

**(1928) 06 AHC CK 0011**

**Allahabad High Court**

**Case No:** None

Ram Singha and Another

APPELLANT

Vs

Shankar Dayal and Another

RESPONDENT

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**Date of Decision:** June 11, 1928

**Final Decision:** Disposed Of

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### **Judgement**

1. This is a reference to the High Court under the Tenancy Act. The facts are clearly set forth in the referring order of Mukerji, J., and it is not necessary to repeat them.
2. A suit for arrears of rent was filed in the Court of the Assistant Collector when the old Tenancy Act was in force. Before it could be-decided, the new Act came into force on 7th September 1926. The suit was decreed on 23rd December 1926.
3. Under the old Act a defendant had undoubtedly a right of appeal to the District Judge, if the decree went against him. Under the new Act, there is no appeal from the decision of an Assistant Collector of the first class, when the valuation of the subject-matter is less than Rs. 200.
4. The point of law that arises therefore is whether the coming into force of the new Tenancy Act, under which no appeal is provided, deprives a defendant of his right of appeal, which he would have had if the old Tenancy Act had continued to be operative.
5. It is admitted that there is nothing in the new Tenancy Act expressly providing that it shall affect all pending actions, or that it shall have retrospective effect. If therefore the right of appeal was a substantive right and not a mere matter of procedure, it could not be taken away by the new Act. On the other hand if it merely involved a question of procedure, that right may have been destroyed.
6. In our opinion the point is concluded by the pronouncement of their Lordships of the Privy Council in the case of the Colonial Sugar Refining Co. Ltd. v. Irving [1905] A.C. 369. In that case ordinarily an appeal lay to their Lordships of the Privy Council

from an order of the Supreme Court. While the matter was pending in that Court, the law was amended so as to allow an appeal to the High Court. Their Lordships of the Privy Council held that the new Act could not deprive the party of his right to appeal to the Privy Council. Lord Macnaghton remarked at p. 372:

To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure.

7. That principle was re-affirmed by their Lordships in the case of the AIR 1927 242 (Privy Council) The principle has been followed by a Full Bench of the Madras High Court in the case of [Daivanayaga Reddiar and Others Vs. Renukambal Ammal](#), Dalal, J., has taken the same view in the case of [Bala Prasad and Others Vs. Shyam Behari Lal and Others](#)

8. An earlier case of this Court Zamin Ali Khan v. Genda [1904] 26 All. 375 was decided before the pronouncement of their Lordships of the Privy Council in the case of the Colonial Sugar Refining Co., Ltd. v. Irving [1905] A.C. 369. That case decided that although a suit is disposed of while one Act is in force, the appeal is governed by a new Act which comes into effect before the appeal is filed. That case must be deemed to have been overruled by the pronouncement of their Lordships of the Privy Council.

9. We think there is no force in the contention that the Privy Council case proceeded on the general principles of common law and is therefore not applicable to this case, which is governed by the United Provinces General Clauses Act of 1904. u/s 6 of that Act, unless a different intention appears, the repeal of an Act cannot affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or affect any remedy or any investigation or legal proceeding commenced before the repealing Act shall have come into operation, and any such remedy may be enforced, and any such investigation or legal proceeding may be continued and concluded as if the repealing Act had not been passed. It is clear to us that an appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, and that the right to continue that proceeding cannot be affected by a new Act unless it expressly says so. The United Provinces General Clauses. Act does not operate differently.

10. Our answer to the reference is that the right to appeal to the Court of the District Judge was governed by the law prevailing at the date of the institution of the suit, and not by the law that prevailed at the date of its decision, or at the date of the filing of the appeal.

11. The case will go back to the Bench concerned with this opinion.