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THOMAS, J.: And I. We cannot look at the deposition unless it is shown to us that on some material point the witness's evidence below was contradictory of what he says now. Either you must take what he said last and stuck to, and in that case he says the same now and there is no contradiction, or you must take everything he said and one piece of it cancels the other and there is nothing left to be either affirmed or contradicted here.

Evidence not admitted.

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[BELCHER, C.J., SERTSIOS AND FUAD, JJ.]

THEMISTOKLES N. DERVIS

v.

CHRISTOFI P. TSERIOTI AND OTHERS (No. 1).

Fraudulent transfer—Creditor's application to set aside—Time-limit—Removal of limit by amending law—Effect on time-barred rights—Retrospective operation of Procedural Law—Qualification—Law 7 of 1886, Section 3—Law 10 of 1927, Sections 3, 4.

Appellant, a creditor whose right under Law 7 of 1886, Section 3, to apply to set aside a dealing by his debtor had expired by lapse of time, in terms of the section, one year after the date of the dealing and before Law 10 of 1927 which removed the time-limit in such cases came into force, applied after the last-mentioned law came into force to set the dealing aside.

Held, that the law had no such retrospective operation as would revive the plaintiff's expired right.

Appeal from order of District Court, Nicosia–Kyrenia, dismissing plaintiff's application (in action No. 728/24).

Law 7 of 1886, Section 3, was as follows :—

" (1) Any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property deemed to be fraudulent under the provisions of Section 2 of this Law may be set aside by an order of the Court, to be obtained on the application of any judgment creditor made in the action or other proceeding wherein the right to recover the debt has been established, and to the Court before which such action or other proceeding has been heard or is pending.

(2) No gift, sale, mortgage or other transfer of any property shall be set aside under the provisions of this Law, except it shall have been made within the period of one year next before the commencement of the action or proceeding in which the application to set it aside is made."

Law 10 of 1927, Sections 3 and 4, are as follows :—

"3. The Principal Law, Section 3 (1), is hereby amended by the insertion in line 3 after the word 'Law' of the words 'whether made before or after the commencement of an action or other proceeding wherein the right to recover the debt has been established' and the deletion in lines 5 and 6 of the words 'the action or other proceeding wherein the right to recover the debt has been established' and the substitution therefor of the words 'such action or other proceeding.'"

4. The Principal Law, Section 3 (2), is hereby repealed."

The dealing in question was a mortgage dated 2nd February, 1923. The creditor (appellant) brought action against the mortgagor on 2nd September, 1924. Law 10 of 1927, came into operation on 4th February, 1927. Appellant applied to the District Court on 11th October, 1927, to set the mortgage aside. The District Court on 30th April, 1929, dismissed the application on the ground that the effect of Law 7 of 1886, Section 3 (2), was to give respondent the right of pleading lapse of time as a defence to such an application, and that in the absence of express words to the contrary in Law 10 of 1927, Law 10 of 1901, Section 14 (*c*), (The Interpretation Law, 1901), operated to prevent the destruction of that defence. The applicant appealed.

Triantafyllides (with him *Panayides*) for appellant (applicant): The amendment was one affecting procedure only, and, therefore, retrospective : Law 10 of 1901, Section 14, does not touch the matter, because Law 10 of 1927 did not repeal Law 7 of 1886, but merely amended it. If the law before 4th February, 1927, left the appellant without a remedy or with a defective remedy for an injury, and that was this case, still that gives the respondent no "right or privilege" under Law 10 of 1901, Section 14 (*c*) : nor can a right be said to have accrued when all that exists is a potential defence to a problematical application.

Clerides for respondent : When Law 10 of 1927 came into force respondent was in the position of being able to say the dealing was no longer impeachable, if ever : conversely, applicant's right, whatever it was, had gone.

JUDGMENT :—

BELCHER, C.J. : Before Law 10 of 1927 came into force, a creditor who wished to have a dealing with property by his debtor set aside as fraudulent under Law 7 of 1886 had to bring the proceedings whereby he established his debt in terms of that law within a year after the dealing took place. Law 10 of 1927, which amends the earlier law, removed the time-limit.

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The legislature did not, however, say, as it might have done in very few words, what effect it intended the new law to have upon past dealings, and so this case comes before the Courts, in which a creditor, who brought what may be termed his "qualifying action" more than a year after the dealing he seeks to upset, claims that since the amending law he is free to pursue the same remedy—*i.e.*, by application in his action—as under the principal law was open to him until the year expired. The District Court dismissed the application, and now plaintiff appeals to us and says that the law of 1927 being one affecting procedure only is to be interpreted retrospectively. The rule relied on is no doubt an exception to the established principle that statutes are to be read prospectively and not retrospectively, and rests itself on equally unimpeachable authority. But in my opinion the exception must be confined to cases where procedure alone is affected, and not substantive legal rights. I have looked at three cases to which we were referred by the appellant, *Curtis* v. *Slovin* (1), and *Rex* v. *Chaudra Dharma* (2). The first was merely concerned with the transfer of an action from one Court to another. In the Ydun, the time for bringing proceedings was shortened, but the new law did not take away, by its mere coming into force, any substantive right of the plaintiff. In *Rex v. Chaudra Dharma* the prisoner was liable to prosecution before the new law came into force, and remained liable after it but for a longer period. The judgment of Channell, J., in the last-mentioned case, which seems to me to give the key to the decision of the one before us, is not in conflict with that of the other judges, for Lord Alverstone, C.J., says of the amending law there that "it did not take away any defence which was formerly open to the prisoner." *Joachim* v. *Christofi* (3) was also a case where the plaintiff's right existed when the new law was passed. No case was cited to us, nor can I find any, where a law which contained no language expressive of such intention was held retrospectively to prejudice an existing substantive right. It is no doubt the law that no one can have a legal right to the continued existence of a particular procedure, be it time-limitation or other, but that seems to me as much as can be drawn from the exception. In the present case, to give any wider scope to the exception would be to revive an extinguished substantive, not procedural, right in the appellant and to destroy an existing similar right in the transferee from the respondent, a right, that is to say, to be secure in his holding

(1) (1889) 22 Q.B.D. 513, *The Ydun* (1899) P. 236.
(2) (1905) 2 K.B. 335.
(3) 5 C.L.R. 77.

against the form of divesting which Law 7 of 1886 creates and regulates, providing as it does for both its genesis and its extinction. Were we to hold otherwise, innocent donees and even purchasers for value in turn from them would never be secure, though the original gift took place many years ago; and even excluding actually decided cases as between the parties there would still be nothing to prevent a creditor whose debt arose yesterday from upsetting a dealing five or ten years old which had already been upheld against an earlier creditor because the latter failed to proceed within the old limit of one year. It is impossible to suppose the legislature intended the law to have effect in such a way. The appeal must be dismissed with costs.

FUAD, J.: I agree with the judgment just delivered by the Chief Justice.

SERTSIOS, J.: This is an appeal from a judgment of the District Court, Nicosia, in an application made by the appellant in action No. 728/24, under the Fraudulent Transfers Avoidance Law 7 of 1886, as amended by Law 10 of 1927. Both at issues and at the hearing of the application it was admitted by the plaintiff in the application that the mortgage he was applying to set aside had been effected more than a year next before commencement of the action cited above. The mortgage, that is to say, was effected on the 2nd February, 1923, and the action was instituted about a year and a half later, i.*e.*, on the 2nd September, 1924, while the application, the subject-matter of this appeal, was filed by the plaintiff (now the appellant) only on the 11th October, 1927.

Now the question arises whether the applicant, having failed to file the application within the time-limit fixed by Section 3, sub-section 2, of Law 7 of 1886, which was repealed to that extent by Law 10 of 1927, is barred from applying to set the mortgage aside, which, as stated above, was effected more than a year next before the commencement of the action instituted by him.

The learned counsel for the appellant, Mr. Triantafyllides, argued that Section 3 of Law 7 of 1886 deals with procedure only, and any amendment of this procedure by a subsequent law will have a retrospective effect. He, therefore, submitted that Section 3 sub-section 2 having been repealed by Law 10 of 1927, has ceased to have any operation in respect of any time prior to Law 10 of 1927, and that the applicant (appellant) was, therefore, entitled to file his application, irrespective of any time under the provisions of the new law, which does away with the time-limit fixed by Section 3 sub-section 2 of the old law quoted above.

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The learned counsel for the respondents, Mr. Clerides, on the other hand, argued firstly, that Section 3 sub-section 2 is not dealing with procedure, and, secondly, that there is nothing in the amending law to show that it was intended to have a retrospective effect. Moreover, he argued that respondents under the said Section 3 sub-section 2 of Law 10 of 1927 had acquired a right to plead in bar, and such right could not be in any way affected by the amending enactment, in view of the provision laid down in Section 14 sub-section 2 (*c*) of the Interpretation Law 10 of 1901.

Counsel for the appellant, in reply, argued that Section 15 of the Interpretation Law takes this case out of the provisions of Section 14, and that the whole Law 7 of 1886 must be repealed to bring into play Section 14, mentioned. He, further, stated that Section 3 sub-section 2 of Law 7 of 1886, gives the remedy and not the right which is given by Section 3 sub-section 1 and that it is not the right that is barred but the remedy.

Dealing with the first point raised by the appellant, namely, that Law 10 of 1927, has a retrospective effect, inasmuch as Section 3 of Law 7 of 1886 is dealing with procedure, I have in view the decision of this Court in the case of *Joachim* v. *Christofi and others* (1). It was then ruled by this Court that the Supreme Court of Cyprus, in cases where no Ottoman or Cyprus legislative authority exists availed itself of the principles acted on in the English Courts. In those Courts it is a principle of the construction of legislative enactments altering procedure that they should have a retrospective effect, unless there is a good reason against such construction ; or unless the new procedure would prejudice rights established under the old.

Now, for the purposes of my judgment, let me first consider whether Section 3 sub-section 2 of the amended Law 7 of 1886, is dealing with procedure, as alleged for the appellant. Section 3 sub-section 1 of the law mentioned, deals with gifts, sales, pledges, mortgages, etc., deemed to be fraudulent under a prior section.

The sole effect, however, of Section 3 sub-section 2 is to narrow the class of gifts, etc., referred to in the previous sub-section, and confine them to those which have been made within one year next before the commencement of the action. I don't think that this can be said to be a matter of procedure. To my mind it merely reduces a class of gifts, etc., wholly unrestricted and unlimited to a much narrower class, namely those made within a year before the action. It does not make any reference as to what is to take place upon any proceedings to set aside a

(1) 5 C.L.R. 74.

transfer. Sub-section 2 merely limits the ambit of sub-section 1 which says precisely how transfers are to be set aside. It excludes, that is to say, from the operation of sub-section 1 all gifts and transfers deemed to be fraudulent, except those made within one year before the action.

Consequently the principle enunciated by this Court in the case quoted above is not applicable to the present case, the enactment which has been repealed by the subsequent law, being a substantive law and not one dealing with procedure. Therefore, in the absence of any provision in the amending law stating distinctly that such was the intention of the legislators, it cannot have a retrospective effect.

As regards the second point put forward by the appellant in support of his appeal, it was stated on his behalf by his learned counsel that Section 14 sub-section 2 (*c*) of the Interpretation Law 10 of 1901, does not help the respondents, inasmuch as Section 15 of the same law, which is in the nature of a saving clause, renders it inapplicable. Section 15, however, reads :—

" The provisions of this law respecting the construction of laws passed after the commencement of this law shall not affect the construction of any law passed before the commencement of this law, although it is continued or amended by a law passed after such commencement." That is to say, a passed law, in spite of its having been amended by a law passed after the commencement of the law in question, will still be considered as a passed law, and consequently, the provisions of the laws respecting the construction of laws passed after the commencement of the Interpretation Law 10 of 1901, will not affect it. But the only provision in the law in question, which deals with the construction of future laws, *i.e.*, passed after the commencement of the Interpretation Law, is the one contained in Section 6 of the said law. Section 6, however, refers to the meaning or construction to be placed upon certain words or expressions in future laws, as enumerated therein, and such a question does not arise in the case before us. In my opinion, Section 15 and Section 6 of Law 10 of 1901 should be read together, and even for the purposes of the provision in Section 6 only, and for no other purpose. Consequently the provisions laid down in Section 14 sub-section 2 (*c*) of the Interpretation Law, 1901, is in no way affected by Section 15 of the law, and it is, therefore, for the purposes of the present case in full force and applicable. That being so, although Section 3 sub-section 2 of Law 7 of 1886 has been repealed by Law 10 of 1927, the right—if it is a right—acquired by the respondents under the repealed sub-section 2, is not at all affected by the repealing enactment.

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Now, the question arises whether the protection given to a respondent to defeat any application not filed within a year next before the commencement of the action, is a "right" or "privilege" acquired or accrued under Section 14 sub-section 2 (*c*) of Law 10 of 1901. I find it hard to say that a protection given by Section 3 sub-section 2 of Law 7 of 1886 to defeat all applications not made (brought) within a year, etc., is not a right or privilege. In my view it is a right of a substantial nature, and within the class set out in Section 14 sub-section 2 (*c*) of Law 10 of 1901, and, therefore, not affected by the repealing enactment of Law 10 of 1927.

Under Section 3 sub-section 2 of Law 7 of 1886, the respondents had an absolute defence in law to any application to set aside the transfer not made within the one year before the action. To deprive them of a certain defence to a wide class of application (namely those not made within a year before the action) is clearly to impose upon them liabilities, from which they were relieved under sub-section 2 referred to above. Therefore, depriving them of the *right* they had acquired under the repealed Section 3 sub-section 2 of Law 7 of 1886, and thus imposing new obligations upon them as stated above, clearly brings them within one of the classes of cases which a repeal, under Section 14 sub-section 2 (*c*) of Law 10 of 1901, is not to affect, *i.e.*, a right acquired under the enactment repealed and they are, therefore, left with any defences, which they had before the appeal.

Needless to say that, assuming that Section 3 sub-section 2 of the amended Law 7 of 1886 was dealing with procedure, the new procedure under the amending enactment of Law 10 of 1927 would not prejudice the right or rights established or acquired under the old enactment, as explained above.

In the circumstances, I am of the opinion that this appeal should be dismissed with costs.

Appeal dismissed.