

which we can draw, more especially in the absence of an affidavit to the contrary by the counsel who appeared before him is that the remaining points were not urged and were definitely abandoned.

[*The remainder of the judgment is not required for the purpose of this report—Ed.*]

C. H. O.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Martinsau.

Bhagat GOBIND DAS, ETC.—(DEFENDANTS)

Appellants

versus

RUP KISHORE AND OTHERS—(PLAINTIFFS)

Respondents.

1923

May 21.

Letters Patent Appeal No. 193 of 1922.

Indian Limitation Act, IX of 1908, Article 177—Application to bring legal representative of a deceased defendant or of a deceased respondent on the record—whether the period of six months has been reduced to 90 days by the Amending Act, XXVI of 1920, section 2—Authenticated text of an Act, where to be found—Indian Evidence Act, I of 1872, section 78—Interpretation of Statutes.

Held, that the text of an Act of the Governor-General in Council as published in the official Gazette must be taken to be the authorised text of the Act, *vide* section 78 of the Indian Evidence Act, 1872.

Held also, that when the words of an Act admit of but one meaning, a Court is not at liberty to speculate on the intention of the Legislature, and to construe them according to its own notions of what ought to have been enacted.

Maxwell's Interpretation of Statutes, VI Edition, page 10 referred to.

Held consequently, that the words "six months" which occur opposite Article 177 in the authenticated text of the Limitation Act have not been altered by anything contained in the Amending Act of 1920, and that the period of limitation for making an

1923

GOBIND DAS
v.
RUP KISHORE.

application to implead the legal representative of a deceased defendant or of a deceased respondent is still six months.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Harrison, dated the 3rd July 1922.

TEK CHAND, SARDHA RAM and FAKIR CHAND, for Appellants.

DALIP SINGH, PIARE LAL and KANWAR NARAIN, for Respondents.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—The question of law, upon which we are invited to express our opinion in this case, is whether the period of six months for an application under the Code of Civil Procedure to have the legal representative of a deceased defendant or of a deceased respondent made a party, as prescribed by Article 177 of the First Schedule to the Indian Limitation Act, IX of 1908, has been reduced to 90 days. Now, section 2 of the Indian Limitation and Code of Civil Procedure (Amendment) Act, XXVI of 1920, provides that in the third division of the First Schedule to the Indian Limitation Act, 1908, in Articles 176, 178 and 179 for the word "Ditto" in the second column the words "ninety days," "six months", and "ninety days", respectively, shall be substituted. It will be observed that this section deals directly with only three Articles, namely 176, 178 and 179, and makes no reference to Article 177 with which we are concerned in the present case. It is beyond dispute that the period of six months as originally prescribed by Article 176 has now been reduced to 90 days, and the question for determination is whether this amendment of Article 176 has resulted in a corresponding amendment of Article 177 which immediately follows the amended article:

In order to answer the question we must turn to the Indian Limitation Act of 1908 as passed by the Legislature and find out the exact word or words used in the second column relating to Article 177. Now, the aforesaid Act, was published in the *Gazette of India* in August 1908, and the First Schedule is so printed that, while Articles 175 and 176 along with

certain Articles preceding them appear on one page, Articles 177, 178 and a few other Articles appear on the succeeding page; and the period of limitation under these Articles is indicated in the following manner:—

1923

GOBIND DAS
v.

RUP KISHORE.

Page 190.

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| 175. | For payment of the amount of a decree by instalments. | six months | The date of the decree. |
| 176. | Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party. | Ditto | The date of the death of the deceased plaintiff or appellant. |

Page 191.

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| 177. | Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party. | Six months | The date of the death of the deceased defendant or respondent. |
| 178. | Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court. | Ditto | The date of the award. |

This is undoubtedly the authorised text of the Act printed by order of Government, and it is clear that the words "six months," which occur opposite Article 177, have not been modified, either directly or indirectly, by anything contained in the Amending Act of 1920.

Our attention has however, been invited to the text of the Act as printed in the Unrepealed General Acts of the Governor-General in Council (1909 Edi-

1923

GOBIND DAS
v.
RUP KISHORN.

tion) and also to the 1908 and 1919 Edition of the Act published in book form under the heading:—

“ GOVERNMENT OF INDIA
LEGISLATIVE DEPARTMENT.”

In all these books Articles 175 to 178 all appear on the same page, and the period of limitation under these Articles is described in the following manner:—

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| 175. | For payment of the amount of a decree by instalments. | Six months | The date of the decree. |
| 176. | Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party. | Ditto | The date of the death of the deceased plaintiff or appellant. |
| 177. | Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party. | Ditto | The date of the death of the deceased defendant or respondent. |
| 178. | Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court. | Ditto | The date of the award. |

On the other hand, we find that in the 1910 Edition of the Act the aforesaid Articles are printed in the same way as in the *Gazette of India*, and that the words “six months” occur opposite Article 177.

In view of the confusion created by the various copies of the Indian Limitation Act, 1908, referred to above, it is necessary to decide which text of the Act should be consulted in order to determine the controversy as to whether the Act, as it emerged from the Legislative Council, contained the expression “Ditto”

or the words "six months" opposite Article 177. Now section 18 of the Indian Councils Act, 1861 (24 and 25 Vict. c. 67), which was in force at the time when the Indian Limitation Act of 1908 was passed, authorised the Governor-General in Council to make rules prescribing *inter alia*, the mode of promulgation and authentication of the laws made by the Council, and one of the rules framed under this section provides that—

"When a bill is passed by the Council, a copy thereof shall be signed by the President, and, when the Governor-General has declared his assent thereto, such copy shall be signed by the Governor-General, and the Bill shall be published as soon as possible in the official Gazettes under the signature of the Secretary, as an Act of the Governor-General in Council. Such publication shall be made in the *Gazette of India*, in English * * * * *

(*Vide* General Statutory Rules and Orders, Volume I, 1915 Edition, page 15, rule 34). It was in accordance with this rule that the Limitation Act was published in the *Gazette of India*, and under sub-section (2) of section 78 of the Indian Evidence Act the text as published in the Gazette must be taken to be the authorised text of the Act. The books containing the Act, which have been relied upon by the learned *Vakil* for the appellants, do not purport to have been printed by order of Government and cannot be used under the aforesaid sub-section for the purpose of proving the provisions of the Indian Limitation Act as passed by the Legislature.

It is possible, nay probable, that the draftsman of the Amending Act of 1920 had before him a copy of the Indian Limitation Act in which Articles 175 to 178 were all printed on the same page, and he accordingly thought that when the period of limitation under Article 176 was altered to 90 days, the word "Ditto" opposite Article 177, which existed in his copy of the Act, would be regarded as equivalent to 90 days, and that the retention of that word would automatically reduce the period of limitation under Article 177. It is not, however, for the Court to speculate as to the intention of the Legislature if that intention has not been carried into effect by the language used. As pointed out by Maxwell in his book on the Interpretation of Statutes,

1923

GOBIND DAS
v.
RUP KISHORE.

1923

GOBIND DAS
v.
RUP KISHORE.

6th Edition, at page 10, when the words, admit [of but one meaning :—

“ A Court is not at liberty to speculate on the intention of the Legislature, and to construe them according to its own notions of what ought to have been enacted. Nothing could be more dangerous than to make such considerations the ground for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such views is, in truth, not to construe the Act, but to alter it. But the business of the interpreter is not to improve the statute, it is, to expound it. The question for him is not what the Legislature meant, but what its language means, *i.e.*, what the Act has said that it meant. To give a construction contrary to, or different from, that which the words import or can possibly import, is not to interpret law, but to make it, and Judges are to remember that their office is *jus dicere*, not *jus dare*.”

It is urged that the text contained in the *Gazette of India* makes the amendment of Article 178 superfluous, for the word “ Ditto ” that occurred opposite that Article, would attract to it the words “ six months ” printed in the *Gazette* opposite Article 177, and it was consequently unnecessary to provide in the Amending Act of 1920 that the words “ six months ” be substituted for the word “ Ditto ” in Article 178. It is contended that the interpretation of an enactment should be such as not to render any portion of it superfluous. This consideration, however, applies only when the language of the Statute is capable of two rival meanings, but in the case before us the language is clear and unambiguous and there is, therefore, no scope for the application of the rule against superfluity.

We must accordingly hold that the words “ six months ” that occur opposite Article 177 in the authenticated text of the Limitation Act, have not been altered by anything contained in the Amending Act of 1920, and that the period of limitation for making an application to implead the legal representative of a deceased defendant or of a deceased respondent is still six months. It is regrettable that the question of amendment should depend upon the use of the word “ Ditto ”, which has, it appears, been used only in those copies of the Act in which Article 177 has been printed on the same page as the preceding Article. It is certainly desirable that the word “ Ditto ” should be omitted altogether, and

that it should be replaced by words mentioning the actual period which it was intended to represent.

In this view of the law it is unnecessary for us to deal with the contention urged on behalf of the respondent that sufficient cause has been shown for setting aside the abatement. We accordingly dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Campbell.

WALLU—Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 30 of 1923.

1923

May 31.

Criminal Procedure Code, Act V of 1898, sections 236, 237 (1) and 238 (2)—whether on appeal a conviction for murder can be altered to one under one of the sections of the Penal Code dealing with offences against property.

Held, that where an accused person has been charged only with murder and has been convicted and the conviction is set aside by the High Court on appeal that Court cannot alter the conviction to one under one of the sections of the Penal Code dealing with offences against property.

Queen-Empress v. Yusuf (1), followed.

Criminal Procedure Code, 1898, sections 236, 237 (1) and 238 (2), referred to.

Appeal from the order of D. Johnstone, Esquire, Sessions Judge, Ferozepore, dated the 14th October 1922, convicting the appellant.

COOPER, for Appellant.

DES RAJ Sawhney, Public Prosecutor, for Respondent.