APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

RAMAKRISHNA CHETTY (PLAINTIFF), APPELLANT,

v.

SUBBARAYA IYER AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1912. November 27 and December 4.

Limitation—Madras Estates Land Act (I of 1908), ss. 210, 211, cl. (2), art. 8 of sch. Part A—Suit for rent under registered agreement, more than three years but less than six years of the Act coming into force—Statutes—Construction of—Retrospective operation, when—Limitation Act (XV of 1877), art. 116, applicability of, suits for rent in a Revenue Court.

A suit to enforce an inamdar's right to rent under a registered agreement, which accrued due more than three years but less than six years before the Estates Land Act came into force, is not barred by the limitation of three years enacted by its provisions but is governed by article 116 of the Limitation Act.

Section 210 and article 8 of Part A to the schedule of the Madras Estates Land Act (I of 1908) have no application to cases where the period of three years thereby provided had expired before the 1st July 1908 when the Act came into force and where to apply them would be to deprive the plaintiff of a right of action which was then vested in him.

The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action including rights of appeal. Retrospective operation of statutes considered.

Colonial Sugar Refining Company v. *Irving* (1905) A.C., 369, applied.

SECOND APPEAL against the decree of H. O. D. HARDING, the District Judge of Salem, in Appeal No. 240 of 1909, preferred against the decree of P. A. BOOTY, the Acting Sub-Collector of Hosur, in Summary Suit No. 249 of 1909.

The following is the judgment of the District Court on appeal :—

"This is a suit under section 77 of Act I of 1908 for arrears "of rent for fasli 1315."

"The suit was filed on 25th September 1909, more than "three years after the close of fasli 1315. The plaintiff "contended that it is not barred by limitation, because he holds "a permanent registered lease. There is no saving for such

* Second Appeal No. 1293 of 1911.

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"leases in the schedule of Act I of 1908 and the Limitation "Act cannot apply in the face of the special provision in Act I of "1908 itself. The suit is therefore dismissed as time barred. "The defendant has incurred no costs.

"Plaintiff appeals and says he has six years under article "116 of the Limitation Act, because he sues on a registered rent "agreement. Under section 210, Act I of 1908, the suit is "barred by the limitation provided by the schedule of that Act, "which allows three years only.

"The suit is so barred subject to the provisions of section "211. Section 211 says that certain sections of the Limitation Act "of 1877 do not apply to such suits and subject to the provisions "of this Chapter the Limitation Act of 1877 applies to all suits, "etc., mentioned in section 210. That is to say the Act of 1877 "applies, except that every suit instituted after the limitation "provided by the schedule of Act I of 1908, shall be dismissed. "This suit was filed after the three years mentioned in the schedule "of the Act—Serial No. 8. It was therefore rightly dismissed. "The suit is a suit for rent under section 77. It is not a suit "for damages for breach of contract contemplated by article 116. "The appeal is dismissed with costs".

The plaintiff thereupon preferred this Second Appeal.

C. Venkatasubbaramayya for the appellant.

V. C. Seshachariar for the first respondent.

BENSON AND SUNDARA AYYAR, JJ.

JUDGMENT.—The question for decision in this case is one of limitation. The suit is by a land-holder for recovery from a ryot of rent for fasli 1315 ending on the 30th June 1906. It was instituted in a Revenue Court (before the Sub-Collector of Hosur) after the Estates Land Act came into force. More than three years, but less than six years, had elapsed at the time of the institution of the suit after the rent became due. Both the lower Courts held that the suit was barred by limitation under Part A, article 8 of the schedule to the Estates Land Act, I of 1908, which provides a period of three years from the date the rent became due.

The contention in Second Appeal is that the rent being due under a registered instrument and six years having been allowed for such a suit according to the decisions of this Court, holding article 116 of the schedule to the Limitation Act to be applicable to such a suit, and the Estates Land Act having come into force

(on 1st July 1908) only after the three years allowed under the Act had elapsed from the date of the rent accruing due, the Act ought to be held to be not applicable to the case. This question has already been the subject of consideration in this Court in *Sundaramaiyah* v. *Muthu Ganapathegal*(1) before a Bench consisting of MILLER and ABDUR RAHIM, JJ.; MILLER, J., following *Khusalbhai* v. *Kabhai*(2), upheld the contention now urged before us, while ABDUR RAHIM, J., was of opinion, that the suit in that case was barred, as according to him the language of section 210 of the Estates Land Act was perfectly clear and barred every suit for rent instituted after the Act came into force, more than three years after time began to run. After full consideration we are of opinion that the rule of limitation in Act I of 1908 should be held to be inapplicable to cases where the period of three years had expired before the 1st July 1908 when the Act came into force. The general principle undoubtedly is that the law of limitation applicable to a suit is that in force at the time when it is instituted. The period of limitation that the party is entitled to have is that prescribed by the statute then in force whether it be shorter or longer than that provided in a previous statute repealed by it [see *Rex* v. *Chandra Dharma*(3)]. This rule is expressly enacted in the Indian Limitation Act now in force as it was also in the previous statutes of limitation. The reason of the rule is that limitation is a branch of the law of procedure and is only a condition annexed to the enforcement of a substantive right in a Court of Law and does not affect the right itself. And there is no injustice in requiring a person having a substantive right to seek the enforcement of it in a Court of Law within such time as the legislature may think fit from time to time to prescribe. It is at the same time a well-established principle that unless the terms of a statute expressly so provide or necessarily require it retrospective operation will not be given to a statute so as to affect, alter or destroy any vested right. See section 6, clause (*c*) of the Indian General Clauses Act and section 8, clause (*c*) of Madras Act I of 1891. For to do so would result in great injustice, and it will be presumed that the legislature did not

(1) (1912) M.W.N., 652. (2) (1882) I.L.R., 6 Bom., 26.
(3) (1905) 2 K.B., 335.

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intend to deprive any person of a right previously vested in him. The general rule that statutes relating to processual law have retrospective operation is as much subject to this important qualification as statutes dealing with substantive rights. The questions whether a person is entitled to maintain a particular action or to do so in a particular form and what defences are open to the defendant cannot be affected by any statute passed after its institution. The principle has been applied even to the right of appeal which a party to an action has. See *Colonial Sugar Refining Company* v. *Irving*(1), in which the Judicial Committee of the Privy Council laid down this rule. Lord MACNAGHTEN delivering the judgment of the Committee observed—

"On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord COKE to the present day, the appellants (the Sugar Company) would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, Was the appeal to His Majesty in Council a right vested in the appellants at the time of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure." The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action including rights of appeal, an appeal being regarded as a continuation of the proceedings in the Court of First Instance. In *Wright* v. *Hale*(2), the question was whether the plaintiff in the action was disentitled to costs under 23 and 24, Vic., c. 126, s. 34, according to which a plaintiff in an action for an alleged wrong recovering a verdict for less than £ 5 should not be entitled, to any costs. CHANNELL, B., observes: "In dealing with Acts of Parliament which have the

(1) (1905) A.C., 369 at p. 372. (2) (1860) 6 H. & N., 227.

effect of taking away rights of action, we ought not to construe them as having a retrospective operation, unless it appears clearly that such was the intention of the legislature." POLLOCK, C.B., also laid down the same rule. A distinction was drawn between rules affecting the right of action and those relating to practice and procedure and the question of costs was regarded as coming within the latter category. An exception was sought to be introduced in *Towler* v. *Chatterton*(1). The question there was whether an oral promise to pay a debt could be relied on to save it from limitation in a suit instituted after Lord TENTERDEN'S Act which made oral acknowledgments and promises insufficient for the purpose. The promise was made before the Act came into force. The Court held that the Act was applicable because the statute prevented all mischief of *ex post facto* legislation by giving due notice that it should have no operation for nearly eight months after its enactment. The same view was held in *The Queen* v. *The Leeds and Bradford Railway Company*(2), where the question related to the period of limitation applicable. Lord CAMPBELL, C.J., observed: "If the Act had come into operation immediately after the time of its being passed the hardship would have been so great that we might have inferred an intention on the part of the legislature not to give it a retrospective operation; but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal." See also *Ings* v. *London and South Western Railway Company*(3). The soundness of this exception was questioned in *Moon* v. *Durden*(4), by ROLFE, B. In *In re Joseph Souche & Co., Limited*(5), JESSEL, M.R., again enunciated the rule as follows:—"It is a general rule that when the legislature alters the rights of parties by taking away or conferring any rights of action, its enactments, unless in express terms, they apply to pending actions, do not affect them." His Lordship held that the right of a creditor to prove his debt in the winding up of a company was not a mere matter of procedure

(1) (1829) 6 Bing., 258 (130 E.R., 1280). (2) (1852) 21 L.J., Com. L.M.C., 193.
(3) (1868) L.R., 4 C.P., 17 at p. 19. (4) (1848) 2 Ex., 22.
(5) (1875) 1 Ch.D., 48.

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and that it was not distinguished in substance from a right of action before winding up. In a similar case *In re Athlumney*(1), WRIGHT, J., observes: "Perhaps no rule of construction is more" firmly established than this—that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment." The learned Judge referred to the observations of JESSEL, M.R., in *In re Joseph Souche & Co., Limited*(2) and to the dissent expressed in *Moon* v. *Durden*(3), from the attempt to make an exception to the rule. It is clear that the result of applying the rule prescribed in the Estates Land Act to cases where three years had elapsed before it came into force would be effectually to deprive the plaintiff of a right of action which was then vested in him. It may be observed that this case would come even within the exceptions admitted in *Towler* v. *Chatterton*(4) and *The Queen* v. *The Leeds and Bradford Railway Company*(5), as Act I of 1908 came into force after the expiration of three days only from the time of its enactment. It is unreasonable to suppose that the Act intended to destroy a man's rights without giving him an opportunity to comply with its provisions. The Court, if asked to give retrospective effect to a statute, will bear in mind the consequences of doing so. See *Ex parte Todd, In re Ashcroft*(6). In *Jackson* v. *Woolley*(7), it was held that section 14 of the Mercantile Land Amendment Act, 1856, which provided that a debtor shall not lose the benefit of the statutory limitations by his co-debtors' payment of interest or part payment of the principal would not affect the efficacy of such payment made before the Act is passed, a decision which is hardly consistent with *Towler* v. *Chatterton*(4) and *The Queen* v. *The Leeds and Bradford Railway Company*(5). On principle, therefore, the present case must be regarded as one in which a vested right of action would be destroyed by the application of the Estates Land Act to it. The language of section 210 does not in terms apply to such a case. It is true, as pointed out by ABDUR RAHIM, J., in *Sundaramaiyah* v. *Muthu*

(1) (1898) 2 Q.B., 547 at p. 551.
(2) (1875) 1 Ch.D., 48.
(3) (1848) 2 Ex., 22.
(4) (1829) 6 Bing., 258 (130 E.R., 1280).
(5) (1852) 21 L.J., Com. L.M.C., 193.
(6) (1887) 19 Q.B.D., 186.
(7) (1858) 8 E. & B., 778.

Ganapathegal(1), that the section does not, in terms, make any exception to the rule laid down in it. But this is not necessary; for, every statute must be taken to have been framed subject to the rules of interpretation applicable to all legislative enactments; and it must be presumed that if the legislature intended that any such rule should not be applicable it would use apt language to indicate its intention. It is argued that if the Act be held not to be applicable to the present case it would logically lead to the conclusion that it would not apply to any case where the cause of action for rent arose before it was passed. But this would certainly not be the case; for, the principle we have enunciated would not apply to cases where three years did not elapse before the Act came into force, for then, the rule enacted in it would not have the effect of destroying the cause of action vested in the land-holder for the rent due to him. The legislature in enacting section 210 then was apparently under the impression that the period of limitation for all suits for rent under the general Limitation Act was three years as it might well have thought, having regard to article 110 in the schedule. But it was decided that article 116 of the Limitation Act which enacted that the limitation for a suit for breach of contract in writing registered would apply also to suits for rent if it was due under a registered instrument. See *Ambalavana Pandaram* v. *Vaguran*(2). This interpretation placed on the general statute of limitation apparently escaped attention of the legislature.

We do not think that there is any force in the argument that the Revenue Court has no jurisdiction to entertain suits for breach of contract and that it, therefore, could not apply article 116 of the Limitation Act in a suit for rent before it. The effect according to the judicial interpretation of article 116 is that a suit for rent is a suit for breach of contract and there can be no difficulty in a Revenue Court applying the proper rule of limitation applicable to a suit for rent coming before it. Section 211, clause (2) of the Madras Estates Land Act makes the provisions of the Limitation Act applicable to all suits in Revenue Courts subject to the other provisions of the Act. If the rule in schedule A, article 8, be held inapplicable to the case, article 116 of the Limitation Act must necessarily apply. We must hold

(1) (1912) M.W.N., 652. (2) (1896) I.L.R., 19 Mad., 52.

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that the suit is not barred by limitation. We reverse the decrees of the Courts below and remand the suit for disposal according to law to the Court of First Instance: all costs up to date will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Sadasiva Ayyar.

1912. December 4 and 9.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, REPRESENTED BY THE COLLECTOR OF TRICHINOPOLY (DEFENDANT), APPELLANT,

v.

RAGHUNATHA TATHACHARIAR (PLAINTIFF), RESPONDENT.*

Grant, inam—Grant of land "besides poramboke," construction of—Padugai lands in Trichinopoly and Tanjore taluks, ownership of—'Padugai,' meaning of.

A grant of land by the Government acknowledging the grantee's title to a whole village consisting of certain specified area "besides poramboke," gives the grantee a right to all the unassessed waste in the village such as waste or padugai land (*i.e.* land between a river bed and the high flood bank of the river) though it may not operate to give communal property such as burying-grounds, temple, sites, etc., to the grantee.

Narayanasami v. *Kanniappa*, Second Appeal No. 1445 of 1910 and *Secretary of State* v. *Kannapallee Venkataratnamma* (1912) 23 M.L.J., 109, referred to.

Padugai land in Trichinopoly and Tanjore taluks means land on the lower level bank breadth of the river between the edge of the sandy stream bed and the high flood level bank.

SADASIVA AYYAR, J.—The grant of poramboke does not operate to give the grantee the bed of the river.

Meaning of the word 'Poramboke', considered.

SECOND APPEAL against the decree of C. G. SPENCER, the District Judge of Trichinopoly, in Appeal No. 6 of 1910, preferred against the decree of K. S. KODANDARAMA AYYAR, the District Munsif of Srirangam, in Original Suit No. 311 of 1908.

The inam title-deed (Exhibit C), whose construction is the subject of this decision, ran as follows :—

"On behalf of the Governor in Council of Madras, I acknowledge your title to the whole village of Kadiyakurichi in the

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* Second Appeal No. 1834 of 1911.