

RETROACTIVE LEGISLATION.

tion should be ascertained and followed in this matter. Parliament being practically omnipotent, it is only by the prevalence of sound ideas of public morality in the community that there can be any protection against acts of gross tyranny. Indifference to vested rights has been long noted as one of the characteristics of modern democracy, and any danger there may be in this tendency is obviously increased where the legislative body is small,—where there is only one House,—and where measures are passed and become law with great rapidity, and often after only slight discussion.

"All *ex post facto* laws are more or less unjust," is a dictum of Vankoughnet C., in *Low v. Morrison*, 14 Gr. 192. But a very slight consideration of the subject shows that there are different kinds of retroactive laws, and if all are objectionable, they certainly are so in very different degrees. For example, the above dictum of the Chancellor was uttered in reference to 25 Vict., c. 20, which abolished the extended period for bringing an action formerly given to absentees, but allowed a year's grace from the date of passing, during which actions brought should not be affected. This concession obviously renders the statute far less open to objection than it would have been had it laid it down simply that "such had always been the law." The statute 21 Jas. I., c. 16, sec. 7, which 25 Vict., c. 20, amended, did not permit time to run against an absentee at all. If, then, the 15 Vict., c. 20 had specially excluded from its operation all who were absentees at the date of its passing, it would in no sense have been retroactive; but would have been analogous to the Act respecting the rights of aliens in real property (R. S. O., c. 97), which enacts that nothing therein contained shall affect any right or title legally vested in, or acquired by, any person whomsoever before the passing of the Act.

Where, however, the statute gives due notice that the law shall not have any operation till after a definite and extended

period, during which actions may be brought, the rule against laws being construed to have a retroactive effect does not apply. (*Dwarris on Statutes* 542, Ed. 2, *Towler v. Chatterton*, 6 Bing. 258; *Reg. v. Leeds and Bradford Ry.*, 21 L. J. M. C. 193.)

Another kind of retroactive statute is that referred to by Mr. Hardcastle (Const. of Stats. 198), in illustration of his statement that sometimes it is expressly enacted that an enactment shall be retrospective. It is the only example he cites in support, and is the Imp. 22-23 Vict., c. 35, sec. 32, which 23-24 Vict., c. 38, sec. 12, enacts shall operate retrospectively. This statute authorizes any trustee, where not expressly forbidden by the instrument creating his trust, to invest any trust funds on real securities in any part of the United Kingdom, or in certain stock, and declares he shall not be liable on that account merely, as for a breach of trust.

We can distinguish a third kind of retrospective legislation in the Imp. 6 Geo. IV. c. 16, which enacts that (secs. 54, 55) it shall not be lawful for an annuitant to sue the surety for the payment of his annuity when the grantor has become bankrupt, until he shall have proved under the commission against such bankrupt for the value of such annuity or for the payment thereof; which statute was declared in *Bell v. Bilton* 4 Bing. 615, to be retrospective, and to apply to annuities granted before the statute was passed.

Again, there are cases where Acts have apparently, but not in reality, a retrospective operation. Thus, since by the Wills' Act, Imp. 7 Will. IV. c. 26, sec. 24 (R. S. O. c. 106, sec. 26) every will is construed as taking effect as if it had been executed immediately before the death of the testator, it comes to pass that if an Act of Parliament is passed after a will has been executed, but before the death of the testator, the will may be affected by the Act. (Hardcastle Const. of Stat. 207; *Capron v. Capron*, L. R. 17 Eq. 295; *Haslock v. Pedley*, L. R. 19 Eq. 273).

Lastly, there are certain statutes which