RETROSPECTIVE EFFECTS OF LAW

(By S. CAMILLERI)

IT has been often said that Law is an organism which is continually undergoing changes as Society passes from one stage of its development to another. This development necessitates changes in and additions to the express provisions of the law, and such changes and additions have given rise to the so called Doctrine of Vested Rights or, as it is called by continental writers, Theory of Retroactivity of Law.

This theory has for a long time furnised the subject-matter of controversy and elaborate treatment by a number of renowned jurists. In certain countries, the legislator has expressly dealt with the matter : our laws contain no express general provisions and therefore, to determine whether a new law is to operate retrospectively or not, our Courts have had to rely on the works of authoritative writers or on the judgements delivered by foreign Courts. Regarding the principles followed in our law about *Ius Transitorium*, we will deal later on. Our purpose here is to give a general account of the development of the rules on the matter under consideration and to ascertain which principles are mostly upheld by modern writers, and what these principles should be in order that the aim of all Laws — namely, the administration of justice—be achieved.

In certain cases there is not, and there cannot be, any doubt as to the retroactivity or otherwise of a new law : it is obvious that a transaction the effects whereof no longer exist cannot be affected by any change of law. Thus, if a contract is made under one law and all obligations arising therefrom are carried out by the respective parties, in such a way that there no longer exist any relations arising from that contract between the parties; or in case a particular dispute is conclusively settled by the Court under one law, then if that law is substituted by a new law, the latter can have no effect on that contract or on that decision. It is impossible in such cases to apply the law retrospectively for the simple reason that once a fact has been done and absolutely consummated before the enactment of the new law, it would be altogether unreasonable.

nay simply ridiculous, to regard it as not having taken place. Conversely a fact which, under the law in force at the time it occurs, can produce no right, would still be without effects if the law is changed in such a manner that a similar fact occuring under the new law would give rise to a right. It is said that there can be no right — and, therefore, no obligation — unless it is given by law, either directly, when it is acquired immediately by the operation of an express provision of the law, or indirectly, when it results from some fact or transaction which the law recognises as productive of such right. It would not, therefore, be logical to create a right out of a fact which occurred previously, when that fact could produce no effects whatsoever under the law in force at the time of its occurrence. It might be objected that the new law considers the said fact as productive of that particular right: it is, however, in virtue of the new law that such a fact is capable of giving rise to the said right, so that when such new law did not exist the said fact could not give rise to the right: that the right might arise the fact must occur at a time when by law it is capable of producing such a right. To hold that the right exists because of the previous occurrence of the fact amounts to saying that the new law was in force at a time when it was not yet enacted or that the fact took place at a later date than it really did.

In certain cases, the legislator expressly declares a law to be retrospective; in others, the law is, of its very nature, retroactive: such are *Interpretative Law* and *Lex Confirmatoria*. These cases do not present any difficulty. Controversy exists in those cases where a right is acquired under one law, which is subsequently altered. Should the right be affected by the change, or, in other words, which of the two laws is to govern the said right?

The general opinion in this respect has, since the days of the Romans, been that a new law applies to events and relations occurring after the date of its enactments and that it should not be applied retrospectively: "Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterita revocari" (Codex: L. 7 de legibus). According to Lassalle this principle had been recognised even before the days of Roman law by Greek philosophy. Many arguments have been brought forward in its defence, the most convincing and the one adduced

by the great majority of writers, being that of the stability of legal transactions upon which depends social order. Society at large, as well as the several members thereof, are anxious that such stability obtains at all times; and such stability cannot be preserved if the rights and obligations given under one law were to be abolished or tampered with by a subsequent one. As Pacifici Mazzoni aptly points out, if such a course were to be followed by legislators, its effect would be that of undermining the confidence and trust the individuals of a society have in existing laws, and this would inevitably lead to disrespect of, and ultimately disregard for, such laws. To give retrospective effect to the new law would, in certain cases, not only be detrimental to the stability of transactions, but would further be unfair and unjust in so far as a person to whom a right had accrued under the old law, might be deprived thereof and, therefore, punished for the very fact of his having conformed to the requirements of the law in force at the time the right in question arose, and because he had obeyed, respected and put trust in such laws.

The legal maxim 'laws provide only for the future and should not be retrospective' is justified on solid grounds. Its importance, indeed its necessity for the welfare of the community, has been appreciated at all times. Lasalle holds (it has been remarked above) that it had its place in Greek philosophy. That it was observed under Roman Law emerges clear from the many dictums found in that law to the effect that laws shall provide only for the future. Notable amongst them is the famous law (already quoted) of Justinian inserted in the Codex (1. 7 de legib.), mention of which had already been made in the Codex Theodosianus: "omnia constituta non praeteritis calumniam faciunt, sed futuris regolam imponunt". This general principle is reproduced in Canon Law: "quoties novum quid statuitur, id solet futuris formam imponere, ut dispendiis praeterita non commendet, ne detrimentum ante prohibitionem possint ignorantes incurrere, quod eos postmodum dignum est vetitos sustinere" (Ch. 2, I. de constitut.); to the same effect it is provided in Ch. XIII de constitut., that the 'constitutiones' are enacted "non ad praeterita, sed ad futura tantum extendi, cum leges et constitutiones futuris certum sit dare formam negotiis, non ad praeterita trahi". It is noticeable that the provisions of Canon Law are very similar to those of Roman Law.

It must be here pointed out that though in Roman Law the principle of non-retroactivity of laws was laid down, it was not yet properly defined; so much so that Weber holds that it was a recognition by words rather than deeds. It is perhaps more correct to accept the view of Gabba that, (in his own words) "nel diritto giustiniano il principio della non-retroattività non è stato sufficientemente analizzato, ne debitamente limitato". Gabba further maintains that though observed under Roman Law, the said principle was as yet undeveloped and unstudied: the legislator incorporated it in the laws because he *felt*—rather than *reasoned*—that he should do so.

The said principle continued to be upheld for many years. However, it was too general; no proper limits were set to its operation. It cannot now be accepted as it was then understood. Be it noted that even under ancient laws there were departures from the said principle: many imperial 'constitutiones' were to operate retrospectively, e.g. L. 27 C. de usuris, which decreed: "jubemus etiam eos, qui ante eadem sanctionem ampliores, quam statutae sunt, usuras stipulati sunt, ad modum eadem sanctione taxatum ex tempore lationis ejus suas moderari actiones". So also Justinian decreed that all his legislation—or at least, as some jurists, e.g. F. Bergmann, believe, the Institutes and the Pandects—was to have retrospective application: "Leges nostrae suum obtinere robur ex tertio nostro felicissimo sancimus consulatu....." But such departures were only made in special enactments and there was no general principle to that effect.

In time jurists argued that a subsequent law must necessarily be better than a former one. A new law, as Pacifici Mazzoni remarks, is introduced to correct the one which it substitutes and to introduce the new principles and rules resulting from progress made in the field of legal science. It would be only too reasonable — the said jurists argued — to apply the new law immediately not only to all transactions and events occurring after the promulgation of the new law, but also to all juridical relations, whether they be the effects of a fact, event or transaction that took place after the enactment of the new law or before such enactment. Not to give such an application to the new law would be against public welfare: the old law is substituted by the new law because the latter is better suited to

govern the juridical relations arising between the members of a community; and if this is true when the relations arise out of a fact which takes place under the new law, it is equally true when such relations are the ulterior effects of a fact which occurred under the former law.

This new doctrine is of no small importance: its truth and sound reasoning has struck a number of jurists who, in dealing with the principles of Transitory Law, have paid serious attention to it. Thus Gabba, speaking about the said view, declares: "Questa proposizione (i.e. the doctrine in question) ci pare evidente, e ci fa meraviglia che da quasi nessuno scrittore sia stata posta a base degli studi del così detto giure transitorio". So also Rudhart, in his 'Controversen im Code Napoleon', maintains that the said principle should form the basis of any study about Transitory Law; Merlin (Effet Retroactif e Pass), is of opinion that, as a general rule, laws are retroactive: to the same effect Theodosiades (Essai sur la non retroactivité des lois), writes: "la loi novelle, toujours preferable à l'ancienne, *doit recevoir la plus large* et la plus prompte application.....".

This new attitude towards the application of new laws had its repercussions over the universality of the principle — so far unchallenged and unqualified — of non retroactivity; with the introduction of the practice of publishing Codes the need for laying down proper limitations to that principle was strongly felt. During the nineteenth century, in fact, we find a number of celebrated lawyers — amongst whom Merlin, Mailler De Chassat, Ferdinand Lassalle, Rudhart, Bergmann, Tonso and Gabba — devoting much of their time to find some general rule whereby to determine whether a new law, whatever its subject matter, was to be applied retrospectively or not. Confronted with the two above-mentioned doctrines, jurists soon perceived that any theory, to be reasonable and acceptable, should take both the said doctrines into consideration. Many of them maintained that the one lays down the general rule, the other the exception: the rule is that laws are not retrospective, but this rule, as almost all other rules, has its exceptions. Lassalle does not accept such a proposition; he points out that when an alleged exception to a principle proceeds from the very nature and character of that principle, then there is not a true and actual exception, since the most complete determination of an

object is ascertained through putting to that object its proper limitations. Gabba shares Lassalle's view, "Imperocchè la pretesi eccezione al principio di cui discorriamo (he refers to the principle that laws are not retrospective), provenendo dalla natura medesima dell'oggetto a cui il principio riferisce, cioè dalla natura della legge, non sono propriamente tali....." It follows that the said two views are not so conflicting that to admit the one we must exclude the other: as we have seen they are not even a rule and its exception. On the contrary, they are two fundamental elements of one and the same rule; they are the complement of one another. Together they furnish the subject matter of the so called theory of non-retroactivity, since this consists in determining what juridical relations arising before the enactment of the new law are to be governed in accordance with the one view rather than with the other. To resolve this question various doctrines have been propounded: of these we shall mention the most important.

It should be noted at this juncture that these doctrines attempt to lay down a general rule, which may be applied to any and every institute comprised in the legal system of a modern society.

Pacifici Mazzoni states that the doctrines to solve the problems of *Ius Transitorium* can be reduced to five, whilst Gabba points out that up to the time of his taking up the writing of his "Teoria della Retroattività delle leggi", five doctrines had been propounded. He was of course leaving out his own theory: including it there would have been six theories. The difference between Mazzoni and Gabba is accounted for by the fact that Mazzoni considers Gabba's theory as an improvement on that of Lassalle: to Mazzoni Gabba's doctrine includes that of Lassalle and he was, as we shall see, justified to do so.

To return to the doctrines about Transitory Law: according to Bergmann (Das Verbot der ruckwirkenden Kraft neuer Gesetze im Privatrechte), followed by Bornemann (Erorterungen im Gebiete des Preussischen Rechts), one should decide whether a law is retrospective or not from the express provisions of the law; in case the legislator's intention cannot be ascertained through the expressions of the law — in other words in case of doubt — the new law should be applied retrospectively; and this, as Bergmann maintains — because the new law is an im-

provement of the former one, and thus should be given the widest application. According to Gabba this theory is untenable, because more often than not, the legislator's intention cannot be inferred from the words of the law: indeed, if this were possible there would be no need for any theory on retroactivity, since the sphere of application of the new law would be determined by the legislator himself. Lassalle's criticism of Bornemann who, as it has already been remarked, shares the views of Bergmann on the matter under consideration, is to the same effect. Lassalle further holds that whenever the legislator's intentions cannot be ascertained from the wording of the law, it should be argued that the legislator intended that which the nature of the subject matter of the law in question requires.

Another theory lays down that if a law is conducive to public welfare and order — is enacted for public utility — it is retrospective; otherwise it is not. Lasalle and Gabba do not accept this theory: indeed even if it were theoretically admissible, such doctrine would, practically, be of no value, since the concept of public utility and order is not susceptible to exact determination. Gabba points out that there is another theory which bears a strong resemblance to this, namely the one holding that prohibitive laws are retrospective. This theory is indeed more plausible than the former: it is upheld by a number of renowned lawyers, amongst whom, John Voet (ad Pandectas, De Ritu Nuptiarum), Henne (de legibus ad praeterita trahendis), Lassalle and Bergmann. Briefly, these writers hold that a prohibitive law, precisely because it is such, is above all private interests and, consequently, even above acquired rights: hence it should be given the widest application. A 'prohibitive' law is one which forbids the creation of one or more juridical relations.

Confuting this theory, Gabba points out that it does not accord with facts. Nor is it acceptable on scientific grounds: for the very same reasons that it is not correct to argue that the legislator, in imposing a *command*, intended it to have a retrospective effect, so also it cannot be said that he meant his *prohibition* to operate retrospectively. This theory has been also rejected by Savigny, Zeiller and Weber.

The third theory is that favourable laws are retrospective; in other words, those laws which better the conditions and posi-

tion of the citizens are retrospective, whereas laws which worsen the citizen's position are not retrospective. That this theory does not furnish an adequate and practical criterion is shown by the fact that favourable laws have a retrospective effect only when their retrospective application causes no detriment to acquired rights: it follows that not even favourable laws are retroactive whenever retroactivity may be prejudical to vested rights. In effect, the said doctrine boils down to this, that new laws are to be applied as widely as possible, since they are an improvement on former ones, and thus more just and favourable to the citizens. The doctrine consequently is of no practical value since it is but a reiteration of the principle, universally accepted, that laws are, as a rule, retrospective: as such, it fails to satisfy the object which it was intended to satisfy, namely, setting proper limitations to the said general principle.

The next doctrine is that propounded by Savigny. It is based, as practically all the theories of Savigny are, on the distinction between the laws respecting the acquisition of rights and those respecting the existence or mode of existence of rights. By "acquisition" of a right Savigny means, in the words of Gabba "il trasformarsi un istituto giuridico astratto in rapporto giuridico personale", and by "existence" of a right, he intends "il riconoscimento di un istituto giuridico in generale per parte della legge"; from such recognition one can deduce whether the particular institute exists or does not exist, or whether it exists in one form or in other. Savigny lays down two general principles: firstly, that the laws governing the *acquisition* of rights are not retrospective; secondly, that laws referring to the *existence or mode of existence* of rights are retrospective.

Criticising Savigny's doctrine, Gabba remarks that he (Savigny) uses the same expressions now in one sense and then in another. His conclusion, therefore, is necessarily erroneous since, by firstly attributing a certain meaning to a term and, later another meaning to that same term, he, in reality, passes from one concept to another totally different — as different, in fact, as the first meaning given to the term is from the second. Moreover, Savigny's classification of law into two kinds, (namely that respecting the acquisition of rights and that respecting the mode of existence of juridical institutes), is, in practice at least, without foundation, for the mode of existence of a juri-

dical institute is necessarily determined by those qualities and rights that are acquired through such institute: so that if a law provides that through a particular juridical institute a certain right may (or may not) be acquired that law refers to the acquisition of rights and, at the same time, to the mode of existence of the particular juridical institute, since such a law affects and modifies the nature of that institute. Lassalle, like Gabba, does not accept Savigny's doctrine. He maintains that the same law refers to the *acquisition* of rights when considered from the point of view of the individual, and to the *existence* of rights when considered from the point of view of its object. Lassalle, therefore, seems to concur with Gabba that, whatever its theoretical value, Savigny's distinction between laws referring to acquisition and those to existence of rights, is of no practical importance.

The aforementioned doctrines, as it has been said, are untenable. They fail to solve the problems of Transitory Law; they do not furnish an adequate criterion and, moreover, are scientifically erroneous. The solution has been found in the "Doctrine of Vested Rights", which was propounded for the first time by Ferdinand Lassalle. Before him, other writers had stressed the importance of taking vested rights into consideration when dealing with retrospective effects of law; but none of these writers succeeded to formulate a plausible doctrine: nor did they establish the exact notion of vested rights. It was in the hands of Lassalle that this doctrine took a coherent form: it is true, as we shall presently see, that Lassalle's doctrine was not perfectly correct, but it was destined to form the basis of all study carried out on this question of legal science in the years that followed its publication in 1861, in a book entitled "Die Theorie der erworbenen Rechte".

It is to Lassalle's practical genius and common sense that the success of this theory is mainly due. He was not subject to abstractions: all through his work, even in passages of abstract reasoning, he never loses touch with reality. He grasps the importance of the principle that laws should be retroactive, since a new law is more conducive to public welfare, but at the same time he admits that an individual should not be deprived of a right which accrued to him under the old law, for such a deprivation would amount to a punishment of that individual's trust

in the laws existing at the time he acquired the right in question. Such reasoning seemed so convincing to him that he regarded non-retroactivity of laws as being synonymous to protection of vested rights: when Lassalle declares that laws are not retrospective, he simply means that vested rights should not be violated by the application of a new law. If his doctrine were to be reduced to a formula, that formula would amount to this, namely that a new law should be given the widest possible application, provided that such application does not prejudice vested rights. To apply a law retrospectively, Lassalle argues, is to disregard, to ignore and set aside human personality itself: retroactivity, in such a case, is the violation of Man's free will, of his freedom of action, of his responsibility, of his rationality. For, is it not as a free, reasonable and responsible being that the law punishes the evil-doer, that it acknowledges the rights acquired through an act willed and performed by him? A person punished under a new law for an act he committeed before the enforcement of such law is punished unjustly, because he committed such an act freely and deliberately, knowing that under the law in force at the time of its commission, no disadvantage could ensue from such an act. So also, if a new law were to operate retrospectively in a way to deprive a person of a right he acquired previously through a free and voluntary act, that law would violate that person's free will as well as his freedom of action. It is by such lofty principles that Lassalle defends his assertion that vested rights should be respected: before him, Stahl had upheld the same principle on similar grounds, maintaining that it is only when all the rights legitimately acquired by him are respected and safegarded that man can attain to the fulness of his personality.

To understand this theory, it is necessary to determine what is a vested right. According to Lassalle, a vested right is one which comes into being through a free and voluntary act of man. This definition is in complete conformity with the the reasons brought forth by Lassalle in defence of his contention that vested rights should be protected from the retrospective operation of the new law. If such rights are not respected then man's freedom of will and action would be violated; but such violation takes place only when a right brought into being through a free and voluntary act of man is abolished or in any other manner

prejudiced. For Lassalle, therefore, a vested right, in order to be immune from the application of the new law, cannot but be one acquired through the personal activity of its subject, and it is only when such a right is prejudiced by the application of the new law that such law cannot operate retrospectively. It is due to this contention that Lassalle's doctrine did not prove completely successful. For, though, as it has been observed above, this doctrine, in the general enunciation it makes, is correct, yet it is, as Gabba rightly maintains, incomplete, and this because it does not contemplate all kinds of vested rights. Though it is true that most rights acquired through the personal activity of the holder are vested rights (and, therefore, cannot be affected by a law coming into force subsequently to their acquisition), it is likewise true that not all vested rights are so acquired. Gabba points out that despite the fact that the majority of vested rights are acquired by the personal and voluntary intervention of the acquirer, there are a number of rights which, though coming into being by the mere operation of the law, in other words "ipso iure", are none the less inviolable—such that is, as cannot be prejudiced by the retrospective operation of the new law. Lassalle's doctrine does not take this latter class of rights into consideration. This doctrine is also incomplete — as Pacifici Mazzoni tells us—in so far as Lassalle failed to give a sufficiently comprehensive definition of vested rights He holds that once a right has been acquired through a voluntary act of an individual, it is necessarily a vested right: and this, as Gabba says, is not correct: "mentre quasi sempre i diritti acquisiti sono la conseguenza di atti di voluntà degli individui, posti in essere a tale scopo, non può dirsi però che acquisiti siano sempre e quindi inviolabili da una legge nuova, i diritti provenienti da una tale fonte."

For the above reasons, Gabba regards Lassalle's doctrine as incomplete. However, he readily accepts the general principle laid down by Lassalle that the new law should not be applied retrospectively to the detriment of vested rights. This is in fact the gist of the theory propounded by Gabba. His renowned work is but a defence of this principle. By careful illustrations and minute analysis, he shows that positive law, both ancient and modern, when declaring that laws should not be retrospective, simply means that vested rights should be respected, that

whenever no prejudice would result to such rights, the new law should be applied as widely as possible; that such a rule was upheld by Roman Law; that modern legislators have acknowledged the truth of this principle and the justice it embraces. In conclusion to his review of Positive Law about Ius Transitorium and the progress therein made, Gabba writes: "anche in questa parte del diritto, come in tutte le altre, i concetti dei legislatori si sono venuti determinando sempre più col progredire della Civiltà. Codesta determinazione consistette precisamente in ciò che dal volgare e vago dettato che le leggi non debbano retroagire, ando svolgendosi, e diventò finalmente persuasione generale il principio che: 'la vera ragione e il vero limite della retroattività delle leggi consistono unicamente nel rispetto dei diritti acquisiti'." With the same end in view, namely to prove the truth of the contention that non-retroactivity is based solely on the respect for vested rights, he shows that all theories brought forth to solve the problems of transitory law, except that founded on the concept of vested rights — i.e. the doctrine propounded by Lassalle — are either erroneous or of no practical value whatsoever. Obviously, however, the doctrine of vested rights is practically meaningless if the concept of vested right be not clearly established and defined: the acceptability of this doctrine is bound up with the definition of vested rights and, in fact, it is because Lassalle failed to give such a correct definition that his theory is incomplete.

In attempting to arrive at a correct definition of vested rights one should take into consideration not only the fact that the violation of a vested right offends human personality, but also — and this is of no minor importance — that such a violation results in an actual diminution of the holder's estate. Gabba, accordingly, lays down this definition, namely that a 'vested right is one which is the consequence of a *fact* capable, under the law in force at the time of its occurrence, of producing the said right, and this even though the opportunity of availing one's self of the said right has not arisen before the enactment of the new law, *and* which, according to the law prevailing at the time the said fact took place, had come to form part of the estate of him to whom it had accrued". It should be noted that in the above definition Gabba does not use the expression "vested right" in its wide meaning which includes also rights already

consummated, but in the restricted sense so as to include only those rights which have been acquired under the old law, but which have not yet been perfected at the time the new law is enforced.

It would appear from the above definition that Gabba defends vested rights not only because a violation of the same would offend human personality but further on the ground that it would cause actual and material loss to the subject of such rights. It is for this reason that he does not accept Lassalle's definition : the latter did not take such loss into consideration. The addition made by Gabba of the requisite that the right should have come to form part of the holder's estate is of importance, because it implies that vested rights do not include mere expectations and abstract faculties. Broadly speaking, both these are simply possibilities of acquiring a right and, therefore, not rights proper. Since an abstract faculty or a mere expectation is not an actual right—but simply a potential one—a law which does away with such faculty or expectation would cause no injustice at all .Thus if A has the expectation of succeeding to his father's estate on the latter's death, he cannot complain of an actual damage if a new law is passed under which he would not succeed to his father's estate, because strictly speaking he had no right so long as his father was alive : it is only with the death of his father that his right would have materialised. So also if, under a law, an alien has the "faculty" of owning a vessel, he cannot complain of a change in the law which deprives him of such "faculty", since so long as the "faculty" is not exercised, there is only *a mere possibility* of acquiring a right.

The above is in brief an outline of the theory of non-retroactivity of laws expounded by Gabba and of his definition of vested rights. This doctrine has practically been universally accepted by Italian writers, such as Bianchi, Borsari, Fulci and Polignani, who have expounded an identical doctrine; indeed, though certain Italian jurists differ slightly from Gabba in applying the general rule to the various questions of Transitory Law, none of them lays down any other doctrine. Italian Courts have unfailingly applied Gabba's definition and his teaching regarding the nature of vested rights. Gabba's doctrine has likewise been accepted by the great majority of non-Italian writers. The German jurists Pfaff and Hoffman hold that the said doc-

trine is neither practical nor exact because—they say—the notion of vested rights is rather vague. Hoffman maintains that a new law, provided it is conducive to the "betterment of juridical relations" should govern such relations even when they are the effects of an event or fact which took place before the enactment of the new law. Hoffman's theory is similar to, not to say identical with, the doctrine that favourable laws should be universally applied irrespective of vested rights, which doctrine, as it has already been said above, was effectively confuted by Gabba.

French teaching on the matter under consideration is not altogether clear. Aubrey et Rau lay down the general rule that laws are retrospective but they hold that this principle is to be observed in those cases only when the application of the new law does not prejudice vested rights. To them, however, the protection of vested rights is a corollary of the sovereignty of the law and a condition necessary to public welfare. It is not that it would be unjust to the individual, but that it would be against public interest, that vested rights are respected. These jurists, as almost all other French jurists, attach more importance to public interest than to the individual. It is noteworthy, however, that Laurent, though attaching the same importance to public interest, upon which he bases his doctrine (as indeed Aubrey et Rau and other French writers do), reports a number of judgements which accord fully with the doctrine of vested rights. French doctrine on this matter, seems to be based on two different considerations: public interest and respect for vested rights. These considerations, it seems, tend to become infused one in the other, since public welfare demands that what the citizen acquires under one law, he should retain under a subsequent one.

Our Courts have often applied the principles laid down by Gabba. A number of judgements delivered by Maltese Courts are to the effect that, rights acquired under one law are not affected by a change in that law. As far back as 1857 in the case "Pace Balzan vs. Busietta", both H.M.'s Commercial Court and the Court of Appeal accepted the view of T.G. Reinharth: "Quaecumque negotia jam ante legem novam latam, quoad essentiam suam, fuerant perfecta, licet consummationem suam, suosque effectus ab ictu demum post legem novam futuro eoque non extensivo, adhuc expectent, ea ad praeterita, omnino

referenda sunt, adeoque ex anterioribus legibus, nequaquam vero ex nova lege lata dijudicanda, modo non integrum sit negotium juxta novae legis, placita emendandi et perficiendi". (Osservaz. ad Christianeum). In this case, the Court of Appeal, declaring that "i diritti che risultano alle parti da una contrattazione..... sono al coperto delle innovazioni in contrario di qualunque legge posteriore", observed that, unless he expressly says so, it is unlikely that the legislator, in passing a new law, intends to cause detriment to rights already acquired before the promulgation of such new law. The principles laid down in "Pace Balzan vs. Busietta" have since been repeatedly upheld in subsequent judgements, e.g. In "Grognett vs. Caruana", decided in 1862, in "Speranza vs. Gauci" decided in 1864; in "Brincat vs. Cassar", in 1864, and in "German vs. Eynaud" in 1866. In all these judgements our Courts have followed the doctrine of Gabba; no definition of vested rights (as far as the writer is aware) has been given by our Courts, but it is perhaps safe to state that they would, in all probability, accept Gabba's definition. In conclusion it must be noted that this definition is a general one which cannot be of practical value unless it is applied particularly to the several questions relating to Transitory Law. Speaking of this definition, Gabba in fact declares: "Se altri troverà che quel concetto generale possa veramente essere addottato come principio fondamentale nella teoria della retroattività noi non possiamo intanto dimenticare che in una materia tanta complessa, il principio fondamentale, benchè indispensabile e retto, non ha tuttavia pratica utilità se non come punto di partenza per trovare principii più concreti, dedotti da quello per via di successive determinazioni".

COUNSEL'S DUTY

"It is not for the counsel himself to prejudge the question at issue. His duty is to see that those whose business it is to judge do not do so without first hearing from him all that can possibly be urged on his side."

LORD MACMILLAN.