1957

February, 1.

GARIKAPATTI VEERAYA

v.

N. SUBBIAH CHOUDHURY

[S. R. DAS C. J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS J J.]

Supreme Court, Appellate Jurisdiction of—Decree in suit instituted prior to the Constitution reversed in appeal by High Court after the Constitution—Value of subject-matter short of twenty-thousand—Appeal, if lies—Vested right of appeal—Constitution of India, Arts. 133, 135.

This application for special leave to appeal arose out of a suit instituted on April 22, 1949, and valued at Rs. 11,400. The Trial Court dismissed the suit and the High Court in appeal reversed that decision on February 10, 1955. Application for leave to appeal to the Supreme Court was refused by the High Court on the ground that the value did not come upto Rs. 20,000. It was contended on behalf of the applicant that he had a vested right of appeal to the Federal Court under the law as it then stood and that Court having been substituted by the Supreme Court, he was as of right entitled to appeal to that Court under Art. 135 of the Constitution.

Held, (per Das C.J., Bhagwati, B. P. Sinha and S. K. Das JJ., Venkatarama Ayyar J. dissenting) that the contention of the applicant was well-founded, that he had a vested right of appeal to the Federal Court on and from the date of the suit and the application for special leave should be allowed.

The vested right of appeal was a substantive right and, although it could be exercised only in case of an adverse decision, it was governed by the law prevailing at the time of commencement of the suit and comprised all successive rights of appeal from court to court, which really constituted one proceeding. Such a right could be taken away only by a subsequent enactment either expressly or by necessary intendment.

Colonial Sugar Refining Company Ltd. v. *Irving*, (1905) A.C. 369, followed.

Sadar Ali v. *Dalimuddin*, (1929) I.L.R. 56 Cal. 512 and *In re Vasudeva Samiar*, (1928) I.L.R. 52 Mad. 361, relied on.

Case-law reviewed.

Article 133 of the Constitution had no application to such cases. It was not intended to have retrospective operation so as to take away this vested right nor did it do so either in express terms or by necessary intendment. Correctly construed it should be read as restricted to only those judgments, decrees and final orders of a High Court in respect of which there was no such

vested right of appeal, as otherwise cl. 20 of the Adaptation of Laws Order, 1950, which saves such a right, would become nugatory. A litigant in a Princely State who could have no vested right of appeal to the Federal Court must, however, come under Art. 133.

Janardan Reddy v. *The State,* (1950), S.C.R. 940, *Keshavan Madhava Menon* v. *The State of Bombay,* (1951) S.C.R. 228 and *Dajisahib Mane* v. *Shankar Rao Vithal Rao,* (1955) 2 S.C.R. 872, referred to.

This vested right of appeal acquired under the old law was a matter contemplated by Art. 135 of the Constitution in relation to which the jurisdiction and powers of the Federal Court were exercisable at the commencement of the Constitution and as such it was within the purview of the appellate jurisdiction of the Supreme Court, and the appeal was entertainable by it. Article 135 could not be limited to such cases only where the right of appeal had actually arisen in a concrete form, and was no mere potentiality, immediately before the Constitution.

Ramaswami Chettiar v. *The Official Receiver,* A.I.R. 1951 Mad. 1051, *Veeranna* v. *China Venkanna,* I.L.R. 1953 Mad. 1079, *Probirendra Mohan* v. *Berhampore Bank Ltd.* A.I.R. 1954 Cal. 289, *Ram Sahai* v. *Ram Sewak,* A.I.R. 1956 All. 321, *Tajammul Hussain* v. *Mst. Qaisar Jagan Begam,* A.I.R. 1956 All. 638 and *The Indian Trade and General Insurance Co. Ltd.* v. *Raj Mal Pahar Chand,* A.I.R. 1956 Punj. 228, overruled.

Canada Cement Co. Ltd. v. *East Montreal (Town of),* (1922) 1 A.C. 249 and *Nathoo Lal* v. *Durga Prasad,* (1955) 1 S.C.R. 51, distinguished.

Per Venkatarama Ayyar J. A right of appeal was undoubtedly a substantive right but it did not, therefore, follow that it vested in the parties to a suit on and from the date of its commencement and the decision in *Colonial Sugar Refining Company Ltd.* v. *Irving* on which such a theory was sought to be founded was neither supportable in principle nor warranted by the authorities it relied on.

Right to appeal to a superior court could arise only on the passing of an adverse decision and the rights of successive appeals provided by the law did not constitute either a single proceeding or a single right as will be apparent from the relevant provisions of the Code of Civil Procedure.

Colonial Sugar Refining Company Ltd. v. *Irving,* (1905) A.C. 369, not followed.

Sadar Ali v. *Dalimuddin,* (1929) I.L.R. 56 Cal. 512 and *In re Vasudeva Samiar,* (1928) I.L.R. 52 Mad. 361, dissented from.

Case-law discussed.

Assuming that the petitioner had such a vested right of appeal to the Federal Court before the commencement of the

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Constitution, that right must be held to have ceased with the repeal of the Government of India Act, 1935, and consequent abolition of the Federal Court, by the Constitution.

Veeranna v. *Chinna Venkanna,* I.L.R. 1953 Mad. 1079 and *Daji Sahib Mane* v. *Shankar Rao Vithal Rao Mane,* (1955) 2 S.C.R. 872, relied on.

There was, therefore, nothing on which cl. 20 of the Adaptation of Laws Order, 1950, could operate so as to keep it alive. Nor could this Court be considered to be a successor of the Federal Court so as to attract the operation of that clause.

State of Seraikella v. *Union of India,* (1951) S.C.R. 474, relied on.

Article 133 applied to all judgments, decrees and final orders of High Courts in Civil Proceedings passed after the commencement of the Constitution irrespective of the dates of their institution and if an appeal did not satisfy its requirement as to valuation it must be held to be incompetent. Any vested right of appeal that might have existed prior to the Constitution must be held to have been taken away by it by necessary implication.

Canada Cement Co. v. *East Montreal,* (1922) 1 A.C. 249, *Durousseau* v. *United States,* 3 L. Ed. 232 : 6 Cranch 307 and *Baltimore and Potomac Railroad Company* v. *J. H. Grant,* 98 U.S. 231 : 25 L. Ed. 231, referred to.

Article 135 of the Constitution could have no application to such a case as Art. 133 applied and there was no vested right to appeal to the Federal Court in relation to which jurisdiction was exercisable by that Court immediately before the commencement of the Constitution. The application for special leave must, therefore, be refused.

CIVIL APPELLATE JURISDICTION : Petition for Special Leave to appeal No. 170 of 1955 and Civil Miscellaneous Petition No. 579 of 1956.

Petition under Article 136 of the Constitution for special leave to appeal from the judgment and decree dated March 4, 1955, of the Andhra High Court in A.S. No. 301 of 1951.

M. S. K. Sastri, for the petitioner.

T. V. R. Tatachary, for the respondents Nos. 1 and 2.

M. C. Setalvad, Attorney-General for India, for assisting the Court.

1957. February 1. The judgment of Das C.J., Bhagwati, B. P. Sinha and S. K. Das JJ. was delivered by Das C.J. Venkatarama Ayyar J. delivered a separate judgment.

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DAS C.J.—This is an application for special leave to appeal from the judgment passed on February 10, 1955, by the High Court of Andhra. The suit out of which this application arises was instituted on April 22, 1949, in the sub-court of Bapatla, which was then within the jurisdiction of the Madras High Court. The judgment of the trial court was passed on November 14, 1950, dismissing the suit. The plaintiff appealed. On October 1, 1953, the Andhra State was formed and a new High Court was established under s. 28 of The Andhra State Act, 1953 (Act XXX of 1953), and apparently the appeal stood transferred to the High Court of Andhra under the provisions of s. 38 of the same Act. On March 4, 1955, the High Court of Andhra accepted the appeal, reversed the decree of the trial court and decreed the suit. The application for leave to appeal to this Court was dismissed on the ground, *inter alia,* that the value of the property was only Rs. 11,400 and did not come up to the amount of Rs. 20,000. In this application the petitioner contends that the judgment being one of reversal and the value being above Rs. 10,000, he was entitled, as a matter of right, to come up to this Court on appeal and as that right has been denied to him by the High Court, this Court should, in exercise of its discretion, grant him special leave to appeal to this Court under Art. 136 of the Constitution.

It will be convenient at this stage to refer to the statutory provisions relating to appeal from any final judgment, decree or order of a High Court in India to a superior court. This was regulated by the provisions of the Letters Patent of each particular High Court. It will suffice for our present purpose to refer to cl. 39 of the Letters Patent, 1865 relating to the High Courts of the three Presidency towns. Under that clause an appeal could be taken to His Majesty in Council from any final judgment, decree or order of the High Court made on appeal or in exercise of its original jurisdiction by a majority of the full number of Judges of the said High Court or of any Division Court provided, in either case, the sum or matter at issue was of the amount or value of not less than 10,000 rupees or that

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such judgment, decree or order involved, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid when the said High Court should declare that the case was a fit one for appeal to His Majesty in Council. The requirements to be fulfilled for appeal to His Majesty in Council were also set out in ss. 109 and 110 of the Code of Civil Procedure, 1908. The Government of India Act, 1935 by s. 200 established a Federal Court for India. Section 204 of that Act gave original jurisdiction to the Federal Court with respect to certain matters. Section 205 conferred appellate jurisdiction on the Federal Court from any judgment, decree or final order of a High Court in British India if the High Court certified that the case involved a substantial question of law as to the interpretation of that Act or any Order in Council made thereunder and prohibited direct appeal to His Majesty in Council either with or without special leave in those matters. When the Indian Independence Act, 1947 was passed by Parliament it became necessary to enlarge the jurisdiction of the Federal Court to enable the Federal Court to entertain appeals which previously went to His Majesty in Council. For that purpose was enacted the Federal Court (Enlargement of Jurisdiction) Act, 1947, being Act I of 1948. Section 3 of that Act provided that as from the appointed day, *i.e.*, from February 1, 1948, an appeal would lie to the Federal Court from any judgment to which the Act applied without the special leave of the Federal Court, if an appeal could have been brought to His Majesty in Council under the provisions of the Code of Civil Procedure, 1908 or of any other law immediately in force after the appointed day and with the special leave of the Federal Court in any other case and that no direct appeal would lie to His Majesty in Council either with or without special leave from any such judgment. "Judgment to which this Act applied" was defined by s. 2(b) as meaning any judgment, decree or final order of a High Court in a civil case

from which a direct appeal could have been brought to His Majesty in Council, either with or without special leave, if that Act had not been passed. By s. 4 all proceedings and steps taken in, and orders made and certificates granted by, a High Court in connection with an appeal to His Majestry in Council, unless the records had been transmitted, were to be deemed to be proceedings and steps taken and orders made and certificates granted in connection with an appeal from that judgment to the Federal Court under the Act and would be concluded, or as the case may be, have effect, accordingly. Under s. 5 every application to His Majesty in Council for special leave to appeal from a judgment to which the Act applied remaining undisposed of immediately before the appointed day would on that day stand transferred to the Federal Court by virtue of the Act and would be disposed of by that Court as if it had been an application duly made to that Court for special leave to appeal from the said judgment. This was followed by the Abolition of Privy Council Jurisdiction Act, 1949 (Act V of 1949), which was passed by the Constituent Assembly in September, 1949 and came into force on October 10, 1949, which was referred to as the 'appointed day'. Section 2 provided that as from the 'appointed day' the jurisdiction of His Majesty in Council to entertain appeals and petitions from or in respect of any judgment, decree or order of any court or tribunal other than the Federal Court within the territory of India including appeals and petitions in respect of criminal matters whether such jurisdiction was exercisable by virtue of His Majesty's prerogatives or otherwise would cease. Section 5 conferred corresponding jurisdiction on the Federal Court, that is to say, as from the 'appointed day' the Federal Court was authorised, in addition to the jurisdiction conferred on it by the Government of India Act, 1935 and the Federal Court (Enlargement of Jurisdiction) Act, 1947, to have the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council had by virtue of His Majesty's prerogatives or otherwise immediately before the 'appointed day'. All proceedings in respect of any

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Indian appeal pending before His Majesty in Council immediately before the 'appointed day' were by s. 6 to stand transferred to the Federal Court and were to be disposed of by it in the exercise of the jurisdiction conferred on it by the Act.

It will be recalled that the suit out of which the present petition arises was filed on April 22, 1949. The petitioner contends that as from the date of the institution of the suit he acquired a vested right to appeal to the Federal Court which has since then been replaced by the Supreme Court. In support of this contention he relies on certain judicial decisions to which reference may now be made.

The leading case on the subject relied on by the petitioner is *Colonial Sugar Refining Company Ltd.* v. *Irving*(1). In that case the Collector of Customs acting under an Act called the Excise Tariff Act, 1902 required the appellants to pay £ 20,100 excise duty on 6,700 tons of sugar. The appellants disputed the claim. So they deposited the money with the Collector and then brought an action in the Supreme Court of Queensland against the Collector for recovering the sum so deposited. The writ in the action was issued on October 25, 1902. At the date of the institution of the action the Order in Council of June 30, 1860, gave a right of appeal to His Majesty in Council from the judgment of the Supreme Court. A special case having been stated for the opinion of the Full Court, that Court on September 4, 1903, gave judgment for the Collector. In the meantime the Judiciary Act, 1903 had been passed and it received the royal assent on August 25, 1903, that is to say about 10 days before the judgment was delivered by the Supreme Court. By s. 38 the jurisdiction of the High Court of Australia in certain specified matters was made exclusive of the jurisdiction of the several Courts of the States and by s. 39 it was made exclusive in all other matters except as therein provided. Sub-section 2 of s. 39 provided that the several Courts of the States would be invested with Federal jurisdiction in all matters above mentioned except those specified in s. 38, subject to certain

(1) [1905] A. C. 369.

conditions and restrictions, one of which was that every decision of a Court of a State from which, at the establishment of the Commonwealth, an appeal lay to the Queen in Council, should be final and conclusive except so far as an appeal might be brought to the High Court. The result of this Act was that Her Majesty in Council ceased to be a Court of Appeal from the decision of the Supreme Court and the only appeal from the Supreme Court under that Act lay to the High Court of Australia. The Supreme Court of Queensland having granted leave to the appellants under the Order in Council of 1860 the appellants filed the appeal in the Privy Council. The respondent filed a petition before the Privy Council praying that the appeal might be dismissed with costs on the ground that the right of appeal to His Majesty in Council given by the Order in Council of June 30, 1860, under which the leave had been granted, had been taken away by the Judiciary Act, 1903 and that the only appeal from a decision of the Supreme Court of Queensland lay to the High Court of Australia. On behalf of the appellants it was contended that the provisions of the Judiciary Act, 1903, on which the respondent relied, were not retrospective so as to defeat a right in existence at the time when the Act received the royal assent. Their Lordships of the Privy Council dismissed the respondent's petition and observed as follows :

"As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their

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Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

This proposition of law has been firmly established in English jurisprudence and this decision is accepted as sound and cited with approval in leading text books. As will be presently seen, it has been followed and applied in numerous decisions in England and India and its correctness or authority has not been questioned by any of the learned counsel appearing before us on the present occasion.

The principle of the above decision was applied in India by Jenkins C.J. in *Nana bin Aba* v. *Sheku bin Andu* (1) and by the Privy Council itself in *Delhi Cloth and General Mills Co. Ltd.* v. *Income Tax Commissioner, Delhi*(2). In *Delhi Cloth and General Mills Co. Ltd.* v. *Income Tax Commissioner, Delhi* (supra) two assessment orders were made, one on June 12, 1923, and the other on March 23, 1924. In each case the sum in dispute exceeded Rs. 10,000. At the request of the assessee two cases were stated by the Commissioner to the High Court under s. 66 of the Indian Income Tax Act. The High Court affirmed the decisions of the Commissioner in January, 1926. The petitioner applied for leave to appeal to the Privy Council. On April 1, 1926, came the Indian Income Tax Amendment Act, 1926 which added s. 66A to the Indian Income Tax Act which gave a right of appeal. The learned Judges of the High Court were of opinion that the petitioners had a right of appeal to His Majesty in Council provided they could in effect bring their cases within the requirements of s. 109(c) of the Code of Civil Procedure but not otherwise. The High Court dealt with the applications for

(1) [1908] I.L.R. 32 Bombay 337.
(2) [1927] L.R. 54 I.A. 421; I.L.R. 9 Lah. 284.

certificates on that footing but dismissed them and as it refused to certify that the case was a fit one for appeal to His Majesty in Council, the company applied to the Privy Council for special leave to appeal from the two orders of the High Court passed in January, 1926. It will be noticed that in January, 1926 when the orders were made by the High Court under s. 66, s. 66A was not in the Act at all and it had been held by the Privy Council in *Tata Iron and Steel Company Ltd.* v. *Chief Revenue Authority*(1), that there was no right of appeal from a judgment delivered by the High Court under s. 66 of the Indian Income Tax Act. Therefore the orders of the High Court were final when they were made in January 1926. Such was the position until April 1, 1926, when s. 66A was added to the Act. The question was whether this section destroyed the finality that had attached to the orders when they were made and gave any right of appeal at all from the orders of the High Court made before the Act of 1926 came into force. Their Lordships answered the question as follows :

"The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in *Colonial Sugar Refining Co.* v. *Irving*(2), where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied restrospectively in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect. On the contrary, they think there is a clear

(1) [1923] L.R. 50 I.A. 212.

(2) [1905] A.C. 369.

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suggestion that a judgment of the High Court referred to in sub-s. 2 is one which under sub-s. 1 has been pronounced by "not less than two judges of the High Court", a condition which was not itself operative until the entire section came into force.

In their Lordships' judgment, therefore, the petitioners in these cases have no statutory right of appeal to His Majesty in Council. Only by an exercise of the Prerogative is either appeal admissible."

The question of finality of order was considered by this Court in the case of *Indira Sohanlal* v. *Custodian of Evacuee Property, Delhi and others* (1). In that case the facts shortly stated were as follows: On October 10, 1947, the appellant had arranged with a Pakistani for the exchange of certain properties she left behind at Lahore at the time she migrated to India after the partition for certain lands in a village in the State of Delhi belonging to that Pakistani. On February 23, 1948, the appellant applied to the Additional Custodian for confirmation of the transaction under s. 5-A of the East Punjab Evacuees' (Administration of Property) Act, 1947 as amended in 1948. Section 5-B of that Act provided that if the original order under s. 5-A was passed by an Additional or Deputy Custodian of Evacuee Property, any person aggrieved by such order might appeal within 60 days from the date of the order to the Custodian of Evacuee Property; and subject only to the decision on such appeal, if any, the order passed by the Assistant or Deputy Custodian would be final and conclusive. For some reason or other the appellant's application for confirmation was not taken up promptly, but was adjourned from time to time. In the meantime the East Punjab Evacuees' (Administration of Property) Act, 1947 was repealed by ordinances, which in their turn were eventually replaced by the Administration of Evacuee Property Act, 1950 (Central Act XXXI of 1950). Section 27(1) of the Act empowered the Custodian General, either on his own motion or on application made to him in this behalf, to call for the record of any proceeding in which any district judge or Custodian had passed an

(1) [1955] 2 S.C.R. 1117.

order for the purpose of satisfying himself as to the legality or propriety of any such order and to pass order in relation thereto as he thought fit. In other words s. 27(1) of the new Act gave a power of revision to the Custodian General. On March 20, 1952, the Additional Custodian acceded to the appellant's application and confirmed the exchange. On May 5, 1952, the appellant applied to be put in possession. Thereupon a notice was issued under s. 27(1) of the Central Act XXXI of 1950 to the appellant to show cause why the order of the Additional Custodian dated March 20, 1952, should not be set aside. On May 20, 1953, the Custodian General passed an order setting aside the order of confirmation passed by the Additional Custodian on the ground, *inter alia,* that notice had not been served on all parties interested and directed the Custodian to decide the case on notice to all parties interested. The petitioner obtained special leave to appeal to this Court against the order of the Custodian General of Evacuee Property. At the hearing of the appeal the learned counsel for the appellant contended that according to the principle laid down by the Privy Council in *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra), she had, on the filing of her application for confirmation in 1948, acquired a vested right to have to determined under s. 5-A with the attribute of finality and conclusiveness attaching to the odrer when made just as a litigant acquired a vested right of appeal on the commencement of his suit or proceeding and that vested right could not be taken away by subsequent statute except by express provision or by necessary intendment. There was, according to the appellant, nothing in s. 27 of the Administration of Evacuee Property Act, 1950 (Central Act XXXI of 1950), which expressly or by necessary intendment took away that vested right. It will be noticed that at the date of the commencement of the Central Act XXXI of 1950 no order had actually been made to which the attribute of finality could attach. In these circumstances this Court repelled the contention of the appellant with the following words :

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"However this may be, it appears to be clear that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action—though we do not so decide—no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. By the very terms of section 5-B of East Punjab Act XIV of 1947, finality attaches to it on the making of the order. Even if there be, in law, any such right at all as the right to a determination with the attribute of finality, it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made, when alone the right to finality becomes an existing right as in *Delhi Cloth and General Mills Co. Ltd.* v. *Income Tax Commissioner*(1). We are, therefore, of the opinion that the principle of *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra) cannot be invoked in support of a case of the kind we are dealing with."

It is clear from the above passage that this Court, on that occasion, left open the question whether a right of appeal in respect of a pending action could be treated as a substantive right vesting in the litigant on the commencement of the action. It becomes, necessary, therefore, to go into that question in detail.

In *Ramakrishna Iyer* v. *Sithai Ammal*(2), a magistrate on August 4, 1923, granted sanction under s. 195 of the Code of Criminal Procedure to prosecute the the respondent for having preferred a false charge of dacoity against the appellant. Sub-section 6 of s. 195, as it stood at that date, provided that the sanction might be revoked or granted by any authority to which the authority giving or refusing it was subject. Pursuant to the sanction the complainant filed a petition of complaint. On August 22, 1923, the respondent applied for revocation of the sanction but no order was made. On September 1, 1923, s. 195 of the Code

(1) [1927] I.L.R. 9 Lahore 284.

(1) [1925] I.L.R. 48 Mad. 620 (F.B.).

of Criminal Procedure was amended. The relevant portion of the amended section was in these terms :

"195. (1) No court shall take cognisance—

(a) .....

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate; or

.....

....."

After the amendment came into force the respondent received notice of the prosecution already instituted against her. In 1924 she filed another petition for revocation of the sanction. The magistrate revoked the sanction. The complainant petitioner filed this petition against this order of revocation of sanction. In dismissing this application a Full Bench of five Judges of the Madras High Court presided over by Coutts Trotter C. J. referred to the decision of the Privy Council in *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra) and quoted the passage in Lord Macnaghten's judgment as laying down the principle in clear language. At page 629 Coutts Trotter C. J., who delivered the judgment of the Full Bench, stated as follows :—

"The question we have to decide is whether this was a right of entering the Superior Court and invoking its aid and interposition to redress the error of the Magistrate's Court below and therefore it seems to us that, on principle and those very weighty authorities, we ought to hold that this is not a case of procedure but it is a case of a real right to invoke the aid of a higher tribunal. We are also of opinion that those principles are really involved and carried out by section 6 of the General Clauses Act X of 1887."

It will be noticed that even the peremptory language of the amended s. 195 quoted above was not regarded

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as containing anything which expressly or by necessary intendment took away the right which had vested in the respondent under old s. 195(6) when the sanction had been granted against her on August 4, 1953, to have it revoked.

In *Daivanayaka Reddiyar and two others* v. *Renukambal Ammal* (1), a suit was filed on March 21, 1921, by a widow for maintenance. It was valued at rupees 14,600 according to the provisions of the Court Fees Act (VII of 1870) then in force. Under s. 13 of that Court Fees Act appeals lay to the district court or the High Court according as the value of the subject matter of the suit was below or over rupees 5,000. On April 18, 1922, the Madras Court Fees Amendment Act (V of 1922) came into force. Section 7(2) of the old Court Fees Act (VII of 1870) was amended. The trial court decreed the suit on March 13, 1923. On April 19, 1923 the defendants filed an appeal in the High Court. In the appeal the court fee was paid on Rs. 2,633-5-4 calculated according to the valuation in terms of the amended Act. An objection was taken on behalf of the plaintiff-respondent that the appeal did not lie to the High Court but should have been filed in the district court. The contention was that though the suit was valued at more than Rs. 5,000 under the law in force at the time of filing of the plaint, yet the valuation of the suit according to the amended Court Fees Act at the time the appeal was presented would have been less than Rs. 3,000 and, therefore, the appeal to the High Court was incompetent. The following question was referred to the Full Bench :

"Does the appeal against the decree in a suit in which the valuation of the relief claimed according to the law in force at the date of the plaint was more than Rs. 5,000 but at the time of the appeal is less than Rs. 5,000 owing to the amendment of the Court Fees Act, lie to the High Court or to the District Court?"

The Full Bench consisting of three Judges held that the appeal had properly been brought before the High Court. The Full Bench observed :

(1) [1927] I.L.R. 50 Mad. 857.

"It is argued that this section does not confer any right of appeal to the High Court in definite classes of suits, but that the right of appeal is merely given to the Court authorised to hear appeals and the question of whether the Court is the District Court or the High Court depends on the valuation of the suit at the time of filing the appeal. It is difficult to treat this argument as any way distinguishing the case from that of *Colonial Sugar Refining Company* v. *Irving*([1]), for, in both cases there was, when the suit was filed, a vested right of appeal to a particular tribunal, which is taken away by a subsequent enactment. According to the argument, when the right is taken away by a subsequent alteration in a mere fiscal enactment, the case is not the same as when the right depends on substantive law. This is untenable. It has been held by the Privy Council that this cannot be done and we are bound by that general expression of the law and must follow it."

Bala Prasad and others v. *Shyam Behari Lal and others*([2]) which was a decision by a single judge who followed the Privy Council decision does not require any further consideration and we may pass on to *Ram Singha* v. *Shankar Dayal*([3]) which is very important. In the last mentioned case a suit for rent was filed on July 12, 1926. At that time the North-Western Provinces Tenancy Act, 1901 (U.P. Act II of 1901) was in force. Section 177 of that Act gave a right of appeal from the decision of the Assistant Collector to the District Judge when the amount or value of the subject matter of suit exceeded Rs. 100. On September 7, 1926, Agra Tenancy Act (U.P. Act III of 1926) came into force. It repealed the old Act of 1901. Section 240 of the new Act reproduced s. 175 of the old Act providing that no appeal would lie from any decree or order passed by any court under this Act except as provided in this Act. The material portion of s. 242, which corresponded to s. 177 of the old Act provided as follows :—

"242(1). An appeal shall lie to the district judge from the decree of an assistant collector of the first

(1) [1905] A.C. 369.
(2) [1928] 26 A.L.J. 406.
(3) [1928] I.L.R. 50 All. 965 (F.B.)

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class or of a collector in any of the suits included in group A of the Fourth Schedule in which—

(a) the amount or value of the subject-matter exceeds rupees two hundred; or

(b) .....

....."

On December 23, 1926, *i.e.*, after the new Act came into force, the suit was decreed by the assistant collector. The defendant presented an appeal to the district judge. The district judge returned the memorandum of appeal. The defendant presented the memorandum before the Collector of Etawah and that officer was of opinion that he had no jurisdiction to entertain the appeal and referred the case to the High Court under s. 207 of the Agra Tenancy Act. The reference came up before a Bench of the Allahabad High Court which referred the following question to a Full Bench :

"Whether the filing of an appeal is governed by the law obtaining at the date of the institution of a suit or by the law that may prevail at the date of the decision of it, or at the date of the filing of the appeal?"

It will be noticed that the question definitely called for a decision as to when the right of appeal vested in the litigant. A Full Bench of three Judges presided over by Mr. Justice Sulaiman, then Acting Chief Justice of Allahabad, expressed the following opinion :

"In our opinion the point is concluded by the pronouncement of their Lordships of the Privy Council in the case of *Colonial Sugar Refining Company Ltd.* v. *Irving*(1). In that case, ordinarily an appeal lay to their Lordships of the Privy Council from an order of the Supreme Court. While the matter was pending in that court, the law was amended so as to allow an appeal to the High Court. Their Lordships of the Privy Council held that the new Act could not deprive the party of his right to appeal to the Privy Council. Lord Macnaghten remarked at page 372: 'To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure'."

(1) [1905] A.C. 369.

"That principle was reaffirmed by their Lordships in the case of *Delhi Cloth and General Mills Co. Ltd.* v. *Income Tax Commissioner*(1). The principle has been followed by a Full Bench of the Madras High Court in the case of *Daivanayaga Reddiar* v. *Renukambal Ammal*( ). Dalal J. has taken the same view in the case of *Bala Prasad* v. *Shyam Behari Lal*(3)."

The Full Bench answered the question as follows :

"Our answer to the reference is that the right to appeal to the court of the District Judge was governed by the law prevailing at the date of the institution of the suit, and not by the law that prevailed at the date of its decision, or at the date of the filing of the appeal."

It will be noticed that the language of s. 242(1) of the new Act which came into force before the decree was passed was not regarded as containing anything which expressly or by necessary intendment took away the right of appeal which vested in the parties on the date of the institution of the suit on the mere ground that the decree had been made after the new amendment came into force. This case clearly establishes that the right of appeal vests in the parties at the date of the suit and is governed by the law prevailing at that time and the date of the decree or of the filing of the appeal does not affect this right unless some subsequent enactment takes away this right expressly or by necessary intendment. It also establishes that the wide language of s. 242(1) of the new Act, namely "An appeal shall lie to the District Judge from the decree of an Assistant Collector...." could not be construed as covering the decree passed after the date of the new Act in a suit instituted before its date.

A Full Bench of the Lahore High Court adopted and applied the Privy Council decision in the case of *Kirpa Singh* v. *Ajaipal Singh and others*( ). It was regarded as settled that the right of appeal was not a mere matter of procedure but was a vested right which inhered in a party from the commencement of the action in the court of first instance and that such right

(1) [1927] I. L.R. 9 Lah. 284.
(2) [1927] I.L.R. 50 Mad. 857.
(3) [1928] 26 A.L.J. 406.
(4) [1928] I.L.R. 10 Lah. 165 (F.B.).

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could not be taken away except by an express provision or by necessary implication.

The decision of a Special Bench of the Calcutta High Court in *Sadar Ali* v. *Dalimuddin*(1) is very instructive. There a suit was filed in the munsiff's court at Alipur on October 7, 1920, for a declaration that the defendant had no right to use a certain pathway and for a permanent injunction against the defendant. On July 17, 1924, the trial court dismissed the suit. On July 17, 1926, the subordinate judge dismissed the plaintiff's appeal. On October 4, 1926, the plaintiff filed a second appeal in the High Court. At that time cl. 15 of the Letters Patent permitted a further appeal to the High Court from the judgment of a single judge of the High Court, except in certain cases which are not material for our present purpose, without any leave of the single judge. During the pendency of the second appeal cl. 15 of the Letters Patent was amended and the amendment came into force on January 14, 1928. The amended Letters Patent imposed a condition that a further appeal would lie only "where the judge who passed the judgment declares that the case is a fit one for appeal." It is well-known that this amendment was made in order to reduce the number of Letters Patent Appeals from the judgments of single judges which had assumed alarming proportions in every High Court. After the Letters Patent were amended the second appeal was dismissed by the single judge on April 4, 1928. The learned single judge declined to grant leave under the amended Letters Patent. On 30, 1928, the appellant filed an appeal on the strength of cl. 15 of the Letters Patent as it stood before the amendment and obtained a rule calling upon the respondent to show cause why his appeal should not be accepted and registered without the leave of the single judge. The contention of the appellant was that the amended clause could not be applied to his appeal, for to do so would be to apply it retrospectively and to impair and, indeed, to defeat his substantive right which was in existence prior to the date of the amendment. The appellant claimed that on October 7, 1920, when

(1) [1929] I.L.R. 56 Cal. 512.

the suit was filed, he had vested in him by the then existing law, i.e., cl. 15 of the Letters Patent as it then stood, a substantive right of appeal from the decision of the single judge and that an intention to interfere with it, to clog it with a new condition, or to impair or imperil it, could not be presumed, unless it was clearly manifested by express words or necessary intendment. Reliance was placed on the judgment of Garth C.J. in *Runjit Singh's case*(1) and on other Indian decisions to the effect that the suit and all appeals from the decree made therein were to be regarded as one legal proceeding on the principle stated by West J. in *Chinto Joshi* v. *Krishnaji Narayan*(2) namely "that the legal pursuit of a remedy, suit, appeal and second appeal, are really but steps in a series of proceedings connected by an intrinsic unity". Rankin C.J. delivering the judgment of the Special Bench consisting of five learned judges of the Calcutta High Court, adverted to the difficulty in supposing "that the amendment made by the Letters Patent, which came into force in January last, was made with any other view than to obviate unreasonable, or unreasonably prolonged litigation: or to suppose that the date of the suit has any rational bearing upon that object or as distinguishing one case from another for this purpose." He was conscious that it might be "thought difficult to arrive at an opinion that the reform introduced is reasonable and necessary but that it should in effect be postponed for years." He put the onus on the appellant by saying that the "whole weight of these considerations has to be borne by the applicant's argument that the Letters Patent as they stood on the 7th October, 1920, conferred upon him at that date an existing right." In spite of these difficulties the Full Bench was constrained to come to the decision that the applicant had discharged that onus. At page 518 the learned Chief Justice observed:

"Now the reasoning of the Judicial Committee in the *Colonial Sugar Refining Company's case*(3) is a conclusive authority to show that rights of appeal are not matters of procedure, and that the right to enter the

(1) [1878] I.L.R. 3 Cal. 662 at page 665.
(2) [1879] I.L.R. 3 Bom. 214 at page 216.
(3) [1905] A.C. 369,

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superior court is for the present purpose deemed to arise to a litigant before any decision has been given by the inferior court. If the latter proposition be accepted, I can see no intermediate point at which to resist the conclusion that the right arises at the date of the suit. It does not arise as regards Court B alone, when the suit is instituted in Court A and as regards Court C when the first appeal is lodged before Court B. A "present right of appeal" (cf. section 154 of the Code of Civil Procedure) is a different matter. The principle must, I think, involve that an admixture of different systems is not to be applied to a single case. It is quite true that the suitor cannot enter Court C without going through Court B, but neither can he enter Court B till Court A has given its decision. The right must be a right to take the matter to Court C in due course of the existing law."

Further down the Special Bench posed before them a question: "Whether it is any necessary part of the intendment of the Letters Patent that they should operate upon appeals arising out of suits instituted before 14th January, 1928, when such appeals were heard after that date?" In spite of the wide language of the amended cl. 15 of the Letters Patent, namely, that an appeal shall lie from the judgment of single judge only where the judge who passed the judgment declared that the case was a fit one for appeal, the Special Bench found nothing in that language to indicate that it applied to a decree passed after the amendment came into force or that it took away the vested right. The Special Bench after saying that—"As there is nothing in the language of the Letters Patent to evidence this intention, we must enquire whether it is manifest from the subject-matter"—went on to deal with the subject-matter and observed:

"Now in this case, I cannot say that it appears to me that there is very much material upon which to base a definite conclusion that the intention was to bring pending suits under the new system. The long postponement of a desirable reform may have been thought wise, and it would hardly be correct for a court of law to proceed merely upon its own opinion

as to the degree of respect to which the right of a third appeal is entitled. In this aspect the present case may reasonably be thought less strong than the case of *Bourke* v. *Nutt*(1894) 1 Q.B. 725, where a similar argument was ultimately negatived. If bankrupts may continue to become members of school boards, I cannot say that litigants may not continue to have a third appeal unless it otherwise appears that this construction of the Letters Patent is not reasonably possible. Far be it from me to distinguish between such forms of excess or to divide such claims to toleration."

In re Vasudeva Samiar(1) was also concerned with the effect of the amended cl. 15 of the Letters Patent on a pre-existing right of appeal. In that case the suit was filed in the District Munsif's Court on July 30, 1919. The second appeal was filed in the High Court on July 15, 1924. The amended cl. 15 of the Letters Patent came into force in Madras on January 31, 1928. On February 9, 1929, the second appeal was disposed of. An appeal was filed without any leave of the learned single judge. The High Court office took objection to the maintainability of the appeal by reason of the amended Letters Patent and the case was placed before the Full Bench consisting of five judges under the orders of Courts Trotter C. J. for the determination of the question. Coutts Trotter C. J. entirely concurred in the reasoning of Rankin C. J. and had no answer to it. He adverted to the argument that the result would be that cl. 15 of the amended Letters Patent will remain a dead letter for many years to come and repelled it in the following sentence: "The result is regrettable, because it makes the amended Letters Patent, which were doubtless brought into being to relieve the heavy burden of Second Appeals, which in this Court have now reached the startling figure of 5,000 cases, unable to effect any substantial relief to us for five years." For the moment we pass over his observation in connection with the case of *Canada Cement Co.* v. *East Montreal (Town of)* (2) and will refer to it later on. The point for our present purpose is that the Full Bench did not

(1) [1928] I.L.R. 52 Mad. 361.

(2) [1922] 1 A.C. 249.

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think that the opinion expressed in that case was in conflict with the earlier decision in *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra), which was authoritatively adopted and reconfirmed in the later case of *Delhi Cloth and General Mills Co. Ltd.* v. *Income Tax Commissioner, Delhi* (supra). The learned Chief Justice concluded his judgment with the following words :

"We must therefore hold, however reluctantly, that the institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the legislation has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect. We agree with the Calcutta High Court that the words of the amended Letters Patent do not admit of such an interpretation."

The principle laid down by the Privy Council in *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra) was applied by a Full Bench of the Nagpur High Court in *Radhakishan* v. *Shridhar*(1).

The doctrine laid down by the Privy Council in *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra) has also been applied by the courts in India to cases where the subsequent legislation did not take away the entire right of appeal but imposed certain onerous conditions on such right. The case of *Nagendra Nath Bose* v. *Mon Mohan Singh*(2) is a case of that type. In that case the plaintiff instituted the suit for rent valued at Rs. 1,306-15-0 and obtained a decree. In execution of that decree the defaulting tenure was sold on November 20, 1928, for Rs. 1,600. On December 19, 1928, an application was made under O. 21, r. 90 of the Code of Civil Procedure by the petitioner who was one of the judgment debtors for setting aside the sale. That application having been dismissed for default of his appearance, the petitioner preferred an appeal to the District Judge, Hooghly, who refused to admit the appeal on the ground that the amount recoverable in

(1) I.L.R. 1950 Nag. 532 (F.B.).
(2) 34 C.W.N. 1009; A.I.R. (1931) Cal. 100.

execution of the decree had not been deposited as required by the proviso to s. 174 (c) of the Bengal Tenancy Act as amended by an amending Act of 1928. The contention of the petitioner was that the amended provision, which came into force on February 21, 1929, could not affect his right of appeal from the decision on an application made on December 19, 1928, for setting aside the sale. Mitter J. said :

"We think the contention of the petitioner is well-founded and must prevail. That a right of appeal is a substantive right cannot now be seriously disputed. It is not a mere matter of procedure. Prior to the amendment of 1928 there was an appeal against an order refusing to set aside a sale (for that is the effect also where the application to set aside the sale is dismissed for default) under the provisions of Order 43, rule (1), of the Code of Civil Procedure. That right was unhampered by any restriction of the kind now imposed by section 174(5), proviso. The Court was bound to admit the appeal whether appellant deposited the amount recoverable in execution of the decree or not. By requiring such deposit as a condition precedent to the admission of the appeal, a new restriction has been put on the right of appeal, the admission of which is now hedged in with a condition. There can be no doubt that the right of appeal has been affected by the new provision and in the absence of an express enactment this amendment cannot apply to proceedings pending at the date when the new amendment came into force. It is true that the appeal was filed after the Act came into force, but that circumstance is immaterial—for the date to be looked into for this purpose is the date of the original proceeding which eventually culminated in the appeal."

That decision was approved by a Bench of this Court in *Hoosein Kasam Dada (India) Ltd.* v. *The State of Madhya Pradesh*(1). In that case on November 28, 1947, the appellant submitted a return to the Sales Tax Officer. At that time s. 22(1) of the Central Provinces and Berar Sales Tax Act, 1947 provided

(1) [1953] S.C.R. 987.

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that no appeal against the order of assessment should be entertained unless it was shown that such amount of tax as the appellant might admit to be due from him had been paid. Pending the assessment on the appellant's return the Act was amended on November 25, 1949, so as to provide that no appeal would be admitted unless such appeal was accompanied by satisfactory proof of payment of tax in respect of which the appeal had been preferred. The Assistant Commissioner to whom the return was transferred for disposal made an assessment on April 8, 1950. The appellant preferred an appeal on May 10, 1950, without depositing the amount of tax in respect of which he had appealed. The Board of Revenue was of opinion that s. 22(1) as amended applied to the case as the assessment was made, and the appeal was preferred, after the amendment came into force, and rejected the appeal. The Bench of this Court held, following the leading Privy Council decision and some of the other decisions referred to above, that the right of appeal was a matter of substantive right and not merely a matter of procedure, that this right became vested in a party when the proceedings were first initiated and that such right could not be taken away except by express enactment or necessary intendment. Accordingly it was held that the appellant had a vested right of appeal when the assessment proceedings were initiated in 1947, that his right of appeal was governed by the law as it existed on that date, that the amendment of 1950 could not be regarded as a mere alteration in procedure or an alteration regulating the exercise of the right of appeal, if it whittled down the right itself, and that it had no retrospective effect as the amended Act of 1950 did not expressly or by necessary intendment give it restrospective effect and the appeal could not, therefore, be rejected for non-payment of tax in respect of which the appeal was preferred.

The case of *Ganpat Rai Hiralal* v. *Aggarwal Chamber of Commerce Ltd.* (1), is also instructive. There were two winding up proceedings regarding two companies,

(1) [1953] S.C.R. 752.

namely, the Marwari Chamber of Commerce Ltd. and Aggarwal Chamber of Commerce Ltd. The Official Liquidator settled the list of contributories in both cases. On June 4, 1946, payment order for Rs. 24,005-7-3 was made by the court in the case of Marwari Chamber of Commerce Ltd. At that time Patiala States Judicature Firman of 1999 was in force. Under s. 44 of that Firman a certificate of fitness was required for an appeal from a judgment of a single judge only if the judgment, decree or order sought to be appealed from was made in the exercise of Civil Appellate Jurisdiction. After the payment order had been made Pepsu Ordinance (X of 2005) was promulgated. Section 52 of the Ordinance required a certificate of fitness for appeal in all cases, including the winding up cases. On February 2, 1950, an application was made in respect of the Marwari Chamber of Commerce Ltd. under s. 152 of the Civil Procedure Code for amendment of the payment order by substituting Rs. 21,805-7-3 for Rs. 24,005-7-3. On March 16, 1950, the above application was dismissed by the judge, who refused to grant the certificate of fitness. An appeal against this order refusing to amend the payment order was filed without any certificate. On May 1, 1950, that appeal was dismissed for want of the necessary certificate. An appeal was brought to this Court on certificate of fitness granted by the Pepsu High Court. In the case of Aggarwal Chamber of Commerce Ltd. the payment order was made on January 18, 1949, by the Liquidation Judge. On February 19, 1949, an appeal was preferred to the High Court. At that time the Patiala States Judicature Firman 1999 was in force. Then came the Pepsu Ordinance (X of 2005). The High Court having dismissed the appeal a further appeal was filed in this Court on certificate of fitness granted by the High Court. The question for decision was whether the appellant had a vested right of appeal to this Court in either of two cases. This Court dismissed the appeal in connection with The Marwari Chamber of Commerce Ltd., not on the ground that the appellant had no vested right of appeal but, on the ground that the application for amendment, which was filed

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on February 2, 1950, was an independent proceeding and as that proceeding was instituted after the Pepsu Ordinance (X of 2005), came into operation, the vested right of appeal arising out of that proceeding was governed by that Ordinance and a certificate was necessary. It was observed that there was no warrant for the view that the amendment petition was a continuation of the suit or proceeding thereunder, that it was in the nature of an independent proceeding though connected with the order of which amendment was sought and that such a proceeding was governed by the law prevailing on its date, which admittedly was Pepsu Ordinance (X of 2005), which provided, under s. 52, for a certificate. The court, however, allowed the appeal in the matter of Aggarwal Chamber of Commerce Ltd. following the principle laid down in the case of *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra), for in that case there was no new proceeding and the right of appeal arising out of the proceeding resulting in the payment order had vested at the commencement of those proceedings which was prior to the date when the Pepsu Ordinance (X of 2005) came into force.

Similar principle has also been adopted in cases, where court fees were increased by subsequent amendment of the Court Fees Act. Reference may be made to the cases of *R. M. Seshadri* v. *Province Madras* (1); *In re Reference under section 5 of Court Fees Act*(2); *Sawaldas Madhavdas* v. *Arti Cotton Mills Ltd.* (3). There are certain other decisions which also adopted the same principle but reference will be made to them later on in connection with the question of construction of Art. 133 of the Constitution.

From the decisions cited above the following principles clearly emerge :

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(1) A.I.R. 1954 Mad. 543.
(2) I.L.R. 1955 Bom. 530.
(3) A.I.R 1955 Bom. 332; 57 Bom. L.R. 394.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the *lis* commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at *the* date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

In the case before us the suit was instituted on April 22, 1949, and on the principle established by the decisions referred to above the right of appeal vested in the parties thereto at that date and is to be governed by the law as it prevailed on that date, that is to say, on that date the parties acquired the right, if unsuccessful, to go up in appeal from the sub-court to the High Court and from the High Court to the Federal Court under the Federal Court (Enlargement of Jurisdiction) Act, 1947 read with cl. 39 of the Letters Patent and ss. 109 and 110 of the Code of Civil Procedure provided the conditions thereof were satisfied. The question for our consideration is whether that right has been taken away expressly or by necessary intendment by any subsequent enactment. The respondents to the application maintain that it has been so taken away by the provisions of our Constitution.

In construing the articles of the Constitution we must bear in mind certain cardinal rules of construction. It has been said in *Hough* v. *Windus*(1), that "statutes should be interpreted, if possible, so as to respect vested right." The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot

(1) [1884] 12 Q B.D. 224 at 237.

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be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed(1). The following observation of Rankin C. J. in *Sadar Ali* v. *Dalimuddin* (supra) at page 520 is also apposite and helpful: "Unless the contrary can be shown the provision which takes away the jurisdiction is itself subject to the implied saving of the litigant's right." In *Janardan Reddy* v. *The State*(2) Kania C. J., in delivering the judgment of the Court observed that our Constitution is generally speaking prospective in its operation and is not to have retroactive operation in the absence of any express provision to that effect. The same principle was reiterated in *Keshavan Madhava Menon* v. *The State of Bombay*(3) and finally in *Dajisaheb Mane and Others* v. *Shankar Rao Vithal Rao*(4) to which reference will be made in greater detail hereafter.

In the next place we must take into account the surrounding circumstances that existed at the time when our Constitution makers framed the Constitution and for which provision had to be made by them. In construing the Articles relating to the appellate jurisdiction of this Court it is well to remember the several categories of persons who were at the date of the Constitution, interested in the right of appeal from judgments, decrees or final orders of a High Court to a superior court in one way or another. There were seven categories of persons so interested, namely—

(i) Those who were aggrieved by a judgment of a High Court in what was British India passed before the commencement of the Constitution in a civil proceeding arising out of a suit or proceeding instituted before the Constitution and who had preferred an appeal from such judgment to the Federal Court or whose appeal from such judgment to the Privy Council had stood transferred to the Federal Court and whose appeal was pending in such court immediately prior to the commencement of the Constitution;

(1) Leeds and County Bank Ltd. *v.* Walker (1883) 11 Q.B.D. 84 at page 91; Moon *v.* Durden (1848) 2 Ex. 22; 76 R.R. 479 at p. 495.
(2) [1950] S.C.R. 940 at pp. 946-947.
(3) [1951] S.C.R. 228.
(4) [1955] 2 S.C.R. 872 at pp. 876-877.

(ii) Those who were aggrieved by a judgment passed by such a High Court before the commencement of the Constitution in such civil proceeding arising out of a suit or proceeding instituted in the court of first instance before the Constitution, but in which only an application for leave to appeal to the Federal Court had been made and such application was pending before the Federal Court immediately before the commencement of the Constitution but no appeal had actually been filed or was pending before the Federal Court at that date;

(iii) Those who were aggrieved by a judgment passed by such a High Court before the Constitution in a civil proceeding arising out of a suit or proceeding instituted in the court of first instance before the Constitution and in respect of which no application for leave to appeal to the Federal Court had been made but the time for making such application had not expired at the commencement of the Constitution;

(iv) Those who may be aggrieved by a judgment passed by such a High Court after the date of the Constitution in a civil proceeding arising out of a suit or proceeding filed in the court of first instance before the Constitution;

(v) Those who were aggrieved by a judgment passed by a High Court in a Princely State before the Constitution and who had appealed from such judgment to the Privy Council of that State which was pending at the commencement of the Constitution;

(vi) Those who were aggrieved by such a judgment of a High Court of a Princely State and who had not actually field an appeal but whose application for leave to appeal to the Privy Council of that State was pending before such Privy Council immediately before the commencement of the Constitution; and lastly

(vii) Those who may be aggrieved by the judgment of a High Court in the territory of India passed after the commencement of the Constitution in a civil proceeding arising out of a suit or proceeding filed also after the Constitution would come into force.

The Constitution makers knew about these several categories of persons and further that, according to a

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series of decisions of the highest courts, it had been firmly established that the right of appeal to the Federal Court vested in a litigant at the date of the institution of the suit or proceeding in the court of first instance and not on the date of the passing of the judgment by the trial court or the High Court or of the filing of the appeal in the High Court or the Federal Court. In other words the Constitution makers knew that the right of appeal to the Federal Court had already vested in persons falling within categories (i) to (iv) at the date of the institution in the court of first instance of the suit or proceeding to which they were parties, no matter when the judgment of the High Court was passed or was likely to be passed in future. The Constitution makers also knew that this vested right was governed by cl. 39 of the Letters Patent read with the Federal Court (Enlargement of Jurisdiction) Act, 1947 and the Abolition of Privy Council Jurisdiction Act, 1949 and ss. 109 and 110 of the Code of Civil Procedure. The Constitution makers were also aware of the rights of persons who fell within categories (v) and (vi). With full knowledge of all these rights the Constitution makers made such provision as they thought fit. The question is,—has the Constitution, expressly or by necessary intendment, taken away this vested right of appeal from any of these categories of persons? This leads us to examine the relevant provisions of the Constitution and other laws bearing on the question.

Article 395 of the Constitution repealed the Indian Independence Act, 1947 and the Government of India Act, 1935 together with all enactments amending or supplementing the latter Act, but expressly kept alive the Abolition of Privy Council Jurisdiction Act, 1949. The repeal of the Government of India Act, 1935 necessarily involved the abolition of the Federal Court which was the creature of that Act. In its place the Constitution by Art. 124 has established this Court, which by Art. 129 is made a court of record with all the powers of such a court, including the power to punish for contempt of itself. Article 131 confers original jurisdiction on this Court in certain disputes

therein mentioned. Appellate jurisdiction of this Court is dealt with in Art. 132 and the following Articles. Article 132 confers jurisdiction on this Court to entertain appeals from judgments, decrees or final orders of a High Court in the territory of India, whether in a civil or criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. The relevant portion of Art. 133 runs as follows:

133(1). An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involved directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

Article 134(1)(c) authorises this Court to entertain an appeal from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India, if the High Court issues the requisite certificate. Article 135 is in the terms following:

135. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

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Article 136 authorises this Court in its discretion to grant special leave to appeal in certain cases. Article 137 confers power or review upon this Court to review its own judgments. Provision is made for the enlargement of the jurisdiction or conferment of additional or ancillary powers under Arts. 138 to 140. Article 372 of the Constitution provides for the continunace in force of the existing laws and for their adaptation. The relevant portions of Art. 372 are as follows :

372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

In exercise of the powers conferred on him by Art. 372(2), the President promulgated the Adaptation of Laws Order, 1950, which came into force simultaneously with the Constitution on January 26, 1950. In the first schedule dealing with the Central Acts are set out the adaptations made in the Code of Civil Procedure. It is to be noted that ss. 109 and 110 of the Code of Civil Procedure were not deleted altogether but were modified only. The sections as adapted run as follows :

109. Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding

appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court—

(a) from any judgment, decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction;

(b) from any judgment decree or final order passed, by a High Court in the exercise of original civil jurisdiction; and

(c) from any judgment, decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to the Supreme Court.

110. In each of the cases mentioned in clauses (a) and (b) of s. 109, the amount or value of the subject-matter of the suit in the Court of first instance must be twenty thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to the Supreme Court must be the same sum or upwards,
or the judgment, decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,
and where the judgment, decree or final order appealed from affirms the decision of the Court immediately below the Court passing such judgment, decree or final order, the appeal must involve some substantial question of law.

This adaptation, however, was subject to the provisions of cl. 20 of the Order itself, which runs as follows :—

20. Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any existing law, or any right, privilege, obligation or liability already acquired, accrued, or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

The result of the foregoing provisions may here be shortly summarised. The Constitution by Art. 395 repealed the Government of India Act and thereby abolished the Federal Court. It, however, continued

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the Abolition of Privy Council Jurisdiction Act, 1949, which directed that the Federal Court in addition to the powers conferred on it by the Federal Court (Enlargement of Jurisdiction) Act, 1947, would have all the appellate powers exercised by the Privy Council. Though the Federal Court (Enlargement of Jurisdiction) Act, 1947, being an Act amending or supplementing the Government of India Act, 1935, was repealed, yet notwithstanding such repeal the provisions of the Act were continued in force under Art. 372(1) subject to the other provisions of the Constitution. The Adaptation Order modified ss. 109 and 110 of the Code of Civil Procedure, *inter alia,* by raising the valuation from Rs. 10,000 to Rs. 20,000, but that provision did not, by virtue of clause 20 of the Order, affect any right, privilege, obligation or liability already acquired, accrued or incurred under any existing law. The true implication of the above provisions is that the pre-existing right of appeal to the Federal Court continues to exist and the old law, which created that right of appeal also continues to exist to support the continuation of that right and the Federal Court having been abolished the Supreme Court is substituted for the Federal Court as the machinery for the purpose of giving effect to the exercise of that right of appeal. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal the old law must govern the exercise and enforcement of that right of appeal. The continuance of the old law, however, is subject to the other provisions of the Constitution.

Turning to the Constitution it will appear that Art. 374(2) provides for the removal of all suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution to this Court and invests this Court with jurisdiction to hear and determine the same. This saves the vested right of appeal of the persons falling within categories (i) and (ii) mentioned above. It is conceded that Art. 135 saves the vested right of appeal of persons falling within category (iii), i.e., persons who are dissatisfied with the judgments passed by a High

Court in what was British India before the commencement of the Constitution, in civil proceedings arising out of suits or proceedings instituted also before that date and in respect of which no application for leave to appeal had been made before the Federal Court prior to the commencement of the Constitution. Article 374(4) abolishes the jurisdiction of the authority which functioned as the Privy Council in the Princely States which under the Constitution became Part B States and provided for the transfer of all appeals and other proceedings pending before such authority at the commencement of the Constitution to the Supreme Court to be disposed of by it. This saved the right of appeal of persons falling within categories (v) and (vi). Persons falling within category (vii) may clearly avail themselves of Art. 133. The only question that remains is whether the right of appeal from the judgment of a High Court passed after the date of the Constitution in a civil proceeding arising out of a suit or proceeding instituted before the Constitution which had vested in persons falling within category (iv) is to be governed by Art. 133 or by the old law under Art. 135.

In *Radha Krishna* v. *Shridhar* (supra) *Nandalal* v. *Hira Lal*[1] *Mahant Sidha Kamal Nayan* v. *Bira Naik*[2], *Ramaswami* v. *Ramanathan*[3], *Daji Saheb* v. *Shankarrao*[4] *Mt. Murtu* v. *Paras Ram*[5] and *Bhagwantrao* v. *Viswasrao*[6], it has been held that Art. 133 of the Constitution is not retrospective and that the vested right of appeal is governed by the conditions laid down in the Code of Civil Procedure which were in force previous to the adaptation thereof and this Court was by Art. 135 substituted for the Federal Court and invested with jurisdiction to entertain the appeals under that article. In *Daji Saheb* v. *Shankarrao* (supra) the suit, the value of which was between Rs. 11,000 and Rs. 13,000, was dismissed by the trial court on December 20, 1946, and the High Court reversed the decree of the trial court and passed the decree in favour of the plaintiff on November 8,

(1) I.L.R. 1950 Nag. 830.
(2) I.L.R. 1950 Cut. 663.
(3) I. L.R. 1951 Mad. 125.
(4) I.L.R. 1952 Bom. 906.
(5) A.I.R. 1952 Him. 14.
(6) I.L.R. 1953 Nag. 822.

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1949. The Bombay High Court having granted a certificate of fitness, the case came up before this Court and will be found reported as *Daji Saheb Mane* v. *Shankarrao.*(1) On a question of the maintainability of the appeal being raised, this Court held that Art. 133 did not apply because (i) it related expressly to appeals against any judgment, decree or final order in a civil proceeding of a High Court in the territory of India and (ii) on the date of the decree of the High Court the defendant had a vested right of appeal to the Federal Court and on January 25, 1950, a certificate of fitness to appeal was bound to be granted. It was held that the appeal to the Supreme Court was competent by virtue of the provisions of Art. 135 of the Constitution as the jurisdiction and powers in relation to the matter in dispute were exercisable by the Federal Court immediately before the commencement of the Constitution under an existing law, inasmuch as the Federal Court had jurisdiction under the Code of Civil Procedure to entertain and hear appeals from a decree of a High Court which reversed the lower Court's decree concerning property of the value of Rs. 10,000 or upwards. As regards the argument urged by the respondent that Art. 133 applied, this Court observed :—

"If we accede to the argument urged by the respondent, we shall be shutting out altogether a large number of appeals, where the parties had an automatic right to go before the Federal Court before the Constitution and which we must hold was taken away from them for no fault of their own, merely because the Supreme Court came into existence in place of the Federal Court. An interpretation or construction of the provisions of the Constitution which would lead to such a result should be avoided, unless inevitable."

On the other hand there are two decisions of the Madras High Court which run counter to the decisions hereinbefore referred to and which may now be considered. In *Ramaswami Chettiar* v. *The Official Receiver*(2), a Division Bench of the Madras High Court held that the expression "matter" under Art. 135

(1) [1955] 2 S.C.R. 872. (2) A.I.R. 1951 Mad. 1051.

excluded civil and criminal proceedings and should be understood as meaning a matter which is neither civil nor criminal and, therefore, by applying the maxim *expressio unius est exclusio alterius,* the word "matter" in Art. 135 should be deemed to exclude both civil and criminal proceedings and the hardship imposed on the litigant by adopting this construction was mitigated by conferment of discretionary power on this Court to grant special leave under Art. 136. On this construction litigants, who come within categories (iii) and (iv) will all have to depend upon the discretionary powers of this Court to grant special leave under Art. 136. This will be a poor consolation to those litigants, for they will have no appeal as a matter of right, which they formerly possessed under the Code of Civil Procedure but will have to seek a favour entirely dependent on the discretion of this Court. We do not think any other High Court has gone to this length and, indeed, this decision has been expressly dissented from in *Bhagwantrao* v. *Viswasrao* (supra) and we are not prepared to accept that Madras decision as correct.

In *Veeranna* v. *China Venkanna*(1) it has been held by a Full Bench of three judges of the Madras High Court that if the judgment is delivered in a civil proceeding of a High Court after the commencement of the Constitution then no matter whether the civil proceeding was instituted before or after the commencement of the Constitution, Art. 133(1) would apply directly and if that article applied Art. 135 would not, for that article would apply only to matters to which Arts. 133 and 134 did not apply, and consequently there would be no right of appeal from such judgment to this Court if the value of the subject-matter of the suit and the appeal was not Rs. 20,000 or upwards. This case has been followed in *Prabirendra Mohan* v. *Berhampore Bank Ltd.* (2), *Ram Sahai* v. *Ram Sewak* (3), *Tajammul Husain* v. *Mst. Qaisar Jahan Begam* (4) and *The Indian Trade and General Insurance Co. Ltd.* v. *Raj Mal Pahar Chand* (5). It is, therefore, necessary to

(1) I.L.R. 1953 Mad. 1079.
(2) A.I.R. 1954 Cal. 289.
(3) A.I.R. 1956 All. 321
(4) A.I.R. 1956 All. 638.
(5) A.I.R. 1956 Punj. 228.

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examine in detail the decision in the Madras Full Bench case.

In that case the suit was filed in 1945 in the court of the subordinate Judge of Kakinada for partition and possession. The subordinate Judge passed a preliminary decree. Eventually the High Court reversed the decision on August 23, 1951. The value of the suit was over Rs. 10,000 but below Rs. 20,000. The learned judges distinguished the previous cases hereinbefore referred to which were cited by counsel in support of the maintainability of the appeal on the ground, *inter alia,* that in those cases the judgments appealed from were passed by the High Courts before the commencement of the Constitution. It was fully conceded that the institution of a suit carried with it the implication that all appeals then in force would be preserved to the parties to the suit throughout the rest of the career of the suit as was laid down by the Full Bench of five Judges of that Court. But it was pointed out that there were two exceptions to the application of that rule, namely, (i) when by competent enactment such right of appeal was taken away expressly or impliedly with retrospective effect and (ii) when the court to which an appeal then, that is, at the commencement of the suit, would lie was abolished. Reference was made to the case of *Canada Cement Co. Ltd.* v. *East Montreal (Town of)* (supra) and the passage from the judgment of Coutts Trotter C.J. in *In re Vasudeva Samiar* (supra) was quoted as an excellent summary of the effect of that decision. The conclusion was thus expressed at page 1086 :

"Now, the suit in the present case was instituted in 1945. On that date the final Court of Appeal was the Privy Council. Strictly speaking, if any right was vested in the parties to the suit on the date of its institution, it was a right to finally appeal to the Privy Council. But from 1st February, 1948, such a right was expressly abolished. There was no doubt no abolition of a Court as such, but substantially that was the result. From that day the Privy Council ceased to be a Court of Appeal from the Indian High Courts. Such right as was vested in the parties to the suit to appeal

to the Privy Council, therefore, came to an end on that day. Instead, the parties may be said to have obtained an alternative right of appeal to the Federal Court. But what must not be overlooked is that this is not because the parties had a vested right, but because the Federal Court (Enlargement of Jurisdiction) Act specially provided for the substitution of the final appellate forum (vide section 3 of that Act)."

Again at page 1087 it was said :—

"it follows, therefore, that the utmost that can be said in favour of the petitioner is that immediately before the coming into force of the Constitution the existing law conferred a right on parties in this case to appeal to the Federal Court. When this Court was abolished by the coming into force of the Constitution the question is, were any rights substituted for the rights which existed at the time? Article 374(2) specially provides for all suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of the Constitution. These shall stand removed to the Supreme Court and the Supreme Court shall have jurisdiction to hear and determine the same. But we find no provision made as regard proceedings by way of appeal or otherwise not pending in the Federal Court at the commencement of the Constitution which might have been taken in the Federal Court or in the High Court in respect of an appeal to the Federal Court. There is no indication as to what is to happen to such proceedings which had not commenced by the date of the Constitution."

It is quite obvious from the passages quoted above that the judgment of this Madras Full Bench proceeds on the footing that the vested right of appeal was to go to a particular court, that that court having been abolished the old vested right had come to an end, that a new court was established and a new right of appeal was given to that court on new terms, that no provision had been made for filing appeals to the new court in cases where appeals could have been filed to the court which ceased to exist and that, therefore, there was no right to appeal to the new court in spite of the doctrine of the vested right. In other words the Full

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Bench apparently thought that this case fell within the second exception mentioned by them, namely, that the court to which the appeal lay at the date of the commencement of the suit had been abolished and, therefore, the vested right of appeal ceased to exist. Support for this conclusion was derived from the decision in the case of *Canada Cement Co. Ltd.* v. *East Montreal (Town of)* (supra).

Now turning to the facts of that last mentioned Canadian case we find that the judgment of the Circuit Court of Montreal was passed on January 5, 1921, against the appellant. The appellant appealed to the King's Bench (Appeal Side) for the Province of Quebec. The respondent applied for dismissal of the appeal on the ground that it was not maintainable. On April 26, 1921, the King's Bench (Appeal Side) held that no appeal lay and the judgment of the Circuit Court was final. The appellant thereupon appealed to the Privy Council. The respondent applied to the Privy Council to quash the appeal on the ground that the appeal to the Privy Council was incompetent. Three points were urged before the Judicial Committee. The first was that as the jurisdiction of the Circuit Court was derived from the Cities' and Towns' Act, 1909, all right of appeal must be found in that Act and as no right of appeal was given by that Act no appeal lay. This point was rejected by the Judicial Committee on the ground that the power that was given to take proceedings to the Circuit Court under art. 5755 enabled these proceedings to be taken as part of the ordinary business of the court and the right of appeal that existed from the judgment given by that court was applicable to such proceeding. The second point urged was that the Circuit Court was governed by the Civil Procedure Code and so it had to be ascertained if that Code gave any appeal. Reference was made to the different sections of the Code and it was contended that no such right of appeal had been given by those sections. The Judicial Committee upheld this point. The last point which was raised is material for our purpose. That was that by the Quebec Statute 10 Geo. 5 c. 79 the whole of the sections of the Code of Civil Procedure

including those dealing with the Circuit Court and the right of appeal were declared to be replaced by other provisions and so far as the Circuit Court was concerned the provisions as to appeal were completely dropped out. Section 42, however, provided that the Court of King's Bench would have jurisdiction in all matters from all courts, wherefrom an appeal by law lay and s. 64 provided that "unless otherwise provided by this Act, all cases, matters or things which, at the time of its coming into force, were within the competence of the Court of Review, shall be within the competence of the Court of King's Bench, sitting in appeal." The Judicial Committee accepted this contention and Lord Buckmaster who delivered the judgment of the Judicial Committee observed as follows :—

"Now this appeal had not been brought when the statute was passed, although the proceedings before the Circuit Court had been instituted. Consequently the statutes giving whatever right of appeal may have existed were replaced by sections which gave none, and s. 64 of the Act, which provided that matters within the competence of the Court of Review should be subject to the Court of King's Bench, must be regarded as qualified by the provision that the powers of the Court of Review with regard to the Circuit Court had been taken away, and consequently to that extent the 'statute had otherwise provided'."

It is clear from the above passage that the reason why the appeal was held to be incompetent was not that the court to which an appeal lay at the date of the institution of the suit had been abolished and, therefore, the right of appeal ceased to exist nor that that court was abolished and a new court was set up in its place and nothing was mentioned about the vested right of appeal, but that the new court which took the place of the court to which the appeal originally lay was given jurisdiction in all cases "unless otherwise provided by this Act" and that that very Act having declared the whole of the sections of the Code in which the provisions relating to the Circuit Court and rights of appeal found place to be replaced by

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other provisions and those other provisions having completely dropped out the provisions relating to the appeal from the Circuit Court, it was held that the statute "had otherwise provided". In other words this case illustrates that the matter really came within the first exception, namely that the vested right of appeal had been taken away expressly or by necessary intendment rather than within the second exception where the court to which the appeal lay had been abolished simpliciter. This case, therefore, can give no support to the conclusion of the Full Bench.

Apart from what, with respect, appears to us to be an erroneous reading of that Canadian case, the judgment of this Madras Full Bench seems to have been founded on the idea that the Constitution simply brought about an abolition of the Federal Court simpliciter and consequently the old vested right of appeal thereto ceased to exist and that as no new right of appeal was given to the new court, i.e., the Supreme Court, no appeal lay to it. If this reasoning of the Madras High Court were correct then with respect to the case of *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra), it could be said, adapting the language used in the Madras Full Bench case and quoted above, that if any right was vested in the parties to the suit on the day of its institution in the court of first instance it was a right of final appeal only to the Privy Council, that though strictly speaking there was no abolition of the Privy Council as such, yet substantially that was the result, for the Privy Council ceased to be a court of appeal from the Queensland Supreme Court and, therefore, such right as was vested in the parties to the suit to appeal to the Privy Council came to an end when the amendment came into force and that instead of that vested right the parties had obtained the alternative right of appeal to the High Court of Australia and, therefore, no appeal lay to the Privy Council. If the reasoning of the Madras High Court were correct then the Privy Council case of *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra) must be held to have been wrongly decided. But such an argument has not been advanced

and, we apprehend, cannot for a moment be countenanced. In that case the Privy Council enunciated a principle which, according to them, was well established by a series of decisions going back to the time of Lord Coke and that principle has been adopted by Full Benches of almost all the High Courts of India and has never been dissented from or doubted. It is now too late in the day to go back upon a principle on the strength of which appeals have been filed and allowed and rights of parties have been adjudicated upon and titles to properties have been declared for over 50 years. If, therefore, we are to accept the correctness of the principle laid down by the Privy Council, as we think we must, then the only question that remains and calls for a decision is whether the Constitution has expressly or by necessary intendment taken away the right of appeal which vested in the parties at the date of the commencement of the proceedings in the court of first instance.

It is said that Art. 133 of the Constitution has taken away that right. This contention appears to be untenable and open to serious objections. There is nothing in Art. 133 which in terms expressly takes away the vested right of appeal from any judgment, decree or final order of a High Court passed in a civil proceeding arising out of a suit or proceeding instituted before the commencement of the Constitution. Does the article, then, disclose any necessary intendment to that effect? It is said that that article gives a right of appeal from any judgment, decree or final order of a High Court passed after the date of the Constitution, provided it satisfies the conditions therein mentioned and this provision impliedly negatives the right of appeal from judgments passed after the Constitution if the conditions are not satisfied, no matter when the proceedings had been instituted in the court of first instance. Article 133 only speaks of any judgment, decree or final order of a High Court. It does not say judgment, decree or final order passed after the Constitution. Therefore, when an application for leave to appeal from a judgment, decree or final order of a High Court is made after the

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Constitution then, at the date of the application, surely the judgment, decree or final order passed before the Constitution can also be described literally and correctly as a judgment, decree or final order of a High Court. But it is said at once that the Constitution is prospective and, therefore, the judgment, decree or final order contemplated therein can only be a judgment, decree or final order passed after the Constitution. But if by reason of the theory that the Constitution is prospective we are to read the words "passed after the commencement of the Constitution" after the words "judgment, decree or final order", can there be any cogent reason why we may not also read the words "arising out of a suit or proceeding instituted in the court of first instance after the commencement of the Constitution" after the words "civil proceedings of a High Court in the territory of India"? If the Constitution is prospective with regard to the date of the judgment why should it not be also prospective with regard to the institution of the suit or proceeding out of which the civil proceeding before the High Court arises? To construe the language of Art. 133 to cover all judgments, decrees or final orders made after the date of the commencement of the Constitution irrespective of the date of the institution of the proceedings in the court of the first instance will be to run counter to the earlier decisions referred to above. The very wide language of the amended cl. 15 of the Letters Patent or of s. 242(1) of the amended Agra Tenancy Act, 1926 and the other provisions of other enactments, e.g., the amended provisions of the Court Fees Act were not construed to apply to judgments, decrees, or final orders made after the respective dates of amendment or regarded as indicating expressly or by necessary intendment, that the vested right of appeal had been taken away. The peremptory words of the amended s. 22(1) of the Central Provinces and Berar Sales Tax Act, 1947 were not considered sufficient by this Court to take away the right of appeal which had vested in the assessee under the old section which was in force at the time the returns were filed. It is erroneous, therefore, to

say that the language of Art. 133 impliedly takes away the right of appeal.

There are, moreover, deeper grounds of objection to the construction placed upon Art. 133 by this later Madras Full Bench case we are considering. It overlooks the fact that the right of appeal becomes vested in the parties to the suit at the date of the institution of the suit and the date of the judgment or the date of the filing of the appeal has nothing to do with it. Therefore, a party to a suit, who is dissatisfied with a judgment passed by the High Court in a civil proceeding arising out of a suit or proceeding filed in the court of first instance before the Constitution, has a right of appeal which had accrued to him at the date of the institution of the suit or proceeding in the court of first instance according to the law then in force and it is immaterial whether the judgment is passed before or after the Constitution. The right to go from court to court in appeal is the right which vests at the date of the institution of the proceedings in the court of the first instance. It is true, as pointed out by Rankin C.J. that the litigant cannot go from Court A to Court B or from Court B to Court C unless and until an adverse order actually is made but the right to go up to Court C vests, not at the date of the adverse judgment or the date of the filing of the appeal but, at the date of the institution of the original proceedings. If this is, as we apprehend it is, the correct view then to construe Art. 133 as covering all judgments, decrees and final orders made after the Constitution irrespective of the date of the initiation of the proceedings in the original court will be to take away or impair the vested right of appeal from a judgment concerning property or subject-matter of the value of Rs. 10,000 but below Rs. 20,000 which had accrued to the aggrieved party long before the commencement of the Constitution. Such a construction plainly and surely amounts to giving a retroactive operation to Art. 133, for so construed the article will certainly destroy the right which was vested prior to the Constitution. This will be contrary to the canons of construction referred to in the earlier part of this

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judgment. As already stated, if the words of Art. 133, namely, "an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court" bring within their ambit all judgments, decrees or final orders passed after the date of the Constitution, then on a parity of reasoning the words in the amended cl. 15 of the Letters Patent that "an appeal shall lie to the said High Court from a judgment of one judge" should have covered a judgment of one judge passed after the amendment came into force. But the Special Bench of five judges of the Calcutta High Court and the Full Bench of five judges of the Madras High Court did not regard that language as sufficient to cover the case of a judgment, which was passed after the amended cl. 15 of the Letters Patent came into force. The truth of the matter is that the latter part of the judgment in this later Full Bench case of the Madras High Court we are now considering is inconsistent with the very basic principle which, in the earlier part of their judgment, the learned judges had conceded, namely, that the right of appeal vested in the parties to a suit or proceeding instituted before the date of the Constitution at the date of the initiation of the suit or proceedings and that this right had nothing to do with the date of the passing of the judgment. The learned judges, we say with respect, completely overlooked the fact that the wide construction they put upon Art. 133 destroyed the pre-existing right of appeal which had vested in the aggrieved party long before the commencement of the Constitution and that this construction amounted to giving the article a retrospective operation which was not permissible in the absence of express provision or necessary intendment.

The learned judges constituting this later Full Bench of the Madras High Court seem to have been oppressed by the feeling that to hold that Art. 133 did not apply to all judgments passed by a High Court after the date of the Constitution in a civil proceeding arising out of a suit or proceeding instituted in the court of first instance prior to that date will make the article a dead letter for many years to come. We need

only point out that the Special Bench in Calcutta and the earlier Full Bench of Madras, which dealt with the cases relating to the amended cl. 15 of the Letters Patent were not deterred by any such feeling of oppression from giving effect to the principle which undoubtedly was laid down by the Privy Council in *Colonial Sugar Refining Co. Ltd.* v. *Irving* (supra).

The learned judges of this later Full Bench of the Madras High Court may also have been oppressed by the feeling that if Art. 133 were not construed as covering all judgments, decrees or final orders of a High Court made after the date of the Constitution in a civil proceeding irrespective of whether such proceeding arose out of a suit or other proceeding instituted before or after that date it will be to deny a right of appeal to a litigant whose suit had been filed in a High Court of a princely State long before the Constitution came into force and in which an adverse order was made against him by the High Court of the corresponding Part B State and he will be deprived of a right of further appeal to this Court for the case will not fall within Art. 135 either. This argument may be attractive at first but a little reflection will show that there is no substance in it. If such a litigant had before the Constitution actually filed his appeal before the Privy Council of his princely State or had filed an application before that authority for leave to appeal to it then Art. 374(4) will amply protect him, for this Court will be competent to dispose of his appeal or application. If, however, the judgment had been passed by the High Court of the princely State before the Constitution and no appeal or application for leave to appeal therefrom had been actually filed in the Privy Council then the suggested construction of Art. 133 will not help the aggrieved litigant, for Art. 133 so construed applies only to judgments passed after the commencement of the Constitution. Nor will Art. 135 be of any assistance to him because the Federal Court could not, immediately before the commencement of the Constitution, exercise any jurisdiction or powers in relation to a judgment passed by a High Court of a princely State. Then there remain those litigants who filed

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their suits or proceedings in the High Court of a princely State before the commencement of the Constitution but in which judgment was passed after the date of the Constitution by the High Court of the corresponding Part B State. It will be shown hereafter that it is not necessary to put upon Art. 133 such a wide construction as is suggested by this later Madras Full Bench decision. In any event our solicitude to give a right of further appeal to this Court to a few litigants should not lead us to put such a construction on Art. 133 as will take away the right of appeal of many more litigants who had acquired that right long before the Constitution came into force. The learned judges of the Madras High Court do not appear to have sufficiently adverted to the fact that a very large number of litigants, who had a vested right of appeal from judgments concerning property or subject-matter of the value of over Rs. 10,000 but below Rs. 20,000 would be deprived of their vested right. We again repeat the admonition given by this Court in *Daji Saheb Mane* v. *Shankarrao Vithalrao Mane* referred to above, namely, a construction which will have such an effect should not be adopted unless it is imperative. We see nothing imperative in Art. 133 in that behalf.

There is another argument advanced against the correctness of this Madras Full Bench decision which may be noticed now. It is pointed out that the learned judges conceded that Art. 133 did not apply to a case in which the judgment, decree or final order of the High Court was made before the Constitution. This concession can only be explained on the footing that having been passed before the commencement of the Constitution such judgment, decree or final order did not comply with the requirements of Art. 133, which, being prospective, contemplated a judgment, decree or final order of the High Court passed after the date of the Constitution and that as Art. 133 did not apply the vested right of appeal was governed by Art. 135. Then, by a parity of reasoning why can it not be said that Art. 133 does not apply to a judgment, decree or final order in a Civil Proceeding arising out of a suit or

proceeding instituted in the court of first instance before the date of the Constitution, where the value of the subject-matter of the suit and the appeal was above Rs. 10,000 but below Rs. 20,000, because such a judgment, decree or final order did not satisfy the conditions of Art. 133 as to valuation? If non-compliance with one requirement of Art. 133, viz., the passing of the judgment after the date of the Constitution takes out of that article a judgment, decree or final order passed by a High Court before the date of the Constitution in a civil proceeding arising out of a suit or proceeding instituted also before that date and brings it within Art. 135 as a matter not comprised in Art. 133, why will not the non-compliance with the conditions as to the valuation laid down in Art. 133 take a judgment, decree or final order passed by a High Court after the date of the Constitution in civil proceeding arising out of a suit or proceeding instituted before that date also out of the operation of Art. 133 and consequently bring it within Art. 135 as a matter to which the provisions of Art. 133 do not apply? The same reasoning, it is urged, should apply to both cases. We need say no more on this argument except that we see some force in it, for it is not necessary for us to base our conclusions on this argument.

We now pass on to consider another construction of Art. 133 which appears to us to be quite cogent. We have seen that ss. 109 and 110 of the Code of Civil Procedure were adapted by the President's Order and the valuation had been raised from Rs. 10,000 to Rs. 20,000 in order to bring it into conformity with Art. 133. Clause 20 of that Adaptation Order itself provided that such adaptation would not affect the vested rights. Therefore those litigants who had a vested right of appeal from judgments, decrees or final orders of a High Court in a civil proceeding arising out of a suit or proceeding instituted prior to the Constitution and which involved a right or property valued at over Rs. 10,000 but below Rs. 20,000 are still to be governed by the old ss. 109 and 110. This means that the words "judgment, decree or final order" occurring in ss. 109 and 110 of the Code as

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adapted must be read as a judgment, decree or final order made after the date of the adaptation other than those in respect of which a vested right of appeal existed before the adaptation and which were preserved by cl. 20. If ss. 109 and 110 must be read in this way why should not Art. 133 be read as covering all judgments, decrees or final orders of a High Court passed after the commencement of the Constitution other than those in respect of which a vested right of appeal existed from before the Constitution? It is said that there is no saving provision to Art. 133 like cl. 20 of the Adaptation Order and, therefore, Art. 133 cannot be read in a restricted way. This argument is unsound and here the observations of Rankin C.J. in the Special Bench case of Calcutta referred to above become apposite, namely, that the provision which takes away jurisdiction is itself subject to the implied saving of the litigant's right. Clause 20 will be meaningless if Art. 133 is also not read in a restricted sense. This restricted construction of Art. 133 will not be open to the objection that it deprives the aggrieved litigant who had filed his suit or proceeding in a princely State before the Constitution but against whom an adverse judgment, decree or final order has been made by the High Court of the corresponding Part B State for the Privy Council to which that litigant had the right to go had been abolished. Such a litigant had no vested right and therefore he can come under Art. 133 if the conditions thereof are satisfied.

As against this construction it is said that it will not help a litigant who had filed his suit before the Constitution but against whom an adverse order is made after the Constitution, for having on this construction a vested right of appeal he will be outside the purview of Art. 133 and he can only exercise his vested right if he can come within Art. 135. It is said that in order to come within Art. 135 the judgment, decree or final order must be passed before the commencement of the Constitution when the Federal Court was in existence, for on the coming into force of the Constitution the Federal Court ceased to exist and

the Federal Court could not possibly exercise any jurisdiction immediately before the commencement of the Constitution with respect to a judgment, decree or final order which had been passed after the date of the Constitution when the Federal Court ceased to exist. This is to give Art. 135 a very narrow and limited construction which was deprecated by this Court in *Daji Saheb Mane* v. *Shankarrao Mane* (supra). Further this construction overlooks the fact that Art. 135 confers on this Court the same jurisdiction and power with respect to any matter to which the provisions of Art. 133 or Art. 134 do not apply, if the jurisdiction and power in relation to that matter were exercisable by the Federal Court immediately before the Constitution under any existing law. If we accept the position that at the date of the institution of the civil proceeding a right vested in the litigant to appeal to the Federal Court then it becomes difficult to hold that such vested right did not constitute a "matter" in relation to which jurisdiction and powers were exercisable by the Federal Court immediately before the commencement of the Constitution. The word "matter" is certainly a word of wide import and by interpreting it in a liberal way the vested rights of appeal may well be brought within the purview of Art. 135. If we say that the Federal Court could not exercise jurisdiction or power unless a judgment, decree or final order was actually passed before it ceased to exist then it will also have to be said that the Federal Court could not exercise jurisdiction or power in relation to a judgment, decree or final order passed before the Federal Court ceased to exist, but with respect to which no leave to appeal had been obtained either from the High Court or from the Federal Court, for without such leave no jurisdiction or power was exercisable by the Federal Court in respect of those judgments, decrees or final orders. This Court has already held that the word "exercisable" should not be used in that limited and restricted sense. In our opinion jurisdiction and powers in relation to a judgment, decree or final order to be passed by the High Court after the Constitution but with respect to

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which a right of appeal had vested in the parties before the commencement of the Constitution must be held to have been "exercisable" by the Federal Court immediately before the commencement of the Constitution. Such jurisdiction and powers were "exercisable" in the sense that they could be exercised as soon as a judgment, decree or final order was passed provided that with respect to it a litigant had already acquired a vested right of appeal. There is no reason why the operation of Art. 135 should be limited to cases where the right of appeal was not a mere potentiality but had actually arisen in a concrete form immediately before the commencement of the Constitution as was suggested by Chakravartti C.J. in *Prabirendra Mohan* v. *Berhampore Bank Ltd.* (supra).

In our opinion *Veeranna* v. *Chinna Venkanna* (supra) and the cases following it were not correctly decided.

Our attention has been drawn to the case of *Nathoo Lal* v. *Durga Prasad*(1) where an objection was raised as to the maintainability of that appeal on the ground that according to the Code of Civil Procedure of the Jaipur State the decision of the Jaipur High Court was final and no further appeal lay from it and, therefore, the appeal to this Court was incompetent. It was further contended that the proceeding in the suit decided in 1945 had concluded by the decision of the Jaipur High Court given in 1949 and that the review judgment which modified the decree in regard to the improvements could not entitle the appellant to reopen the decision of the High Court of Jaipur given in 1949. This Court observed at page 55 :—

"In our opinion, this objection is not well founded. The only operative decree in the suit which finally and conclusively determines the rights of the parties is the decree passed on the 5th of April, 1950, by the Rajasthan High Court and that having been passed after the coming into force of the Constitution of India, the provisions of article 133 are attracted to it and it is appealable to this Court provided the requirements of that article are fulfilled. The Code of Civil Procedure of the Jaipur State could not determine

(1) [1955] 1 S.C.R. 51.

the jurisdiction of this Court and has no relevancy to the maintainability of the appeal. The requirements of article 133 having been fulfilled, this appeal is clearly competent."

What was claimed by the respondent was the attribute of finality attaching to the judgment, decree or final order of the Jaipur High Court. The argument was that the Jaipur High Court having given its judgment in 1949 that judgment became final and the respondent has a vested right to that final order, and that right had not been taken away by the Constitution either expressly or by necessary intendment. What this Court said was that the review application having been made the appeal became pending and at large, for the judgment was under consideration and, therefore, no finality had attached to it before the Constitution came into force. The judgment on review was passed by the Rajasthan High Court in April, 1950, that is, after the Constitution by a High Court of a Part B State constituted under the Constitution and the respondent had no vested right of finality in relation to any judgment of the Rajasthan High Court. The appellant's vested right of appeal to the Privy Council of that State came to an end as that authority was abolished and at the date of the suit he had no right of further appeal from the judgment of the Jaipur High Court to the Federal Court or to this Court. That being the position it was a judgment with respect to which nobody had any vested right of appeal and, therefore, an appeal lay to this Court under Art. 133 as construed above. It did not matter in that case whether the appeal was maintainable under Art. 133 or Art. 135 and the question that we are considering in the present appeal does not appear to have been urged by learned counsel or discussed by the court in that case and the cryptic observation quoted above cannot be taken as a considered and final expression of opinion that whenever a judgment, decree or final order is passed after the date of the Constitution it must come within Art. 133 no matter whether the proceedings were instituted before or after that date.

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For reasons stated above we think that the suit, out of which this application arises, having been instituted before the date of the Constitution the parties thereto had, from the date of the institution of the suit, a vested right of appeal upon terms and conditions then in force and the judgment sought to be appealed from being a judgment of reversal and the value of the subject matter being above Rs. 10,000 the applicant had a vested right of appeal to the Federal Court under the provisions of the old Civil Procedure Code read with the Government of India Act, 1935, and the Federal Court (Enlargement of Jurisdiction) Act, 1947. Such a vested right of appeal was a matter which did not fall within Art. 133 and jurisdiction and powers with respect to such right of appeal was exercisable by the Federal Court immediately before the commencement of the Constitution and consequently the applicant had a right of appeal under Art. 135 and the High Court was in error in refusing leave to appeal to the petitioner. As in our opinion the petitioner was entitled under Art. 135 to come up on appeal to this Court as of right and such right has been wrongly denied to him we are prepared, in the circumstances of this case, to grant him special leave to appeal to this Court under Art. 136 of the Constitution. The petitioner will have the costs of this application from the respondents Nos. 1 and 2.

We are indebted to the learned Attorney-General, who has assisted us as *amicus curiae* in deciding this application and we are also free to express our appreciation of the cogent and learned arguments advanced by the learned counsel for both parties.

VENKATARAMA AYYAR J.—The point for determination in this petition is whether the petitioner is entitled to appeal, as a matter of right, against the judgment of the Andhra High Court in A.S. No. 301 of 1951 delivered on February 10, 1955. My brothers are of opinion that he is so entitled under Art. 135 of the Constitution. I regret I am unable to agree with this conclusion. In my opinion, the governing provision is

Art. 133, and as the suit was valued at Rs. 11,400/-, the appeal would be incompetent, unless it fell within Art. 133 (1) (c). This is in accordance with the view taken by a Full Bench of the Madras High Court in *Veeranna* v. *Chinna Venkanna*(1), which has since been followed by the High Court of Calcutta in *Prabirendra Mohun* v. *Berhampore Bank Ltd.*(2), by the High Court of Allahabad in *Ram Sahai* v. *Ram Sevak*(3) and *Tajammul Hussain* v. *Mst. Quaiser Jahan Begum* (4) and by the High Court of Punjab in *The Indian Trade and General Insurance Ltd.* v. *Raj Mal Paharchand*(5), while the contrary view has been taken by the Bombay High Court in *Dajee.Sahib* v. *Sankar Rao*(6), by the Nagpur High Court in *Bhagwantrao* v. *Viswasa Rao*(7) and by the Patna High Court in *N. P. Sukul* v. *R. K. Misra*(8). We have had the benefit of a full and learned argument on the question, and having carefully reconsidered the matter, I have come to the conclusion that the view taken by the majority of the High Courts is correct.

The judgment against which the present appeal is sought to be preferred was pronounced on February 10, 1955. The Constitution of India came into force on January 26, 1950, and Arts. 131 to 140 therein define the jurisdiction of the Supreme Court, original and appellate. It being settled law that an appeal does not lie unless expressly given by the statute, the sole point for determination is whether the present appeal is authorised by any of those Articles. The two Articles which bear on the question are Arts. 133 and 135. According to the petitioner, it is Art. 135 that applies, and he has a right to appeal to this Court thereunder. Article 135 is as follows:

"Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable

(1) I.L.R. 1953 Mad. 1079.
(2) A.I.R. 1954 Cal. 289.
(3) A.I.R. 1956 All. 321.
(4) A.I.R. 1956 All. 638.
(5) A.I.R. 1956 Punjab. 228.
(6) I.L.R. 1952 Bom. 906.
(7) I.L.R. 1953 Nag. 822.
(8) [1953] I.L.R. 32 Patna 400.

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by the Federal Court immediately before the commencement of this Constitution under any existing law."

For this Article to apply, two conditions must be fulfilled: (1) The matter should be one which does not fall within the purview of Art. 133; and (2) it should be a matter in respect of which jurisdiction was exercisable by the Federal Court before the commencement of the Constitution under any existing law. Whether the present appeal is competent under Art. 135 will depend on whether it satisfies both these conditions.

Taking the first condition, it is the contention of the respondent that the present matter falls within the purview of Art. 133, and that therefore Art. 135 is excluded. Article 133, in so far as it is material for the present purpose, runs as follows:

133(1) "An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court;

and where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law."

This Article is clearly not retrospective, and that has been repeatedly held by this Court. But the only result of it is, as decided in *Janardan Reddi and others* v. *State of Hyderabad*(1), that appeals against

(1) [1952] S.C.R. 344.

judgments, decrees or final orders passed prior to January 26, 1950, will not be governed by Art. 133. And as prospective in character, there being no words limiting its operation in any manner, it will apply to all judgments, decrees or final orders passed after the coming into force of the Constitution, and as the judgment in this case was pronounced on February 10, 1955, the right of appeal against it must be determined in accordance with Art. 133, and as the valuation of the suit was only Rs. 11,400, the present appeal would be incompetent, as the requirements of Art. 133(1)(a) are not satisfied.

The answer of the petitioner to this contention might thus be stated : Under the law as it stood on April 22, 1949, when he filed the suit he had vested in him a right of appeal to the High Court and from the High Court to the Federal Court. That right has not been taken away by the Constitution expressly or by necessary implication, and the Articles of the Constitution should therefore be so interpreted as to give effect to it. That requires that the operation of Art. 133 should be limited to judgments and decrees passed in civil proceedings instituted after the Constitution. If that Article is so interpreted, judgments passed in suits instituted before, though delivered after the Constitution, will fall outside its purview. And that will let in Art. 135. As this is the sole ground for construing the language of Art. 133, which is wide and unqualified, in a restricted sense, it is necessary to examine rather closely whether the petitioner had any vested right of appeal before the Constitution, what the scope of it is, and whether it is one which could survive to him under the Constitution. The further question will arise whether even if that is so, it is permissible to read into the Article words which are not there, so as to cut down its operation.

The contention of the petitioner that when he instituted the suit in the Sub-Court, Bapatla, on April 22, 1949, he had under the then law a right of appeal to the High Court of Madras against the judgment passed in that suit and a further right of appeal to the Federal Court against a judgment to be passed by the High Court in the appeal, rests on the decision in *Colonial*

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Sugar Refining Company v. *Irving*(1). There, the facts were that an action was commenced in the Supreme Court of Queensland on October 25, 1902. On that date, according to the Order in Council dated June 30, 1860, an appeal lay to the Privy Council against the judgment of the Supreme Court. While the action was pending, the Judiciary Act, 1903 came into force on August 25, 1903, and the result of it was to abolish appeals to the Privy Council and to substitute therefor a right of appeal to the High Court of Australia in respect of matters mentioned therein. On September 4, 1903, the Supreme Court gave judgment dismissing the action, but granted leave to the plaintiff to appeal to the Privy Council. The plaintiff having lodged an appeal pursuant to the leave, a preliminary objection was raised as to its maintainability on the ground that as the judgment under appeal had been pronounced after the coming into force of the Judiciary Act, any appeal against the same would be governed by the provisions of that Act, and that, in consequence, the appeal to the Privy Council was incompetent. In overruling this contention, Lord Macnaghten observed:

"The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

It is on this decision that the entire argument in support of the petition is founded. But is it correct? It may look a daring and almost fatuous adventure to

(1) [1905] A.C. 369.

canvass the correctness of the decision in *Colonial Sugar Refining Company* v. *Irving* (supra), especially when it has been followed by Courts in this country for well nigh half a century. But with all the respect which I have for the decision of a tribunal so august as the Privy Council and of a Judge so eminent as Lord Macnaghten, I am of opinion that the decision in question cannot be supported on principle, that it is not warranted by the authorities, and cannot, therefore, be followed.

Considering the question on principle, an appeal is a proceeding by which the correctness of the decision of an inferior court is challenged before a superior court. A right of appeal therefore can arise by its very nature only when a decision by which a litigant is aggrieved is given, and it sounds paradoxical to say that it arises even before judgment in the case is pronounced. Now what reason can there be for holding that a right of appeal vests in a suitor at the commencement of the proceedings? If it is to be held not to arise on the date of judgment, then why should it be held to arise on the institution of the proceedings, and not on the date of the transaction which forms the foundation for those proceedings? If it is to be said that when a litigant commences a proceeding he acts on the expectation that a right of appeal existing under the then law with reference to that proceeding would not be taken away, it could likewise be said that when a person enters into a transaction, he does so in the expectation that the right of action and of appeal in relation thereto under the then law would be available to him for the enforcement of his rights under the transaction. And no one has asserted that a right of appeal is to be determined on the law as it stood on the date of the transaction.

Then again, if the right of appeal arises at the commencement of the action, in whom does it vest, the plaintiff or the defendant? It is the suitor who is aggrieved by the decision that has a right to prefer an appeal against it, and it might, according to the result, be either the one or the other, and if the theory that a right of appeal arises when the proceedings are

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commenced is to be accepted, it must be held to vest at that point of time both in the plaintiff and the defendant, and cease on the determination of the cause as regards the party who succeeds, and where the success is partial, to the extent of that success. Can anything so nebulous and contingent be regarded as a right and as a right which vests before a decision is given. The judgment in *Colonial Sugar Refining Company* v. *Irving* (supra) does not disclose the reasoning on which it is based. Lord Macnaghten no doubt defers to "a long line of authorities from the time of Lord Coke to the present day", and they are presumably what are referred to in the argument of counsel at page 370. But when examined, they do not bear on this point. Lord Coke, in commenting on the Statute of Gloucester (6, Edward I, Chap. 78, s. 3) which prohibited alienations of tenement, stated :

"This extendeth to alienations made after the statute and not before; for it is a rule of law of Parliament that regularly *nova constitutio futuris forman imponere debet, non praeteritis*" (a new statute regulates future conduct and not past (1)).

From this passage, one may say that legislation does not affect a right of appeal, which has accrued. But it throws no light on the question when that right accrues, whether at the commencement of the action or on the pronouncement of the decision.

In *Towler* v. *Chatterton*(2), the suit was to recover an oral loan, and the question was whether it was hit by Lord Tenterdon's Act, which required that, to take the case out of the operation of the statute of limitation, the debt should be in writing. That Act was passed after the debt was contracted but before the action was brought thereon. It was held that having regard to the terms of the Act, it must be held to be retrospective, and that the action was not maintainable.

The decision in *The Ydun*(3) is similar to the one in *Towler* v. *Chatterton* (supra). The plaintiffs sued for damages for the grounding of their vessel on September 13, 1893, by reason of the neglect of the defendants.

(1) 2 Inst. 292.
(2) (1829) 6 Bing. 253; 31 R. R. 411.
(3) (1899) P.D. 236.

On December 5, 1893, the Public Authorities Protection Act came into force, and that provided that an action against public authorities grounded on neglect or default should be commenced within six months of such neglect or default. The suit was actually filed on November 14, 1898, and the question was whether the right which had accrued to the plaintiffs on September 13, 1893, was barred by this enactment, which came into force on December 5, 1893. It was held that it was.

In *Attorney-General* v. *Sillem*(1), the point for decision was whether in exercise of a power conferred on the Court of Exchequer to frame rules for regulating practice before it, it could enact a rule providing for an appeal. The House of Lords held that it could not, because an appeal was not a matter relating to practice or procedure, and must be conferred by the legislature itself.

In *In re Joseph Suche & Company Ltd.*(2), the facts were that an order was made on January 30, 1875, winding up a company under the supervision of the Court. Under the law as it then stood, a secured creditor was entitled to prove for the full amount of the debt without deducting the value of the securities. Subsequent to the order, s. 10 of the Judicature Act, 1875 came into operation, and under that section, the secured creditor could only prove for the balance of the claim after deducting the value of the securities. The point in dispute was whether a secured creditor was entitled to prove for the entire debt under the law as it stood at the date of the order of winding up, or only for the balance of the debt after deducting the value of the security in accordance with s. 10 of the Judicature Act. It was held by Jessel M. R. that the right to prove for a debt was not a mere matter of procedure, and could not be distinguished from a right of action, and that the creditor was therefore not affected by the change effected by s. 10 of the Judicature Act. The decision in *In re Athlumney* (3) is similar to the one in *In re Joseph Suche and*

(1) [1864] 10 H.L.C 704; 11 E.R. 1200.
(2) [1875] 1 Ch. D. 48.
(3) [1898] 2 Q.B. 547.

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Company Ltd. (supra), the question being whether the rights of a creditor who had proved for his debt could be affected by the provisions of a Bankruptcy Act, which came into force after proof of such debt. Following *In re Joseph Suche & Company Ltd.*, it was held that the right to prove a debt was a substantive one, and was not affected by the provisions of the Bankruptcy Act, which came into force after such proof.

It may be taken on these authorities that a right of appeal is a substantive right and not a mere matter of procedure, and that a legislation subsequent to the accrual of such a right must not be construed as taking it away, unless it does so expressly or by necessary implication. But the question still remains when that right accrues or vests; and that did not arise for determination in the authorities cited above, and indeed, does not appear to have been the subject-matter of any pronouncement prior to *Colonial Sugar Refining Company* v. *Irving* (supra), and the decision therein that a right of appeal vests when the action is commenced would accordingly appear to be a deduction made from the character of the right as a substantive one. But is it a right deduction to make? It is one thing to say that right of appeal is a substantive right, and quite a different thing to hold that it vests at the date of the commencement of the proceedings. It would be perfectly logical to hold that the right of appeal is a substantive right and at the same time that it arises only when the decision which is to be appealed against is rendered. The result of that view will be that a right of appeal which arises when a judgment is given, would stand unimpaired by a subsequent legislation altering or abridging it, unless that is made retrospective, expressly or by necessary implication. On this reasoning, the conclusion that because a right of appeal is a substantive right it must be held to vest at the commencement of the action would be *non sequitur*. Whether we consider the question, therefore, on the principle of it or on the basis of authorities, the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) does not appear to be sound.

It is argued that the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) has been applied by the Privy Council in *Delhi Cloth and General Mills Company Ltd.* v. *Income-tax Commissioner, Delhi* (1) in the decision of a question arising under the Indian Income-tax Act, that it has been followed ever since in numerous decisions, and that it is now too late to reverse the current of authorities, and propound what is a new theory of the law. I see no force in this contention. Is it to be expected that the British Indian Courts would consider this question on its own merits, and hold contrary to the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) that a right of appeal arises, not on the date of the commencement of the action but on the date of the judgment? If *Colonial Sugar Refining Company* v. *Irving* (supra) fails to commend itself to us by force of its reasoning, could the decisions of the British Indian Courts which had no option in the matter but merely followed it, take the matter further? It is true that the number of decisions which have followed *Colonial Sugar Refining Company* v. *Irving* (supra) is quite a legion. But apart from any question of *stare decisis,* they have no independent value of their own, and no useful purpose will be served by any detailed reference to them.

Then, there is the question whether in view of the fact that the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) has been followed in this country for quite a long period, we should not decline to disturb it on the principle of *stare decisis.* But that principle is properly applicable only when there is a long course of decisions interpreting the law in a particular way and rights to property have been acquired and contractual relations entered into on the basis of those decisions. It cannot properly be invoked when the question is, when on the construction of a statute a right to appeal vests in a suitor. I should add that the petitioner did not seriously contend that the principle of *stare decisis* would apply to the decision of such a question.

(1) [1927] L.R. 54 I.A. 421.

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I must now refer to the decision of this Court in *Hoosein Kasam Dada (India) Ltd.* v. *The State of Madhya Pradesh and others*(1), where the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) was followed. But there, it was assumed that the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) was correct, and the precise point now under consideration was neither raised nor decided. The question in its present form was raised in *Indira Sohanlal* v. *Custodian of Evacuee Property, Delhi and others*(2), but the point was left open. Vide observations at page 1133. The present question must, therefore, be taken as not concluded by any authority of this Court.

In jurisdictions not dominated by the Privy Council, as for example, the United States of America, it is well settled that the right of appeal is to be determined in accordance with the law as it is on the date of the judgment and not as it was on the date of the commencement of the action. Thus, in Corpus Juris Secundum, Volume IV, page 63, the position is stated as follows:

"S-3—*Statutes taking effect before judgment:*

Except where the statute itself provides it or there is a general provision that statutes relating to the remedy shall not affect pending actions, a statute which gives, takes away, or modifies the remedy by appeal or other mode of review applies to cases commenced before, but in which the judgment, decree, or order sought to be appealed from is not rendered or made until after it goes into effect.

S-4—*Stautes taking effect after judgment:*

Unless it is evident from the terms of a statute which gives, takes away, or modifies the remedy by appeal or other mode of review that it was intended to have a retroactive effect, it applies only to cases pending and undetermined at the time when it goes into effect, and has no application to causes in which final judgment has been entered, or rendered, although not entered, prior to that time, particularly where it is

(1) [1953] S.C.R. 987. (2) [1955] 2 S.C.R. 1117.

expressly provided that the statute shall not affect existing remedies."

The statement of the law in American Jurisprudence, Volume III, page 145, section 426 is as follows :

"As a general rule, the right of appeal is governed by the law applicable thereto in force when the final judgment is rendered."

Agreeing with the above statements of the law and differing from the decision in *Colonial Sugar Refining Company* v. *Irving* (supra), I am of opinion that a right of appeal arises only when judgment is given and not earlier, and that accordingly the petitioner acquired no vested right of appeal on April 22, 1949, when he instituted the suit.

But even if the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) is to be accepted as laying down the correct law, it does not go far enough to support the petitioner. It should be noted that the suit was there instituted in a Court from which but for the Judiciary Act an appeal would have lain to the Privy Council, and what the Judicial Committee decided was that the right to prefer an appeal became vested in the suitor when the action was commenced, and that no legislation subsequent thereto could impair or take away that right, unless it did so expressly or by necessary intendment. Giving full effect to that decision, the petitioner can only claim that when he instituted the suit in the Sub Court, Bapatla on April 22, 1949, he had on that date a vested right to file an appeal against any decision which might be given in that suit to the High Court of Madras, which was the Court to which an appeal lay from the Bapatla Sub Court on that date. That right is not in dispute. The petitioner did file an appeal to the High Court of Madras, and that was heard and decided by the Andhra High Court, to which the appeal was transferred. What the petitioner now claims is something more. He contends that not only had he on April 22, 1949, a vested right of appeal to the High Court of Madras from a judgment which might be delivered in his suit in the Bapatla Sub Court, but that he had also

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vested in him on that date a further right to prefer an appeal to the Federal Court against the judgment which might be delivered by the Madras High Court in an appeal which might be preferred to that Court against the decision of the Bapatla Sub Court. That is to say, what vested in him on April 22, 1949, was also a right to prefer an appeal to the Federal Court against a non-existent judgment of the High Court in a non-existent appeal. One would have thought such a contention unarguable, were it not that it is supported by the decision of a Full Bench of the Calcutta High Court in *Sadar Ali* v. *Dalimuddin*(1), which was followed by a Full Bench of the Madras High Court in *Vasudeva Samiar, In re*(2). It now becomes necessary to examine the correctness of these decisions.

In *Sadar Ali* v. *Dalimuddin* (supra), the question raised was with reference to an amendment of the Letters Patent, which provided that no appeal shall lie from the decision of a single Judge in second appeal to a Division Bench of the Court, unless a certificate therefor is granted. This amendment came into force on January 14, 1928. Under the terms of the Letters Patent as they stood before this amendment, an appeal lay as a matter of right from the judgment of a single Judge to a Division Bench, and the point for decision was as to how far this right was affected by the amendment. In the case before the learned Judges, the suit had been instituted in the court of the Munsif on October 7, 1920, and the second appeal filed in the High Court on October 4, 1926. It was actually heard by a learned Judge of the High Court on April 4, 1928, after the amendment had come into force and was dismissed, and he also refused to grant a certificate. Notwithstanding this refusal, the appellant sought to prefer an appeal against this judgment to a Division Bench, and with reference to the bar created by the amendment, he contended that he had vested in him on October 7, 1920, when he commenced his action, a right of appeal to all the courts in succession under the law as it then stood, and that the amendment had not deprived him of that right. In agreeing with this

(1) [1929] I.L.R. 56 Cal. 512. (2) [1928] I.L.R. 52 Mad. 361.

contention, Rankin C.J. who delivered the judgment of the Court, stated the *ratio decidendi* as follows :

"Now the reasoning of the Judicial Committee in the *Colonial Sugar Refining Company's case* (supra) is a conclusion authority to show that rights of appeal are not matters of procedure, and that the right to enter the superior court is for the present purpose deemed to arise to a litigant before any decision has been given by the inferior court. If the latter proposition be accepted, I can see no intermediate point at which to resist the conclusion that the right arises at the date of the suit. It does not arise as regards Court B alone when the suit is instituted in Court A and as regards Court C when the first appeal is lodged before Court B.....It is quite true that the suitor cannot enter Court C without going through Court B, but neither can he enter Court B till Court A has given its decision. The right must be a right to take the matter to Court C in due course of the existing law."

It will be noticed that the two propositions of law on which the judgment is based are, first, that a suitor in Court A should be held to have a right of appeal to Court B even before Court A has given its decision, as to which the learned Judge simply observes that the question was concluded by the decision of the Privy Council in *Colonial Sugar Refining Company* v. *Irving* (supra), and second, that if a suitor can have a vested right of appeal to Court B before Court A where his action is pending gives its decision, why not he also have a right vested in him at the same time to appeal to Court C even before an appeal is instituted in Court B. That conclusion appeared to the learned Chief Justice to follow logically on the first proposition; but that, in my opinion, is open to question.

Now, a right of appeal is, as observed in *Attorney-General* v. *Sillen* (supra), "the right of entering a superior court and invoking its aid and interposition to redress the error of the court below" (Vide page 1209), and when examined, it will be found to possess two facets, a right conferred on the suitor to challenge the decision given in a proceeding in Court A, by which he is aggrieved, and a jurisdiction conferred on

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Court B, which may be termed as the superior Court, to review the decision of Court A, which may be designated as the inferior Court. The right of the suitor and the jurisdiction of the Court are both of them necessary and essential ingredients that together go to make up the concept of appeal, and both of them must expressly be granted by the legislature. Reference may be made to the following observation of Lord Westbury in *Attorney-General* v. *Sillem* (supra) :

"The creation of a new right of appeal is plainly an act which requires legislative authority. The Court from which the appeal is given, and the Court to which it is given, must both be bound, and that must be the act of some higher power."

And he also defined a right of appeal as "in effect, a limitation of the jurisdiction of one Court, and an extension of the jurisdiction of another." The position then is that a right which is given to a suitor to appeal against a decision of Court A is not something in the abstract but one which has to be exercised in Court B, which derives its power to hear appeals against decisions of Court A under legislative authority, and it is therefore possible to conceive of such right only in relation to two specified Courts A and B.

When the law establishes a hierarchy of Courts and then provides in succession for appeals from a Court of the lower grade to one of the higher grade, it will not be correct to regard those appeals as forming a single proceeding, or the right to file them as a single right. If a suit is instituted in Court A and the law permits an appeal against its decision to Court B, and if the law further provides for an appeal from the decision of Court B to Court C, and there is again a right of further appeal provided against the decision of Court C to Court D, the successive appeals from Court A to Court B, from Court B to Court C and from Court C to Court D are distinct proceedings independent of one another. How then can the right of appeal from one Court to another be held to comprise within it the right of appeal from that Court to a third Court? Section 96, Code of Civil Procedure, provides for an appeal from a decree passed by the trial court, and under

that provision the decision in a suit instituted in the court of a District Munsif will be open to appeal to the District Court. Section 100, Code of Civil Procedure, provides for further appeal from the judgment of the District Court to the High Court; but this right of second appeal is much more limited than that given under section 96. It lies only when there is a question of law, and it is also subject in certain cases, to pecuniary limitations. Thus, the rights of appeal conferred by ss. 96 and 100, Code of Civil Procedure, are different in their quality and contents. Then again, under ss. 109 and 110, Code of Civil Procedure, a further appeal is provided against the decision of the High Court to this Court subject again to certain conditions. This is a right different in its character from the right of appeal conferred by s. 96 or s. 100. The notion, therefore, that if a suitor has a right of appeal from Court A to Court B, that right includes a right of appeal from Court B to Court C and again from Court C to Court D, would appear to be untenable.

Viewing the question next from the point of view of the jurisdiction of the Court, a right which is given to a suitor to challenge the decision of Court A in appeal is only a right to challenge it before Court B, which is authorised to hear appeals from Court A. It cannot extend to a possible appeal from Court B to Court C, because Court C is not a Court authorised to entertain an appeal against the decision of Court A, and it will be an error to speak of the suitor in Court A, having a right of appeal to Court C to which under the law an appeal cannot lie. Section 96 of the Code of Civil Procedure brings out the position quite unmistakably, when it provides that an appeal shall lie "to the Court authorised to hear appeals from the decisions of such Court." And if, as already pointed out, under the scheme of the Code an appeal from Court A to Court B is a proceeding distinct and different from an appeal from Court B to Court C, and that is a feature which runs through the entire succession of appeals under the Code, it will be inconsistent with that scheme to hold that when a suitor commences an action in Court A, a right vests in him at that time not merely to appeal from Court C to

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Court B, as held in *Colonial Sugar Refining Company* v. *Irving* (supra), but also from Court B to Court C and from Court C to Court D. The decision in *Colonial Sugar Refining Company* v. *Irving* on which this conclusion in *Sadar Ali* v. *Dalimuddin* (supra) is based, is clearly no authority in support of it.

But it is said that there were before the decision in *Sadar Ali* v. *Dalimuddin* (supra) authorities of Indian Courts, which had held that a suit, appeal and second appeal were to be regarded as constituting one proceeding, that *Sadar Ali* v. *Dalimuddin* merely engrafted this principle on the decision in *Colonial Sugar Refining Company* v. *Irving* (supra), and that the decision come to therein was therefore well placed on principle. These decisions, however, when examined contain little that really supports the conclusion reached in *Sadar Ali* v. *Dalimuddin*. In fact, they are merely referred to in the judgment at pages 516 and 517 without any discussion, as authorities relied on by counsel for appellant in support of his contention that the principle of s. 6 of the General Clauses Act was applicable in the construction of the Letters Patent. The first of these decisions is *Ratanchand Shrichand* v. *Hammantrav Shivbakas* (1). There, the facts were that a suit for Rs. 23,319 was instituted in the court of the Principal Sadar Amin of Dhulia, and that was substantially decreed on January 29, 1869. On March 19, 1869, the Bombay Civil Courts Act came into force, and under that Act appeals in suits exceeding Rs. 5,000 lay to the High Court of Bombay. But under the law as it stood prior to that date, the appeal against the judgment of the Principal Sadar Amin would have lain to the District Court. The point for decision was whether an appeal against the decree dated January 29, 1869, lay to the District Court or to the High Court. The learned Judges held that the proper forum to which the appeal lay was the District Court. The decision was based on s. 6 of the General Clauses Act, which enacted that "the repeal of any statute....shall not affect any proceedings commenced before the repealing Act shall have come into operation." It was

(1) [1869] 6 Bom. H.C. R. 166.

observed by Couch C.J. that "A suit is a judicial proceeding, and the word 'proceedings' must be taken to include all the proceedings in the suit from the date of its institution to its final disposal, and therefore to include proceedings in appeal." The meaning of this passage is clearly this: The word "proceeding" is not limited to suits; it is wide enough to include appeals. Just as a right of suit which had accrued before repeal is saved by s. 6, so also is a right of appeal. This is all that the above observation means. It does not mean that when under this section a right of suit is saved, a right of appeal against the decree passed therein is in addition saved. This is clear from the following observations:

"It is clear it was not the intention of the Legislature to take away the right of appeal in any case in which it existed at the date of the passing of the Bombay Court's Act."

Where, therefore, a suitor could not maintain a proceeding by way of appeal at the date of the repealing Act, *Ratanchand Shrichand* v. *Hammantrav Shivbakas* (supra) is not authority for holding that such a right is preserved to him as comprised in a right of suit which he had on that date.

In *Chinto Joshi* v. *Krishnaji Narayan* (1), proceedings in execution of a decree had been commenced when the Code of Civil Procedure, Act VIII of 1859, was in force. By the time the properties were actually sold in execution, a new Code of Civil Procedure, Act X of 1877, had come into operation. The judgment-debtor filed an application to set aside the sale on the ground of irregularity, and the same was allowed. The question was whether this order was open to appeal. It was not appealable under the Act of 1859, but was appealable under the Act of 1877. It was held that execution proceedings for the sale of property would not be complete until the sale had taken place, and that therefore the proceedings for sale which were commenced under the Act of 1859 were governed by the provisions of that Act, and that the appeal was accordingly incompetent. I do not see anything in

(1) [1879] I.L.R. 3 Bom. 214.

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this decision which touches the present controversy. In the course of the judgment, West J. stated that opinion had sometimes been expressed "that the legal pursuit of a remedy, suit, appeal and second appeal, are really but steps in a series of proceedings connected by an intrinsic unity....." Are we to interpret this remark as meaning that under the law, suit, appeal, and second appeal all constitute but one proceeding? The observation itself merely speaks of them as steps in a series of proceedings. That is to say, they are different proceedings, but are directed to a common purpose. And are we to build on this observation, reading it along with the decision in *Colonial Sugar Refining Company* v. *Irving* (supra) the theory that when a right to file an appeal arises, it comprehends a right to file the whole series of appeals under the law? That will be putting the observation to a use which could not have been contemplated. On the other hand, there are the following observations at page 215 in the same judgment, which are more germane to the present discussion :

"When judicial enquiry has reached its intended close in an adjudication, requiring thenceforward in theory only a ministerial or coercive exercise of authority to give it practical effect, the party who strives by an appeal to unsettle again the legal relation, which in itself has by the act of the Court become settled may fairly be regarded as instituting a new proceeding. Such has been the view of some eminent authorities."

Then, there is *Deb Narain Dutt* v. *Narendra Krishna*(1). There, a decree was obtained under the provisions of the Bengal Tenancy Act VIII of 1869, and by the time execution proceedings were started, a new Act VIII of 1885 had come into operation. Section 170 of the new Act prohibited the entertainment of any claim by third parties to properties attached in execution of a decree. The point for decision was whether this provision applied to a claim preferred to the property attached in execution of the decree passed under Act VIII of 1869. It was contended in support of the maintainability of the claim that a right to prefer

(1) [1889] I.L.R. 16 Cal. 267.

a claim existed under the provisions of Act VIII of 1869, and that under s. 6 of the General Clauses Act that right could be exercised notwithstanding the repeal of that Act. It was held that the word "proceedings" in the section did not include execution proceedings, and that, therefore, the matter was governed by s. 170 of the Act.

Thus, the authorities referred to at pages 516 and 517 in *Sadar Ali* v. *Dalimuddin* (supra) really turn on the meaning to be given to the word "proceedings" in s. 6 of the General Clauses Act, and they are not of much use in deciding the question now under consideration, and the decision in *Sadar Ali* v. *Dalimuddin* (supra) must therefore be regarded as the first authority which has extended the theory of a right of appeal vesting at the date of the commencement of the action to the whole series of appeals provided by the law. The decision in *Sadar Ali* v. *Dalimuddin* (supra) was followed by a Full Bench of the Madras High Court in *Vasudeva Samiar In re* (supra), Coutts Trotter C. J. observing that he would be reluctant to differ from the Full Bench decision of the Calcutta High Court, and that he also agreed with the reasoning on which it was based. The correctness of these decisions did not come up for consideration before the Judicial Committee, as their effect was promptly nullified by a further amendment of the Letters Patent giving retrospective operation to the earlier amendment of 1928. But though these decisions themselves had thus been rendered obsolete, the theory enunciated therein of the right of appeal 'in all its career' vesting in the suitor at the commencement of the action has continued to possess the field of law, until it has come to be regarded as an established doctrine of our jurisprudence. For the reasons already given, that theory cannot be accepted as sound. The decisions in *Sadar Ali* v. *Dalimuddin* (supra), and *Vasudeva Samiar In re* (supra) which expressed that theory, must be held to be erroneous, and the contention of the petitioner based on those authorities that he acquired on April 22, 1949, when he instituted the suit in the Bapatla Sub Court, a vested right of appeal

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to the Federal Court under the then law must be rejected.

But that does not exhaust all the hurdles which the petitioner has to cross before he can reach the Constitution as the holder of a vested right, seeking protection for the same therein. Assuming that the petitioner had, as decided in *Sadar Ali* v. *Dalimuddin* (supra), a right of appeal to the Federal Court before the Constitution came into force, did it survive thereafter so as to be capable of being exercised thereunder? The Federal Court was established by the Government of India Act, 1935, and when that Act was repealed by the Constitution, the Court established under it was also abolished. When a Court in which an appeal is allowed itself ceases to exist, the right of appeal to that Court must also necessarily cease with it. It is not disputed that a right of appeal which is the creature of a statute can also be taken away by it expressly or by necessary intendment, and what clearer expression of such an intention can there be than the abolition of the very Court to which the appeal has to be taken? How can you exercise a right of appeal if the Court in which it has to be exercised has disappeared? This is the main ground of the decision in *Veeranna* v. *Chinna Venkanna* (supra), and there has been practically no answer to it in the arguments before us. It was argued that that decision proceeded on a mistaken impression that the Privy Council had decided in *Canada Cement Co.* v. *East Montreal (Town of)*(1), that a right of appeal must be held to be taken away when the Court to which it lies is abolished, whereas it is argued that there was no question there of abolition of Court.

The facts in *Canada Cement Co.* v. *East Montreal (Town of)* (supra) were that the suit was instituted in Court A (the Circuit Court of Montreal), and under the Code of Civil Procedure which was then in force, decisions of Court A were appealable in certain cases to Court B (Court of Review). While the action was pending, a new law, 10 Geo. 5 Ch. 79 (Quebec), was enacted, and that Act repealed all the sections in the

(1) [1922] 1 A.C. 249.

Code providing for appeals from Court A. Section 42 of the new Act provided that Court C (Court of the King's Bench) was to have jurisdiction in respect of all matters in which an appeal lay under the law. After this Act came into force, the suit was tried and decreed, and the defendant appealed under s. 42 to Court C. That Court dismissed the appeal as incompetent, and against this dismissal, the defendant preferred an appeal to the Privy Council, and there, the point for decision was whether an appeal to Court C was competent. The contention of the respondent, *inter alia,* was that as the provisions of the Code of Civil Procedure which gave a right of appeal had been repealed before the appeal was filed and the new Act which was then in force gave no such right, the appeal was incompetent, and the Privy Council upheld this contention.

I shall have to refer to this decision again, when I deal with the question as to whether Art. 135 is applicable. At this stage, it is only necessary to consider whether the criticism of the petitioner that there was no question of abolition of Court in *Canada Cement Co.* v. *East Montreal (Town of)* (supra), and that the decision in *Veeranna* v. *Chinna Venkanna* (supra) was mistaken in thinking that there was, is justified. It is true that the judgment in *Canada Cement Co.* v. *East Montreal (Town of)* (supra) does not mention that Court B (Court of Review) was abolished. But nothing is mentioned in the judgment as to what happened to that Court. It is probable that it was abolished because Court B was under the Code of Civil Procedure merely a Court of Review, and all the provisions in that Code providing for appeals from Court A to Court B had been repealed, and, instead, s. 42 provided that Court C was to hear all the appeals which were maintainable under the law. If there was no jurisdiction left in Court B to hear appeals, then it must have been abolished, it being only a Court of Review. This is how it was understood by Coutts Trotter C.J. in *Vasudeva Samiar In re* (supra), wherein he summarised the effect of the decision thus :

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"By 10 George V, Chap. 79 (Quebec), the right of appeal was transferred from the abolished Court to the Appellate Side of the Court of King's Bench in Quebec, but no provision was made for the transference of appeals which could have lain to the abolished Court to the newly constituted Appellate Court. In these circumstances, their Lordships of the Privy Council held that an appeal from the Circuit Court to the Court of the King's Bench did not lie."

But assuming that the Court of Review had not been abolished in *Canada Cement Co.* v. *East Montreal (Town of)* (supra), nevertheless, the principle that on the abolition of a Court the right of appeal to that Court must fall with it, is on its own reason and apart from the authority of that decision, unassailable and that principle has been affirmed by this Court in *Daji-saheb Mane and others* v. *Sankar Rao Vithal Rao Mane and another* (1), where the position was thus stated :

"If the Court to which an appeal lies is altogether abolished without any forum substituted in its place for the disposal of pending matters or for the lodgment of appeals, the vested right perishes no doubt."

The petitioner seeks to get over this obstacle by resort to Cl. 20 of the Adaptation of Laws Order, 1950, which was promulgated by the President in exercise of the powers conferred by Art. 372(2) of the Constitution. It runs as follows :

"Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any existing law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law."

The contention of the petitioner is that the right of appeal which he had to the Federal Court in accordance with the decisions in *Colonial Sugar Refining Company* v. *Irving* (supra), *Sadar Ali* v. *Dalimuddin* (supra) and *Vasudeva Samiar In re* (supra) is saved by

(1) [1955] 2 S.C.R. 872.

the above clause, and therefore the provisions of the Constitution must be so construed as to effectuate that right. This argument proceeds on a misapprehension as to the true character of the right, which the petitioner had, assuming of course he had one. That right was not a right in gross to appeal to some Court which is superior to the High Court. It was a right to appeal to the Federal Court against the decision of the High Court, and when that Court was abolished, the right which the petitioner had by its very nature perished with that Court, and there was accordingly nothing on which Cl. 20 could operate, nothing which could be kept alive by it. It was argued that this Court does the work which previously was done by the Federal Court, and must, in consequence, be regarded as its successor, and that would attract the operation of that clause. This contention is clearly untenable. This Court was established by the Constitution, and is a new Court deriving its jurisdiction and powers under the Constitution. Reference might, in this connection, be made to the following observation of Patanjali Sastri J. in *State of Seraikella and others* v. *Union of India and another*(1):

"The Federal Court, in which the suits were pending, and which had exclusive jurisdiction to deal with them, was abolished and a new Court, the Supreme Court of India, was created with original jurisdiction strictly limited to disputes relating to legal rights between States recognised as such under the Constitution."

Reliance was placed by the petitioner on Art. 374(2) under which all proceedings pending in the Federal Court at the commencement of the Constitution stand removed to the Supreme Court, but that itself shows that without such a provision this Court would have had no jurisdiction over those cases, and that really goes against the contention of the petitioner. Reference was also made to Art. 375 which enacts that all the Courts in the territory of India are to continue to exercise their function subject to the provisions of the Constitution. But this provision applies only to Courts,

(1) [1951] S.C.R. 474, 497.

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which continued to function after the Constitution as before it. It cannot apply to the Federal Court, which ceased to function under the Constitution. The net result is that even if the petitioner had a vested right of appeal to the Federal Court, that right perished with the abolition of that Court, and there was nothing which survived calling for protection under the Constitution. In this view, the reason for construing Art. 133 so as to restrict the natural and plain meaning of the language thereof disappears.

I have so far assumed in favour of the petitioner that if he had a vested right of appeal it would be permissible to read into Art. 133 words such as would save that right. But is that assumption right? Can we import into that Article words which are not there? Now, there is no doubt as to the law on the subject. It is the duty of a Court which is called upon to interpret a statute to ascertain the intention of the legislature, and it has to do that from the words actually used.

"In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

per Lord Watson in *Salomon* v. *Saloman and Co. Ltd.*(1). If the words used are clear and unambiguous, the Court has merely to give effect to them :

"Where the language of the Act is clear and explict, we must give effect to it, whatever may be the consequences; for in that case the words of the statute speak the intention of the Legislature."

per Lord Chief Justice Tindal in *Warburton* v. *Loveland*(2). And where the intention of the Legislature as expressed in the language of the statute is reasonably clear, the Court would so interpret it as it give effect to that intention, notwithstanding that the words used are defective, and for that purpose, it could add words which might have been omitted by mistake or accident. But where the language of the enactment is clear and its meaning unmistakable, it is not permissible to read

(1) [1897] A. C. 22, 38.
(2) [1831] 2 Dow. & Cl (H. L.) 480, 489; 6 E. R. 806, 809.

into it a new provision, which will have the effect of enlarging or abridging its connotation. Vide Halsbury's Laws of Enland, Hailsham Edition, Volume 31, pages 497 and 498, para 635. Applying these principles, the language of Art. 133 is crystal clear and unambiguous. Full effect can be given to it without reading into it any words which are not there, and according to all settled canons of construction, therefore, it will not be permissible to read into the Article words such as "instituted after the coming into force of the Constitution." The objection to such a course is all the greater, when it is remembered that it is a Constitution that we are interpreting.

There is, on the other hand, good reason why the addition in question should not be made. Article 133 is the provision of law under which appeals can be preferred under the Constitution from judgments, decrees and final orders of the High Courts in the territory of India. It is under this provision that appeals against judgments, decrees and final orders of High Courts in Part B States lie to the Supreme Court. If Art. 133 is to be restricted to judgments pronounced in proceedings instituted after the Constitution, then what is the provision of law under which an appeal could be taken from judgments of the High Courts in Part B States in suits instituted before the Constitution, passed after the coming into force thereof? If the contention of the petitioner is correct, then there is no provision in the Constitution for appeal against these judgments, a result which is by itself sufficient, in my opinion, for rejecting it. None of the grounds put forward for putting a limited construction on Art. 133 is, to my mind, convincing. I would, on the terms of the Article, hold that appeals against judgments and decrees pronounced after the Constitution will be governed by the provisions thereof, and that accordingly if the petitioner has no right of appeal under that Article, he cannot resort to Art. 135, which is applicable only to matters which do not fall within Art. 133.

I have next to consider the contention that even if Art. 133 applies to all judgments, decrees and final orders passed after the Constitution came into force,

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the present appeal cannot fall within its purview, as it does not satisfy the requirements laid down therein as to valuation, and that therefore it would fall under Art. 135. Now, the words of Art. 135 are "with respect to any matter to which the provisions of Art. 133 do not apply." The matter to which the provisions of that Article apply is an appeal from any judgment, decree or final order made in a Civil proceeding by a High Court in the territory of India. When these conditions are satisfied, the matter falls within the ambit of Art. 133, and if a case which falls within the ambit of that Article fails to satisfy the conditions laid down therein, it cannot be said that it is a matter to which the Article itself is inapplicable. A second appeal presented to a High Court under s. 100 of the Civil Procedure Code does not cease to be an appeal under that section, because it does not disclose any grounds on which the Court could interfere under that section. The eligibility of a candidate to sit for an examination is not destroyed by reason of the fact that he fails to get through the examination. In the present case, the subject-matter of the intended appeal is the judgment of a Bench of the Andhra High Court, and that was given in an appeal against a decree passed in a suit. It therefore directly falls within the purview of Art. 133, and whether it satisfies the requirements laid down therein or not, does not destroy its character as a matter to which the provisions of that Article apply. If so, Art. 135 is inapplicable.

There is another reason why we should not accede to the contention of the petitioner that an appeal against a judgment or decree which would fall within the purview of Art. 133 should be held to go out of it when it does not satisfy the requirements contained therein as to valuation. Suppose that a judgment is passed after the Constitution, by a High Court in a Part B State in a suit commenced before the Constitution, the value of which is over Rs. 10,000 but less than Rs. 20,000. No appeal against it would be competent under Art. 133 for want of requisite valuation nor under Art. 135 because that relates to matters in respect of which the Federal Court could have exercised

jurisdiction, and that Court had never jurisdiction over High Courts in Part B States. Thus, after the Constitution, judgments in the same class of suits, namely, suits whose valuation is over Rs. 10,000 but less than Rs. 20,000 will be appealable if passed by a High Court in Part A State, but not by a High Court in Part B State. What is the reason for this differentiation? There is, of course, no question of discrimination under Art. 14, as we are concerned with the provisions of the Constitution itself. But can we put a construction which will deny citizens equality before law and equal protection of law, unless compelled thereto? In fact, some of these States had a Priviy Council, and Art. 374, sub-cl. (4), provides that appeals pending before them at the date of the Constitution shall be transferred to the Supreme Court, thus assimilating them to the position of appeals pending before the Federal Court under Art. 374(2). Why then should we construe Arts. 133 and 135 in such manner as to lead to discrimination among suitors similarly placed? It would be more in consonance with the intendment of the Constitution to hold that Art. 133 applies to all appeals against judgments, decrees or final orders passed in civil proceedings after the Constitution came into force, and that if an appeal is not maintainable thereunder, it is not maintainable under Art. 135.

The matter can be viewed from another angle. When a provision of law confers a right of appeal and prescribes the conditions under which it can be exercised, there is, by implication, a negation of that right where those conditions are not satisfied. There can be no difference in substance between a provision which enacts that an appeal shall lie if certain specified conditions are satisfied, and one which enacts that no appeal shall lie unless those conditions are satisfied. If Art. 133 had enacted that no appeal shall lie against the judgment or decree in a civil proceeding unless the requirements laid down therein are satisfied, it will not be argued, I presume, that Art. 135 will apply so as to nullify the prohibition enacted in Art. 133. In my opinion, the same result will follow on the language of Art. 133 as it stands, and it should be construed as

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enacting that no appeal shall lie unless the requirements of that Article are satisfied. If it was the intention of the legislature that an appeal should lie against judgments, decrees and final orders passed in civil proceedings instituted prior to the Constitution when the value of the subject-matter was Rs. 10,000 or above, nothing would have been easier than to say so, by enacting a proviso to that effect to Art. 133(1), which deals with that category of appeals, and not leave it to be gathered by a process of involved and debatable ratiocination. In this view, even if there be a right of appeal vested in the petitioner prior to the Constitution as contended for by him, it must be held to have been taken away by necessary implication by Art. 133.

It has been uniformly held in America that when a right of appeal is given conditioned on the subject-matter being of a certain valuation, that provision must be interpreted as negativing a right of appeal where that condition is not satisfied. In *Durousseau* v. *United States*(1), dealing with a provision providing for an appeal when the subject-matter exceeded 2,000 dollars, Marshall C.J. observed :

"....the Court implies a legislative exception from its constitutional appellate power in the legislative affirmative description of those powers. Thus, a writ of error lies to the judgment of a Circuit Court, where the matter in controversy exceeds the value of 2,000 dollars. There is no express declaration that it will not lie where the matter in controversy shall be of less value. But the Court considers this affirmative description as manifesting the intent of the Legislature to except from its appellate jurisdiction all cases decided in the circuits where the matter in controversy is of less value, and implies negative words."

The rule thus laid down has been followed without question in American Courts. The decision in *Baltimore and Potomac Railroad Company* v. *J. H. Grant* (2) is directly in point. There, an action claiming 2,250 dollars was commenced on December 6, 1875. According to

(1) 3 L. Edn. 232 at 234-235; 6 Cranch 307.
(2) 98 U. S. 231; 25 Lawyer's Edn. 231.

s. 847 of the Revised Statute which was then in force an appeal lay to a superior Court, if the value of the matter in dispute was 1,000 dollars or more. In 1879 a new law was passed raising the valuation for the purpose of appeal to 2,500 dollars. The question was whether the right of the defendant to appeal against the decree in the action was taken away by this legislation. Apart from repealing the prior Act, the new Act was silent on the matter. It was held, following the principle laid down in *Durousseau* v. *United States* (supra), that the appeal was not maintainable as the provisions of the new Act must be construed as negativing the right of appeal if the value was less than 2,500 dollars.

The decision in *Canada Cement Co.* v. *East Montreal (Town of)* (supra) already referred to, is again another authority in support of the same conclusion. It will be remembered that in that case while proceedings were pending in Court A, a new statute was enacted, which dropped the provisions of the Code of Civil Procedure then in force providing for appeal from Court A to Court B and invested Court C with jurisdiction to hear all appeals which lay under the law. With reference to jurisdiction exercised by Court B under the repealed provisions of the Civil Procedure Code, s. 64 provided that,

"Unless otherwise provided by this Act, all cases, matters or things which, at the time of its coming into force were within the competence of the Court of Review shall be within competence of the Court of King's Bench, sitting in appeal."

This corresponds in substance to Art. 135, the only difference being that instead of the words "unless otherwise provided by this Act", we have "with reference to any matter to which the provisions of Art. 133 do not apply". In holding that the appeal was not competent under s. 64, the Privy Council observed :

"Now this appeal had not been brought when the statute was passed, although the proceedings before the Circuit Court had been instituted. Consequently the statutes giving whatever right of appeal may have

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existed were replaced by sections which gave none, and s. 64 of the Act, which provided that matters within the competence of the Court of Review should be subject to the Court of King's Bench, must be regarded as qualified by the provision that the powers of the Court of Review with regard to the Circuit Court had been taken away, and consequently to that extent the statute 'had otherwise provided' ".

According to the Privy Council, therefore, the replacing of the provision of the Civil Procedure Code, which gave a right of appeal, by provisions which gave none was other provision, which barred resort to s. 64. On the same reasoning, it must be held that the applicability of Art. 135 is barred, by the provisions of the Constitution abolishing the Federal Court, replacing the provisions relating to appeal that Court by Art. 133, and by adapting ss. 109 and 110 of the Civil Procedure Code on the terms of that Article. Whether we construe the provisions of Art. 133 as negativing a right of appeal where the conditions mentioned therein are not satisfied, or whether we regard that Article as covering the whole field of appeals against judgments, decrees and final orders in civil proceedings, the result is that the application of Art. 135 would be excluded on the ground that the matter is not one to which Art. 133 does not apply.

The question was also raised in argument as to the exact connotation of the word "matter" in Art. 135. The contention of the petitioner is that it is a word of wide import, and will take in judgments and decrees in all civil proceedings. That may be conceded, but by its very nature, Art. 135 applies only to proceedings to which Art. 133 does not apply, and therefore appeals against judgments, decrees and final orders in civil proceedings would fall within it only when they have been passed before the Constitution came into force but not thereafter. Article 135 will also apply to proceedings under special Acts, such as appeals against orders passed under the provisions of the Indian Income-tax Act to which ss. 109 and 110 of the Civil Procedure Code do not apply. Having regard to the contents of Art. 135 and of ss. 109 and 110 as adapted,

it may be stated that, broadly speaking, matters in respect of which appeal would have been competent under ss. 109 and 110 of the Code will now be governed by Art. 133, if the judgment, decree or final order appealed against is made after the Constitution, and other matters, by Art. 135. But, in the view which I have taken that the present case is within the purview of Art. 133 and Art. 135 is therefore excluded, there is no need to express any decided opinion as to the true scope of the word "matter" in Art. 135.

The result then might thus be summed up: The contention of the petitioner that the proposed appeal does not fall within the ambit of Art. 133 on the ground that that Article applies only to judgments, decrees and final orders passed in proceedings instituted after the Constitution is untenable, firstly because it proceeds on the notion that a right to appeal to the Federal Court has vested in the suitor prior to the Constitution, for which there is no justification on principle or on the statute law of India; secondly because it involves reading into the Article words which are not there and which restrict the plain meaning of the enactment: and thirdly because it will lead to the anomalous result that there will be no right of appeal against judgments, decrees and final orders made after the Constitution in civil proceedings instituted prior thereto in the Courts of Part B States, whatever their valuation. The contention of the petitioner that appeals against judgments, decrees or final orders which would otherwise fall within the ambit of Art. 133 must be held to fall outside that Article for the reason that they have not the requisite valuation prescribed therein, and that, in consequence, they will be governed by Art. 135, is untenable, firstly because Art. 133 must be construed as exhaustive of the law in respect of appeals when they are directed against judgments, decrees or final orders in civil proceedings; secondly because, by implication that Article must be interpreted as negativing any appeal which does not satisfy the requirements as to valuation prescribed therein; and thirdly because, that would result in this discrimination that while appeals will be competent against judgments,

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decrees or final orders made in proceedings instituted before the Constitution when made by High Courts in Part A States, no appeal will lie against judgments in like suits instituted in Part B States, though some of them at least had a provision for an appeal to an authority functioning as the Privy Council. The correct interpretation to be put on Art. 133 therefore is that it applies to all appeals against judgments, decrees and final orders of the High Courts in the territory of India made after the commencement of the Constitution in civil proceedings, irrespective of whether those proceedings were instituted before or after the Constitution. Such an interpretation would furnish a simple, clear and uniform law for the whole of India, and that would also avoid discrimination between suitors who instituted actions prior to the Constitution and those who instituted them after, and between those who have instituted proceedings in Part A States and those who have instituted proceedings in Part B States.

In this view, the present petition falls within Art. 133, and the appeal must be held to be incompetent for failure to satisfy the requirements of Art. 133(1)(a).

BY THE COURT.

In accordance with the opinion of the majority of the Court, Special Leave to Appeal to this Court is granted on usual terms. The Petitioner will have the costs of this application from Respondents Nos. 1 and 2. There will be stay as prayed for in Civil Miscellaneous Petition No. 579 of 1956 until the determination of this appeal.

Special leave granted.