abdur Rahim vs Mohamed Barkat Ali* (1928) 55 Cal. 519, 55 I.A. 96, 103, 108 I.C. 361, (28) A. P.C. 16.

(r) Maxwell's Interpretation of Statutes, 6th Ed., p. 10.

(s) (1897) A.C. 22, 38.

(t) (1895) 22 I.A. 107, 116, 22 Cal. 788.

(u) *Grey vs Pearson* (1857) 6 H.L.C. 61; *Deo Narain vs Kakur Bind* (1902) 24 All. 319; *Madan Chandra vs Jaki* (1902) 6 Cal. W.N. 377; *Aiyasamier vs Venkatachela* (1917) 40 Mad. 989, 1000, 37 I.C. 741; *Promotho Nath vs Kali Prasanna* (1901) 28 Cal. 44; *Dial Singh vs Gurdwara Sri Akal Takht. Amritsar* (1928) 9 Lah. 649, 110 I.C. 164, (28) A.L. 325; *Vacher & Sons Ltd. vs London Society of Compositors* (1913) A.C. 107, 117.

(v) *Gurdial Singh vs Central Board & Local Committee, Amritsar* (1928) 9 Lah. 689, 698, 113 I.C. 769 (28) A.L. 337.

(w) (1864) 6 Moo. P.C. 1.

(5) *The literal construction ought not to prevail if it is opposed to the intention of the Legislature* as apparent from the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated(x).

(6) *The construction should be as far as possible beneficial*, that is, to suppress the mischief and advance the remedy, if this can be done without violence to the language of the section (y).

(7) The Crown is not bound by a statute unless directly(z) or by necessary implication referred to (a). Necessary implication means that if the Crown were not bound by the Act, the legislation would be unmeaning(b).

(8) *If two statutes are apparently inconsistent*, an effort should be made to reconcile them. In *Ebbs vs Boulnois* (c) James, LJ, said—"It is a cardinal principle in the interpretation of a statute that if there are two inconsistent enactments, it must be seen if one cannot be read as a qualification of the other."

(9) *If two statutes are irreconcilable the latter prevails* (d).

(10) *A general Act must not be construed so as to derogate from a special Act* (e). In *Barker vs Edger* (f) Lord Hobhouse said—"The general maxim is *generalialia specialibus non derogant*. When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent

(x) Per Lord Selborne in *Caledonian Ry. Co. v North British Ry. Co.* (1881) L.R. 6 App. Cas. 114, 122; *Rex vs Halliday* (1917) A.C. 260, 303.

(y) *Middlesex Justices vs R.* (1884) 9 App. Cas. 757, 770.

(z) *Attorney-General vs Donaldson* (1842) 10 M. & W. 117; *Attorney-General vs Newman* (1815) 1 Price 438; *Ganpat Putaya vs The Collector of Kanara* (1876) 1 Bom. 7, 9; *Secretary of State vs Mathurabhai* (1890) 14 Bom. 213.

(a) *Theberge vs Laudry* (1876) 2 App. Cas. 102; *Re. WI Matua's Ill* (1908) A.C. 448 P.C.

(b) *Gorton Local Board vs Prison Commissioners* (1904) 2 K.B. 165n, at p. 167, per Day, J.

(c) (1875) 10 Ch. App. 479, 484. See *Kalyanasundaram vs Karruppa* (1927) 54 I.A. 89, 95, 50 Mad. 193, 100 I.C. 105, (27) A.P.C. 42.

(d) *Luby vs Warwickshire Miners Association* (1912) 2 Ch. 371; *West Ham vs Fourth Building Society* (1892) 1 Q.B. 654.

(e) *Kamalammal vs Peeru Meera* (1897) 20 Mad. 481; citing *Queen v Champnyes* (1871) L.R. 6 C.P. 384; *Garnett vs Bradley* (1878) 3 App. Cas. 944, 950; *Hawkins vs Gathercole* (1850) 6 De G.M. & G.I.

(f) (1898) A.C. 748, 754.

general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."

(11) *Statutes encroaching upon private rights* must be strictly construed so as to save those rights as far as possible (g). An intention to take away property without compensation should not be imputed to a Legislature, unless it be expressed in unequivocal terms (h).

(12). *Statutes affecting substantive law or vested rights are not retrospective, unless expressed to be so*; but statutes affecting procedure may properly have retrospective effect attributed to them unless that construction be textually inadmissible(i). The *principles affecting the retrospective operation of statutes* have been stated as follows (j):

1. Legislative enactments have no retrospective effect, explicitly stated to be so in the enactments themselves.
2. Amending statutes should not be construed as having retrospective effect, if they affect vested rights.
3. Statutes which are declaratory or explanatory are to be construed as having retrospective effect as they give an authoritative explanation of the words, phrases or clauses used in a statute, and whenever the statute has to be applied the explanation also should be applied.
4. No recital in a declaratory or amending statute can render void that which has been declared by the Courts to have been rightly done under the law.
5. Statutes which affect a mere procedure are retrospective in their nature.

(g) *Suratee Bara Bazar Co. vs Municipal Corporation of Rangoon* (1927) 5 Rang. 722, 107 I.C. 849, (28) A.R.87; *Western Countries Rly. Co. vs Windsor & Annapolis Rly. Co.* (1882) 7 App. Cas 178.

(h) *Commissioner of Public Works (Cape Colony) vs Logan* (1903) A.C. 355; *Gopeshwar Pal vs Jiban Chandra* (1914) 41 Cal. 1125, 1140, 24 I.C. 37.

(i) *Colonial Sugar Refining Co. v. Irving* (1905) A.C. 369; *Delhi Cloth & General Mills Co. vs Income-tax Commissioner* (1927) 54 I.A. 421, 425, 30 Bom. L.R. 60, 106 I.C. 156, (27) A. PC. 242; *Mohammad Abdus Samad vs Kurban* (1904) 26 All. 119, 31 I.A. 30, 37; *Manjhoori vs Akel Mohamed* (1913) 17 Cal. W.N. 889, 19 I.C. 793; *Ramkrishna vs Subbaraya* (1915) 38 Mad. 101, 18 I.C. 64; *Smithies vs National Association of Operative Plasterers* (1909) 1 K.B. 310, 319; *Henshall vs Porter* (1923) 2 K.B. 193; *Falcon vs Famous Players Film Co.* (1926) 1 K.B. 393 on App. (1926) 2 K.B. 474; *Gardner vs Lucas* (1878) 3 App. Cas. 582, 603.

(j) *Balaji Singh vs Gangamma* (1927) 51 Mad. L.J. 641, 643, 99 I.C. 143, (27) A.M. 85 (per Devadoss, J.).

The Transfer of Property Act, however, expressly enacts in section 2(c) that it is not retrospective.

(13) *Proceedings of the Legislative Council* are excluded from consideration in the judicial construction of an Act. The *debates in the Legislative Council, reports of Select Committees and statements of objects and reasons* annexed to a bill may not be referred to (k). The Privy Council when construing section 68 of the Indian Companies Act, 1882, said that "no statement made on the introduction of the measure, or its discussion can be looked at as affording any guidance as to the meaning of the words"(l).

(14) *Marginal notes* to the sections are not to be referred to for the purpose of construction. The Privy Council described this as a well-settled rule(m); but the Allahabad High Court has held that marginal notes may be referred to when they have been inserted with the assent of the Legislature(n).

(15) *Illustrations* are instances of the practical application of the written law and make nothing law which would not be law without them (o). As they explain the meaning of the section they are useful as aids to construction, but they cannot control the plain meaning of the section (p). In a case from the Straits Settlements (q), the Privy Council said—"And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such

(k) *Administrator-General vs Premlal* (1895) 22 Cal. 788, 22 I.A. 107, 118; *Queen Empress vs Sri Churn* (1895) 22 Cal. 1017; *Kadir vs Bhawani* (1892) 14 All. 145; *Queen Empress vs Bal Gangadhar Tilak* (1898) 22 Bom. 112; *Zamindar of Ettiyapuram vs Chidambaram* (1920) 43 Mad. 675; 687, 58 I.C. 871; *Raj Mal vs Harnam Singh* (1928) 9 Lah 260 104 I.C. 661, (28) A.L. 35; *Gurdial Singh vs Central Board & Local Committee, Amritsar* (1928) 9 Lah. 689, 113 I.C. 769; (28) A.L. 337; *Rex vs West Riding of Yorkshire County Council* (1906) 2 K.B. 676, 716; *Mahant Shantanand Gir vs Basudevanand* (1930) 52 All. 619, 125 I.C. 477; (30) A.A. 25 F.B.

(l) *Krishna Ayyangar vs Nella Perumal* (1920) 43 Mad. 550, 47 I.A. 33, 42, 56 I.C. 163.

(m) *Balraj Kunvar vs Jagatpal Singh* (1904) 26 All. 393, 31 I.A. 132, 142-43 *Balaji Singh vs Gangamma* (1927) 51 Mad. L.J. 641, 99 IC 143, (27) A.M. 85, citing *Attorney-General vs Great Eastern Ry. Co. Ltd.* (1879) 11 Ch. D. 449.

(n) *Ram Saran Das vs Bhagwal Prasad* (1929) 51 All. 411, 113 I.C. 442, (29) AA. 53.

(o) Whitley Stockes Anglo Indian Codes, Vol. I., P xxv.

(p) *Koylash Chunder vs Sonatun* (1880) 7 Cal. 132.

(q) *Mahomed vs Yeoh* (1916) 43 IA 256, 263, 19 Bom LR 157, 39 IC 401.

assumption. The great usefulness of the illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute should not be thus impaired."

(16) "It is an error to rely on *punctuation* in construing Acts of the Legislature"(r).

(r) *Maharani of Burdwan vs Murtunjoy* (1887) 14 IA. 30, 35, 14 Cal. 365, 372, suggested probably by the observations of Willes, J., in *Claydon vs Green* (1868) L.R. 3 C.P. 511, at p. 522. But does the *ratio decidendi* of the English cases apply in India where punctuation forms part of the clauses as passed in the Legislature?