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the proposition that a devise to 'dharma' is void, because the word 'dharma', without any qualifying expression, is too vague an indication of the testator's intention to constitute a valid gift to charity. A specific bequest, for the purpose of particular charity, stands on a different footing.

It may be, however, that the will (exhibit No. 3) is invalid, wholly or in part, on another ground, viz., that the testator had no power to bequeath his undivided share of joint family property: *Gangubai v. Ramanna*⁽¹⁾ and *Vrandavandas v. Yamunabai*⁽²⁾. There has been no finding, by the Courts below, on the question, whether the property in suit, or any part of it, was joint family property at the date when the will (exhibit No. 3) was executed. If it were so, the will, so far as it affects to deal with the testator's interest in such undivided property, would be invalid. The decrees of both the Courts below must be reversed, and the case remanded for a new decision, with reference to the issue above suggested. Costs to follow final decision.

Decrees reversed.

(1) 3 Bom. H. C. Rep. 66, A. C. J.

(2) 12 Bom. H. C. Rep. 229.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Kimball.

September 12.

KHUSA'LBHA'I AND OTHERS (PLAINTIFFS), APPLICANTS, v. KABHAI AND OTHERS (DEFENDANTS), OPPONENTS.*

The Civil Procedure Code (Act X of 1877), Section 386—Act XII of 1879, Sections 60 and 108—Limitation Act XV of 1877, Schedule II, Article 171 B—Deceased defendant—Application to make legal representative defendant—Construction of Limitation Acts.

Subsequently to the institution of the plaintiffs' suit, one of the defendants died, and his son, as his legal representative, was made a defendant in his stead. The new defendant (*inter alia*) objected that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that, therefore, the suit should abate, as provided by the last clause of section 386 of the Civil Procedure Code Act X of 1877 (introduced by the amending Act XII of 1879) and article 171 B of the Limitation Act XV of 1877, which prescribes a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to a suit.

* Extraordinary Application, No. 26 of 1881.

When the amending Act XII of 1879 was passed,—that is, on the 29th of July, 1879,—the original defendant had been dead more than six months; but the plaintiff made an application to have the representative of the deceased defendant made a defendant before the publication of the Act in the local gazette.

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Held that the provisions of article 171 B of the Limitation Act should not be given retrospective effect, and that the plaintiffs' application was not time-barred. The general rule as laid down in *Reg. v. Dorabji*(1)—that “an Act of limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment, except so far as its operation is expressly excluded or postponed”—admits of the qualification that, when the retrospective application of a statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively.

THIS was an application, in the Court's extraordinary jurisdiction, for the reversal of an order of S. Tagore, Judge of Surat, confirming an order of Khan Saheb E. M. Modi, Subordinate Judge of Jambusar.

The plaintiffs sued the defendants to recover possession of a piece of land alleged to have been sold to them under a deed of sale dated 9th April, 1875, or the price paid for it with interest. The defendants answered that they had completed the sale by making over the plaintiffs possession of the property; that they lost that possession afterwards in consequence of the obstruction caused by one Bai Amrut and others, and that, therefore, they, the defendants, were no longer responsible.

One of the defendants subsequently died, and his legal representative was made a defendant in his stead. The new defendant (*inter alia*) objected that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that, therefore, the plaintiffs claim must necessarily abate under the last clause of section 368 of Act X of 1877 introduced by Act XII of 1879, and article 178 B of Act XV of 1877, which prescribes a period of sixty days within which to apply to have the representative of a deceased defendant made a defendant.

Another of the defendants also died, and his son was made legal representative on the record. The latter also made the same defence under the same circumstances.

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The Subordinate Judge and, on appeal, the District Judge, following the principle laid down in *Reg. v. Dorabji*⁽¹⁾, held the claim barred, and directed the suit to abate. The plaintiffs applied to the High Court.

Gokuldas Kahandas Parekh for the applicants.—When this suit was filed, neither the Code of Civil Procedure (Act X of 1877) nor the Limitation Act XV of 1877 had been amended. The amending Act XII of 1879 received the assent of the Governor General on the 29th July, 1879, when both the defendants had been dead six months. Section 60 of the amending Act introduced into section 368 the words “when the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate”;—section 180 added to Schedule II of the Limitation Act XV of 1877, art. 177 B —“Under section 368 of the same Code [the Code of Civil Procedure] where the representative of a deceased defendant was made a defendant sixty days from the date of the defendant’s death.” The effect of these amendments is to require a plaintiff to apply, within sixty days of the defendant’s death, to have his legal representative made a defendant. At the date of the passing of Act XII of 1879 the defendants had been dead six months, and it was physically impossible for the plaintiffs to have carried out the Legislature’s direction. The Legislature could not have intended to deprive the plaintiffs of their right to revive their suit without any notice whatever, for the amending Act came into force the same day that it was passed. The application in this case was made as soon as possible. It was made before the publication of the amending Act in the local gazette. It would be a hardship to give retrospective operation to the Act : 24 and 25 Vict., c. 67, sec. 20 ; Maxwell on Statutes, 198 ; *The Queen v. Leeds and Bradford Railway Company*⁽²⁾.

Shivshankar Govindram, contra.—The words of the amending Act are imperative and must be given effect to, whatever may be the hardship. As ruled in *Reg. v. Dorabji*, a law of procedure governs all proceedings to which it applies from the moment of its enactment, except so far as its operation is expressly postponed, which it is not in this case.

(1) 11 Bom. H. C. Rep. 117.

(2) 21 L. J. M. C. (N. S.), 193.

MELVILL, J.—The decision of this Court in the matter of *Reg. v. Dorabji*⁽¹⁾, on which the Courts below rely, is, no doubt, in point. That case may have been rightly decided; for the Court was there dealing with a statutory provision which was beneficial to the liberty of the subject, and, therefore, perhaps, there was no reason, (but the contrary) for presuming that the Legislature did not intend that the words of the statute should receive the widest possible application. But we think that it is somewhat too broadly stated in that case that “an Act of limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment, except so far as its operation is expressly excluded or postponed.” This general rule must admit of the qualification that, when the retrospective application of a statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively. Thus in the *London and Delhi Bank v. Orchard*⁽²⁾ the Privy Council, in discussing the literal construction which had been put on sections 20 and 21 of Act XIV of 1859, observe: “Such a construction would cause great inconvenience and injustice, and give the Act an operation which would retrospectively deprive the creditor of a right which he had under the law as it existed in the regulation provinces at the time of the passing of the Act, and in the Punjab at the time of the introduction of it. Their Lordships are of opinion that such a construction would be contrary to the intention of the Legislature.” Similarly, in the present case, we think that article 171 B, Sched. II, of Act XV of 1877, ought not, if possible, to be retrospectively construed. When that article was introduced into the statute of limitation by Act XII of 1879, the deceased defendant had been dead for six months, and it was, therefore, impossible for the plaintiffs to comply with the requirements of the article, namely, that an application to have the representative of a deceased defendant made a defendant should be presented within sixty days from the date of the defendant’s death. Consequently, to put a retrospective construction upon the article would be to deprive the plaintiffs absolutely of the

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(1) 11 Bom. H. C. Rep. 117.

(2) L. R., 4 Ind. Ap. 127, 135.

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right which they previously had, and which all plaintiffs subsequently had, to revive their suit ; and this would be an injustice which cannot be presumed to have been within the intention of the Legislature.

Another consideration, tending to the same conclusion, is that there was no postponement of the operation of Act XII of 1879, but the Act came into force at the moment at which it received the assent of the Governor General. The plaintiffs, therefore, and others similarly situated, had no such notice as might have enabled them to anticipate the divestiture of their right of revival. This is a consideration which has weighed much with Courts in England and in this country when dealing with similar questions (see *Wright v. Hale*⁽¹⁾ ; *Towler v. Chatterton*⁽²⁾ ; *Ramchandra v. Soma*⁽³⁾ ; *Abdul Karim v. Manji Hansraj*⁽⁴⁾ ; *In the matter of the petition of Ratansi Kaliaji and others*⁽⁵⁾ . In the *Queen v. The Leeds and Bradford Railway Company*⁽⁶⁾ it was held that the 11 and 12 Vict., c. 43, sec. 11, which limits the time for taking summary proceedings before justices to six months from the time when the matter complained of arose, was fatal to proceedings begun after the passing of the Act, in respect of a matter which had arisen more than six months before the Act was passed. But this was not on the ground that a statute of limitation is necessarily retrospective, but because there was an interval of six weeks between the passing of the Act and its coming into operation ; and the concession of this interval was thought to show that the hardship in question had been in the contemplation of the Legislature, and had been thus provided for. If it had been otherwise, the decision would probably have been different. Lord Campbell said : “ 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 proceed-

(1) 6 H. & N. 227.

(4) I. L. R., 1 Bom. 295, 302.

(2) 6 Bing. 258.

(5) I. L. R., 2 Bom. 148.

(3) I. L. R., 1 Bom. 350, note.

(6) 21 L. J. (M. C.) 193.

ing respecting antecedent damages or injuries might be taken before the proper tribunal." The observations of Wightman, J., were to the same effect.

The orders of the Courts below must be reversed, and the plaintiff's application of the 12th August, 1879, to enter the names of the legal representatives of the deceased defendants, must be complied with, and the plaintiffs must have the costs of the appeal and of this application.

Order reversed.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

MANOHAR, APPLICANT, *v.* GEBIA'PA, OPPONENT.

October 5.

Dekkhan Agriculturists' Relief Act XVII of 1879, Sections 47 and 48—Application for execution—Conciliator—Limitation Act XV of 1877, Section 14, para. 3 Article 179, Schedule 2—Court.

A conciliator appointed under the Dekkhan Agriculturists' Relief Act XVII of 1879 is not a Court. The presentation, therefore, to a conciliator of an application for execution of a decree within the period of limitation does not save the limitation, if the application to the proper Court be time-barred: Act XV of 1877, sec. 14, para. 3; Sched. 2, art. 179; Act XVII of 1879, secs. 47 and 48.

The presentation, to any civil Court, of an application for execution of a decree passed before 1st November, 1879, (the date on which the Dekkhan Agriculturists' Relief Act came into force,) to which any agriculturist residing within any local area for which a conciliator has been appointed is a party, is no legal presentation at all, if the application be not accompanied by the conciliator's certificate.

THIS was an application, in the High Court's extraordinary jurisdiction, for the reversal of an order of W. H. Newnham, Judge of Poona, reversing an order of the Subordinate Judge of Barsi.

Gebiapa held a decree against Manohar. The last application made to enforce it was on the 7th of July, 1877. Within three years of this date, Gebiapa applied to the Subordinate Judge of Barsi to have the decree fully executed. The Subordinate Judge ruled that the application was one to which the Dekkhan Agriculturists' Relief Act XVII of 1879 applied, and that it must, therefore, be accompanied by a conciliator's certificate. Gebiapa was accordingly directed to procure it. Gebiapa applied to a

* Extraordinary Application, No. 22 of 1881.