

Mar. Court.]

RE THE TUG "KATE MOFFATT."

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In Maxwell on Statutes, at page 191, I find the law thus stated: "It is a general rule that all statutes are to be construed to operate in future, unless from the language a retrospective effect be clearly intended. *Nova constitutio futuris formam imponere debet non preteritis*." "It has been said that nothing but clear and express words will give a retrospective effect to a statute, and that however much the present tense may be used in it, it must be construed as applying only to future matters." In *Vansittart v. Taylor*, 4 E. & B. 910, even a statute which confers a benefit, such as abolishing a tax, would not be construed retrospectively to relieve the persons in the property already subject to the burden before it was abolished. And at page 192 the learned author proceeds: "It is where the enactment would prejudicially affect vested rights or the legal character of past acts that the presumption against a retrospective operation is strongest; every statute which takes away or impairs vested rights under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation." However, the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the Courts. In the case of the *Alexander Larsen*, 1 Robinson Ad. Rep. 288, cited by Mr. Brough, would at first give countenance to the contention of the plaintiff. The learned Judge of the High Court of Admiralty (Dr. Lushington), at page 295, states: "I am not aware of any principle or decision which establishes the doctrine that where a statute affords a new mode of suing, the cause of action must necessarily arise subsequent to the period when the statute comes into operation." On the contrary, where the statute creates a new jurisdiction, the new jurisdiction, I apprehend, takes up all the cases. The *Alexander Larsen* was a Norwegian ship, and was arrested to satisfy a claim for £45 13s. 0d., the price of an anchor and cable furnished to the vessel be-

fore the Imperial Statute 3 & 4 Vict. came into operation. The 6th section gave the Court of Admiralty jurisdiction, among other things, to decide on claims for necessaries furnished to any foreign ship or vessel, and to enforce payment thereof. The Court was in existence and had power to enforce payments in regard to ships or vessels before. It will be seen the present case cannot be controlled by the ruling of the Court of Admiralty in the *Alexander Larsen*.

The case of the *Ironsides*, L. J. N. S. Admiralty cases, 129, is cited. Dr. Lushington stated in that case: "In the general principle I entirely concur, viz.—that, as a general rule, all statutes should be construed to operate prospectively, and especially not to take away or affect vested rights; but true as these rules are—indeed admitted on all hands as founded on common justice and authority—no one denies the competency of the Legislature to pass retrospective statutes, if they think fit; and many times they have done so, bearing in mind the general principle. The question must always be, what intention the Legislature expressed in the Statute to be construed. The presumption is that it is not retrospective. The facts and circumstances connected with the case of the *Ironsides* cannot help us in coming to a sound conclusion so far as I can see.

In the case of *Moon v. Durden*, reported in 2 Ex. 22, the arguments of counsel and the judgments delivered by the learned Barons of the Exchequer are instructive and exhaustive. The 18th section of the 8 & 9 Vict. cap. 109, which received the Royal Assent on the 8th August, 1845, enacts "that all contracts by way of gaming or wagering shall be null and void, and no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event upon which any wager shall have been made." Barons Parke, Alderson and Rolfe held "that the statute had not a retrospective operation so as to defeat any action for a wager com-