APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Seshagiri Ayyar and Mr. Justice Kumaraswami Sastriyar.

RAJAH SAHIB MEHARBAN-I-DOSTON SRI RAJA ROW V. K. M. SURYA ROW BAHADUR, SIRDAR, RAJAHMUNDRY SIRCAR AND RAJAH OF PITTAPUR (PLAINTIFF), APPELLANT,

1915. March 22 and April 1.

29 M. L. J. 31

v.

G. VENKATA SUBBA ROW AND FIVE OTHERS (DEFENDANTS), RESPONDENTS.*

(*Madras*) *Estates Land Act* (*I of* 1908), *ss.* 210 *and* 211 *and art.* 8 *of part A of schedule—Limitation Act* (*XV of* 1877), *sec.* 7—*Suits for arrears of rent—Minority as a ground of exemption—Statutes of Limitation, when retrospective—Principles to be applied—Madras General Clauses Act* (*I of* 1891), *ss.* 6, *cl.* (*c*) *and* 8, *cl.* (*d*).

A "landholder" under the Madras Estates Land Act, who became a major on 5th October 1906 brought suits for recovering arrears of rent due for fasli 1315, after the Estates Land Act came into force, but within three years of his attaining majority. On the date the suits were brought, more than three years had elapsed after the rents had become due. The lower Courts dismissed the suit as barred by the limitation of three years prescribed by sections 210 and 211 and article 8 of part A of the schedule to the Estates Land Act:

Held by WALLIS, C.J. and KUMARASWAMI SASTRIYAR, J., agreeing with SADASIVA AYYAR, J. [SESHAGIRI AYYAR, J., dissenting]: (*a*) that notwithstanding section 211, which prohibited the application of section 7 of the Limitation Act (XV of 1877) to suits under the Estates Land Act, the plaintiff was entitled to the exemption and extension given by section 7 of the Limitation Act, and (*b*) that the suits were therfore within time. Section 211 of the Estates Land Act should not be construed retrospectively so as to destroy or practically destroy rights of action existing on the date that Act came into force.

Retrospective operation of Statutes considered.

Ramakrishna Chetty v. *Subbaraya Ayyar* (1915) I.L.R., 38 Mad., 101 and *Gopeshwar Pal* v. *Jiban Chandra* (1914) I.L.R., 41 Calc., 1125, followed.

Per SESHAGIRI AYYAR, J.—As section 211 of the Estates Land Act expressly prohibited the application of section 7 of the Limitation Act, the suit was barred by the three years' rule of limitation prescribed by the Estates Land Act.

It is the rule of limitation that is in force at the time the suit is instituted that governs the action and not the one under which the rights accrued.

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* Letters Patent Appeals Nos. 129 and 130 of 1913.

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Soni Ram v. *Kanya Lal* (1912) I.L.R., 35 All., 227 (P.C.), followed.

APPEALS under article 13 of the Letters Patent against the decree of SADASIVA AYYAR, J., in *Sri Surya Row* v *Venkata Subba Row*(1).

The facts necessary for this report are fully set out in the judgments of SESHAGIRI AYYAR and KUMARASWAMI SASTRIYAR, JJ.

B. Somayya for the appellants in both the appeals.

(1) (1916) I.L.R., 39 Mad., 646.

The following contains the judgments delivered on 9th October 1913 by SANKARAN NAIR, J., and SADASIVA AYYAR, J., who differed from each other, and confirmed the decree of the Lower Court under section 98, Civil Procedure Code:—

1913. August 25 and October 9.

RAJAH SAHIB MEHARBAN-I-DOSTAN SRI RAJA ROW V. K. M. SURYA ROW BAHADUR SIRDAR, RAJAHMUNDRY SIRCAR AND RAJAH OF PITTAPUR (APPELLANT),

v.

G. VENKATA SUBBA ROW AND FIVE OTHERS (RESPONDENTS).*

SECOND APPEAL against the decree of M. O. PARTHASARATHI AYYANGAR, the District Judge of Gōdāvari, in Appeals Nos. 111, etc., of 1910, preferred against the decisions of R. V. SUBBA RAO PANTULU, the Suits Deputy Collector of Gōdāvari, in Summary Suits Nos. 128, etc., of 1910, respectively.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—These are suits brought by a landlord for the recovery of rent from his tenants under section 189 of the Estates Land Act.

The question is whether the suits are barred by limitation. The District Judge is of opinion they are barred. The landlord appeals.

Under section 210 every suit instituted after the period of limitation specified therefor in the schedule shall be dismissed. The period of limitation prescribed in the schedule is three years from the date referred to therein. In these cases that period has expired. These suits therefore must be dismissed. But it is argued that, as the plaintiff was a minor when the rent fell due and the suit was brought within three years of the plaintiff attaining majority, the suit is not barred under section 7 of the Limitation Act and, though section 211 enacts that section 7 of the Limitation Act shall not apply to suits instituted under the Estates Land Act, we are bound to hold that, in the absence of express terms to that effect or necessary implication, this Act does not take away the right of action that has already accrued and, as the plaintiff was entitled to sue when the Act was passed, he is entitled to maintain the suit within the time he had before the passing of the Act.

The following cases are relied upon in support of this argument:—

Sundaramaiyah v. *Muthu Ganapathigal*(1), *Ramakrishna Chetty* v. *Subbaraya Ayyar*(2) and *Munjhoori Bibi* v. *Akel Mahmud*(3).

* Second Appeals Nos. 323, etc., of 1912.

(1) (1912) M.W.N., 652. (2) (1915) I.L.R., 38 Mad., 101.

(3) (1913) 17 C.L.J., 316.

The suit is for the recovery of arrears of rent, brought under section 77 of the Estates Land Act. The arrears accrued before the Act came into force. The period of limitation prescribed in schedule A, article 8 of the Act, is three years from the date when the arrears became due. Section 211 enacts that section 7 of the Limitation Act is inapplicable to suits under the Estates Land Act.

Before the Act I could have sued in a Civil Court and availed myself of section 7 of the Limitation Act.

[WALLIS, C.J.—You do not contend that after the Estates Land Act you could sue in the Civil Courts.]

No, not in view of section 189 of the Act.

[SESHAGIRI AYYAR, J.—If you had instituted your suit before the Act came into force in the Civil Court then the jurisdiction

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I agree that, if the words of a section admit of a construction that will not interfere with vested rights, that construction must be adopted Here, however, we are dealing with an Act which is complete in itself, like the Rent Act which it repealed. See *Kumara Akkappa Nayanim Bahadur* v. *Sithala Naidu*(1). When an Act has got its own provisions as to limitation the general rules in the Limitation Act do not apply, and it was held by the Calcutta High Court, in accordance with this principle enunciated in *Kumara Akkappa Nayanim Bahadur* v. *Sithala Naidu*(1), that section 7 of the Limitation Act does not apply to rent suits. See *Girija Nath Roy Bahadur* v. *Patani Bibee*(2).

Reading the sections of the Act, not only are the words quite clear, as I have pointed out; the policy also appears to be clear. The Legislature considered it is not desirable having regard to the relative position of zamindars and ryots, that questions between them should be kept open for long periods of time or that the resources of a ryot available for the current year's cultivation should be crippled with the obligation of discharging old arrears. The practical hardship is greater on the ryot than on the zamindar. Again in this Presidency the zamindaris of minors would be, as was in this case, under the Court of Wards and, if they were not able, or did not think it right to collect the rent from tenant, it was a sufficient reason to justify any legislature in concluding that the zamindar after he attains his age should not be allowed to harass the ryot. I would therefore confirm the decrees and dismiss all appeals with costs. But as my learned brother is of a different opinion, the decrees are confirmed and the Second Appeals dismissed with costs under section 98, Civil Procedure Code.

SADASIVA AYYAR, J.—The only question in these cases is whether a suit brought by a landlord after the passing of the Madras Estates Land Act for rent due for faslis which expired before the Act came into force is governed by the old rule of limitation provided for by the Limitation Act of 1877 or whether it was governed by the special rules of limitation mentioned in sections 210 and 211

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(1) (1897) I.L.R., 20 Mad., 476. (2) (1889) I.L.R., 17 Calc., 263.

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of the Civil Court would not have been taken away because of the Act.]

My argument is this: if the effect of the application of the new rule is to extinguish the rights already accrued then the new rules ought not to be applied. I refer to *Ramakrishna Chetty* v. *Subbaraya Ayyar*(1).

[SESHAGIRI AYYAR, J.—Prior to the Estates Land Act did section 7 of the Limitation Act apply to suits for rent, under the Rent Recovery Act?]

Yes, if the suit was brought under general law in the Civil Court, but it was not applicable to summary suits under the Rent Recovery Act. See *Kumara Akkappa Nayanim Bahadur* v. *Sithala Naidu*(2). The following cases were also referred to, viz., *Munjhoori Bibi* v. *Akel Mahmud*(3), *Budhu Koer* v. *Hafiz Husain*(4), *Gopeshwar Pal* v. *Jiban Chandra*(5), *Soni Ram* v. *Kanhaiya Lal*(6) and *Delhi and London Bank, Limited* v. *Orchard* (7), on the question as to when an Act will or will not have retrospective operation.

B. Narasimha Rao for the respondent.

There is no killing of the right of action. Section 7 of the Limitation Act gives only a personal exemption and it is only this *personal exemption* that is now taken away by section 211 of

(1) (1915) I.L.R., 38 Mad., 101. (2) (1897) I.L.R., 20 Mad., 476.
(3) (1913) 17 C.L.J., 316. (4) (1914) 18 C.L.J., 274.
(5) (1914) I.L.R., 41 Calc., 1125; s.c., 19 C.L.J., 549 at p. 562.
(6) (1913) I.L.R., 35 All., 227 (P.C.). (7) (1878) I.L.R., 3 Calc., 47 (P.C.).

of the Estates Land Act and in the schedule annexed to the said Act. If the old rules of limitation applied, the plaintiff, who was a minor till October 1906 when the cause of action arose for the greater portion of the claims in dispute in these suits, had three years by virtue of section 8 of the Limitation Act of 1877 from the cessation of minority to bring these suits. These suits brought in October 1909, just within three years of October 1906 are not, in that view, barred by limitation. But if the special rules mentioned in sections 210 and 211 of the Estates Land Act applied, the plaintiff will be barred as section 211 expressly says that sections 7 and 8 of the Indian Limitation Act of 1877 shall not apply to the suits and applications mentioned in section 210 (which include suits for rent). On the question whether the old rules of limitation or the new rules of limitation apply to claims for rent due for periods which had elapsed before the Estates Land Act came into force, when a suit is brought on those claims after the passing of the Estates Land Act, there was a conflict of opinion between MILLER, J., and ABDUR RAHIM, J., in *Sundaramaiyah* v. *Muthu*

the Estates Land Act. Section 211 expunges section 7 of the Limitation Act. There is no right of action alive at the time of the Act. *Colonial Sugar Refining Company* v. *Irving*(1) is not against me. It says where the intention is clear, enactments may have retrospective effect. In none of the cases referred to by the other side is there such a special section like section 211. All those cases are based on general considerations.

V. Ramadoss for respondent in Letters Patent Appeal No. 130 of 1913.

The opinion of ABDUR RAHIM, J., in *Sundaramaiyah* v. *Muthu Ganapathigal*(2) is against the contention of the appellant. *Munjhoori Bibi* v. *Akel Mahmud*(3) was a case falling within a rule like section 210 of the Estates Land Act. It was not a case of a minor. *Sakina Bibee* v. *Mahomed Ishak*(4) is in my favour. Refers to sections 7, 8, 9, 185 and 187 of the Bengal Tenancy Act; and *Arayil Kali Amma* v. *Sankaran Nambudripad*(5), when there is a provision in an Act that it shall come into force only after a certain time then there is sufficient intimation given to the parties: [see *Chidambaram Chetty* v. *Karuppan Chetty*(6), *Hope Mills* v. *Vittaldas*(7)] and arguments based on hardship to parties ought not to be listened to.

(1) (1905) A.C., 369. (2) (1912) M.W.N., 652 at p. 654.
(3) (1913) 17 C.L.J., 316. (4) (1910) 15 C.W.N., 185.
(5) (1911) I.L.R., 34 Mad., 292. (6) (1911) 9 M.L.T., 75.
(7) ((1910) 12 Bom., L.R., 730.

Ganapathigal(1). The same question arose in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(2), before BENSON and SUNDARA AYYAR, JJ., and the view of MILLER, J., was upheld in this latter case. I am free to admit that, if it was a question of first impression, I would have followed the plain language of sections 210 and 211 of the Madras Estates Land Act and treated such suits also as barred by limitation. But having regard to the *dicta* of the Privy Council in *Colonial Sugar Refining Company* v. *Irving*(3) and *Lala Soni Ram* v. *Kanhoia Lal*(4) and the fact that a Divisional Bench of this Court has held otherwise in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(2), I am inclined to follow the ruling of the said Divisional Bench. If the Divisional Bench ruling is to be so followed, the decrees of the lower Courts should be reversed and the suits remanded for disposal of the issues other than the issue of limitation, which question of limitation has been considered by both Courts. I would pass the above order, costs hitherto abiding the result.

(1) (1912) M.W.N., 652. (2) (1912) I.L.R., 38 Mad., 101.
(3) (1905) A.C., 369. (4) (1914) 25 M.L.J., 131.

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WALLIS, C.J.—I think that SADASIVA AYYAR, J., was right in following the carefully considered judgment of BENSON and SUNDARA AYYAR, JJ., in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(1), and that the principle to be applied is that where an Act contains provisions for the limitation of suits which take away altogether a vested right of suit without providing any equivalent remedy, then according to the approved rule of construction, the provisions must be considered to have been enacted subject to the implied exception that they were not to extend to such vested rights of suit which were to continue subject to the rules of limitation in force at the passing of the Act. This rule of construction was adopted to give effect to the presumed intention of the Legislature not to take away vested rights in this fashion; it is recognised in section 8 of the Madras General Clauses Act, 1891, and the provisions now in question must be taken to have been enacted with reference to it. In *Ramakrishna Chetty* v. *Subbaraya Ayyar*(1), it was held with reference to this Act that the six years' period applicable under article 116 to a registered contract continued to apply to a suit for rent under the Madras Estates Land Act which would otherwise have become barred by the coming into force of that Act at a time when the period of limitation prescribed by it for suits of this nature had already expired. In the present case the claim for rent was not barred at the date of the passing of the Act as it was kept alive under section 7 of the Limitation Act owing to the minority of the plaintiff. Sections 210 and 211 enact rules of limitation for suits under the Act, and section 211 expressly provides that section 7 and certain other sections of the Limitation Act shall not apply to suits under this Act. Thus the result of the passing of the Act, which came into force two days after it received the Viceroy's assent, was to leave no opportunity for the exercise of the plaintiff's vested right of suit, unless the provisions of section 211 (1) be read subject to an implied exception in cases where these provisions would otherwise absolutely destroy the plaintiff's right of suit which was in existence when the Act came into force. In addition to the cases cited in that judgment, I may refer to the recent decision of a Full Bench of five Judges of the Calcutta High Court—*Gopeshwar Pal* v. *Jiban Chandra*(2), where

(1) (1915) I.L.R., 38 Mad., 101.

(2) (1914) I.L.R., 41 Calc., 1125; s.c. 19 C.L.J., 549.

JENKINS, C.J., delivering the judgment of the Court after citing *Commissioner of Public Works (Cape Colony)* v. *Logan*(1), *Colonial Sugar Refining Company* v. *Irving*(2) and *Jackson* v. *Woolley*(3), observed "Here the plaintiff at the time when the Amending Act was passed had a vested right of suit, and we see nothing in the Act as amended that demands the construction that the plaintiff was thereby deprived of a right of suit vested in him at the date of the passing of the Amending Act."

These observations are applicable to the present case and I think the appeals must be allowed, the decrees of the lower Courts be reversed, and the case remanded for disposal according to law. The respondents will pay the appellant's costs of the appeals. Other costs will abide and follow the event.

SESHAGIRI AYYAR, J.—With all respects I have ventured to differ from the conclusion at which the learned Chief Justice has arrived.

The circumstances which raise the question of law are these. Before the passing of the Estates Land Act, suits for arrears of rent were cognisable only by the ordinary Civil Courts. Such suits were governed by the Indian Limitation Act. As a necessary incident of such rights, minors were entitled to institute their suits within three years of their attaining majority, if the cause of action for rent arose during their minority. The claim in the suit now under appeal relates to the arrears which accrued due in fasli 1315 when the appellant was a minor. He attained his majority in 1906. The Estates Land Act was passed by the local Legislature in March 1908. In it a provision was inserted that the Act shall come into force on the 1st of July 1908. His Excellency the Governor gave his assent to it on the 25th March 1908. The assent of His Excellency the Governor-General was given on the 28th June. The Act came into force on the 1st of July. Section 189 of the Act enacts that suits for arrears of rent shall be instituted in the Revenue Courts, and removes such cases for the cognisance of Civil Courts. Section 211 provides that certain sections of the General Limitation Act *shall not apply* to suits instituted under the Act. The minority section (7) is one of them. The present suit was instituted by the

(1) (1903) A.C., 355.
(2) (1905) A.C., 369.
(3) (1858) 8 E. & B., 764.

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appellant in the Revenue Court after the Estates Land Act came into force. It is conceded that the suit would be barred if section 7 of the Limitation Act did not apply. I am forced to the conclusion that the suit is barred. The pre-existing right, which carried with it the benefit of the Limitation Act, was to institute the suit in the Civil Court. That right could not have been sued upon under the old law in the Revenue Court. The new forum is the creature of the statute. It was designed to afford a speedy remedy to the parties. The plaintiff has chosen to avail himself of that advantage. He is also bound by the disabilities which the law imposes on such persons. I can follow the argument which claims for the plaintiff the right to institute his suit in the ordinary Civil Courts with the attendant advantage of counting in his favour a period of three years after attaining majority. To such an argument, the plea that the Legislature should not be presumed to have deprived parties of their vested rights by *post facto* legislation may apply. But a litigant cannot approbate and reprobate. He cannot claim the advantage which the new law gives without submitting to the restrictions which it imposes.

The principle that vested rights should not be taken away by implication cannot apply to the present case. Section 211 lays down that the minority section of the Limitation Act *shall not apply*. There is no room for speculation here. It is an express prohibition. If a suit is instituted under the Act, it is not open to argument that section 211 is not applicable to it. The clear indication of the Legislature takes this case out of the general rule. See per Lord HATHERLEY in *Pardo* v. *Bingham*(1). The closely reasoned judgment of BENSON and SUNDARA AYYAR, JJ., in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(2), was much relied upon in the course of the argument. I am not differing from the main propositions which that case enunciates. Excepting on one matter of detail, to which I shall refer later on, I fully concur in the conclusions therein stated. In my opinion, it is not correct to say that the plaintiff in this case is deprived of his rights by giving retrospective effect to the Estates Land Act. He acquires one of his rights only under the Act, namely, the right to sue in the Revenue Court. He had a vested right for a

(1) (1869) L.R., 4 Ch., 735. (2) (1915) I.L.R., 38 Mad., 101.

longer period of limitation before the Act came into force. As has been well stated "a statute is not retrospective . . . because a part of the requisites for its action is drawn from time antecedent to its passing" per Lord DENMAN, C.J., in *The Queen* v. *St. Mary's Whitechapel*(1). That is the position in the present case. Lord Justice BUCKLEY points out in *West* v. *Gwynne*(2): "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 with existing rights. Most Acts of Parliament, in fact, do interfere with existing rights." This *dictum* is specially applicable to enactments which while taking away some rights confer others which are no less important. See also *Ex parte Dawson*(3). On the ground that section 211 is express, and on the further ground that the principle of retrospective extinguishment of vested rights does not arise in this case, I hold that the decision in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(4) does not affect this case. In *Munjhoori Bibi* v. *Akel Mahmud*(5), *Budhu Koer* v. *Hafiz Husain*(6) and *Gopeshwar Pal* v. *Jiban Chandra*(7), there was no express provision as in section 211 of the Estates Land Act. Moreover in all those cases, a completed pre-existing right was sought to be put an end to by implication.

On the other hand, where the statute provides for a new procedure for the enforcement of rights, it is always retrospective; per Lord BLACKBURN in *Gardner* v. *Lucas*(8). In the present instance it is the procedure by which the arrears are to be recovered that is changed. The plaintiff is directed to seek redress in a Revenue Court instead of in the Civil Court. The decision of the Judicial Committee in *Soni Ram* v. *Kanhaiya Lal*(9) lays down that the Limitation Act in force at the time the suit is instituted governs the action, and not the one under which the rights accrued. That decision governs the present case. See also *Chidambaram Chetty* v. *Karuppan Chetty*(10) and *Hope Mills* v. *Vittaldas*(11). There is one

(1) (1863) 12 Q.B., 127. (2) (1911) 2 Ch., 1.
(3) (1875) L.R., 19 Eq., 433. (4) (1915) I.L.R., 38 Mad., 101.
(5) (1912) 17 C.L.J., 316. (6) (1914) 18 C.L.J., 274.
(7) (1914) I.L.R., 41 Calc., 1125; s.c. 19 C.L.J., 549.
(8) (1877) 3 A.C., 582. (9) (1913) I.L.R., 35 All., 227.
(10) (1911) 9 M.L.T., 75. (11) (1910) 12 Bom. L.R., 730.

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circumstance which has not been noticed in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(1). I stated at the outset the material dates regarding the passing of the Act and of the sanction obtained. One underlying principle of the cases which lean against retrospective operation is that if the new Act gives no days of grace for its coming into operation, but makes it law as soon as it is passed, Courts should hold that the Legislature did not intend to interfere with vested rights. But where litigants had previous notice and could have enforced their rights before the Act became law they cannot claim relief. On the day the Legislature passed the Act, it deliberately put off its operation for over three months. It did not say that it shall become law as soon as the Governor-General's assent was obtained. It purposely gave parties a period of grace during which their remedies under the law as it stood could have been enforced. The plaintiff in claiming exemption by virtue of an equity should not be heard to say that although he might have enforced his rights between March and July 1908, he can plead that the Act does not apply to him because no time was fixed for its coming into force after the assent of the Governor-General was obtained.

As I feel strongly that the plaintiff has no right to avoid the statute under which he has come to Court, I respectfully differ from the conclusion at which the learned Chief Justice has arrived and agree with SANKARAN NAIR, J., in holding that the suit is barred by limitation.

KUMARASWAMI SASTRIAR, J.

KUMARASWAMI SASTRIAR, J.—The appellant who is the Raja of Pittapur and whose estate was under the management of the Court of Wards attained majority on the 5th October 1906. He filed suits to recover rent due for fasli 1315 and claimed exemption from the bar of limitation on the ground that he had under section 7 of the Limitation Act three years from the date of his attaining majority to file suit for arrears of rent accrued due during his minority. The Deputy Collector, in whose Court the suits had to be filed under section 77 of the Madras Estates Land Act, held that section 211 of the Act applied and that the suits were barred as the plaintiff was not entitled to the benefit of section 7 of the Limitation Act. The District Judge taking the

(1) (1915) I.L.R., 38 Mad., 101.

same view confirmed the decrees of the Deputy Collector. In Second Appeal Mr. Justice SANKARAN NAIR held that section 211 of the Estates Land Act applied retrospectively and barred suits which would have been in time but for the Estates Land Act; while Mr. Justice SADASIVA AYYAR was of a contrary opinion.

The question raised in this appeal is whether section 211 is retrospective and bars suits which would have been in time if the ordinary law of limitation were applied. The point is not free from difficulty, but I am of opinion that both on principle and on the balance of authority the section ought not to be applied so as to kill causes of action that were alive on the date of the passing of the Act.

It is a well-known rule of construction that retrospective operation ought not to be given to a statute so as to take away vested rights unless that effect cannot be avoided without doing violence to the language of the enactment and that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights. I need only refer to *Reid* v. *Reid* (1) and *Lauri* v. *Renard*(2). The same view was taken by the Privy Council in *Mohamad Abdus Samad* v. *Kurban Hussan*(3), *Colonial Sugar Refining Company* v. *Irving*(4). Section 6, clause (c) of the General Clauses Act and section 8, clause (*d*) of the Madras Act I of 1891 are statutory recognitions of the same rule.

It is argued that as rules of limitation are rules of procedure and as nobody has a vested right as regards matters of procedure the plaintiff cannot plead section 7 of the Limitation Act as giving him a longer period of limitation as at the date of the suit the Estates Land Act had enacted that the section is not to apply to suits for rent. Reference has been made to *Arayil Kali Amma* v. *Sankaran Nambudripad*(5) and *Soni Ram* v. *Kanhaiya Lal*(6). As observed by MOOKERJEE, J., in *Mohamad Bibi* v. *Abdul Mohamed*(7), a statute of limitation ceases to be a statute of mere procedure where it shortens the period and is sought to be used to defeat causes of action which had accrued

(1) (1886) L.R., 31 Ch.D., 402. (2) (1892) 3 Ch.D., 402.
(3) (1903) 3 I.L.R., 26 All., 119 (P.C.). (4) (1905) A.C., 369.
(5) (1911) I.L.R., 34 Mad., 292. (6) (1913) I.L.R., 35 All., 227.
(7) (1913) 17 C.L.J., 352.

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earlier than the length of time prescribed in the new law. The distinction has always to be borne in mind between mere matters of procedure and rights of suit which the procedure affects. The effect of the decision of the Privy Council in *Soni Ram* v. *Kanhaiya Lal*(1) on cases like the present has been discussed by the Full Bench of the Calcutta High Court in *Gopeshwar Pal* v. *Jiban Chandra*(2) and I agree with the conclusion arrived at by the Full Bench that the provisions of an enactment should not, unless it is absolutely necessary, be construed so as to make it impossible to exercise a vested right of suit. As pointed out by Justice CHATTERJEE (at p. 1129) their Lordships of the Privy Council had not to consider the retrospective operation of special period of limitation provided by a local law coming into operation at once. In *Arayil Kali Amma* v. *Sankaran Nambudripad*(3), MILLER and KRISHNASWAMI AYYAR, JJ., seem to rest their decision on the ground that the new Limitation Act gave time to suitors to make applications under the old Act as the Legislature postponed the coming into operation of the Act on 1st January 1909. In *Sundaramaiyah* v. *Muthu Ganapathegal*(4) Justice MILLER who was a party to *Arayil Kali Amma* v. *Sankaran Nambudripad*(3), was of opinion that section 210 of the Estates Land Act cannot be retrospective. As the assent of the Governor-General was received only about three days before the Estates Land Act came into operation and as it is doubtful if the public knew of the assent before 1st July 1908 it cannot be said that the public had due notice. It cannot be said that they were bound to assume that consent was a mere matter of form and would be given as a matter of course especially as petitions had been sent by landlords against the measure.

The question as to the retrospective operation of section 210 was discussed in *Ramakrishna Chetty* v. *Subbaraya Ayyar*(5), where it was held that the rule of limitation in Madras Act I of 1908 was inapplicable to cases when the period of three years provided by it had expired before the Act came into force. The judgment of BENSON and SUNDARA AYYAR, JJ., deals exhaustively with the whole question and I see no reason to dissent from the view taken by the eminent Judges who decided the case.

(1) (1913) I.L.R., 35 All., 227. (2) (1914) I.L.R., 41 Calc., 1125 ; 19 C.L.J., 549.
(3) (1911) I.L.R., 34 Mad., 292. (4) (1912) M.W.N., 652.
(5) (1915) I.L.R., 38 Mad., 101.

I do not think it makes any difference whether the alteration of the period of limitation is due to a *special provision in schedule A* to the Act or to *a special section in the body of the Act*. So far as I can see there is no difference in principle between the present case and *Ramakrishna Chetty* v. *Subbaraya Ayyar*(1). In both cases the legislature shortened the period of limitation for suits for rent so far as the plaintiff was concerned and if the three years' rule in Schedule A applied, the suit would have been barred.

Some considerations were urged during the argument which I think are beside the point. It has been argued that as the Estates Land Act has prescribed a new forum which the plaintiff has elected to sue in he is precluded from seeking the benefit of the exemption conferred by section 7 of the Limitation Act. Section 77 of the Estates Land Act gives the plaintiff no option as to the forum and there is in the present case neither election nor benefit so far as he is concerned. It has also been suggested that the object of the legislature was to preserve tenants from long-standing demands. This may be so as regards causes of action arising after the Act came into force or running at its date, but I can see no grounds for supposing that the legislature intended to deprive landlords of rents justly due to them at the date of the passing of the Act.

The correct rule seems to me to be that though laws affecting limitation might abridge or enlarge periods of limitation in cases of suits or causes of action which were alive at the date when the new enactment came into force and which under the old law would expire afterwards, the change cannot unless there is a clearly expressed intention to the contrary either by apt words in the enactment or otherwise, be retrospective so as to destroy rights of suits which were alive on the date.

I agree with the Chief Justice and would allow the Letters Patent Appeals and reverse the decisions of the Courts below and remand the suits for disposal. The respondents will pay the appellant's costs of these appeals. Other costs will abide and follow the result.

C.M.N.

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(1) (1915) I.L.R., 38 Mad., 101.