Shivram(1) held that "earth" might be the subject of theft, and the same reasoning applies, *a fortiori*, to stones that are quarried from "the earth." We think that the view of Brandt, J., in *Queen-Empress* v. *Kotayya*(2) is correct and we hold that any part of "the earth," whether it be stones or sand or clay or any other component, when severed from "the earth" is moveable property, and is capable of being the subject of theft. Our answer to the reference is, therefore, in the affirmative.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Offg. Chief Justice, and Mr. Justice Bhashyam Ayyangar.

1903. October 26, 27.

MANTHARAVADI VENKAYYA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), RESPONDENT.*

Limitation Act—XV of 1887, *arts.* 18, 120—*Land taken under Land Acquisition Act —Refusal by Collector to give award—Possession taken by Government.*

Land had been taken under the Land Acquisition Act, possession having been taken by the Collector before an award was made. The Collector subsequently refused to give an award, on the ground that the land belonged to Government. More than one year after the Collector's refusal to give an award, the present suit was instituted for a declaration that the land belonged to the plaintiffs and for recovery of possession, or, in the alternative, for damages for the wrongful refusal of the Collector to give the award. The finding was that the land was the plaintiffs'; but the plea of limitation was raised:

Held, that the suit was not barred by limitation. The land had vested absolutely in Government, and so plaintiffs were not entitled to recover possession but could only claim damages for breach of a statutory duty on the Collector's part. The suit contemplated by article 18 of the Limitation Act is one for compensation for non-completion, and that article does not apply to a case in which the land has vested in Government. Article 120, therefore, governed the suit.

---

(1) I.L.R., 15 Bom., 702. (2) I.L.R., 10 Mad., 255.

* Second Appeal No. 242 of 1902, presented against the decree of I. L. Narayana Row Naidu, Subordinate Judge of Kistna, in Appeal Suit No. 28 of 1901, presented against the decree of S. Hanumanta Row Pantulu, District Munsif of Bapatla, in Original Suit No. 297 of 1899.

MANTHARAVADI VENKAYYA v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

SUIT for land, or in the alternative for damages for the wrongful refusal by the Collector appointed to acquire the land for public purposes to make an award stating the amount of compensation payable to the plaintiffs. The land had been taken for railway purposes by the Government under section 17 of the Land Acquisition Act (I of 1894), and the Collector took possession of it after issuing the usual notices under sections 6 and 9. He, however, refused to pass an award, inasmuch as he held that the land was Government land, and that, in consequence, no compensation was payable to plaintiffs. Plaintiffs brought this suit for a declaration that the land was theirs, and for possession of it, and in the alternative as above. More than one year had elapsed since the Collector had informed plaintiffs that he would not give an award. The defence was that the land had become vested absolutely in Government under section 17 (1) even though no award had been passed, and that no suit lay to recover possession of it; and as to the claim for compensation, limitation was pleaded, article 18 of schedule II of the Limitation Act being relied on. The District Munsif held that a portion of the land belonged to the plaintiffs, and that the suit was not barred by limitation, it being governed by article 120, and he passed a decree in plaintiffs' favour for compensation in respect of that portion of the land. The Acting Subordinate Judge, on appeal, also found that the land belonged to the plaintiffs, but held that the suit was barred by limitation, being governed by article 18. He reversed the decree and dismissed the suit.

Plaintiffs preferred this second appeal.

V. Krishnasamy Ayyar and *K. Subrahmania Sastri,* for appellants, contended that inasmuch as possession had been taken and the land had vested absolutely in Government the acquisition had been completed. Article 18 only applies where the acquisition has not been completed and where Government has, for some reason or other, given up the land after the preliminaries have been gone through. As there was no special article to cover such a case as the one under appeal they contended that article 120 applied. They referred to section 54 (2) of the Land Acquisition Act X of 1870, which corresponded with section 48 of the present Act. The wording in the earlier Act was "decline to complete any such acquisition." The words "refusal to complete" in the third column in article 18 of the Limitation Act seemed to

have been taken from section 54, clause (1) of the earlier Land Acquisition Act.

The Government Pleader, for respondent, contended that article 18 applied to cases in which an award has not been made under the Act. Acquisition could not be complete until the proceedings prescribed by the Act are taken. He contended that the suit was barred.

JUDGMENT.—The suit in its alternative character is really a suit for damages for the wrongful refusal by the Collector appointed to acquire the land for public purposes to make an award settling the amount of compensation payable to the appellants in respect of the land which by virtue of a direction made by the local Government under section 17 of Act I of 1894 was taken possession of by the Collector before any award had been made and thus became vested absolutely in the Government. The reason for the Collector's refusal was that it had been subsequently discovered that the land belonged to Government and not to the appellants, and therefore the latter were not entitled to compensation. It is now found by both the lower Courts that the land was the appellants' property and not the property of Government. But as the land vested absolutely in Government under section 17 though in fact it was, as now found, the property of the appellants, they are not entitled to recover the land but can only claim damages for breach of statutory duty on the Collector's part, the measure of damages being such compensation as would have been recovered by the appellants if the Collector in due discharge of his duty had proceeded under the Land Acquisition Act to make the award. The suit, however, was brought more than one year after the Collector informed the appellants that he was not going to make the award as the property belonged to Government and the lower Appellate Court dismissed the suit as barred by limitation under article 18 of the Indian Limitation Act. This article 18 reproduces the corresponding article 20 of Act IX of 1871 which was passed shortly after the enactment of the Land Acquisition Act X of 1870, now replaced by Act I of 1894. It seems to us clear by comparing article 18 with section 54 of Act X of 1870 that the suit contemplated by the article is one for compensation for non-completion and the refusal to complete the acquisition referred to in the said section 54 which does not include a case in which the land has vested in Government. Section 48 of Act I of

MANTHARA-VADI VENKAYYA v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

1894 corresponds to section 54 of Act X of 1870. In the present case the acquisition has been completed in the sense that the property has absolutely vested in Government and in our opinion article 18 does not govern such a suit and, there being no other article applicable to the case, the general residuary article 120 must be held to govern the case. That being so the suit is not barred by limitation. We must allow the appeal with costs in this and in the lower Appellate Court and, reversing the lower Appellate Court's decree, restore that of the District Munsif.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1903. December 15.

VEDAVALLI NARASIAH (THIRD DEFENDANT), APPELLANT,

v.

MANGAMMA AND FOUR OTHERS (REPRESENTATIVES OF PLAINTIFFS NOS. 1 AND 2, AND DEFENDANTS NOS. 1, 2 AND 4), RESPONDENTS.*

Construction of statutes—Enactments relating to substantive rights—Effect on pending suits—Enactments relating to procedure—Effect of—.

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, unless in express terms they apply to pending actions, do not affect them. An exception to this general rule is where enactments merely affect procedure, but do not extend to rights of action.

SUITS to recover karnikam kalavasam, or percentage of crops payable to persons performing the duties of village accountant in the Venkatagiri Estate. The suits were instituted on 30th June 1897. During their pendency, Madras Act II of 1894 was extended to the office of village accountant in the Venkatagiri Estate. That Act was enacted "to amend the law relating to village officers in permanently-settled and certain other estates," and provides for the appointment of village officers by the revenue officer. Section 33 provides that no Civil Court shall have

---

* Second Appeals Nos. 307 and 308 of 1902, presented against the decrees of T. M. Swaminatha Ayyar, District Judge of Nellore, in Appeal Suits Nos. 17 and 18 of 1900, presented against the decrees of T. Varadarajulu, District Munsif of Kanigiri, in Original Suits Nos. 250 and 249 of 1897.