

Co. Ct.]

BRADLEY V. BRADLEY.

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In *Sunter v. Ellison*, 9 B. & C. 752, Lord Tenterden, C.J., says:—"It has been long established that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed), as if it had never existed.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, and we must not destroy that by indulging in conjectures as to the intention of the Legislature. We are, therefore, to look at the statute, 6 Geo. IV. c. 16, as if it were the first that had ever been passed on the subject, etc.; and so considering it we cannot possibly say that there was any sufficient trading to support the commission."

It is certainly very unfortunate that a statute of so much importance should have been framed with so little attention to the consequences of some of its provisions. It is said that the last will of a party is to be favourably construed, because the testator is *inops consilii*. That we cannot say of the Legislature, but we must say that it is "*magnas inter opes inops*."

In order to decide whether any particular transaction is affected by the repeal of the Act, it is necessary to ascertain whether the transaction in question was complete or incomplete at the time the Act was repealed. Now, if an Act gives a right to do anything, the act to be done, if duly commenced, but not completed, before the Act is repealed, must upon the repeal of the Act, be left in *statu quo*. Thus in *R. v. Maughan*, 8 A. & E. 496, a presentment as to the non repair of a highway had been made under 13 Geo. III. c. 78, s. 24, but before the case came on to be tried, the above-mentioned Act was repealed. Consequently no further proceedings could be taken. "If," said Lord Denman, C. J., "the question had related merely to the presentment, that no doubt is complete. But *dum loquimur*, we have lost the power of giving effect to anything that takes place under that proceeding." And Littledale, J., added, "I do not say that what is already done has become bad, but that no more can be done."

But if a right has once been acquired by virtue of some statute, it will not be taken away by the repeal of the statute under which it was acquired. "The law itself," says Baron Puffendorf, in his *Law of Nature and Nations* Bk. I C. 6, s. 6, "may be disannulled by the author, but the right acquired by virtue of that law whilst in force must still remain: for together with a law to take away all its precedent effects would be a

high piece of injustice." Thus in *Jacques v. Withey*, 1 H. Bl. 55, it appears that it being illegal by virtue of 22 Geo. III. c. 47, to insure tickets in a lottery, a contract for insuring lottery tickets was void, and that consequently any money that had been paid in pursuance of such a contract might be recovered back. After a contract of this kind had been entered into, and after money had been paid by the plaintiff to the defendant in pursuance of it, the Act of 22 Geo. III. c. 47, was repealed, consequently it was argued that as such contracts were no longer illegal, the money which had been paid before the repeal of the Act could not be recovered back in an action which had not been commenced until after the repeal of the Act. It was held, however, that a contract which was void by statute when made, could not be set up again by the repeal of the statute between the time of contracting and the commencement of the suit. "If," said Coleridge, J., in commenting on the case of *Hitchcock v. Way*, 6 A. & E. 947, "it had been originally a good contract, and a statute had been passed which made it void, and then that statute had been repealed, the contract would have been set up again. But here there was originally a void contract by virtue of a statute, and, therefore, it cannot be made valid by the repeal of that statute." See *Hardcastle on Statutory Law*, 217.

In this case the notes were invalid under the Stamp Acts, because they were not properly stamped. "It is true, as urged on behalf of the plaintiff, the owner might have stamped them by affixing double duty, when she first acquired the knowledge, if she had been in ignorance of the fact, but unfortunately she did not so stamp them, and the Act 45 Victoria, cap. 1, was passed repealing the Stamp Act, and rendering it impossible for her to make the notes valid."

The demurrer is, in my opinion, a complete answer to the action, and I give judgment thereon for the defendant with costs.

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