

SUPREME COURT OF NIGERIA

19TH MAY, 2000. SC. 36/1998

**CORAM:- A. B. WALI, M. E. OGUNDARE, E. O. OGWUEGBU,
A. I. IGUH, S. O. UWAIFO, JJSC.**

1. FESTUS IBIDAPO ADESANOYE ... DEFENDANTS/APPELLANTS
2. HIGH CHIEF W. OGUNYE
3. HIGH CHIEF B. AKINGBULE
4. HIGH CHIEF S. N. AGUNIADE

AND

PRINCE FRANCIS GBADEBO ADEWOLE PLAINTIFF/
RESPONDENT
ATTORNEY-GENERAL, ONDO STATE 5TH DEFENDANT/
RESPONDENT

***APPEALS** - Issue - Incompetence - Issue argued without a supporting ground of appeal - The consequence is that both the issue and the argument founded on it - Ought to be discountenanced by the court.*

***INTERPRETATION OF STATUTES** - Retrospective statutes - Construction - The general principles in regard to retrospective operation of statutes*

***INTERPRETATION OF STATUTES** - Retrospective Statutes - Interpretation giving a retrospective effect to a statute - Should not be readily accepted - Where it would affect vested rights - Or impose liability or disqualification for past events*

***STATUTES** - Retrospective statutes - Categorization - The three kinds of statutes that can be said to be retrospective.*

***STATUTES** - Retrospective statute - Definition - When a statute is deemed to be retrospective*

STATUTES - *Retrospective legislation - Where the Edict created a right of action - And the condition for its exercise - It was not the intention of the legislature to give it retrospective operation - As it is not possible to exercise that right before it came into being.*

STATUTES - *Retrospective Edict - Procedural requirements - Where the provisions are fundamental - And would affect substantive rights in regard to a suit which has already commenced - They are not to be taken as mere procedural requirements*

STATUTES - *Interpretation - Retrospective Statute - Vested rights - Act that might annul rights already acquired - There is always a presumption against such an intention*

STATUTES - *Retrospective Statute - Edict No. 2 of 1992 - SS. 1 and 2 thereof - Could not properly be given a retrospective effect - So as to defeat the vested or substantive right of action in the respondent - Prevailing at the time he filed the suit*

FACTS

In the High Court of Ondo State, holden at Ondo, the Plaintiff/ 1st respondent instituted an action, on 14th October, 1991 against the 1st - 4th defendants/appellants as well as the Attorney - General of Ondo State (5th defendant respondent) challenging the appointment of the 1st defendant as Osemawe of Ondo. On the death of Oba Itiade Adeko Lurejo the Osemawe of Ondo in August, 1991 the 1st defendant was appointed to fill the vacancy from among 3 candidates recommended for the vacant stool. The appointment of the new Oba was made on 11th October 1991 and approved by the Executive Council of Ondo State on 16th October, 1991. The plaintiff who was not happy with the appointment instituted an action as aforesaid. Which action was pending in the court and in the process of being heard after the exchange of pleadings between the parties, the Military Governor of Ondo State on 23rd December, 1991 promulgated an Edict cited as "The Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff

of Office" Edict No. 2 of 1992. The said Edict No. 2 of 1992 was originally given a commencement date of 23rd December, 1991 by the Ondo State Supplementary Official Gazette No. 2 Published on 16th January, 1992. But sometime later, Ondo State Official Gazette No. 6 Vol. 19 dated 10th February, 1994 published as Ondo State Notice No. 10 corrected the date of commencement of Edict No. 2 of 1992 to read 3rd January 1984. Section 1 of the Edict prescribed a period of 7 days from the date of appointment of an Oba within which to file an action challenging the appointment while section 2 thereof prescribed the requirement of the payment of a deposit of N25,000.00 at the time of filing the action at the High Court Registry by a plaintiff as a condition precedent to the prosecution of the action. The 1st - 4th defendants relying on the provisions filed a motion on 27/10/93 asking the trial court to strike out the Plaintiff's action on the ground of non-compliance with sections 1 and 2 of the Edict.

In a considered ruling, the learned trial judge upheld the contention of the 1st - 4th defendants and struck out the action. He was of the view that retrospective operation must be given to the said Edict with effect from the back-dated date of 3rd January, 1984. Dissatisfied, the plaintiff appealed to the Court of Appeal, Benin Division, which Court in a unanimous decision allowed the appeal, set aside the decision of the trial High Court and ordered that the suit be heard by another judge of the Ondo State High Court. The 1st - 4th defendants have now appealed to the Supreme Court against the decision of the Court of Appeal, raising 4 issues. Issues (1) - (3) were reformulated by the court as a single issue while issue (4) was adjudged to be incompetent.

ISSUE FOR DETERMINATION

Whether having regard to the provisions of Edict No. 2 of 1992, the Ondo State Notice No.10 in the Ondo State of Nigeria Gazette No. 6 vol. 19 page 20 of 26 April, 1994 making 3 January, 1984 commencement date of the said Edict, the date the appointment of the 1st appellant as the Osemawe was approved and the date the 1st respondent filed his suit, the lower court was right to declare the said suit competent even though it did not comply with the conditions specified in that Edict?

HELD (Unanimously dismissing the appeal per lead judgment of **UWAIFO JSC**)

Retrospective statute - Categorization

B 1. According to Driedger, Construction of Statutes page 186, there are three kinds of statutes that can be said to be retrospective, namely (a) statutes that attach benevolent consequences to a prior event; (b) statutes that impose a penalty on a person who is described by reference to a prior event, but the penalty is not a consequence of the event; (c) statutes that
C attach prejudicial consequences to a prior event. It is said that it is the last that attracts the presumption against the retrospective operation of the law: See Understanding Statutes by Crabbe, 1994 edn., page 169. (p. 1452 A)

D

Retrospective statute - Definition

2. The learned author of Craies on Statute Law, 7th edn., page 387, relying on the definition by Sedgwick, says that a statute is to be deemed to be
E retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed. But I think it is well established that whether a retrospec-
F tive operation will be given to such a statute will depend on the language of the statute and the peculiar facts of the case. (p. 1452 C)

Appeals - Issue

G 3. It seems the issue was thus argued without a supporting ground of appeal. The consequence is well established that both the issue and the argument founded on it ought to be discountenanced by the court: see Nwosu v. Udejaja (1990) 1 NWLR (pt. 125) 188; Ogbuanyiya v. Okudo (No. 2) (1990) 4 NWLR (pt.146) 551; Momodu v. Momoh (1991) 1
H NWLR (pt. 169) 608. I would accordingly strike out issue 4 and discountenance the argument based on it. (p. 1456 D)

Retrospective statutes - Construction

4. I think I can begin by stating the general principles in regard to retrospective operation of statutes. One is based on the presumption that the legislature does not intend what is unjust and therefore the courts lean against giving certain statutes retrospective operation. They are construed as operating only in cases or on facts which come into existence B after the statutes were passed unless a retrospective effect is clearly intended: see Maxwell on Interpretation of Statutes, 12th edn., page 215. Another related principle to the same effect is that it is a fundamental rule of law in our legal system that although it is competent for the legislature to make retrospective laws, no statute should be construed to C have a retrospective operation unless the terms of the statute say so in clear and unequivocal language: see Pardo v. Bingham (1870) L.R. 4 Ch. App. 735 at 739; Lauri v. Renad (1892) 3 Ch. 402 at 421. (p. 1460 E)

Retrospective statutes - Interpretation giving a retrospective effect

5. There is no dispute that the legislature has the authority and competence to make retrospective legislations within the Constitution which allocated legislative functions to it. The retrospective nature may be partial E or total, merely procedural in the real sense or substantive: see Smith v. Callander (1901) A.C. 297 at 305; Ibrahim v. Barde (1996) 9 NWLR (pt. 474) 513 at 577. But it should be emphasized that an interpretation giving a retrospective effect to a statute should not be readily accepted where F that would affect vested rights or impose liability or disqualification for past events: see West v. Gwynne (1911) 2 Ch.1; Afolabi v. Governor of Oyo State (supra). (p. 1461 A)

Retrospective Edict - Where the Edict created a right of action

6. In the present case, the commencement date of the Edict having been stated to be deemed to be 3 January, 1984 by virtue of s. 6 thereof, it has a semblance that it was given a retrospective effect. But that fact does not H displace the necessary implication of the words of the Edict. It was on this basis I think, that Mohammed JCA, after reciting the provisions of the said s. 6, observed as reported in Adewole v. Adesanoye (supra) at page 199 as follows:

"The Edict was intended to have retrospective effect. However, taking into consideration the plain language of sections 1 and 2 of the Edict which created a right of action and the condition for the exercise of that right, was it the intention of the law makers that the provisions of those sections which are only incidental to the main purpose of the Edict, should have retrospective effect as well? Looking at the provision of section 1, the right of action has just been created. Therefore there can be no question of the possibility of exercising that right before it came into being. The right to file to an action is only exercisable from the date of the creation of the right of action by the Edict not in the past."

Apart from saying that, in my view, there may be no need to draw a distinction between the main and incidental provisions of the Edict in order to give them the proper interpretation in this present case, I agree with the observation made by the learned Justice of the Court of Appeal. (p.1468B)

Retrospective Edict - Procedural requirements

7. The provisions of ss. 1 and 2 are not to be taken as mere procedural requirements when considered in connection with the circumstances of the respondent. They are fundamental and would certainly affect his substantive rights in regard to his suit which he had already commenced. (p. 1468 G)

Retrospective statute - Vested rights

8. It is not only that it would be impossible for the respondent to comply with the provisions of ss. 1 and 2 of the Edict since the action had been filed before the Edict was passed imposing conditions to be met in filing such action, which in the case of the respondent turned out to be ex post facto, but also no room in any manner can be found to have been allowed therein for later compliance with leave of court in case the respondent wanted to do that. In addition, as this court was reminded by the uncompromising aspect of the appellants' counsel's submission already referred to in this judgment, such a retrospective interpretation would affect and destroy vested rights derived from decisions earlier reached even right from January, 1984 as a result of the incompetence that would

then attach to the proceedings conducted without compliance with what would now be fundamental conditions. The decisions would therefore be a nullity and their execution void. There would in consequence be chaos similar to circumstances of a serious disturbance of law and order. It cannot be imagined that the legislature whose constitutional role is to make laws for peace, order and good government would have intended, much less been prepared for, such pernicious results. There is always a presumption against such an intention. As Scrutton L.J. said in Ward v. British Oak Insurance Co. Ltd (1932) 1 K.B. 392 at 397:

"Prima facie an Act deals with future and not with past events. If this were not so the Act might annul rights already acquired, while the presumption is against the intention." (p. 1472 C)

Retrospective Statute - Edict No. 2 of 1992

9. I must come to the conclusion that ss. 1 and 2 of Edict No. 2 of 1992 could not properly be given a retrospective effect so as to defeat the vested or substantive right of action in the respondent prevailing at the time he filed this suit. The lower court was right in the interpretation it gave to those sections as regards their effect on the respondent's suit. The respondent was not expected to and could not possibly be bound by the new conditions precedent for filing an action after he had commenced his suit without completely losing his vested or substantive right to sue. (p.1473A)

NOTABLE POINTS OF INTEREST

WALI JSC

1. Statutes are generally meant to apply to future events unless otherwise expressly stated

The above decided cases show that provisions of statutes are generally meant to apply to future events unless the provisions expressly and unambiguously stated that they are retrospective. See Ward v. British Oak Insurance Co. (supra); Afolabi v. Governor of Oyo State (1985) 2 NWLR (pt. 9) 734 at 752 and Ibrahim v. Barde (1996) 9 NWLR (pt. 474) 513. (p. 1481 B)

2. *Evidence of legislative intent*

Where the language of a statute is plain and not leading to absurd or whereby unpracticable consequences, it is the evidence of the ultimate legislative intent. The language in both sections 1 and 2 of the Edict is clear. The confusion only supervenes its head when the two sections are read with section 6 as amended and when applied to past events as purportedly applied to the plaintiff, albeit unsuccessfully. (p. 1481 G)

C **OGUNDARE JSC**

3. *How to resolve a conflict in a statute*

I pause here to observe that I have very strong reservations as to the validity of resolving a conflict in a statute (such as the commencement date of the statute) by a Notice without any provision in the substantive legislation allowing for this. I would have thought that a better way of doing this is by an amending statute. However, as the validity of otherwise of Notice No. 10 is not in contention in this appeal, I will say no more on it. (p. 1483 E)

4. *How to interpret enactments dealing with vested rights and those dealing with procedure*

F It is a well recognized rule that statutes should be interpreted, if possible, so as to respect vested rights but it must be a vested right in the strict sense and not merely existing rights. Such a construction is not, however, to be adopted if the words are open to another construction. In respect of statutes dealing with procedure or costs, different considerations apply. For there is no vested right in procedure or costs. And enactments dealing with these matters apply to pending actions, unless a contrary intention is expressed or clearly implied. As Pollock C.B. Put it in Wright v. Hale (1860) 30 Ex. 40 at p. 42, the first case on the rule:
G "I have always understood, that there is a considerable difference between laws which merely affect the proceedings of courts; as, for instance, declaring what shall be deemed good service, what shall be the criterion to the right to costs, how much costs shall be paid, or what

witnesses the party shall be entitled to, and so on I do not think a matter of that sort can be called a right in any sense in which Lord Coke in his Institutes has spoken of rights."

Thus if a statute deals merely with the procedure in action, and does not affect the rights of the parties, such as right of appeal (for which see Colonial Sugar Refining Co. v. Irving (1905) AC 369, 372), it will be held to apply prima facie to all actions pending as well as future. See Kimbray v. Draper (1868) L.R. 3 QB 160, 163; Welby v. Parker (1916) 1 Ch 1; Att. Gen. v. Vernazza (1960) AC 965. I say prima facie because it may be that the particular enactment, by the words used, is not intended to be retrospective. See, for example, Hickson v. Barlow (1883) 23 Ch.D 690. (p. 1488 F)

5. Principles relating to retrospectivity of a statute

Before I turn to the case on hand I want to refer to Afolabi v. Gov. of Oyo State (supra); (1985) 2 NWLR 734 which is the locus classicus on the subject under discussion and to which our attention has been drawn by both parties to this appeal. In that case this court laid down the following principles as relating to retrospectivity of a statute:

1. If an enactment seeks to have retroactive effect in order to destroy accrued rights under another enactment which it has repealed, such enactment must either expressly or impliedly refer to such accrued rights or the earlier enactment which it has repealed.

2. The Courts have always leaned against giving statutes retrospective effect and usually regard them as applying to facts or matters which come into existence after the statutes were passed.

3. The presumption is that a legislature does not intend what is unjust and thus the presumption against retrospectivity applies unless it is clearly shown that a retrospective effect was intended by the Legislature.

4. Statutes which encroach on the rights of the subjects, whether in relation to persons or property are regarded as Penal Acts and are subject to a strict construction. Such statutes are therefore to be interpreted so as to respect such rights and any ambiguity in such statutes is usually resolved in favour of the freedom of the individual.

5. A statute does not retrospectively abrogate vested rights or take away proprietary rights without making provision for compensation.

B 6. Where there is ambiguity about the extent to which a statute has derogated from common Law rights, the courts should resolve the issue in favour of maintaining common law rights unless they are clearly taken away.

C 7. The well-established presumption is that the legislature does not intend to limit vested rights farther than clearly appears from the enactment. xxxxxxxxxxxxxxxxxxxx

D 9. Statutes are not to be held to act retrospectively to deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right, unless a clear intention to that effect was manifested. (p. 1490 C)

OGWUEGBU JSC

6. The test of retrospective operation of a statute

E It is a fundamental rule in common law jurisdictions that no statute is construed to have a retrospective operation unless that construction appears very clearly in the terms of the Act, or arises by necessary or distinct operation. The test of retrospectivity of operation is whether there is anything in the Act which indicates that the consequences of an earlier event
F are changed, not for the time before the enactment but prospectively from the time of the enactment or from the time of commencement of the Act. (p. 1495 G)

IGUHJSC

7. General presumptions in the interpretation of statutes

H As I have already pointed out, there is the presumption that it is improbable that the law makers would overthrow fundamental principles or infringe rights without expressing their intention with absolute clarity. There is also the general presumption that the legislature does not intend the enactment into law of what is unjust. I cannot in the circumstances of this case share the view of the trial court that sections 1 and 2 of the Edict must

receive retrospective operation. This, in effect, would nullify and make nonsense of the plaintiff's already acquired right of action which, at all material times, he was prosecuting before the Edict in question was promulgated. It is plain to me that to give sections 1 and 2 of the Edict retrospective operation would be totally unjust, if not entirely vindictive and oppressive, having regard to the plaintiff's already acquired right as of the date the Edict was promulgated. (p. 1504 A) B

REPRESENTATION

Chief Segun Adegoke with Dele Thomas Esq. for the appellant C
A. Thompson Esq. for the respondent

CASES REFERRED TO

Smith v. Callander (1901) A.C. 297 at 305 D
Ibrahim v. Barde (1996) 9 NWLR (pt. 474) 513 at 577
West v. Gwynne (1911) 2 Ch.1
Nwosu v. Udejaja (1990) 1 NWLR (pt. 125) 188
Ogbuanyiya v. Okudo (No. 2) (1990) 4 NWLR (pt.146) 551 E
Momodu v. Momoh (1991) 1 NWLR (pt. 169) 608
Pardo v. Bingham (1870) L.R. 4 Ch. App. 735 at 739
Lauri v. Renad (1892) 3 Ch. 402 at 421
Afolabi v. Governor, Oyo State (1985) 2 NWLR (pt. 9) 734 at 752-753 F
Ward v. British Oak Insurance Co. Ltd (1932) 1 K.B. 392 at 397

STATUTE REFERRED TO

Approval of Appointment of an Oba and Presentation of Instrument of Appointment and staff of Office Edict No. 2 of Ondo State, 1992; ss. 1 G and 2

BOOKS REFERRED TO

Driedger, Construction of Statutes, P. 186 H
Crabbe, Understanding Statutes , 1994 edn, P. 169.
Craies On Statute Law, 7th edn, P. 387
Maxwell on Interpretation of Statutes, 12th. edn. P. 215

LEAD JUDGMENT BY UWAIFO JSC

This appeal deals with how to determine whether a statute is retrospective or prospective in operation and the effect thereof in relation to the facts of the present case. According to **Driedger, Construction of Statutes** page 186, there are three kinds of statutes that can be said to be retrospective, namely (a) statutes that attach benevolent consequences to a prior event; (b) statutes that impose a penalty on a person who is described by reference to a prior event, but the penalty is not a consequence of the event; (c) statutes that attach prejudicial consequences to a prior event. It is said that it is the last that attracts the presumption against the retrospective operation of the law: See **Understanding Statutes** by Crabbe, 1994 edn., page 169. The learned author of **Craies on Statute Law**, 7th edn., page 387, relying on the definition by Sedgwick, says that a statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed. But I think it is well established that whether a retrospective operation will be given to such a statute will depend on the language of the statute and the peculiar facts of the case.

The plaintiff (now 1st respondent) took out a writ at the High Court, Ondo, on 14 October, 1991 against the 1st-4th defendants (now appellants) as well as the Attorney-General of Ondo State (now 2nd respondent), claiming three reliefs. An amended writ and amended statement of claim were later filed on 3 March, 1992. The reliefs as finally claimed were stated as follows:

- (i) *A declaration that the purported approval of the 1st defendant as Osemawe of Ondo published in the Official Gazette Chief Edict No. 11 of 1984 Notice is ultra vires void and of no effect whatsoever.*
- (ii) *A declaration that the purported appointment of the 1st defendant as Osemawe of Ondo is contrary to the custom appertaining to the Chieftaincy void and of no effect.*
- (iii) *Order restraining the 1st defendant from parading himself*

as Osemawe elect."

After pleadings had been exchanged, the appellants brought an application to have the suit struck out on two grounds, namely (a) that the 1st respondent failed to give security for the sum of N25, 000.00 prior to instituting the suit as required by section 2 (1) (a) of the Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict No. 2 of 1992 (Edict No. 2 of 1992); (b) that the 1st respondent did not institute the suit within seven days of the date of the appointment of the 1st appellant.

The said Edict No. 2 of 1992 under which the appellant was appointed the Osemawe of Ondo was originally given a commencement date of 23 December, 1991 by the Ondo State supplementary Official Gazette No. 2 published on 16 January, 1992. But sometime later, Ondo State official Gazette No. 6 vol.19 dated 10 February, 1994 published as Ondo State Notice No.10 corrected the date of commencement of Edict No. 2 of 1992 to read 3 January, 1984 instead of 16 January, 1992. The learned trial Judge (Babalola, J.) held that retrospective operation must be given to the said Edict with effect from the back-dated date of 3 January, 1984. He further held that the giving of security for the sum of N25,000.00 and the requirement to institute a suit within seven days of the appointment of the 1st appellant to challenge his appointment as the Osemawe of Ondo were procedural conditions precedent to the competence of the suit filed by the 1st respondent on 14 October, 1991. The learned trial judge seemed to have found support in the case of Attorney-General v. Vernazza (1960) A.C. 965, to which I shall have to return in the course of this judgment. He therefore struck out the suit in a ruling he gave on 24 May, 1994. It ought to be made clear that the suit was struck out only on the ground that the 1st respondent failed to fulfil the condition precedent for giving security at the same time the suit was filed when the learned trial judge held:

"The failure of the plaintiff/respondent to deposit the sum of twenty five thousand naira in the High Court registry Ondo State at the same time the necessary court processes were filed (even up till now) precludes the court from examining the merit of the case being put forward. The

case is therefore struck out."

In the appeal which came before the Court of Appeal against the said ruling, several issues (altogether 18, although some of them were considered to have overlapped and some others to be irrelevant or incompetent) were raised by three sets of parties to the appeal in their respective briefs of argument. On 8 December, 1987, the lower court in a carefully considered judgment, reported as Adewole v. Adesanonye & Ors (1998) 3 NWLR (pt. 541) 175, allowed the appeal upon only one issue regarded as arising for determination against the ruling of the trial court striking out the suit. The said issue was stated per Mahmud Mohammed JCA at page 190 as follows:

"Whether the learned trial judge was right in striking out the suit of the appellant on the ground that the appellant as plaintiff had failed to comply with the condition precedent of paying the deposit of N25,000.00 in the High Court Registry at Ondo at the same time the necessary court processes were filed as prescribed by sections 1 and 2 of Edict No. 2 of 1992 of Ondo State, (which failure) had precluded the trial court from exercising jurisdiction to hear the case." [Parenthesis added by me]

The lower court ordered that the suit be heard by another judge of the Ondo State High Court.

The appeal against that decision to this court was fought by the appellants and the 1st respondent (now simply the respondent). The Attorney-General, Ondo State, who was the other respondent did not file a brief of argument and did not appear at the hearing.

The appellants have set out four issues for determination as follows:

"(1) Whether the court of Appeal was right when having held that the Ondo State government promulgated Edict No. 2 of 1992 with retrospective effect in exercise of legitimate legislative power then went further to hold that the plaintiff could not be expected to comply with the conditions precedent contained therein his suit having (been) commenced before the Edict was promulgated.

(2) Whether the Ondo State Edict No. 2 of 1992 with its atten-

dant retrospective effect is not applicable to the suit of the 1st respondent.

(3) *Whether considering the clear and unambiguous provisions of the Edict the Court of Appeal was right to use the headings of the Edict to hold that the provisions of sections 1 and 2 of the Edict are mere incidentals to the main purpose of the Edict.* B

(4) *Whether the motion dated 9th July, 1996 for leave to file Notice of Intention to contend that ruling be affirmed on other grounds other (sic) than those relied upon by the trial court and which was granted did not constitute leave of the Court to argue on appeal this point which was not raised at the trial court."* C

I think the first three issues recited above really amount to one issue which may be framed thus:

Whether having regard to the provisions of Edict No. 2 of 1992, the Ondo State Notice No.10 in the Ondo State of Nigeria Gazette No. 6 vol. 19 page 20 of 26 April, 1994 making 3 January, 1984 commencement date of the said Edict, the date the appointment of the 1st appellant as the Osemawe was approved and the date the 1st respondent filed his suit, the lower court was right to declare the said suit competent even though it did not comply with the conditions specified in that Edict? D E

As for issue 4, I should perhaps dispose of it first. The appellants filed five grounds of appeal. None of those grounds appears to support the issue which raises the point that the lower court failed to regard the respondents' notice filed by them with the leave of court to argue a new issue not raised at the trial court. The only ground of appeal which might have been thought relevant to that issue (Ground C) reads: F

"The Court of Appeal erred in law when the court held as follows: G

'In the present case therefore, the respondents, clearly required the leave of this court to canvass their points in this appeal. Not having sought for and obtained leave to raise the new points, the respondents cannot successfully raise the points in this appeal and I so hold.' H

Particulars of Error

i. *Where fresh point/points or question/questions involve sub-*

stantial point of law, substantive or procedural, and it is plain that no further evidence needs be adduced which would affect the decision on the matter, the appellate court will allow the question to be raised and the point taken to prevent a miscarriage of justice.

B ii. *The points of law raised in the 1st-4th respondents/appellants (sic: plaintiffs/appellants' notice of appeal in the Court of Appeal Benin City disclose ex-facie that the High Court has no jurisdiction.*

C iii. *All the materials necessary for the determination of the point(s) of law raised before the court of Appeal Benin City are present in the records of the court."*

D It is doubtful if issue 4 was formulated from this ground. If it was, then it is not encompassed by the ground in any sense. There is nothing in the said ground of appeal suggesting that a respondent's notice on the issue of jurisdiction was filed and that the Court of Appeal failed to regard it as equivalent to a notice of appeal. That is what issue 4 raises. **It seems the issue was thus argued without a supporting ground of appeal. The consequence is well established that both the issue and**
E **the argument founded on it ought to be discountenanced by the court: see Nwosu v. Udeaja (1990) 1 NWLR (pt. 125) 188; Ogbuanyiya v. Okudo (No. 2) (1990) 4 NWLR (pt.146) 551; Momodu v. Momoh (1991) 1 NWLR (pt. 169) 608. I would accordingly strike out issue**
F **4 and discountenance the argument based on it.**

G The facts of this appeal have been stated as deemed necessary in the narrative given thus far of the proceedings in the two courts below. I may add a little more and recount some before proceeding to resolve the single issue for reaching a decision on this appeal. The respondent in his
H amended statement of claim has averred how he felt aggrieved on the 1st appellant being appointed the Osemawe of Ondo. He has pleaded in paragraphs 1 and 3 that he is a Prince of the Leyo Aroworayi Ruling House and that the 2nd, 3rd and 4th appellants are Kingmakers of Ondo. These are admitted in paragraph 1 of the amended statement of defence of the 1st defendant/appellant. The averment in para. 2 that the 1st appellant is not a Prince of the said Ruling House but an Otunba is denied in the statement of defence, claiming in para. 3 and related paras. Thereof that he is a

prince of the full blood.

I refer to paras. 5 and 12 of the amended statement of claim. Para. 5 is simply admitted in para. 1 for the amended statement of defence. Para. 12 is only partially denied. The said paras. 5 and 12 read:

"5. Sometime about August 1991, His Royal Highness Oba Itiade Adekolurejo joined his ancestors and as a result a vacancy existed for the throne of Osemawe of Ondo.

12. Notwithstanding the various protests and in breach of tradition and the law the 2nd to 4th defendants purported to appoint the 1st defendant as the Osemawe for the approval of the 5th defendant's principal Executive Council on the 11th of October, 1991."

As I said, para. 5 is simply an admission without more but para. 12 is answered thus:

"24. With regard to paragraph 12 of the statement of claim, the 1st defendant avers that he was not, and still not, aware of any written protest by plaintiff against his candidature and none up till now, has been brought to his notice."

It will be observed that the aspect of para. 12 above that says approval was given to the 1st appellant's appointment as Osemawe by the Executive Council of Ondo State Government on 11 October, 1991 is not denied. That is accordingly deemed admitted and the relevance of this shall be shown later. On the whole the respondent's grievance is that the 1st appellant was not entitled to be nominated for, and consequently was wrongly appointed to, the position of Osemawe of Ondo thereby depriving him (the respondent) his chance of being so appointed.

In dealing with the issue as identified above, it is necessary to refer at this early stage to the provisions of Edict No. 2 of 1992, which Edict was published by Gazette on 16 January, 1992 and governs the subject-matter of this case.

The Edict reads:

"An Edict to Make provisions for the Approval of Appointment of an Oba, Presentation of Instrument of Appointment and Staff of Office and to Make Further Provisions Incidental Thereto or Connected Therewith. (23rd December, 1991)

The Military Governor of Ondo state of Nigeria hereby makes this Edict as follows:

1. Any person who is aggrieved by the appointment of another person as an Oba shall within seven days of the date of such appointment
B institute action in the High court challenging the appointment.

2. (1) Any person who intends to institute an action against or challenge such appointment shall give security for -

(a) a sum of twenty-five thousand naira in respect of such action
C instituted against the appointment in any government headquarters; or
(b) a sum of ten thousand naira in respect of such action instituted against the appointment in towns other than local government headquarters

(2) Any security given in pursuance of sub-section (1) of this
D section shall be paid into the High Court at the same time the necessary court processes are filed.

3. The appointment of a person as an Oba is deemed to have been completed on the date of approval of the appointment by the Executive Council in accordance with the provisions of the Chiefs Edict.
E

4. Notwithstanding that the appointment of a person as an Oba has been approved by the Executive council but that such person so appointed is not or has not been presented with the instrument of appointment or staff of office in respect thereof such person shall function as
F such and have all the rights and privileges of an Oba.

5. In this Edict unless the context otherwise requires: 'date of approval' means the date the Executive Council takes the decision to approve the appointment of the person presented by the Kingmakers for
G approval as an Oba.

6. This Edict may be cited as the Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict, 1991 and shall be deemed to have come into force on the 23rd
H December, 1991

MADE at Akure this 23rd day of December, 1991." [Emphasis by me]

The commencement date of 23 December, 1991 was altered

subsequently by Ondo State of Nigeria Official Gazette No.6 vol.19 dated 10 February, 1994, as Ondo State Notice 10, to read 3 January, 1984. That was the day the Military Government of Ondo State was inaugurated.

It has been submitted by learned counsel for the appellants that the Edict was given a retrospective effect, and by that s. 2 thereof a new obligation was thereby created imposing certain conditions precedent for the filing of an action to challenge the appointment of an Oba. He has said further that whatever was the existing vested right in or accruing to the respondent prior to the promulgation of the Edict had by the clear and unambiguous terms of the Edict been "impaired if not completely taken away." He insisted that the new obligation must be complied with and that the suit having been struck out for non-compliance, the respondent should have "subsequently taken step to comply with the condition precedent when filing a fresh suit", adding that a right to file such a fresh suit was not taken away by the Edict.

Learned counsel did not allude to the other condition precedent (apart from the giving of security for the N25,000.00) which by ss.1 & 3 of the Edict requires that the action must be instituted within seven days from the date approval was given to the appointment of an Oba by the State Executive Council. So it would appear that learned counsel's contention that a fresh action could be subsequently filed upon steps being taken to comply with the condition precedent when indeed no discretion was allowed for extending the time for compliance, does not help matters at all. The giving of security and the filing of the suit must take place within the said seven days and at the same time. It means, if the contention is right, the respondent should have complied with those conditions, even before the Edict was enacted, at the time he filed his suit. That would appear to be beyond human endeavour going by the terms of the Edict whose commencement date was subsequently made retrospective after the event and also the circumstances of this case. Yet learned counsel has pressed that the lower court was bound to give effect to the Edict and that it lacked the power to derogate from it "whatever its consequences might be." I think learned counsel might not have realized the full implication of his insis-

tence on an inflexible or even oppressive retrospective application of the Edict, particularly when he went further to say: "It is submitted that since the commencement date of the Edict No. 2 of 1992 is 3rd January, 1984 relating back to the main Edict No.11 of 1984 it must have application to
B all suits instituted after 1984 with all the attendant effect attached to a retrospective legislation." One is compelled to ask whether that effect would attach to concluded actions whose decisions might have been implemented - maybe long since - at a time the present conditions precedent did not exist or were perhaps not even contemplated?

C Learned counsel for the respondent submits to the contrary in regard to ss.1 and 2 of Edict No. 2 of 1992. He says the provisions of those sections cannot be regarded as constituting conditions precedent to the respondent's action in question as it is his contention that those sections
D contemplate the said conditions precedent for future actions and not past ones. In other words, the sections speak of the future and not the past, a conclusion reached by the lower court. Learned counsel's argument essentially is that the language of ss.1 and 2 of the said Edict must be read
E against the background of the circumstances it is meant to apply to, and if so read, those conditions precedent cannot be read retrospectively. I find powerful force in these submissions of respondent's counsel.

**I think I can begin by stating the general principles in regard
F to retrospective operation of statutes. One is based on the presumption that the legislature does not intend what is unjust and therefore the courts lean against giving certain statutes retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended: see Maxwell on Interpretation of Statutes, 12th edn., page 215. Another related principle to the
G same effect is that it is a fundamental rule of law in our legal system that although it is competent for the legislature to make retrospective laws, no statute should be construed to have a retrospective operation unless the terms of the statute say so in clear and unequivocal language: see Pardo v. Bingham (1870) L.R. 4 Ch. App. 735 at 739; Lauri v. Renad (1892) 3 Ch. 402 at 421; Afolabi v. Gov-
H**

Adesanoye v. Adewole (2000) 5 KLR Uwaifo JSC 1461
ernor, Oyo State (1985) 2 NWLR (pt. 9) 734 at 752-753 per Aniagolu
JSC.

There are other principles some of which can be said to relate to factual situations or certain peculiar circumstances as will be obvious from some of the cases I shall consider. **There is no dispute that the legislature has the authority and competence to male retrospective legislations within the Constitution which allocated legislative functions to it. The retrospective nature may be partial or total, merely procedural in the real sense or substantive: see Smith v. Callander (1901) A.C. 297 at 305; Ibrahim v. Barde (1996) 9 NWLR (pt. 474) 513 at 577. But it should be emphasized that an interpretation giving a retrospective effect to a statute should not be readily accepted where that would affect vested rights or impose liability or disqualification for past events: see West v. Gwynne (1911) 2 Ch.1; Afolabi v. Governor of Oyo State (supra).**

Thus in In re Athlumney (1898) 2 Q.B. 547, a debt, including interest above 5 per cent, was proved under a scheme adopted and approved by the Court. At a later date the Bankruptcy act, 1890 was passed. Section 23 of the Act provided that:

"Where a debt has been proved upon a debtor's estate under the principal Act, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full."

This act seemed to have introduced a new element capable of upsetting the concluded scheme between the parties.

It is without doubt that the provisions of the Act recited above could be interpreted prospectively to confer a right to interest higher than 5 per cent on a creditor and impose a corresponding liability on a debtor despite the scheme of arrangement made between both parties and approved by the Court before the date of the passing of the Act. A retrospective interpretation, which was possible, would have an opposite effect.

Indeed, counsel for the creditor acknowledged the possibility of either interpretations but argued that a retrospective interpretation would be to the detriment of the creditor. On the other hand counsel for the debtor argued to the contrary saying that the grammatical meaning of the words "where a debt has been proved" made the effect of the Act reasonably retrospective.

But it was held that the said s. 23 was not to be interpreted retrospectively in its operation, and so did not apply to a debt including an interest above 5 per cent proved under a scheme approved by the Court before the date of the passing of the Act. In a carefully considered judgment, Wright J. stated the general rule against a retrospective operation of a statute which impaired an existing right or obligation but a prospective operate unless so provided by the statute on clear and unambiguous terms; but that if the statute was expressed in language which was fairly capable of either interpretations, it ought to be construed as prospective only, citing such cases as Main v. Stark (1890) 15 App. Cas. 384 at 387 per Lord Selbourne; Gilmore v. Shuter (1677) 2 mod. 310 on the Statute of Frauds; Moon v. Durden (1848) 2 Ex. 22 on the Gaming Acts; In re Joseph Suche & Co. Ltd. (1875) 1 Ch. D. 48 on s. 10 of the judicature Act, 1875; and Hickson v. Darlow (1883) 23 Ch. D 690 on the Bills of Sale Acts. The learned judge then made the following very relevant observation at page 553:

"In the present case the enactment does not merely affect procedure. If the section is construed retrospectively, it will postpone the creditor's right of dividend beyond 5 per cent. , and will pro tanto deprive him of the vested right of action which he possessed at the commencement of the Act and when the bankruptcy occurred. Then is the section so expressed as to be plainly retrospective? No doubt the words 'where a debt has been proved under the principal Act' are capable of such a meaning. But this form of words is often used to refer, not to a past time which preceded the enactment, but to a time which is made past by anticipation - a time which will have become a past time only when the event occurs on which the statute is to operate."

I respectfully commend and endorse this observation. It has a close cor-

relation with the facts and circumstances of the present case. If I may say so, In re athlumney (supra) and West v. Gwynne (supra) were considered and approved in Afolabi v. Government of Oyo State (supra) by this court.

It is common ground that the 1st appellant's appointment as the B Osemawe of Ondo was approved by the State Executive Council on 11 October, 1991. That was before Edict No. 2 of 1992 was passed on 23 December, 1991 though later made effective from 3 January, 1984. The respondent felt legally aggrieved from that date of 11 October, 1991 because that was the date ss. 3 and 4 of the Edict give him a cause of action. C Put differently, his cause of action arose on that date; and the law as existed permitted him to go to court without giving security for any amount. He brought his action on 14 October, 1991, some three days after his cause of action arose under the Edict although it had already ordinarily D arisen before and aside from the Edict. Now, s.1 of the said Edict begins by saying "Any person who is aggrieved by the appointment of another person as an Oba shall within seven days of the date of such appointment institute action..." But this provision was not in fact enacted until 23 De- E cember, 1991, well after the respondent's cause of action arose.

The seven days within which to bring such action had long elapsed. The said period of seven days was also tied to the provision in s. 2 (1) (a) which requires that security for an amount be given at the F same time of instituting the action. The provisions in question had become futuristic as far as the circumstances of the respondent were concerned. Although the commencement date tended to make the Edict roll back to 1984, surely the form of words used in ss.1 and 2 refers "not to a past time which preceded the enactment (Edict) but to a time which is G made past by anticipation - a time which will have become a past time only when the event occurs on which the statute is to operate" to borrow the classic words of Wright J. In essence those words considered from a past event before they were enacted must be seen to look to a future H event of "any person who is aggrieved" [s. 1] and "any person who intends to institute an action" [s. 2 (1)] to complain against an appointment approved under an Edict made on a future date from that past

event.

In the case of In re Joseph Suche & Co Ltd (1875) 1 Ch. D. 48, the provisions of s.10 of the Judicature act, 1875 directed that in the winding-up of any company whose assets may prove insufficient for the payment of its debts the same rules shall be observed as may be in force under the law of bankruptcy. The words appearing at the end of the relevant section 10 of the said Judicature Act were that interested creditors "may come in under the winding-up of such company, and make such claims against the same as they may be respectively entitled to by virtue of this Act." But the action was brought before the commencement of the Act. It was there laid down by Jessel M.R. at page 50 that it is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments do not affect pending actions unless in express terms. It was therefore held that s.10 of the judicature act, 1875, was not retrospective and did not apply to the case of a winding-up of a company brought before the commencement of the Act.

In Afolabi v. Governor of Oyo State (supra), Eso JSC said at page 768:

"In my view the law has always been that unless a contrary intention is expressed there is a presumption that an enactment has no retrospective operation. The principle is 'lex prospicit non respicit' that is the law looks forward and not back: see Jenk Cent 284; see also 2 Co. Inst. 292."

He cited at pages 768-769 Wills J's observation in Phillips v. Eyre (1870) L.R. 6 Q.B. 1 at 23 in respect of retrospective legislation, that it is -

"contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, ought not to change the character of past transactions carried on upon the faith of the then existing law."

The learned Justice then observed:

"I think, with respect, this accords with commonsense for retrospectivity is entirely artificial. It deems (and deems is used advisedly) a thing to be what it is not. It is a make belief (sic: believe). It is false. It is repugnant to law, for after all law is just a servant of human

welfare. *It should never be its master. See Carson v. Carson* 1964 1 W.L.R. 511 at p. 516."

I think this adequately reflects what I have attempted to draw attention to in regard to the consequences or even the futility of giving a retrospective effect to Edict No. 2 of 1992.

In Babatunde v. Governor, Western Region (1960) 1 NSCC 41, reported also as Ajagunna II v. The Governor, Western Region of Nigeria (1960) SCNLR 153, In re Joseph Suche & Co. Ltd (supra) was cited and Jessel M.R.'s observation at p. 50 was quoted with approval by the Federal Supreme Court per Hubbard, Ag. F. J. at p. 155. In that case, the appellant who was deposed as the Olukare of Ikare commenced action by way of certiorari to have the appointment of his replacement quashed. The Administration of Justice (Crown Proceedings) Law, 1959 was subsequently passed before the appellant's appeal came on for hearing. That Law took away the jurisdiction of the High Court in the cause. It was argued that that consequently affected the appellant's right to pursue his appeal. It was held that the action having been started before the jurisdiction of the High Court was precluded, the appellant was entitled to have his appeal heard and determined because the enactments of the legislature altering the rights of parties and taking away or conferring any right of action do not apply to pending actions unless any enactment expressly said so. See also Government of Midwest State v. Mid-Motors Nigeria Co. Ltd (1977) 10 SC 43 at 55-56; (1977) 11 NSCC 429 at 437-438; and Uwaifo v. Attorney-General, Bendel State (1982 NSCC (vol. 13) 221 where it was held in both cases that the obligations and rights of parties must be considered in the light of the law at the time when the cause of action arises. That also entails that the procedure in force at the time action was brought if eventually altered does not affect the competency of the action.

It may be useful to give other instances to show the attitude towards retrospective interpretation of statutes in respect of those which seem to be a genre of retrospective legislation. In Reid v. Reid (1886) 31 CH. D. 402, Bowen L.J. observed that except in special cases a new law should be construed so as to interfere as little as possible with vested rights, and

added at page 408:

"It seems to me that even in construing an Act which is to a certain extent retrospective, and in construing a section which is to some extent retrospective, we ought nevertheless to bear in mind that maxim as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the Legislature meant."

More specifically is the case of In re a Solicitor's Clerk (1957) 1 W.L.R. 1219. The Solicitor's Act, 1941 s. 16 provided inter alia that:

"Where a person who is or was a clerk to a Solicitor has been convicted of larceny or any other criminal offence in respect in respect of any money or property belonging to or held by the solicitor an application may be made that an order be made directing that no solicitor shall take or retain the said person into or in his employment."

It can be seen that this provision applied only when what the solicitor's clerk was convicted of stealing was his employer's or the employer's client's property. The Act of 1941 was amended in 1956 by s. 11 (1) of the Solicitors (Amendment) Act, 1956 to apply where a clerk had been convicted of larceny etc of any property irrespective of whether it belonged to his employer or one of his clients; in other words, larceny of any person's property. The intention could well be to ensure that Solicitors' clerks are persons of honest character in any event.

The appellant had been convicted of larceny in 1953 of property which belonged neither to his employer nor to a client of his. It was sought to have an order made against him going by the Amendment Act of 1956. So the question that then arose was whether the amendment introduced by the 1956 Act should be made to operate retrospectively against the appellant. Under the 1941 Act as it stood an order could not be made against him. On this point, Lord Goddard C. J. observed at page 1222:

" in my opinion this Act is not in truth retrospective. It

enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past." B

See also in re Pulborough Parish School Board Election (1894) 1 Q.B. 725 where it was held that an undischarged bankrupt before the Bankruptcy Act, 1883 which created disqualifications for that status was not affected by those disqualifications which did not exist at the time he was declared a bankrupt. C

Another relevant authority on this aspect of my consideration of this appeal, is Young v. Adams (1898) A.C. 469. In that case, the statute upon which a decision was reached was the Public Service Act 1895 otherwise known as the New South Wales Act together with the Civil Service Act of 1884. It was passed on 23 December, 1895, five months after the summary dismissal of the respondent. Section 58 provided that: D

"Nothing in this Act or in the Civil Service Act of 1884 shall be construed or held to abrogate and restrict the right of the Crown as it existed before the passing of the Civil Service Act to dispense with the services of any person employed in the public service." E

The respondent who had been dismissed from the public service before the said Act came into operation, but not in the manner prescribed by the Civil Services Act of 1884, had gone to court to claim damages for wrongful dismissal. The question was whether the 1895 Act had retrospective effect so as to validate the dismissal of the respondent which had not been done in accordance with the Act of 1884 which was the law in operation then. That Act had earlier been held in Gould v. Stuart (1896) A.C. 575 to have restricted the power generally possessed by the Crown to dismiss a Civil officer at pleasure and that the Government had no power to dismiss a Civil servant, except upon the grounds, after due inquiry, which that Act prescribed. The Judicial Committee of the Privy Council per Lord Watson therefore held that the language of s. 58 was such that it had reference only to persons who were actually employed in F G H

the service at and after the date of the Act of 1895 and did not extend to persons who had ceased to be employed in the public service before the date of the Act. In other words, that it could not be given retrospective interpretation to convert an act wrongfully done at the time into a legal act, and to deprive the person injured of the remedy which the law gave him at the time.

In the present case, the commencement date of the Edict having been stated to be deemed to be 3 January, 1984 by virtue of s. 6 thereof, it has a semblance that it was given a retrospective effect. But that fact does not displace the necessary implication of the words of the Edict. It was on this basis I think, that Mohammed JCA, after reciting the provisions of the said s. 6, observed as reported in Adewole v. Adesanoye (supra) at page 199 as follows:

"The Edict was intended to have retrospective effect. However, taking into consideration the plain language of sections 1 and 2 of the Edict which created a right of action and the condition for the exercise of that right, was it the intention of the law makers that the provisions of those sections which are only incidental to the main purpose of the Edict, should have retrospective effect as well? Looking at the provision of section 1, the right of action has just been created. Therefore there can be no question of the possibility of exercising that right before it came into being. The right to file an action is only exercisable from the date of the creation of the right of action by the Edict not in the past."

Apart from saying that, in my view, there may be no need to draw a distinction between the main and incidental provisions of the Edict in order to give them the proper interpretation in this present case, I agree with the observation made by the learned Justice of the Court of Appeal.

The provisions of ss. 1 and 2 are not to be taken as mere procedural requirements when considered in connection with the circumstances of the respondent. They are fundamental and would certainly affect his substantive rights in regard to his suit which he had already commenced. I think Attorney-General v. Vernazza. (1960) AC

965; (1960) 3 All ER 97, which the learned trial judge relied on presents a case study as to the real principle it sought to establish in relation to retrospective legislations. Let me state the relevant facts briefly. Mr. Vernazza, the respondent, was a vexatious litigant; so much so that the Attorney-General applied to the High Court for an order under the Supreme Court of Judicature (consolidation) Act, 1925, to prohibit him instituting proceedings without the leave of the High Court. On 9 April, 1959, the order was made. At that date the High Court had no authority to prohibit him from continuing proceedings which he had already started. But on 14 May, 1959 a new Act was passed as Supreme Court of Judicature (Amendment) Act, 1959, which enable the court not only to prohibit the institution of new proceedings without leave, but also to prohibit the continuance of existing proceedings without leave.

A week later, on 21 May, 1959, the respondent appealed to the Court of Appeal against the original order made against him. On 2 December, 1959 his appeal was dismissed. But the Attorney-General, by a cross-notice sought from the Court of Appeal a further order under the new Act prohibiting the respondent from continuing his existing proceedings. They refused to make this further order saying they had no power to do so apparently on the basis that it was a retrospective Act which affected existing rights.

This was what the House of Lords had to consider as to whether in fact existing rights were involved here. It was in the course of resolving this that Lord Denning observed as follows at (1960) A.C. p. 977; (1960) 3 All E.R. pp.100-101:

"If the new Act affects the respondent's substantive rights, it will not be held to apply to proceedings which have already commenced, unless a clear intention to that effect is manifested: see Colonial Sugar Refining Co. v. Irving (1905) A.C. 369. But if the new Act affects matters of procedure only, then, prima facie, it applies to all actions, pending as well as future; for, as Lord Blackburn said:

'Alterations in form of procedure are always retrospective, unless there is some good reason or other why they should not be', see Gardner v. Lucas (1878) 3 App. Cas. at p. 603. The Court of Appeal

seem to have thought that the new Act affects the respondent's substantive right to carry on his pending proceedings; and that it ought not to be given a retrospective operation. I cannot, I am afraid, share this view. The new Act does not prevent the respondent from continuing proceedings which it is proper for him to carry on. It only prevents him from continuing proceedings which are an abuse of the process of the court. If the proceedings are not an abuse and he has *prima facie* grounds for them, then he will be given leave to continue them. This is no interference with a substantive right. The courts of this country have an inherent power to 'prevent the abuse of legal machinery which would occur, if for no possible benefit the defendants are to be dragged through litigation and which must be long and expensive', see Wills v. Earl Beauchamp (1886) 11 P.D. at p. 63, by Bowen, L.J.; and when the courts of this country exercise this power, they are not depriving a man of a vested right. They are only exercising a control over their own procedure. No man, let alone a vexatious litigant, has a vested right to bring or continue proceedings which are an abuse of the process of the court."

It is true Lord Denning immediately added that even if the new Act did affect substantive rights, he thought there were clear words in the Act which showed the Parliament intended it to be retrospective against a vexatious litigant's pending action. The Act indeed provided the High Court with powers to make an order against such litigant "that any legal proceeding instituted by him in any court before the making of the order shall not be continued by him without such leave." I must say, however, that the earlier observation of Lord Denning reproduced above clearly shows that the Act merely gave statutory force to the already existing inherent power of the courts to prevent the abuse of the legal process. As pointed out no one has a substantive or vested right to bring or continue proceedings which are an abuse of the process of the court; and this abuse the courts had power of their own to check procedurally. Hence Viscount Simonds in the same case said (1960) A.C. at p. 975 (1960) 3 All ER at p. 99, that the new power given to the court by the amending Act was merely of a procedural nature which provided new remedies against abuse of court process rather than that which affected substantive rights. He added, "It

would, I think, be wrong to say that a man was deprived of a vested or substantive right, if it was still open to him to prosecute any claim which was not an abuse of process and for which there was a prima facie case." In the present case before us, it would not be open to the respondent to prosecute his claim if the provisions of the Edict were given B retrospective operation thereby conclusively depriving him of his vested or substantive right to approach the court upon a cause of action which had enured to him and which he was then at liberty to pursue without the pre-conditions later imposed. So it was not merely some procedural C requirement he could still fulfil.

As to the second part of Lord Denning's observation in which he referred to the express words of the Act in question and came to the conclusion that Parliament intended it to be retrospective, it is plain from those words that the intention of Parliament was clear. It was not just a question D of back-dating the commencement date of the Act; express words were used to define the powers conferred upon the High Court in regard to making orders affecting pending legal proceedings. But also to be taken into account is that the right to continue such legal proceedings was not E completely obliterated or rendered impossible so long as there was prima facie ground for continuing them. In that sense no interpretation of those express words can be seen as intended to defeat existing rights.

Instructively, in the present case, a retrospective interpretation will F not only make it impossible for the respondent to comply with the so-called conditions precedent, it will also clearly destroy and defeat his vested right of action. The effect of creating an impossibility through a retrospective operation of a statute passed after a given act had been G done with the intention to regulate the doing of that act was considered in Hickson v. Darlow (1883) 23 Ch. D. 690. In that case the Bills of Sale Amendment Act, 1882, s. 8 provided that every bill of sale shall be registered under the principal Act within seven clear days after execution thereof, otherwise such bill of sale shall be void in respect of the personal H chattels comprised therein. The bill of sale was executed on 5 October, 1882 before the Act came into operation on November 1, 1882, a period of some 27 days in between. It was sought to have the bill declared void

not having been registered even though there was no such provision as to registration under the principal Act. When the matter came on appeal, Jessel M.R. said at page 694:

"It is, in our opinion, clear that the Act s. 8 does not apply to the present bill of sale. It appears to us impossible to read it as so applying, for it enacts that a bill of sale shall be registered within seven days after its execution. But the bill of sale in the present case was executed more than seven clear days before the Act came into operation, so that to read it as applying to this bill of sale would be making it enact an impossibility."

I think this accords with both common sense and the logic of justice. That authority is on all fours with the present case and it seems to me clear that such is the manner the present case should be regarded. **It is not only that it would be impossible for the respondent to comply with the provisions of ss. 1 and 2 of the Edict since the action had been filed before the Edict was passed imposing conditions to be met in filing such action, which in the case of the respondent turned out to be ex post facto, but also no room in any manner can be found to have been allowed therein for later compliance with leave of court in case the respondent wanted to do that. In addition, as this court was reminded by the uncompromising aspect of the appellants' counsel's submission already referred to in this judgment, such a retrospective interpretation would affect and destroy vested rights derived from decisions earlier reached even right from January, 1984 as a result of the incompetence that would then attach to the proceedings conducted without compliance with what would now be fundamental conditions. The decisions would therefore be a nullity and their execution void. There would in consequence be chaos similar to circumstances of a serious disturbance of law and order. It cannot be imagined that the legislature whose constitutional role is to make laws for peace, order and good government would have intended, much less been prepared for, such pernicious results. There is always a presumption against such an intention. As Scrutton L.J. said in Ward v. British Oak Insurance Co. Ltd (1932) 1 K.B. 392 at**

397:

"Prima facie an Act deals with future and not with past events. If this were not so the Act might annul rights already acquired, while the presumption is against the intention."

I must come to the conclusion that ss. 1 and 2 of Edict No. 2 of 1992 could not properly be given a retrospective effect so as to defeat the vested or substantive right of action in the respondent prevailing at the time he filed this suit. The lower court was right in the interpretation it gave to those sections as regards their effect on the respondent's suit. The respondent was not expected to and could not possibly be bound by the new conditions precedent for filing an action after he had commenced his suit without completely losing his vested or substantive right to sue. Accordingly, I find no merit whatsoever in this appeal and therefore dismiss it. I affirm the judgment of the lower court together with the consequential order given on 8 December, 1997, and award costs of N10,000.00 against the appellants in favour of the respondent.

WALI JSC

I have had the privilege of reading before now, the lead judgment of my learned brother Uwaifo, JSC and I agree with him that the appeal lacks merit and should be dismissed.

The simple facts of the plaintiffs/respondent's case are as follows:-

Following the demise of Osemawe of Ondo in 1991, the Leyo Ruling House which was the only one qualified to present a candidate to fill in the vacant stool, met, selected and presented the following three candidates to the Kingmakers:-

1. Festus Ibidapo Adesanoye
2. Prince Francis Gbadebo Adewole
3. Prince Eric A Adewole.

The Kingmakers unanimously selected Festus Ibidapo Adesanoye to succeed to the vacant stool. On 6th October 1991, the Ondo State Government approved the appointment of Festus Ibidapo Adesanoye as the

Osemawe of Ondo land.

Prince Francis Gbadebo Adewole being not happy with the action of the Kingmakers and its subsequent approval by the Ondo State Government, instituted an action in the Ondo Judicial Division, Ondo State High Court, seeking the following reliefs [as amended] against, Festus Ibidapo Adesanoye, High Chief W. Ogunye AND, High Chief B. Akingbule, High Chief S. N. Agunbiade and Attorney-General of Ondo State:

i. A declaration that the purported approval of the 1st defendant as Osemawe of Ondo published in the official Gazette Chief (sic) Edict No. 11 of 1984 Notice is ultra vires void and of no effect whatsoever.

ii. A declaration that the purported appointment of the 1st defendant as Osemawe of Ondo is contrary to the custom appertaining to the chieftaincy void and of no legal effect.

iii. Order restraining the 1st defendant from parading himself as Osemawe elect.

Pleadings were settled, filed and exchanged. After the plaintiff's case was opened, he gave evidence and his 1st witness was testifying when the 1st - 4th defendants filed a motion on notice challenging the jurisdiction of the trial court in that-

1. *"The plaintiff has failed to give security for the sum of N25,000 [Twenty five thousand Naira only] prior to instituting the suit as required by section 2 (1) (a) of the approval of appointment of an Oba and presentation of Instrument of Appointment and Staff of Office Edict, 1991.*

2. *AN ORDER striking out the suit on the ground that the plaintiff did not institute the said action within SEVEN DAYS of the date of the appointment of the 1st defendant."*

After taking arguments of counsel for and against the preliminary objection, the learned trial judge delivered a considered Ruling wherein he concluded-

"On the whole I hold that the commencement date of Edict No. 2 of 1992 of Ondo State is 3rd January, 1984, that the Edict has no interference with the plaintiff's substantive right to challenge the 1st the defendant's appointment as the Oba Osemawe of Ondo. Sections 1 and 2

of Edict of No. 2 of 1992 of Ondo State do not delimit or curtail the extensive "unlimited" jurisdiction conferred on a state High Court by section 236 (1) of the 1979 Constitution. The failure of the Plaintiff/ Respondent to deposit the sum of twenty five thousand Naira into the High Court registry Ondo at the same time the necessary Court processes were filed [even up till now] precludes the Court from examining the merit of the case being put forward. The case is therefore struck out."

Against the Ruling of the High Court, the plaintiff appealed to the Court of Appeal, Benin Division. The Court of Appeal in a well researched and painstaking considered judgment on the issues raised and canvassed before it, unanimously allowed the appeal and Mahmud Mohammed JCA, delivering the lead judgment opined thus:

"The Edict was intended to have retrospective effect. However, taking into consideration the plain language of sections 1 and 2 of the Edict which created a right of action and the condition for the exercise of that right, was it the intention of the law makers that the provisions of those sections which are only incidental to the main purpose of the Edict, should have retrospective effect as well? Looking at the provision of section 1, the right of action has just been created. Therefore there can be no question of the possibility of exercising that right before it came into being. The right to file an action is only exercisable from the date of the creation of the right of action by the Edict and in the subsequent days in the future but certainly not in the past. Therefore it is my respectful view that from the plain language of section 1 of the Edict and the provisions made therein, it was not the intention of the legislature to give it retrospective operation as it is in any case not possible to do so."

As for section 2 of the Edict, like section 1 thereof, its language are also very clear and plain. The opening words of the section which states:-

"Any person who intends to institute an action"

shows quite clearly that the section is speaking of the future and not the past. Similarly the provision of subsection (2) of section 2 of the Edict which prescribed the place of the payment and the time for the

payment of the prescribed deposit for security under subsection (1), is also speaking of the future and not the past. Subsection (2) of section 2 of the Edict reads:-

"Any security given in pursuance of subsection (1) of this section shall be paid into High Court at the same time the necessary court processes are filed."

The fact that the prescribed deposit is to be paid into the High Court at the time of filing the action shows clear intention to give the provision prospective effect rather than retrospective effect. In fact with all due respect to the learned counsel for the respondent, it is not even possible to give the provisions of section 2 of the Edict retrospective effect because the payment of the required deposit for security can only be made at the time of filing the action, not before and not after according to the plain language of the section." xxxxxxxxxxxxxxx

"To apply the provisions of section 6 of the Edict to the incidental matters provided in sections 1 and 2 of the Edict will certainly lead to manifest absurdity or repugnance not intended by the law makers having regard to the plain language of those sections. For this reason, I hold that the provisions of section 6 of the Edict which brought the Edict into force retrospectively do not apply to sections 1 and 2 of the Edict which from the language of the sections must be regarded as having come into force only on the date the Edict was actually promulgated, that is 23/12/91."

The defendants aggrieved by the decision of the Court of Appeal has now appealed to this court. My learned brother Uwaifo JSC has, in his well considered and articulated lead judgment to which I have already signified my consent, beautifully reformulated the relevant issues raised for determination in this appeal as follows:-

"Whether having regard to the provisions of Edict No. 2 of 1992, the Ondo State No. 10 in the Ondo State of Nigeria Gazette No. 6 Vol. 19 page 20 of 26 April, 1994, making 3 January, 1984 commencement date of the said Edict, the date the appointment of the 1st appellant as the Osemawe was approved and the 1st respondent filed his suit, the lower court was right to declare the said suit competent even though it did not

comply with the conditions specified in that Edict."

I only wish to emphasize on the conclusion reached by my learned brother on the issue he reframed above.

The crux of the complaint is the effective retrospectivity or otherwise of Edict No. 2 of 1992 cited under section 6 of the same as the Approval of Appointment of an Oba and presentation of Instrument and Staff of Office Edict, 1991 and shall be deemed to have come into force on 23rd day of December, 1991 MADE at Akure this 23rd day December, 1991.

By a subsequent amendment of section 6 of the Edict, the commencement date of the Edict was made to come into force on 3rd January, 1984. See Ondo State Nigeria Official Gazette No. 6 Vol. 19 of 10/2/94 published therein as Ondo State Notice 10.

For clarity and understanding of the issues involved, I deem it pertinent to reproduce the Edict as amended-

"APPROVAL OF APPOINTMENT OF AN OBA, PRESENTATION OF INSTRUMENT OF APPOINTMENT AND STAFF OF OFFICE EDICT, 1991 NO. 2 Ondo State of Nigeria 1992 AN EDICT TO MAKE PROVISIONS FOR THE APPROVAL OF APPOINTMENT OF AN OBA, PRESENTATION OF INSTRUMENT OF APPOINTMENT AND STAFF OF OFFICE AND TO MAKE FURTHER PROVISIONS INCIDENTAL THERETO OR THEREWITH (23rd December, 1991)

THE MILITARY GOVERNOR OF ONDO STATE OF NIGERIA hereby makes this Edict as follows:

1. Any person who is aggrieved by the appointment of another person as an Oba shall within seven days of the date of such appointment institute action in the High Court challenging the appointment

2. (1) Any person who intends to institute an action against or challenge such appointment shall give security for-

(a) a sum of twenty-five thousand naira in respect of such action instituted against the appointment in any local government headquarters; or

(b) a sum of ten thousand naira in respect of such action instituted against the appointment in towns other than local government headquarters .

(2) Any security given in pursuance of subsection (1) of this section shall be paid into the High Court at the same time the necessary court processes are filed.

B 3. The appointment of a person as an Oba is deemed to have been completed on the date of approval of the appointment by the Executive Council in accordance with the provisions of the Chiefs Edict.

C 4. Notwithstanding that the appointment of a person as an Oba has been approved by the Executive Council but that such person so appointed is not or has not been presented with the instrument of appointment or staff of office in respect thereof such person shall function as such and have all the rights and privileges of an Oba.

5. In this Edict unless the context otherwise requires:

D *"date of approval" means the date the Executive Council takes the decision to approve the appointment of the person presented by the Kingmakers for approval as an Oba;*

"executive council" means the state Executive Council;

"high court" means the state High Court;

E *"local Government headquarters" means any local government headquarters in the state;*

"Oba" has the same meaning ascribed to it in the Chiefs Edict;

"state" means Ondo State of Nigeria,

F 6. *This Edict may be cited as the Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict, 1991 and shall be deemed to have come into force on the 3rd day of January, 1984.*

MADE At Akure this 23rd of December, 1991.

G NAVY CAPTAIN SUNDAY ABIODUN OLUKOYA,
Military Governor of Ondo State of Nigeria."

The facts of the case as beautifully summarized by Mahmud Mohammed JCA, in his lead judgment are reproduced hereunder-

H *"The facts of this case are not at all in dispute between the parties. On the death of Oba Itiade Adekolurejo the Osemawe of Ondo in August, 1991, the 1st Defendant/Respondent was appointed from one of the ruling houses to fill the vacancy from among 3 candidates recom-*

mended for the vacant stool. The appointment of the new Oba was made on 11/10/91 and approved by the Executive Council of Ondo State on 16/10/91. The Appellant who was not happy with the appointment of the new Oba went to the High Court of Ondo on 14/10/91 and filed an action in suit No. HOD/99/91 challenging the appointment. While the action was pending in the court and in the process of being heard after the exchange of pleadings between the parties, the Military Governor of Ondo State on 23/12/91 promulgated an Edict No.2 of 1992 titled "The Approval of Appointment of an Oba and presentation of Instrument of Appointment and Staff of Office." Section 1 of this Edict prescribed a period of 7 days from the date of appointment of an Oba within which to file an action challenging the appointment while section 2 thereof prescribed the requirement of the payment of the deposit of N25,000.00 at the time of filing the action at the High Court Registry by a plaintiff as a condition precedent to the prosecution of the action. Although the Edict was promulgated on 23/12/91 and published in the Gazette on 16/1/92, section 6 thereof brought it into force retrospectively with effect from 3/1/84. The 1st - 4th Respondents therefore took the advantage of the provisions of this Edict and filed their motion on 27/10/93 asking the trial court to strike out the Appellant's action for being incompetent for the non compliance by the Appellant of the conditions precedent laid down by sections 1 and 2 of the Edict. It was the striking out of the Appellant's action by the lower court that gave rise to this appeal."

As emphasized by the Court of Appeal and also in the lead judgment of this court sections 1 and 2 of Edict No. 2 of 1992 quoted supra are the main provisions which call for proper consideration and interpretation. The guiding principle in interpreting any statute containing any inkling of retrospectivity was succinctly stated by scrutton L. J. in Ward v. British Oak Insurance Co. Ltd. (1932) 1 KB 392 at 397 as follows:-

prima facie, an Act deals with future and not with past events. If this were not so, the Act might annul rights already acquired, while the presumption is against the intention." In the same case, Greer L. J. expressed the same view at page 398 in the following words-

"There are numerous cases which clearly show that the court

lean against so interpreting an Act as to deprive a party of an accrued right."

Reading Section 1 of the Edict, it leaves no one in any doubt that it alludes to future events happening after its promulgation; as it confers
 B right to any person wishing to challenge the appointment of an Oba, providing a time limit of 7 days within which to do so. Section 2 of the Edict provides another condition precedent to the validity of the act of wit-payment of N25,000 in respect of challenging the appointment in a Local Government headquarters while a sum of N10,000 is to be paid in respect of
 C suit against appointments in towns other than local government headquarters. The sums stated in sub-sections (a) and (b) of section 2 (1) must be paid into the High Court simultaneously with the filing of any of the suits.

As stated by the Court of Appeal, the plaintiff had already commenced his suit before Edict No. 2 of 1992 was promulgated and brought
 D into force. Both sections 1 and 2 speak of occurrence of future events. This is the plain and clear-meaning of the two sections. In West v. Gwynne (1911) 2 CHI at 12, in dealing with situation not dissimilar with present
 E one Buckley L. J. said-

*"As a matter of principle an Act of Parliament is not without sufficient reason taken to be retrospective. There is, so to speak, a presumption that it speaks only as to the future. But there is no like presumption that an Act is not intended to interfere within existing right. Most Acts of Parliament in fact do interfere with existing right. To
 F construe the section 1 have simply to read it, and looking at the Act in which it is contained, to say what is its fair meaning.*

[Under - ling supplied by me for emphasis] in the same view Brown L. J. in Reid v. Reid (1886) 31 CH 402 made the following statement in relation to an Act held to be retrospective-

"That is a necessary and logical corollary of the general proposition, that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the legislature meant." (Under - lining supplied by me for emphasis)

In R. v. Vine (1875) L. R. 10 Q. B. 195 section 14 of the Wine and

Beerhouse Amendment Act, 1870 which provides that every person convicted of felony "should for ever be disqualified from selling spirits by retail," and if he should take out or have taken out a licence for that purpose it should be void, was held to apply to a man who had obtained a licence after the Act was passed, apparently on the ground that the object of the Act was to ensure that public beerhouses were not kept by men of bad character. See also RE A SOLICITORS CLERK (1957) 1 WLR 1219. B

The above decided cases show that provisions of statutes are generally meant to apply to future events unless the provisions expressly and unambiguously stated that they are retrospective. See Ward v. British Oak Insurance Co. (supra); Afolabi v. Governor of Oyo State (1985) 2 NWLR (pt. 9) 734 at 752 and Ibrahim v. Barde (1996) 9 NWLR (pt. 474) 513 C D

In Lauri v. Renad (1892) 3 ch. 402 at 421 Lindley L. J. restated the law thus-

"It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such construction and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have greater retrospective effect than its language renders necessary." E

The Edict did not make any provision for the plaintiff to ask for extension of time to enable him comply with the condition precedent therein. Neither Section 1 nor section 2 of the Edict contains any prohibitive provision prohibiting the plaintiff from seeking relief before enacting it. So to demand compliance with sections 1 and 2 of the Edict is to ask the plaintiff to perform the impossible. F G

Where the language of a statute is plain and not leading to absurd or whereby unpracticable consequences, it is the evidence of the ultimate legislative intent. The language in both sections 1 and 2 of the Edict is clear. The confusion only supervenes its head when the two sections are read with section 6 as amended and when applied to past events as purportedly applied to the plaintiff, albeit unsuccessfully. H

It is for these and other elaborate reasons contained in the lead judgment of my learned brother Uwaifo JSC that I also hereby dismiss the appeal and affirm the judgment of the Court of Appeal with its consequential orders. I endorse the order as to costs made in the lead judgment.

OGUNDARE JSC

I have had the advantage of reading before now the judgment of my learned brother Uwaifo JSC just delivered. I agree with his conclusion that this appeal is lacking in merit. I only need to add a few words of my own.

Taking into consideration the judgment of the Court appealed against, the grounds of appeal and the arguments proffered in the written briefs of the parties, it is my view that the main question arising for consideration in this appeal is as to whether sections 1 and 2 of the Ondo State Edict No.2 of 1992 have such retrospective effect as to invalidate the plaintiff's action in this case for non-compliance. Following the appointment, by the Kingmakers, of the 1st Defendant (who is now one of the Appellants before us) as the Osemawe of Ondo in succession to Oba Itiade Adekulturejo who joined his ancestors in August 1991 the plaintiff took out a writ on 14th October 1991, against the four appellants herein and the Attorney-General of Ondo State as the 5th Defendant claiming as per his amended statement of claim:

" (i) A declaration that the purported approval of the 1st Defendant as Osemawe of Ondo published in the official Gazette Chief Edict No. 11 of 1984 Notice is ultra vires void and of no effect whatsoever.

(ii) A declaration that the purported appointment of the 1st Defendant as Osemawe of Ondo is contrary to the custom appertaining to the Chieftaincy, void and of no effect.

(iii) Order restraining the 1st Defendant from parading himself as Osemawe elect."

On the approval of that appointment by the Military Government of Ondo State, the original claims were amended as above in the amended state-

ment of claim. On 23rd December 1991 the Military Governor of Ondo State promulgated an Edict cited as the Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict, 1991 which had its date of commencement as 23rd December 1991 although in its section 6 it was "deemed to have come into force on the 3rd day of January 1984." The Edict was published on 16/1/92. A subsequent Notice No. 10 of 1994 which appeared in the Ondo State of Nigeria Official Gazette No. 6 Vol. 19 dated 10th February 1994, in an apparent attempt to resolve the conflict in the Edict as to the date of its commencement, altered the date of its commencement to 3rd January 1984. The Notice reads:

"Ondo State Notice No. 10

CORRIGENDUM

There are some errors discovered in the Ondo State Supplementary Official Gazette and they are hereby amended as follows:-

'The date of Commencement for Gazette No. 2 published on 16th January, 1992 which reads 23rd December, 1991 should read 3rd January, 1984'

I pause here to observe that I have very strong reservations as to the validity of resolving a conflict in a statute (such as the commencement date of the statute) by a Notice without any provision in the substantive legislation allowing for this. I would have thought that a better way of doing this is by an amending statute. However, as the validity of otherwise of Notice No. 10 is not in contention in this appeal, I will say no more on it. Suffice it to say that the parties and the two Courts below dealt with this matter on the basis that Edict No. 2 of 1992 was made to take effect from 3rd January 1984 and it is on that basis that I will consider and deal with this appeal.

On completion of pleadings the case proceeded to trial at which the Plaintiff and one witness testified. Thereafter, the 1st - 4th Defendants, on 27th October 1993 brought a motion praying the Court to strike out the suit on the ground of non-compliance with Sections 1 and 2 (1) (a) of Edict No. 2 of 1992, in that plaintiff's action was not brought within seven days of the date of the appointment of the 1st Defendant and that security for

the sum of N25,000.00 was not given at the time the suit was filed - both requirements were provided for in the Edict. It was in the course of the hearing of this motion that the Legal Notice No. 10 was published amending the date of commencement of Edict No. 2 of 1992 from 23rd December B 1991 to 3rd January 1984. The learned trial Judge after hearing arguments, in a well considered ruling, upheld the contention of learned counsel for the 1st to 4th defendants and struck out the action. The learned trial judge concluded his Ruling thus:

C *"On the whole, I hold that the commencement date of Edict No. 2 of 1992 of Ondo State is 3rd January 1984, that the Edict has no interference with the plaintiff's substantive right to challenge the 1st defendant's appointment as the Oba Osemawe of Ondo. Sections 1 & 2 of Edict No. 2 of 1992 of Ondo State do not delimit or curtail the extensive 'unlimited' D jurisdiction conferred on a State High Court by section 236 (1) of the 1979 Constitution. The failure of the Plaintiff/Respondent to deposit the sum of twenty five thousand Naira in to the High Court registry Ondo at the same time the necessary Court registry Ondo at the same time the E necessary Court processes were filed (even up till now) precludes the Court from examining the merit of the case being put forward. The case is therefore struck out."*

The plaintiff was dissatisfied with the decision of the trial High F Court and appealed to the Court of Appeal (Benin Division). The latter Court, in a unanimous decision, allowed the appeal, set aside the decision of the trial high Court and ordered that the case should proceed to trial. The Court of Appeal found:

G (1) that from the plain language of section 1 of the Edict and the provision made therein it was not the intention of the legislature to give it retrospective operation as it is not in any case possible to do so.

H (2) That the plaintiff's notice having been filed on 14/10/91 before the Edict was made on 23/12/91, the plaintiff could not be expected to comply with the provisions of the Edict as to the payment of security before filing the action.

(3) That having regard to all the circumstances of the case and the plain language of the Edict section 2 of the Edict could not be regarded as

having come into force retrospectively. The 1st to the 4th defendants have now appealed to this Court against the decision of the Court below.

In their written brief of argument, the 1st - 4th Defendants (hereinafter are referred to as the Appellants) set out four questions as calling for determination in this appeal; they are:

"(1) Whether the Court of Appeal was right when having held that the Ondo State Government promulgated Edict No. 2 of 1992 with retrospective effect in exercise of legitimate legislative power then went further to hold that the plaintiff could not be expected to comply with the conditions precedent contained therein his suit having commenced before the Edict was promulgated.

(2) Whether the Ondo State Edict No. 2 of 1992 with its attendant retrospective effect is not applicable to the suit of the 1st respondent.

(3) Whether considering the clear and unambiguous provisions of the Edict the Court of Appeal was right to use the headings of the Edict to hold that the provisions of section 1 and 2 of the Edict are mere incidentals to the main purpose of the Edict.

(4) Whether the motion dated 9th July, 1996 for leave to file Notice of Intention to contend that ruling be affirmed on other grounds other than those relied upon by the trial court and which was granted did not constitute leave of the Court to argue on appeal this point which was not raised at the trial court."

As earlier stated in this judgment, questions (1) - (3) amount to no more than raising the issue whether sections 1 and 2 of the Edict have retrospective effect as to vitiate Plaintiff's action for non-compliance. Question 4 remains a separate issue. It is for this reason that I accept the questions as formulated by the Plaintiff in the Respondent's brief as adequate for the proper determination of this appeal. They are:

"(i) Whether the Lower Court was right to have held that sections 1 and 2 of Ondo State Edict No. 2 of 1992 did not constitute conditions precedent to the Plaintiff's action at the High Court which was filed 70 days before the Edict was made.

(ii) Whether the non consideration of section 11 (2) of the Ondo

State Chief Edict No. 11 of 1984; Section 20 (a) and (b) of the Chiefs Law of Ondo State and the Chiefs Amendment Edict No. 2 of 1991 led the Lower Court to arrive at a wrong decision which occasioned a miscarriage of Justice."

B My learned brother Uwaifo JSC has dealt adequately with Question 4 and has resolved it against the Appellants. I agree entirely with him on this. I do not intend to say anything more on it.

C I now come to the main question arising for determination and before I go further I think it is appropriate to set out sections 1 and 2 of the Edict:

"1. Any person who is aggrieved by the appointment of another person as an Oba shall within seven days of the date of such appointment institute action in the High Court challenging the appointment.

D *2. (1). Any person who intends to institute an action against or challenge such appointment shall give security for-*

(a) a sum of twenty-five thousand Naira in respect of such action instituted against the appointment in any local government head-quarters; or

(b) a sum of ten thousand Naira in respect of such action instituted against the appointment in towns other than local government head-quarters."

F *(2) Any security given in pursuance of subsection (1) of this section shall be paid into the High Court at the same time the necessary court processes are filed.*

G Action I imposes a limitation as to the time of instituting an action by a person aggrieved by the appointment of another as an Oba (traditional ruler). Section 2 provides for the giving of security and the amount thereof, at the time of filing such an action

H It is not in dispute that the plaintiff instituted his action within seven days of the appointment of the 1st Appellant by the 2nd - 4th Appellants as the Oba Osemawe of Ondo. The Kingmakers made the appointment on 11th the October 1991 and the action leading to this appeal was instituted on 14th October 1991. However, it would appear that the word "appointment" as appearing in sections 1 and 2 is wider in its meaning.

For section 3 of the Edict provides:

"3. The appointment of a person as an Oba is deemed to have been completed on the date of approval of the appointment by the Executive Council in accordance with the provisions of the chiefs Edict."

and the expression "date of approval" is defined in section 5 as meaning B

"date of approval" means the date the Executive Council takes the decision to approve the appointment of the person presented by the Kingmakers for approval as an Oba;"

In the instant case, 1st Appellant's appointment was approved by the Executive Council on 17th October 1991 as per the Gazette Notice published that day. If, therefore, "date of such appointment" in section 1 is taken to be "date of approval of the appointment", this would be 17th October 1991. And Plaintiff would be taken to have instituted his action before and not within seven days of the date of appointment of the 1st Appellant. Whether Plaintiff's action was caught by section I would depend on whether that section was retrospective, in its operation to 3rd day of January, 1984. D

It is equally not in dispute that at the time Plaintiff filed his action on 14/10/91, he did not pay into the High Court the sum of N25,000.00 E (twenty-five thousand Naira) as subsequently required by section 2 (I) (a) of the Edict. Was Plaintiff's action caught by non-compliance? Is section 2 retrospective?

Chief Adegoke, Learned counsel for the Appellants has argued F strenuously, both in his brief and in oral argument, that sections 1 and 2 of the Edict, like the Edict itself, are by clear and unambiguous provisions in the Edict as to the date of its commencement - 3rd January 1984 - retrospective. He cited Afolabi v. Oyo State Government (1985) NSCC 1151; Ojokolobo v. Alamu (1987) 3 NWLR 377; Ebiriukwu v. Ohanyerenwa (1959) 4 FSC 212 and a host of other authorities. He submitted that the Court below was wrong to read sections 1 and 2 of the Edict in isolation of section 6 which lays down the date of commencement of the Edict as 3rd January 1984. Learned counsel submitted that section 2 was a procedural enactment and urged us to allow the appeal, set aside the judgment of the court below and restore that of the trial High Court. G H

It is submitted on behalf of the Plaintiff that the Court below came to the right decision when it held that sections 1 and 2 were not retrospective and, therefore, Plaintiff's action was not vitiated by non-compliance with those sections. A number of authorities was also referred to including Afolabi v. Oyo State Government (supra).

No doubt, by section 6 of the Edict, the statute was purportedly made to have retrospective effect from 3rd January 1984. This, notwithstanding, one has to examine every provision thereof to determine whether the particular provision by its wording could be said to be retrospective. My learned brother Uwaifo JSC has dealt at length on when a statute is said to be retrospective; I need not go in great detail over that again. It is sufficient to say that "a law is said to have retrospective effect when the date of commencement is earlier in point of time than the date of enactment" per Obaseki JSC. in Afolabi v. Gov. of Oyo State (supra). Also, a statute is to be deemed to be retrospective which takes away or impairs any vested right acquired under existing law or creates a new obligation; or imposes a new duty, or attaches a new disability in respect to transactions already past. There is always a presumption against retrospectivity of a statute. It is a fundamental rule of the English law, which Nigerian Courts have adopted, that no statute shall construed so as to have a retrospective effect, unless it appear very clearly in the terms of the statute or arises by necessary or distinct interpretation. There is always a presumption against retrospectivity but it is a presumption that can be rebutted either by express enactment or by necessary implicating from the language employed.

It is a well recognized rule that statutes should be interpreted, if possible, so as to respect vested rights but it must be a vested right in the strict sense and not merely existing rights. Such a construction is not, however, to be adopted if the words are open to another construction. In respect of statutes dealing with procedure or costs, different considerations apply. For there is no vested right in procedure or costs And enactments dealing with these matters apply to pending actions, unless a contrary intention is expressed or clearly implied. As Pollock C.B. Put it in Wright v. Hale (1860) 30 Ex. 40 at p. 42, the first case on the rule:

"I have always understood, that there is a considerable difference between laws which merely affect the proceedings of courts; as, for instance, declaring what shall be deemed good service, what shall be the criterion to the right to costs, how much costs shall be paid, or what witnesses the party shall be entitled to, and so on I do not think a B *matter of that sort can be called a right in any sense in which Lord Coke in his Institutes has spoken of rights."*

See also Re Joseph Suche & Co Ltd (1875) 1 Ch. D 48, 50 where Jessel M.R. observed:

"..... it is a general rule that when the Legislature alters C *the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. It is said that there is one exception to that rule, namely, that, where enactments merely affect procedure and do not extend to* D *rights of action, they have been held to apply to the alteration made by this section is an alteration not merely in procedure, but in the right to prove for a debt which is not distinguishable in substance from a right of action....."*

And in Gardener v. Lucas (1878) 3 App Cas 582, 603 Lord Blackburu observed:

"..... it is perfectly settled that if the Legislature intended to E *frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone* F *transactions are to be sued for any enforced according to the new form of procedure.. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be."*

Thus if a statute deals merely with the procedure in action, and does not affect the rights of the parties, such as right of appeal (for which see Colonial Sugar Refining Co. v. Irving (1905) AC 369, 372), it will be held to apply prima facie to all actions pending as well as future. See Kimbray v. Draper (1868) L.R. 3 QB 160, 163; Welby v. Parker (1916) 1 Ch 1; Att. H Gen. v. Vernazza (1960) AC 965. I say prima facie because it may be that the particular enactment, by the words used, is not intended to be retrospective. See, for example, Hickson v. Barlow (1883) 23 Ch. D. 690

where section 8 of the Bill of Sales Act, 1882, which made a bill of sale void unless it was registered within seven clear days after execution was held did not avoid an unregistered bill of sale which was executed more than seven clear days before the Act came into operation. Jessel M.R. at B page 694 said:

"It is, in our opinion, clear that the Act 45 & 46 Vict. c. 43, s. 8 does not apply to the present bill of sale. It appears to us impossible to read it as so applying, for it enacts that a bill of sale shall be registered within seven clear days after its execution. But the bill of sale in the present case was executed more than seven clear days before the Act came into operation, so that to read it as applying to this bill of sale would be making it enact an impossibility."

Before I turn to the case on hand I want to refer to Afolabi v. Gov. of Oyo State (supra); (1985) 2 NWLR 734 which is the locus classicus on the subject under discussion and to which our attention has been drawn by both parties to this appeal. In that case this court laid down the following principles as relating to retrospectivity of a statute:

1. If an enactment seeks to have retroactive effect in order to destroy accrued rights under another enactment which it has repealed, such enactment must either expressly or impliedly refer to such accrued rights or the earlier enactment which it has repealed.

2. The Courts have always leaned against giving statutes retrospective effect and usually regard them as applying to facts or matters which come into existence after the statutes were passed.

3. The presumption is that a legislature does not intend what is unjust and thus the presumption against retrospectivity applies unless it is clearly shown that a retrospective effect was intended by the Legislature.

4. Statutes which encroach on the rights of the subjects, whether in relation to persons or property are regarded as Penal Acts and are subject to a strict construction. Such statutes are therefore to be interpreted so as to respect such rights and any ambiguity in such statutes is usually resolved in favour of the freedom of the individual.

5. A statute does not retrospectively abrogate vested rights or take away proprietary rights without making provision for compensation.

6. Where there is ambiguity about the extent to which a statute has derogated from common Law rights, the courts should resolve the issue in favour of maintaining common law rights unless they are clearly taken away.

7. The well-established presumption is that the legislature does not intend to limit vested rights farther than clearly appears from the enactment. xxxxxxxxxxxxxxxxxxxx

9. Statutes are not to be held to act retrospectively to deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right, unless a clear intention to that effect was manifested.

I now turn to the case on hand. From the wording of sections 1 and 2 (1) it is idle arguing that those sections are intended to be retrospective. Section 1 speaks of "any person who is aggrieved..." and section 2 (1) of "any person who intends to institute an action....". Surely to expect the Plaintiff to comply with the provisions of sections 1 and 2 (1) would mean expecting him to perform an impossibility. At the time Edict No. 2 of 1992 was enacted, seven days from the date of appointment of the 1st Appellant had elapsed. And as Plaintiff filed his action on 13/10/91, long before Edict No. 2 was enacted there could be no question of his ever being able to comply with the provisions of section 2 (1) thereof. Indeed, to hold that those sections are retrospective to 3rd January 1984 would invalidate all actions similar to Plaintiff's instituted between that date and the date the Edict was enacted. I would need very clear words in the Edict to hold that those sections have retrospective effect. It is not enough to enact in section 6 that the Edict "shall be deemed to have come into force on the 3rd day of January, 1984". The expressions used in the statute must be capable of having such effect. This is the case with section 4 of the Edict which reads:

"4. Notwithstanding that the appointment of a person as an Oba has been approved by the Executive Council but that such person so appointed is not or has not been presented with the instrument of appointment or staff of office in respect thereof such person shall function as such and have all the rights and privileges of an Oba" (Underlining is

mine)

The underlined words show that the provision applies not only to the future but to past failure to present instrument of appointment or staff of office. The same cannot be said of sections 1 and 2.

B From all I have been saying and for the other reasons given in the judgment of my learned brother Uwaifo, JSC I agree with the conclusion reached by the Court below that sections 1 and 2 are not retrospective and that plaintiff's action is competent. I, therefore, dismiss this appeal and order that the case be remitted to the High Court of Ondo State to be disposed of expeditiously, in view of its age. I award N10,000.00 costs to C the Plaintiff/Respondent against the Appellants. The 5th Defendant Respondent did not take part in this appeal as he neither filed a brief nor was represented at the oral hearing. I, therefore, make no order as to costs in D his favour.

OGWUEGBU JSC

E I had a preview of the judgment which has just been read by my learned brother Uwaifo, J.S.C. and I agree that the appeal lacks merit and should be dismissed and it is hereby dismissed.

F The main issue canvassed by the learned counsel for the appellants in their brief of argument is whether sections 1 and 2 of the Ondo State Edict No. 2 of 1992 have the effect of invalidating the plaintiff/respondent's action filed on 14th October, 1991 for the non-payment of #25, 000.00 deposit into court at the time the action was filed.

G The facts of the case have been adequately set out in the lead judgment of my learned brother Uwaifo, J.S.C. I will, however, make a brief introduction of the facts of the case leading to these proceedings.

H On the demise of Oba Itiade Adekolurejo, the stool of Osemawe of Ondo became vacant. The only qualified persons that could be presented are members of the Leyo Ruling House of the male line. The Leyo Ruling House called for nominations. The plaintiff, the 1st defendant and Prince Eric A. Adewole were nominated by the Ruling House. The plaintiff respondent by a letter dated 1-10-91 addressed to the Chairman of

Leyo Ruling House protested against the nomination of the 1st defendant on the ground that he was not qualified by tradition. Notwithstanding the protest, the Ruling House recommended the three candidates to the Kingmakers (2nd to 4th defendants).

The plaintiff and other members of the community carried their protest to the Kingmakers who ignored the protests. They appointed the 2nd defendant and forwarded his name to the 5th defendant for approval. The plaintiff was dissatisfied with the appointment of the 2nd defendant and on the 14th day of October, 1991, he filed the action giving rise to this appeal challenging the said appointment. The Government approved the appointment on 16-10-91 and this led to the amendment of writ of summons and the statement of claim.

On 23-12-91, the Military Governor of Ondo State of Nigeria promulgated an Edict titled "the Approval of Appointment of an Oba, Presentation of Instrument of Appointment and Staff of Edict, 1991". The commencement date was 23-12-91. This Edict is known as Edict No. 2 of 1992. Section 6 thereof reads:

"This Edict may be cited as the Approval of Appointment of An Oba and Presentation of Instrument of Appointment and Staff of Office Edict, 1991 and shall be deemed to have come into force on the 3rd day of January, 1984."

It was published on 16-1-92. A Legal Notice No. 10 of 1994 was published in the Ondo State of Nigeria Official Gazette No. 6 Volume 19 of 10-2-94. In that Notice the commencement date of the Edict published on 16-6-92 with commencement date of 23-12-91 was amended to read 3-1-84.

At the close of pleadings and after hearing has commenced, the defendants filed a motion on notice praying the trial court for the following orders:

(1) An order striking out the suit on the ground that the plaintiff has failed to give security for the sum of N25,000.00 (Twenty five thousand naira) prior to instituting the suit as required by section 2 (1) (a) of the Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict, 1991;

(2) An order striking out the suit on the ground that the plaintiff did not institute the said action within SEVEN DAYS of the date of appointment of the 1st defendant.

In a considered ruling, the learned trial judge, Babalola, J. granted the orders sought and stated:

"The failure of the plaintiff/respondent to deposit the sum of twenty five thousand naira in the High Court registry Ondo at the same time the necessary Court processes were filed (even up till now) Precludes the Court from examining the merit of the case being put forward. The case is therefore struck out."

The plaintiff not being satisfied with the decision appealed to the Court of Appeal, Benin Division. The appeal was allowed and an order was made for the case to be heard by another judge of the High Court of Ondo State. The 1st to 4th defendants appealed to this court against the decision of the court below.

I will at this stage reproduce sections 1 and 2 of Edict No. 2 of 1992 which provide as follows:

"1. Any person who is aggrieved by the appointment of another person as an Oba shall within seven days of the date of such appointment institute action in the High Court challenging the appointment.

2. (1) Any person who intends to institute an action against or challenge such appointment shall give security for -

(a) a sum of twenty- five thousand Naira in respect of such action instituted against the appointment in any local government headquarters; or

(b) a sum of ten thousand Naira in respect of such action instituted against the appointment in towns other than local government headquarters.

2. Any security given in pursuance of subsection (1) of this section shall be paid into the High Court at the same time the necessary court processes are filed."

Having regard to the above provisions of Edict No. 2 of 1992, can it be said that the plaintiff is caught by them? It has to be borne in mind that the plaintiff filed his action on 14-10-91 challenging the appointment of the

1st defendant. There was no law in Ondo State at that time which provided for the payment into court of N25,000.00 security and a limitation of time within which an action challenging an appointment can be brought. Edict No. 2 of 1992 was enacted on 23-12-91 when the plaintiff was already in court.

The court below set aside the ruling of the learned trial judge striking out the plaintiff's suit for non compliance with sections 1 and 2 of Edict No. 2 of 1992. In allowing the appeal of the plaintiff the court below held as follows.

"However, taking into consideration the plain language of sections 1 and 2 of the Edict which created a right of action and the condition for the exercise of that right, was it the intention of the law makers that the provisions of those sections which are only incidental to the main purpose of the Edict, should have retrospective effect as well? Looking at the provision of section 1, the right of action has just been created. Therefore there can be no question of the possibility of exercising that right before it came into being.....

Therefore it is my respectful view that from the plain language of section 1 of the Edict and the provisions made therein, it was not the intention of the legislature to give it retrospective operation at it is in any case not possible to do so. What I have to determine now is whether the Appellant whose action had already been filed and pending in the High Court before sections 1 and 2 of the Edict came into force was obliged to comply with the condition precedent prescribed by section 2 of the Edict of having to pay the sum of N25,000.00 deposit..... His action having been filed on 14/10/91 before the law came into force on 23/12/91, the action is quite competent and the lower court has full powers and jurisdiction to hear the action".

There is no doubt that Edict No. 2 of 1992 was enacted to have a retrospective operation. It is a fundamental rule in common law jurisdictions that no statute is construed to have a retrospective operation unless that construction appears very clearly in the terms of the Act, or arises by necessary or distinct operation. The test of retrospectivity of operation is whether there is anything in the Act which indicates that the consequences

of an earlier event are changed, not for the time before the enactment but prospectively from the time of the enactment or from the time of commencement of the Act.

A retrospective statute operates for the future. It is prospective in character but impose new results in respect of a past event or transaction. Where an Act attaches an obligation or disability or imposes a duty as a new consequence, prejudicial in most cases, of a prior event, then it can be said to be retrospective.

In Re A Solicitor's Clerk (1957) 1 WLR 1219 the statute provided thus:

"Where a person who is or was a clerk to a solicitor has been convicted of larceny or any other criminal offence in respect of any money, or property belonging to or held by the solicitor an application may be made..... that an order be made directing that no solicitor shall take or retain the said person into or in his employment." It was held that the making of an order in respect of a clerk who had been convicted prior to the enactment of the statute was a retrospective operation.

In Philips v. Eyre (1870-71) 6 L.R. Q.B. 1 at 23, retrospective laws are said to be:

"..prima facie of questionable policy and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law."

Before applying the general principles set out approve to the facts of this case, I will reproduce pertinent portions of sections 1 and 2 of Edict No 2 of 1992 which refer to the present and the future. The opening phrase of section 1 of Edict No. 2 of 1992 states: "Any person who is aggrieved by the appointment of another as an Oba shall" Section 2 (1) states in part: "Any person who intends to institute an action" and section 2(2) provides in part: "Any security given in pursuance of subsection (1) shall be paid into the High Court at the same time the necessary court processes are filed". These excerpts refer to the present and the future

but not the past. In section 2 (2) the deposit shall be paid into the High court at the same time the necessary court processes are filed and there is no provision for late payment even where section 1 is complied with by an aggrieved party. Clearly, these provisions cannot be construed retrospectively to include the plaintiff who was already in the court before the Edict was promulgated and it is of no moment that the Edict was deemed to have come into force on 3-1-84". Accordingly, the court will not ascribe retrospective force to new law affecting rights, unless by express words or necessary implication, it appears that such was the intention of the law makers. See Afolabi & Ors. v. Governor of Oyo State & Ors. (1985) 2 NSCC 1151. Courts have also leaned against giving a statute retrospective effect and usually regard them as applying to facts which come into existence after the statutes were passed unless it is clearly shown that a retrospective effect was intended by the legislature.

In the absence of anything in the Edict to show that it is to have a retrospective operation, and, none was found, I cannot construe it to have the effect of altering the law applicable to the claim of the plaintiff which was already in the court when the Edict was promulgated. I agree entirely with the conclusion reached by the court below that sections 1 and 2 of the Edict have no retrospective effect. As regards repealing Acts, this rule is clearly recognized by section 6 of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, 1990.

For the above reasons and the fuller reasons given in the lead judgment of my learned brother Uwaifo, J.S.C., I, too dismiss the appeal and abide by all the consequential orders contained in the said judgment of Uwaifo, J.S.C including the order as to costs.

IGUHJSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Uwaifo, J.S.C. and I agree entirely with the reasoning and conclusion therein reached.

The facts that gave rise to this appeal have been set out so ex-

haustively in the leading judgment that I need not repeat them all over again. It suffices to state that it is common ground that The Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict No. 2 of the Ondo State of Nigeria, 1992, hereinafter referred to as the Ondo State Edict No. 2 of 1992 or, simply, as the Edict was promulgated on the 23rd December, 1991. Its commencement date was expressly stated therein to be the 23rd December, 1991. There is, however, section 6 of the Edict which provides that it shall be deemed to have come into force on the 3rd day of January, 1984. By a subsequent amendment published in the Ondo State of Nigeria, official Gazette No. 5, Vol. 19 of the 3rd February, 1994 under the title "Corrigendum", the State Government corrected the date of commencement of the Edict from the 23rd December, 1991 to the 3rd January, 1984. The operation of the Edict was thereby given a retrospective effect from the 3rd January, 1984.

I think for ease of reference, sections 1 and 2 of the Edict which come into question in this appeal need be reproduced. These provide as follows -

"1. Any person who is aggrieved by the appointment of another person as an Oba shall within 7 days of the date of such appointment institute action in the High Court challenging the appointment.

2(1) Any person who intends to institute an action against or challenge such appointment shall give security for:

(a) a sum of twenty five thousand naira in respect of such action instituted against the appointment in any local government headquarters; or

(b) a sum of ten thousand naira in respect of such action instituted against the appointment in towns other than local government headquarters.

(2) Any security given in pursuance of subsection (1) of the section shall be paid into the High Court at the same time the necessary court processes are filed."

It is crystal clear that by section 1 of the said Edict No. 2 of 1992, any person aggrieved by the appointment of another person as an Oba

shall within 7 days of the appointment challenge such appointment in the High Court. There is also section 2 of the Edict by which any person who intends to institute such an action shall give security by payment of the prescribed amount into the High Court at the same time the action is filed.

In the present case, the 1st defendant was selected for appointment by the Kingmakers as the Osemawe of Ondo on the 11th October, 1991. The plaintiff who was dissatisfied with this development immediately filed an action challenging this appointment on the 14th October, 1991. The main issue for decision in this appeal is whether the appellant, whose action was validly filed and properly pending before the Ondo State High Court of Justice is caught by the provisions of sections 1 and 2 of the Ondo State Edict No. 2 of 1992 for failure, *inter alia*, to pay the prescribed N25,000.00 deposit into court at the time of the filing of his action, thus depriving the court of jurisdiction to entertain the claim.

It is not in dispute that as at the date the plaintiff filed his action, there was no law applicable in Ondo State which required him to pay the deposit of N25,000.00 into court at the time his action was being filed. Indeed, it was well after two months of the institution of the plaintiff's action that Edict No. 2 of 1992 was promulgated. The question before this court is whether the court below was right when it set aside the ruling of the trial court which struck out the suit for want of jurisdiction for non-compliance with the conditions precedent prescribed under the provisions of sections 1 and 2 of the Edict before the action was filed. Put differently, is the plaintiff's action caught by the retrospective nature of the Ondo State Edict No. 2 of 1992 or, alternatively, are the conditions precedent to the institution of an action challenging the appointment of a person as an Oba as prescribed in sections 1 and 2 of the Edict applicable to actions properly filed and pending in court before the date the Edict was promulgated.

The first point that I desire to make before I proceed to examine the relevant sections of the Edict is that it is a cardinal principle in the construction of statutes that they should be construed according to the intention expressed in the statutes themselves. Where the words of any section are clear and unambiguous, then no more is necessary than to give them their natural and ordinary meaning unless this would lead to absur-

dity or be in conflict with the other provisions of the statute. The words of the statute do alone best declare the intention of the law makers where the words as aforesaid are clear and unambiguous. See Chief D. O. Ifezue v. Livinus Mbadugha and Another (1984) 5 SC 79 at 101, Alhaji Ibrahim v. Galadima Barde and others (1996) 9 N.W.L.R. (Part 474) 513 at 577 and 603 - 604, Ahmad v. Kassim (1958) S.C.N.L.R. 58, Claude Nabhan v. George Nabhan (1967) 1 All N.L.R. 47 at 54. But as was pointed out by Lord Goddard, C.J. in Barnes v. Jarvis (1953) 1 W.L.R. 649, a certain amount of common sense must be applied in construing statutes and the object of the statute has to be considered.

There is also a second point which ought to be borne in mind. This is the presumption of improbability that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clarity and effort must be made not to give the words used in a statute a meaning other than the which was actually intended. See Adeshina v. Lemonu (1965) 1 All N.L.R. 233, 248 - 249.

A third point that arises in the matter of the resolution of the issue under consideration is the well established principle that unless a contrary intention is expressed, there is a general presumption that the legislature does not intend the enactment of what is unjust. In this regard, the courts in interpreting statutory provisions with retrospective operation generally construe them as operating with respect to cases or matters which came into existence after the promulgation of the relevant statute unless, of course, a retrospective effect is manifestly intended or arises by necessary implication. See West v. Gwynne (1911) 2 CH.1. As Scrutton, L.J. explained in Ward v. British Oak Insurance Co. Ltd. (1932) 1 K.B. 392 at 397, an Act, prima facie, deals with future and not with past events. He went on

"If this were not so, the Act might annul rights already acquired, while the presumption is against the intention".

The retrospective operation of a statute may however pertain to the whole provisions of a statute or, may, indeed, only concern a section or sections thereof. See Lauri v. Renad (1892) 3 Ch. 402 at 421, Pardo v. Bingham

Adesanoye v. Adewole (2000) 5 KLR Iguh JSC 1501 (1868-69) 4 L.R. Ch. App. 735 at 739 etc. Turning now to the provisions of the Edict in issue, the Court of Appeal with regard to section 1 thereof commented thus -

"Looking at the provision of section 1, the right of action has just been created. Therefore there can be no question of the possibility of exercising that right before it came into being. The right to file an action is only exercisable from the date of the creation of the right of action by the Edict and in the subsequent days in the future but certainly not in the past. Therefore, it is my respectful view that from the plain language of section 1 of the Edict and the provisions made therein, it was not the intention of the legislature to give it retrospective operation as it is in any case not possible to do so".

The court below next turned to section 2 of the Edict and stated -

"As for section 2 of the Edict, like section 1 thereof, its language are also very clear and plain. The opening words of the section which state:-

'Any person who intends to institute an action' show quite clearly that the section is speaking of the future and not the past. Similarly the provision of subsection (2) of section 2 of the Edict which prescribed the place of the payment and the time for the payment of the prescribed deposit for security under subsection (1) is also speaking of the future and not the past. Subsection (2) of section 2 of the Edict reads:

'Any security given in pursuance of subsection (1) of this sections shall be paid into the High Court at the same time the necessary court processes are filed.'

The fact that the prescribed deposit is to be paid into the High Court at the time of filing the action shows clear intention to give the provision prospective effect rather than retrospective effect. In fact, with all due respect to the learned counsel for the respondent, it is not even possible to give the provisions of section 2 of the Edict retrospective effect because the payment of the required deposit for security can only be made at the time of filing the action, not before and not after according to the plain language of the section."

I have given very anxious consideration to the above observations of the Court of Appeal and confess that they appear to me sound and well founded.

In the case of section 1 of the Edict, it is crystal clear that the provisions thereof by no stretch of the imagination speak of events of the past, such as pending court actions in respect of similar disputes as at the date the Edict was promulgated. On the contrary, they speak of things to be done in futuro by any person who is aggrieved by the appointment of another person as an Oba. The stipulation is that such aggrieved person shall within seven days of such appointment institute an action in the High Court challenging such appointment. It is plain that the word "shall" therein used is clearly indicative of future events or acts and does not relate to past events. Although, I shall presently turn to section 2 of the Edict, it is apt at this stage to point out that the said section 2, like section 1 the Edict, similarly lays down what an aggrieved person who intends to institute an action in respect of a chieftaincy dispute shall do. Again, the word "shall" therein used is indicative of future acts and does not in the context in which it is used connote past events. Indeed, if sections 1 and 2 of the Edict which was promulgated on the 23rd day of December, 1991 were to be read as having retrospective operations from the 3rd day of January, 1984 then, clearly, this would make nonsense, not only of cases lawfully disposed of by the courts during the interval, but also cases properly pending for determination as at the 23rd December, 1991 when the Edict was enacted into law. Such cases may automatically be rendered incompetent and/or erroneous in law for non-compliance with the statutory conditions precedent for the filing of an action under the Edict as stipulated by sections 1 and 2 thereof but which statutory conditions did not exist at the time the actions were filed or disposed of. I cannot conceive that it was the intention of the law makers to reduce the law to this absurd and ridiculous position.

In my view, it cannot be right to hold, as the trial court in fact did, that sections 1 and 2 of the Ondo State Edict No. 2 of 1992 must be given retrospective operation. This is because there could be no question of the exercise of the right created under the Edict and the compliance of

the prescribed conditions for the exercise of that right before the right itself was created by the Edict. I agree entirely with the court below that the right to file the action prescribed under the Edict is only exercisable from the date of the creation of that right of action by the Edict. That right of action, most certainly, cannot possibly be exercisable before the date of its creation. I will now consider section 2 of the Edict more closely. B

Section 2 (1) of the Edict is even clearer as its language is plain and unambiguous. Its opening words which go thus -

"Any person who intends to institute an action" C
indicate in the clearest possible term that the section is speaking of the future and definitely not the past. The same is true of the provisions of section 2 (2) of the Edict which also speak of the future and not the past. I think the court below could not have put it any clearer when, with regard to section 2 (2) of the Edict, it stated thus - D

"The fact that the prescribed deposit is to be paid into the High Court at the time of filing the action shows clear intention to give the provision prospective effect rather than retrospective effect. In fact with all due respect to the learned counsel for the respondent, it is not even possible to give the provisions of section 2 of the Edict retrospective effect because the payment of the required deposit for security can only be made at the time of filing the action, not before and not after according to the plain language of the section." E F

The language of sections 1 and 2 of the Edict, being very clear and unambiguous, no more is necessary, as I have already stated, than to expound the words in their natural and ordinary sense as they best declare the intention of the lawmakers. See Chief D.O. Ifezue v. Livinus Mbadugha and Another, Alhaji Ibrahim v. Galadima Barde, I abide by the order for costs therein made. G

There is yet another aspect of the question under consideration to which attention must be drawn. This is the fact that the provisions of sections 1 and 2 of the Edict, if given retrospective operation, would cut the earth underneath the feet of the plaintiff and effectively deprive him of his substantive vested right to prosecute his action against the defen- H

dants. The said vested right, had at all material times, validly and lawfully enured to the plaintiff at the time he instituted his action. The case was in fact part-heard before the trial High Court at the time the controversial Edict was promulgated. As I have already pointed out, there is the pre-
B supposition that it is improbable that the law makers would overthrow fundamental principles or infringe rights without expressing their intention with absolute clarity. There is also the general presumption that the legislature does not intend the enactment into law of what is unjust. I cannot in the circumstances of this case share the view of the trial court that
C sections 1 and 2 of the Edict must receive retrospective operation. This, in effect, would nullify and make nonsense of the plaintiff's already acquired right of action which, at all material times, he was prosecuting before the Edict in question was promulgated. It is plain to me that to
D give sections 1 and 2 of the Edict retrospective operation would be totally unjust, if not entirely vindictive and oppressive, having regard to the plaintiff's already acquired right as of the date the Edict was promulgated.

E The conclusion I therefore reach is that sections 1 and 2 of the Approval of Appointment of an Oba and Presentation of Instrument of Appointment and Staff of Office Edict No. 2 of 1992 cannot be given retrospective operation in the absence of very clear words in the Edict to that
F effect. See Afolabi v. Government of Oyo State (1985) N.S.C.C. 1151.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Uwaifo, J.S.C. that I, too, dismiss this appeal as lacking in substance. I abide by the order for costs therein made.

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