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whose title to sue had accrued after the alienation must be regarded as derived from the person who was the heir presumptive at the time of the alienation. In *Pershad Singh v. Chedee Lall* (1), the widow was sued for acts of waste and alienation alleged to have taken place during the lives of the mothers of the several plaintiffs who were then the next heirs to the [516] property; and Jackson, J., said: "At the time when the alienation complained of occurred, the mothers of the plaintiffs were alive and were then the next heirs entitled to this property, and they might have brought the suit which the plaintiffs have now brought, but they did not do so. They allowed more than twelve years to elapse, and this cause of action is not revived in favour of the plaintiffs who have since been born and have now arrived at majority." So, also, in the present cause the latest cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiffs' mother in 1869, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was barred in 1875.

We, therefore, confirm the decree of the lower appellate Court with costs.

Decree confirmed.

14 B. 516.

APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Telang.

JAVANMAL JITMAL (*Original Plaintiff*), *Appellant v. MUKTABAI*
(*Original Defendant No. 1*), *Respondent*.* [21st February, 1890.]

Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 56—Act XXIII of 1886, s. 9—Proviso added to s. 56 of Act XVII of 1879—Its applicability to instruments executed before it came into force—Construction of statutes.

The general rule is that Acts are prospective, not retrospective, in their operation. To this rule there are two exceptions (a) when Acts are expressly declared to be retrospective, (b) when they only affect the procedure of the Court.

The proviso added to s. 56 (2) of the Dekkhan Agriculturists' Relief Act [517] (XVII of 1879) by Act XXIII of 1886, is not retrospective in its operation, as it involves not merely a change of procedure, but also a change of existing rights.

The plaintiff purchased a house from the defendant, who was an agriculturist, under a deed of sale dated 23rd June 1886. The deed was registered under the

* S A. No. 609 of 1888.

(1) 15 W. R. C. R. 1.

(2) NOTE.—Section 56 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) provides as follows:—No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar." To this section a proviso was added by Act XXIII of 1886, which came into force on 1st January, 1887. The proviso runs thus:—"Provided that nothing herein contained shall apply to any instrument required by s. 17 of the Indian Registration Act, 1877, to be registered under that Act."

Registration Act (III of 1877). On the 1st December, 1886, the plaintiff sued to recover possession of the house.

The defendant pleaded that the sale-deed was invalid for want of consideration. Both the lower Courts rejected the claim on the ground that the sale-deed not having been executed according to the provisions of s. 56 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was inadmissible and inoperative.

In second appeal it was contended for the plaintiff that as the amending Act XXIII of 1886 came into force after the institution of the suit, but before the suit came to a hearing, the plaintiff was entitled to the benefit of the proviso added to s. 56 by the amending Act, whereby it was provided that s. 56 was not to apply to instruments which were duly registered under the Indian Registration Act (III of 1877).

Held that the proviso to s. 56 of Act XXIII of 1886 did not apply, as it was not retrospective.

Held, also, that the mere admission in the defendant's written statement of the execution of the sale-deed did not dispense with the necessity of establishing affirmatively the validity of the deed, which was expressly impugned by the defendant.

[R. 31 B. 630=9 Bom.L.R. 917; 26 M. 440; D., 8 C.P.L.R. 22; 16 Ind. Cas. 934=12 M.L.T. 437=(1912) M.W.N. 960.]

SECOND appeal from the decision of J. W. Walker, District Judge of Ahmednagar, in appeal No. 247 of 1887 of the District File.

The plaintiff sued to recover possession of a house, alleging that he had purchased it from the defendant No. 1 under a deed of sale dated 23rd June, 1886. The suit was filed on 1st December, 1886. The deed was registered under the Registration Act (III of 1877).

The defendant No. 1 pleaded that she was an agriculturist, and that the sale-deed was fraudulent and invalid for want of consideration.

Both the lower Courts found that the defendant No. 1 was an agriculturist at the date of the sale-deed, but not at the date of the suit. And they held that as the deed was not registered according to the provisions of s. 56 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) it was inadmissible in evidence and inoperative. The plaintiff's claim was, therefore, rejected.

The plaintiff preferred a second appeal to the High Court.

[518] *Mahadev C. Apte*, for appellant.—Act XXIII of 1886 was in force at the time the sale-deed was tendered in evidence. The proviso added to s. 56 by that Act applies.

[COURT:—Is that proviso retrospective?]

I submit it is. It affects an alteration in procedure, and the general rule is that Acts relating to procedure are retrospective. They govern suits pending at the time they come into force. The case of *Shivram Udaram v. Kondiba Muktoji* (1) would show that the Act is retrospective. It, therefore, follows that the deed of sale is admissible in evidence, as it is registered under the Registration Act III of 1877. But, assuming that the deed is inadmissible, it is unnecessary to put it in evidence, as it is admitted by the defendant in her written statement.

Daji Abaji Khare, for respondents.—I contend that Act XXIII of 1886 is not retrospective. The object of s. 56 is to afford protection to the illiterate agriculturist against fraud and deceit. With that view the Legislature has taken care that a certain class of instruments executed by an agriculturist should be written and attested in a particular form,

(1) 8 B. 340.

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failing which such instruments are not only inadmissible but also inoperative as against the agriculturist. Section 56, therefore, not only affects the procedure of Courts, but also confers on the agriculturist substantive rights. And the proviso to this section not only changes the procedure, but also affects existing rights. The proviso, therefore, is not retrospective. Section 56 of the Dekkhan Agriculturists' Relief Act may be compared to ss. 17 and 50 of the Registration Act III of 1877. It has been held that s. 50 of the Registration Act is not retrospective. Refers to *Rubchand Dagdas v. Davlatram Vithalrav* (1). Under s. 6 of the General Clauses Act I of 1868 a suit is governed by the registration law in force at the institution of the suit, and not by that which comes into force at the time the suit comes on for hearing—*Oghra Singh v. Ablakhi Kooer* (2); *Guduri Jagannadham v. Rapaka Ramanna* (3); *Syud Mahomet Hussein v. Hadzi Abdullah* (4); *Doolubdass Pettamberdass* [519] v. *Ramloli Thackoorseydass* (5); *The Gujarat Trading Company, Limited v. Trikamsi Velji* (6); *Padgaya Somshetti v. Baji Babaji* (7).

JUDGMENT.

TELANG, J.—This suit was instituted by the plaintiff to recover certain immoveable property in the Ahmednagar District, on the allegation that such property had been sold to him by the defendant under a deed of sale duly executed. The execution of the deed was admitted, but the defendant pleaded, among other defences, that the deed had been obtained from her fraudulently and without payment of consideration. Both the Courts below held that the deed, not having been executed according to the provisions of s. 56 of the Dekkhan Agriculturists' Relief Act, 1879, was under that section "inadmissible," and they have accordingly dismissed the plaintiff's suit. On appeal before us two questions have been raised: firstly, whether the proviso to s. 56 of the Dekkhan Agriculturists' Relief Act, enacted by Act XXIII of 1886, is or is not applicable to the case; secondly, whether the plaintiff is not, in any event, entitled to a decree upon the defendant's admissions contained in her written statement. The latter point is easily disposed of. The admission in the defendant's written statement is like that which the Court had to deal with in *Shankar Ramchandra v. Vishnu Anant* (8), as to which West, J., said that the terms of the document "and the relations thence arising are not so admitted in the defendant's written statement as to have made all proof of the document superfluous." So here the defence denies the validity of the deed, and charges that the whole transaction was fraudulent on the part of the plaintiff. On that state of the pleadings it plainly lies on the plaintiff to prove his case in the regular way and under the Dekkhan Agriculturists' Relief Act to establish affirmatively the validity of the deed under which he claims. And if the Legislature has prohibited the Courts from acting upon such a deed, the prohibition is not avoided merely by an admission of the execution of the deed by the defendant.

The question, therefore, is whether there is any such legislative prohibition. It is admitted that at the time when the deed was executed, Act XVII of 1879 was in force. By s. 56 of that [520] Act it was provided that "no instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge

(1) 6 B. 495.
(4) 3 C. 727.
(7) 11 B. 469.

(2) 4 C. 536.
(5) 5 M. I.A. 109.
(8) 2 B. 67 (69).

(3) 7 M. H. C.R. 248.
(6) 3 B.H. C. R.O.C.J. 45.

upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon by any such person or by any public officer unless such instrument is written by, or under the superintendence of, and is attested by, a Village-Registrar." Now all rights created by a contract are ordinarily governed by the law existing at the date of the contract (see *Vinayak v. Mahadaji* (1) and *In the matter of the petition of Ratansi Kalianji* (2)). By that law the deed here in question could not be enforced either by the Courts, or, to put it shortly, by any arbitrator or public officer. And as "it is only through the possibility of judicial enforcement that an agreement becomes practically binding" (per West, J., *In the matter of the petition of Ratansi Kalianji* (2)), this deed was not binding between the parties to it, and did not create the legal relation of vendor and purchaser between them. Upon that deed the plaintiff filed this suit on the 1st of December, 1886. At that date, s. 56 of Act XVII of 1879 still continued in force in its original form, as far as this case is concerned. According to ordinary rules, therefore, the decision of the suit must be governed by that Act (see *Hitchcock v. Way* (3) and *The King v. The Inhabitants of Wix* (4)). It happened, however, that after the institution of the suit and before it came to a hearing, Act XXIII of 1886 came into operation, and by that Act a proviso was added to s. 56, whereby it was enacted that s. 56 was not to apply to instruments which were duly registered under the Indian Registration Act III of 1877. The deed of sale in the case before us was so registered, and we are asked to hold that that deed may now be acted upon, as the plaintiff is entitled in this suit to claim the benefit of that proviso. This, however, is [521] inconsistent with s. 6 of the General Clauses Act I of 1868. For, although the Act of 1886 did not, in terms, repeal the previous Act, a proviso such as the one we are here dealing with is within the limits covered by it really equivalent to a repeal of the section, as pointed out by Blackburn, J., in *Butcher v. Henderson* (5). See also *Shivram Udaram v. Kondiba Muktabai* (6).

But it is said that the Dekkhan Agriculturists' Relief Act is a law of procedure, and that in accordance with the general principle that statutes regulating procedure are retrospective, this case should be governed by the provisions of Act XXIII of 1886 which was in force at the time when the case came to a hearing before the Court. The section of the General Clauses Act already referred to and the case of *Ratanchand Srichand v. Hanmantrav Shribakas* (7) together with the remarks of the Privy Council in *Mungul Pershad v. Grija Kant Lahiri Chowdhry* (8) would seem to afford one answer to this argument. But it may be also considered, on more general grounds. It is unnecessary now to discuss the cases touching the retro-active operation of statutes of procedure from *Wright v. Hale* (9) downwards. They were all fully examined in *Ratansi Kalianji's case* (2). The Court was not unanimous in that case, but even the Judges who were in the minority

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(1) Printed Judgments for 1873, p. 117.

(3) 6 A. & E. 943 cited, 2 B. 162.

(5) L.R. 3 Q.B. 338.

(7) 6 B.H.C.R. A.C.J. 166.

(9) 30 L.J. Exch. 40=6 H. & N. 227.

(2) 2 B. 148, 180, 183, 196 (216).

(4) 2 B. & Ad. 297.

(6) 8 B. 345.

(8) 8 I.A. 123 (133)=8 C. 51 (60).

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proceeded to a considerable extent upon the indications furnished by the Legislature itself of an intention that ss. 341—2 of act X of 1877 should be construed retrospectively. They did not, at all events, expressly dissent from the rule laid down by Westropp, C.J., that where a change in procedure is complicated with a change of existing rights the principle laid down in *Wright v. Hale*(1) does not apply. And the cases cited by Westropp, C. J., of *Pryor v. Pryor*(2) and others certainly seem to support that rule. (See also Maxwell on Statutes, p. 273, 2nd ed., and compare the *Midland Railway Company v. Pye* (3)) In the case before us the application of Act XXIII of 1886, if it can be properly said [522] to involve a change of procedure, certainly involves such a change complicated with a change of existing rights, quite as strong as those which had to be dealt with in *Pryor v. Pryor* (2). And it is not contended that there is anything to indicate that the Legislature meant that change to operate retrospectively. But a further question arises here. Is the change introduced by Act XXIII of 1886 properly called a change of procedure? The answer to that depends upon the answer to the question whether the original s. 56 is to be regarded merely as a section relating to procedure. Now that section lays down, first, that a document not executed in the mode therein prescribed is not to be admitted in evidence by any Court or arbitrator; and secondly, that no Court or arbitrator or public officer is to act upon it. As regards the first branch of the section, there is, no doubt, authority for holding that an enactment regulating the admissibility or otherwise of evidence must be applied in all cases heard after it has come into operation. This may for the present be conceded, although, having regard to *Thistleton v. Frewer* (4), *Wright v. Greenroyd* (5) and *Leman v. Houseley* (6) the point might have to be examined more closely if it became necessary to decide it. But can the second branch of the section above referred to be properly regarded as dealing with a matter of procedure? When it is said that no Court or arbitrator shall "act upon" a certain document, surely something more is dealt with than mere procedure. The provision applies *ad litem decisionem*, not merely *ad litem ordinationem*. The decision of Lord Chancellor Hatherley in *Hicks v. Powell* (7) upon s. 13 of the old Registration Act XVI of 1864 affords strong support to this view. The words of that Act were almost exactly identical with those used in s. 56 of the Dekkhan Agriculturists' Relief Act, save in so far as the latter are somewhat stronger. But both Acts render an unregistered document inadmissible in evidence, and further forbid any Court or arbitrator from acting upon it. It was argued in *Hicks v. Powell* (7) that the Registration Act of 1864 did not [523] make an unregistered deed void, but only affected the power of giving it in evidence in an Indian Court, and *Leroux v. Brown* (8) and other cases were cited. But Lord Hatherley, upholding the view of Sir G. M. Giffard, then Vice-Chancellor, held that those words did not deal with a "mere matter of evidence", but in substance rendered the document invalid and inoperative. It seems to me that on the true construction of the Dekkhan Agriculturists' Relief Act, having regard to its general purpose as enunciated by the Legislature and expounded by West, J.,

(1) 30 L.J. Exch., 40 6 H. & N. 227.

(3) 10 C B. (N.S.), 179=30 L.J. C.P. 314.

(5) 1 B. & S. 758=31 L.J. Q. B. 4.

(7) L. R. 4 Ch. Ap. 741.

(2) L.R. 19 Eq. 595=L.R. 10 Ch. 469.

(4) 31 L.J. Exch. 230.

(6) L. R., 10 Q. B. 66.

(8) 16 Jur. 1021=12 C. B. 801.

in *Shivram Udaram v. Kondiba Muktaji* (1) and other authorities, and having regard further to the specific provisions contained in s. 56 itself, there are even stronger reasons for holding that the Legislature by s. 56 intended to invalidate a document not executed in conformity with its provisions than there were in the case of s. 13 of Act XVI of 1864. The case of *Gopee Mohun Takoor v. Raja Radhanat* (2), mentioned by the Court in the judgment in *Vinayak v. Mahadaji* (3), is distinguishable. There the Privy Council looking to "the terms and spirit" of the Bengal Regulation there in question, which be it remarked was apparently applicable only to Mofussil Courts, came to the conclusion that on the true construction of it the document executed contrary to its provisions was not intended to be invalidated. Of the other cases mentioned in the same judgment it is enough to say that while they lay down the general principle distinguishing between a law which invalidates a contract and a mere *lex fori* that forbids its reception in evidence they do not afford much guidance upon the question whether in the particular case before us the provisions of s. 56 of the Dekkhan Agriculturists' Relief Act are to be treated as falling under the one or the other class. It is to be further remarked that no question apparently arose in the case itself then before the Court about the application of s. 6 of the General Clauses Act or of the principle embodied in it.

Upon the whole, therefore, it appears that this case must be governed by s. 56 of the Dekkhan Agriculturists' Relief Act as it stood before the recent amendment, and it being admitted [524] that on that footing the case has been correctly decided by the District Judge we must confirm his decree, with costs.

SCOTT, J.—Mr. Justice Telang has discussed this case in an able and exhaustive separate judgment. I will only say a few words on the chief principle involved.

The main question turns on whether the rule laid down by s. 56 of the Agriculturists' Relief Act, 1879, is applicable alone to the present case, or whether it is modified by the proviso added to that section by Act XXIII of 1886. The rule is that no instrument creating an obligation or a charge on property executed by an agriculturist shall be admitted in evidence or acted upon by Judges or public officers, unless it is written by, or under the superintendence of, and is attested by, a Village-Registrar. The proviso is that this special form of registration should not be required in the case of any instrument required by s. 17 of the Registration Act III of 1877 to be registered. The intention of the Legislature in framing s. 56 was to protect agriculturists by requiring their deeds to be executed in a certain formal and public manner and by declaring that deeds not so executed should be not only inadmissible in evidence, but also not capable of being acted upon by Courts and public officers. The chapter of the Act in which the s. 56 occurs is entitled "Registration by Village-Registrars," and the principal Act on this point is analogous to a Registration Act, whilst the amending Act is analogous to an amending Registration Act. The general rule is that Registration Acts do not operate retrospectively. But the case comes under a broader principle. The case comes within the rule of construction "*omnis nova constitutio futuris formam imponere debet non præteritis*," in other

(1) 8 B. 340.

(2) 2 Knapp, P. C. 228.

(3) Printed Judgments for 1873, p. 17.

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words, statutes must not be held retrospective so as to deprive parties of a right they have actually acquired unless they are expressly made so. See *Broom's Legal Maxims*, 28 (6th ed.); *Maxwell on Statutes*, 190 (2nd ed.). Here the Act had given cultivators protection against a deed that had not been registered before the Village-Registrar, and the defendant had acquired a right to that protection in respect of the deed sued upon. The prohibition of the use of the deed, if not so registered, makes, in my opinion, this s. 56 more than a mere rule of evidence, and creates a substantive right. [525] The substitution of an alternative form of registration by the amending Act cannot, therefore, apply retrospectively to the prejudice of that substantive right. The leading case of *Wright v. Hale* (1) strictly limits the retrospective effect of statutes to matters of procedure. The general principle of the non-retrospectivity of Acts, therefore, applies, and the case is governed by s. 56 alone (*In the matter of the petition of Ratansi Kālianji* (2), Pollock, C. B., in *Wright v. Hale* (3) says: "There is a considerable difference between new enactments which affect vested rights and those which merely affect the procedure in Courts of justice, such as those relating to the service of proceedings, or what evidence must be produced to prove particular facts * * *. When an Act alters the proceedings which are to prevail in the administration of justice, and there is no provision that it shall not apply to suits then pending, I think it does apply to such actions." The distinction is also clearly drawn in the following *dictum* per Blackburn, J.—*Kimbray v. Draper* (4)—The rule of interpretation in such cases is, that when the enactment changes or takes away rights, it is not to be construed as retrospective unless there are express words to that effect, but when it only changes mode of procedure it is to be applied to all actions. See also *Allhusen v. Brooking* (5); *Reid v. Reid* (6).

The case may be summed up thus. The general rule is that Acts are prospective, not retrospective in their operation—*Moon v. Durden* (7) and *Dooluldass Pettamberdass v. Ramlooll Thackoorseydass* (8). To this rule there are two exceptions: (a) when Acts are expressly declared to be retrospective—that is not so in the present case—(b) when they only affect the procedure of the Court. In the present case one form of registration is substituted for another. That is more than an alteration of procedure. The general rule, therefore, applies, and the decree is confirmed, with costs.

Decree confirmed.

(1) 30 L. J. Ex. 40=6 H. & N. 227.
(3) 30 L.J.Ex. 42=6 H. & N. 230 (231).
(5) L. R. 26 Ch. D. 564.
(7) 7 Exch. 22.

(2) 2 B. 148.
(4) L.R. 3 Q.B. 161.
(6) L.R. 31 Ch. D. 408.
(8) 7 Moore P. C. C. 239.