Company in an appeal properly filed before the taxing authorities to contend that under the terms of the agreement with Caltex (India) Ltd., the Company is the owner of the goods received by it and that on that account consumption of those goods by it for its own vehicles did not amount to sale and the Sales Tax Officer will be entitled to consider that question on its merits and will not be bound by any expression of opinion by the High Court as to the interpretation of the agreement produced before it. Having regard to the circumstances, there will be no order as to costs.

Appeal dismissed.

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v.

VARKEY VARKEY AND ANOTHER

(S. J. IMAM, K. SUBBA RAO, RAGHUBAR DAYAL, and J. R. MUDHOLKAR, JJ.)

Limitation—Suit filed beyond time—Decree, if a nullity—Point of limitation not raised in High Court, if entertainable by Supreme Court—Receiver's possession, if must ensure to successful party—Appeal—Forum—Abrogated by subsequent legislation—If and when can be challenged—Travancore High Court Act, 1099 (IV of 1099)), s. 11 (1), as repealed by Ordinance II of 1124—Indian Limitation Act, 1908 (9 of 1908), s. 3. Arts. 47, 142.

One Ittiyavira, the deceased father of the appellant purchased properties and paid part of the consideration for the transaction in cash and for the balance executed two hypothecation bonds in favour of his vendors, Ramalinga Iyer and Raman Vela Yudhan. Ramalinga Iyer assigned his hypothecation bond in favour of one Sankara Rama Iyer. He had executed a promissory note in favour of one Anantha Iyer who, after his death, instituted a suit against his son Sankara Subha Iyer for recovery of the amount thereunder and obtained a decree. Treating the deed of assignment executed by Ramalinga

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Iyer in favour of Sankara Rama Iyer as a sham document, Anantha Iyer attached the mortgagee rights of Ramalinga Iyer in the hypothecation bond and eventually purchased them. In a partition in Anantha Iyer's family, the rights under the hypothecation bond purchased by him were allotted to his share and to that of his brother. These two persons instituted a suit against Ittiyavira being O. S. No. 59 of 1093 and obtained a decree for realisation of the amount against him and transferred their decree to one Venkiteswara Iyer who, at the court auction held in execution of that decree, purchased the hypothecated properties which are properties in the suit and eventually obtained possession of the properties on 12. 7. 1099.

Before the institution of O. S. 59 of 1093 by Anantha Iyer and his brother, Ittiyavira had executed a sale deed of these properties on 8. 10. 1093 in favour of his son, the appellant. The appellant was not made a party to O. S. No. 59 of 1093. Ittiyavira died in the 1107 and on 2. 2. 1108, Venkiteswara Iyer sold all the suit properties to the plaintiffs-respondents. Thereafter the respondents instituted proceedings under s. 145 of the Code of Criminal Procedure in the Court of Magistrate claiming their possession over the suit properties which was disputed by the appellant. The properties were attached and placed in the possession of the Receiver appointed by the court. Eventually, the court held that the appellant's possession over the properties be maintained until otherwise ordered by the competent civil court. The High Court of Travancore affirmed the order of the Magistrate and the appellant was handed over the possession of the properties by the Receiver. Consequently, the respondents instituted a suit out of which this appeal arises. The trial court dismissed the suit and that decision was reversed by the High Court. It was contended before this Court that the decree obtained by Anantha Iyer in O. S. 59/1093 was a nullity because the suit was barred by time. It was further urged that the appeal before the High Court should have been heard not by a Division Bench of merely two Judges, but by a Bench of three Judges as provided in s. 11 (1) of the Travancore High Court Act, 1099.

Held, that if the suit was barred by time and yet, the court decreed it, the court would be committing an illegality and the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decree rendered by them cannot be treated as nullities.

Maqbul Ahmad v. *Onkar Pratap Narain Singh*, A. I. R. 1935 P. C. 85, held inapplicable.

Where the question of limitation was not raised in the High Court, it cannot be allowed to be raised in this Court when the question was one of mixed fact of law.

In the instant case the possession of the Receiver during the proceedings under s. 145 of the Code of Criminal Procedure would necessarily unure for the benefit of the successful party and if this period is taken into account, the respondent's suit would be well within time.

Held, further that no party has a vested right to have his appeal heard by a specified number of judges and no right of the party has been infringed merely because it was heard by two Judges and not by three Judges. A litigant has no right to contend that a tribunal before whom he should have taken an appeal when he instituted the suit, should not be abolished and unless it can be shown that the repeal of the Travancore High Court Act was unconstitutional, whatever right of appeal may have vested in the party stood abrogated by the competent legislature.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 372 of 1960.

Appeal from the judgment and decree dated April 6 1955, of the former High Court of Travancore-Cochin in Appeal Suit No. 721 of 1951.

Manual T. Paikedy, Mahalinga Iyer and *Ganpat Rai*, for the appellant.

V. A. Syed Muhu nmad, for the respondent.

1963. January 15. The Judgment of the Court was delivered by

MUDHOLKAR, J.—This is an appeal by certificate from the judgment of the Travancore-Cochin High Court which allowed the appeal preferred by the respondents from the decree of the District Court

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of Parur dismissing their suit for declaration of title to and recovery of possession of certain properties and for other consequential reliefs.

The relevant facts are as follows :

The 23 items of property comprised in the schedule to the plaint belonged originally to two persons Ramalinga Iyer ("Iyen" as described by the High Court) and Raman Velayudhan. They sold them on 6-6-1080 (Malayalam Era which roughly corresponds to the year 1905) to Ittiyavira the deceased father of the appellant-defendant No. 1. Part of the consideration for the sale was paid by Ittiyavira in cash and for the balance, he executed two hypothecation bonds in favour his vendors on the same date. One of the bonds was executed in favour of Raman Velayudhan and the amount secured thereunder was Rs. 308-8-0. In respect of this amount, items of property Nos. 3, 5, 14 and 18 were hypothecated with Raman Velayudhan by Ittiyavira. The other bond was in favour of Ramalinga Iyer and under this bond, Ittiyavira hypothecated with him items Nos. 1, 2, 4, 6-13, 151-7, and 19-23 and also the remaining items, subject to the hypothecation bond in favour of Raman Velayudhan, for securing an amount of Rs. 2,191-8 0. On 3-10-1082, Ramalinga Iyer assigned his hypothecation bond in favour of one Sankara Rama Iyer ("Iyen" as described by the High Court). The parties are in dispute concerning this transaction. According to one of them, the deed of assignment Ex. V was a sham document and was not intended to take effect while according to the other, it was a genuine document.

It would appear that Ramalinga Iyer had executed a promissory note in favour of one Anantha Iyer ("Iyen" as described by the High Court). After the death of Ramalinga Iyer, Anantha Iyer instituted a suit against his son Sankara Subha Iyer ("Iyen" as

described by the High Court) for recovery of the amount thereunder and obtained a decree Ex. VI on 13-11-1088. Treating the deed of assignment executed by Ramalinga Iyer in favour of Sankara Rama Iyer as a sham document, Anantha Iyer attached the mortgagee rights of Ramalinga Iyer in the hypothecation bond which had been executed in his favour by Ittiyavira. The rights under this bond were sold in execution and were purchased by Anantha Iyer at court auction. In a subsequent partition in Anantha Iyer's family, the rights under the hypothecation bond purchased in execution by him were allotted to his share and that of his brother Manicka Iyer ("Iyen" as described by the High Court). Thereafter, these two persons instituted a suit against Ittiyavira being O. S. No. 59 of 1093 in the District Court at Parur and obtained a decree for realisation of the amount against Ittiyavira. The decree-holders subsequently transferred their decree to one Venkiteswara Iyer ("Iyen" as described by the High Court) which the latter executed and at the court auction held in execution of that decree, he himself purchased the hypothecated properties which are the properties in the suit on 27-4-1099. Exhibit C is the sale certificate which was granted to him by the court. Venkiteswara Iyer eventually obtained possession of the properties on 12-7-1099.

It would appear that Raman Velayudhan also assigned the hypothecation bond which was executed in his favour by Ittiyavira in favour of some person who eventually sued on the bond and obtained decree in O. S. No. 462 of 1094 in the court of the Munsiff, Moovattupuzha. In execution of that decree, items Nos. 3, 5, 14 and 18 were purchased by one Mathai Ouseph the brother of the second defendant in the suit on 10-11-1096. In pursuance of this decree, Mathai Ouseph obtained delivery of possession of 4 items of property (items 3, 5, 14 and 18) on 19-6-1098

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and thereafter sold them to defendant No. 2 (wife of appellant) on 5 12-1104.

Even before the institution of O. S. 59 of 1093 by Anantha Iyer and his brother, Ittiyavira had executed a sale deed in favour of his son—the appellant before us—whereunder, he conveyed to him all the properties in the suit. The date on which the sale deed was executed was 8-10-1092. It may, however, be mentioned that the appellant was not made a party to O. S. No. 59 of 1093 filed by Anantha Iyer and his brother and the contention raised by the respondents is that the sale in favour of the appellant is not a genuine transaction and therefore he was not a necessary party to the suit.

Ittiyavira died in the year 1107 and on 2-2-1108, Venkiteswara Iyer sold all the suit properties to the plaintiffs respondents. Thereafter, the respondents instituted proceedings under s. 145 of the Code of Criminal Procedure in the court of the Magistrate, First Class, Perumbavoor claiming that they were in possession of the suit properties, that the appellant was disputing their possession and that there was a likelihood of a breach of peace because of the attempt of the appellant to "obstruct" their possession. In these proceedings, the properties were attached and placed in the possession of the Receiver appointed by the court. Eventually, the court held that the properties were in the possession of the appellant and ordered that his possession be maintained until otherwise ordered by a competent Civil Court. The order of the Magistrate was affirmed by the Travancore High Court and thereafter, the Receiver handed over the possession of the properties to the appellant. Consequent upon this order the respondents instituted a suit out of which this appeal arises. Their contention in the suit is that the alleged sale by Ittiyavira in favour of the appellant is a sham transaction, that therefore he did not obtain any

rights thereunder and that consequently it was not necessary to implead him in O. S. No. 59 of 1093. They also alleged that Mathai Ouseph did not obtain any rights under his auction purchase because the sale and delivery of possession in execution of the decree in O. S. No. 462 of 1094 were benami for Ittiyavira. For this reason, it was contended that defendant No. 2 acquired no rights to items 3, 5, 14 and 18 in the plaint. The appellant disputed the validity of the decree and of the execution proceedings in O. S. No. 497 of 1088 and contended that the decree was obtained and the execution proceedings taken out, fraudulently against Ramalinga Iyer's heirs inasmuch as Ramalinga Iyer had assigned the hypothecation bond in favour of Sankara Rama Iyer on 3-10-1082. The plea of the appellant thus was that Anantha Iyer did not obtain any rights to the hypothecation bond executed by Ittiyavira in favour of Ramalinga Iyer, and consequently, Venkiteswara Iyer obtained no rights under his purchase in execution of the decree in O. S. No. 59 of 1093. The entire proceedings were characterised as fraudulent and not binding on Ittiyavira and the suit properties. The allegation that the alleged sale in favour of the appellant was a sham transaction was denied by them as also the other allegations concerning the purchase of items 3, 5, 14 and 18 by Mathai Ouseph.

The trial court dismissed the suit. The High Court, however, reversed the decree of the trial court except with respect to items 3, 5, 4 and 18 in the plaint. No cross-appeal or cross-objections having been filed by the respondents, the appeal before us is confined to the remaining items provided in the plaint schedule.

The first point raised by Mr. Paikedy for the appellant is that the decree in O. S. No. 59 of 1093 obtained by Anantha Iyer and his brother in the suit

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on the hypothecation bond executed by Ittiyavira in favour of Ramalinga Iyer was a nullity because the suit was barred by time. Even assuming that the suit was barred by time, it is difficult to appreciate the contention of learned counsel that the decree can be treated as a nullity and ignored in subsequent litigation. If the suit was barred by time and yet, the court decreed it, the court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. Learned counsel, however, referred us to the decision of the Privy Council in *Maqbul Ahmed* v. *Onkar Partap Narain Singh* (1), and contended that since the court is bound under the provisions of s. 3 of the Limitation Act to ascertain for itself whether the suit before it was within time, it would act without jurisdiction if it fails to do so. All that the decision relied upon says that s. 3 of the Limitation Act is peremptory and that it is the duty of the court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The privy council has not said that where the court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If

(1) A.I.R. (1935) P.C. 85.

the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity.

The next point raised by learned counsel is that the present suit was barred because it was not instituted within three years of the decision of the Magistrate, First Class, Perumbavoor, holding that the appellant was in possession of the suit properties. It is no doubt true that the order in question was passed on 28-12-1111 while the suit was instituted in the District Court, Parur on 4-3-1118 and even if limitation is computed with reference to the date of the order of the High Court dismissing the revision petition the suit will be said to have been instituted more than three years thereafter. The fact, however, is that the plaint was originally instituted by the respondent in the court of the Munsif. Moovattupuzha and numbered as original suit No. 1296 of 1114. The appellant contended that the valuation of the suit property made by the respondents was low and therefore the court appointed a Commissioner for ascertaining their true value. The Commissioner reported that the value of the suit properties was Rs. 4,602. The court thereupon passed an order on 21-2-1118 returning the plaint for presentation to the proper court inasmuch as the sum total of the value of the reliefs claimed in the plaint was beyond its pecuniary limits. Shortly thereafter, the plaint was presented by the respondents in the District Court at Parur. If the respondents had filed the suit in the Court of the Munsiff within three years of the date of the final order passed in proceedings under s. 145 of the Code of Criminal Procedure but the plaint was returned for presentation to the proper court, they would be entitled under s. 14 of the Limitation Act to the deduction of the entire period during which they were prosecuting their suit with due diligence and in good faith in the court of the Munsiff. Had

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the suit been barred by time when it was instituted in the court of the Munsiff, a plea to that effect could have been taken by the appellant. The defendants do not appear to have done so. It, therefore, follows that the suit must have been within time, when it was instituted in the court of the Munsiff. After the plaint was represented in the District Court at Parur, the appellant filed a written statement. In para 12 of the plaint the respondents have stated thus :

> "The cause of action for this suit has arisen within the jurisdiction of this court from 15th Kanni 1113, the date of the final order in the summary case."

The only answer to this plea of the respondents which the appellant has given in the written statement is to be found in para 13 of the written statement which reads thus :

> "The plaintiffs have no manner of right whatsoever, as alleged in para 10 of the plaint. Even if the plaintiffs had any rights, they have become barred by limitation; and they need not be considered at this juncture. The plaintiffs have no right to contend like this in the present suit, after the lapse of a long period since the 2nd defendant's brother took possession of the properties in execution proceedings. The plaintiffs are barred from contending so."

Just below the plaint, the respondents have also stated thus :

> "This suit is first filed in Moovattupuzha Munsiff's Court as O. S. No. 1296/1114. The defendants contended that the plaint properties are of great value and so a Commissioner was appointed during the trial of the suit to ascertain the value of the properties. The value was

ascertained to be Rs. 4,602/- chs. 14 and so an order was passed from the Moovattupuzha Munsiff's Court on 21-2-1118 stating that the plaint should be returned and filed in the proper court having jurisdiction to try the case, since the same cannot be tried in the Munsiff's Court. According to that order, the plaint was received back on 30-2-1118. The correct valuation is shown and the plaint is filed in this court together with the court-fee memos returned."

There is no reference to these averments in the written statement of the appellant. It would thus be clear that the appellant has not raised a sufficiently clear plea of limitation by stating relevant facts and making appropriate averments. It is apparently because of this that the trial court, though it did raise a formal issue of limitation, gave no finding thereon. Nothing would have been simpler for the trial court than to dismiss the suit on the ground of limitation if the plea was seriously raised before it. Had the point been pressed it would not have been required to discuss in detail the various questions of fact pertaining to the merits of the case before it could dismiss the suit. In the plaint, the respondents claimed that the period of limitation for the suit commenced on 15-2-1113 when the High Court dismissed the revision petition preferred by the respondents. The appellant has not stated that under Art. 47 of the Limitation Act, the period of limitation is to be computed not from the date of the revisional order but from the date of the original order. Had he done so, we have no doubt that the respondents would at least have placed on record by amending the plaint the date on which the plaint was instituted in the Court of the Munsiff. Thus, had the plaint been instituted in the court of the Munsiff say two months before the expiry of the limitation, the suit would have been within time

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on 4-3-1118 when the plaint was re-presented to the District Court, computing the period of limitation even from the date of the original order. Moreover, the appellants could well have raised the question of limitation in the High Court in support of the decree which had been passed in their favour by the trial court. Had they done so, the High Court would have looked into the records before it for satisfying itself whether the suit was within time or not. The point now raised before us is not one purely of law but a mixed question of fact and law. No specific ground has even been taken in the petition made by the appellant before the High Court for grant of a certificate on the ground that the suit was barred by time. In the circumstances, we decline leave to the appellant to raise the point of limitation before us.

The next contention of the learned counsel is that the suit is governed by Art. 142 of the Limitation Act and as the respondents have not established that they were in possession within 12 years thereof, their suit is barred by time. This plea of the appellant rests upon another contention which is that the delivery of possession to the auction purchaser in O. S. No. 59 of 1093 was a sham and fraudulent transaction. The appellant claimed that he was in possession of these properties at the time of delivery of possession and that he actually obstructed the delivery of possession to the auction-purchaser. According to him, the Amin who came to effect delivery of possession did not remove the obstruction and therefore what is recorded in Ex. D, the report pertaining to the delivery of possession, establishes at best the delivery of merely symbolical possession. Exhibit D shows on its face that actual possession of the properties was delivered by the Amin to the auction-purchaser in pursuance of the execution sale. A presumption as to regularity attaches to the records of the court and such presumption cannot be

lightly brushed aside. In addition to the presumption, however, there is the evidence of P. W. 2—Vasu Vasu Elayath—who was one of the persons who had attested the report Ex. D. He swears that the Amin came to the property and effected delivery of possession to the auction-purchaser. As the High Court has pointed out, he is a respectable person residing in the neighbourhood and that since nothing has been brought out in his cross-examination to discredit him, he deserves to be believed. Then there is the evidence of P. W. 3, Meeralava Osakkal Rawther, who was also present at the time of delivery of possession. Exhibit D states that the charges for beating of a drum at the time of delivery of possession were paid to him (P. W. 3) in token whereof he had put his signature on the exhibit. This witness also swears that actual delivery of possession to the auction-purchaser was effected as stated in Ex. D. His evidence has also been accepted by the High Court. We see no reason to take a different view of the evidence.

Learned counsel, however, refers us to Ex, J which is a petition dated 16-7-1099 filed by the appellant in the District Court, Parur in O. S. No. 59 of 1093 and says that this was filed only four days after the date of delivery of possession. His contention is that this document would show that the appellant continued to be in possession of the properties. What is stated in that petition however is this :

> "For the reasons stated in the accompanying affidavit it is prayed that the Court may be pleased, to declare my possession and rights etc. over the properties mentioned in the decree in the above suit and to hold that the said properties are not liable to be sold for the said decree, and to allow this petition with costs."

It would thus be clear that he has only claimed his right to the possession of the properties and not that

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he had obstructed the delivery of possession of the properties by the Amin to the auction purchaser. No doubt, the District Judge has recorded an order thereon to the effect that since the appellant does not say that he was dispossessed his application is not tenable. It seems to us that in the absence of any averments of the kind we have already indicated, the appellant cannot derive any benefit from his application. It was contended in the High Court and it is contended also before us that the appellant had sent an obstruction petition to the Amin, but he has neither produced a certified copy of that petition nor examined the Amin in proof of what he has said. In the circumstances, agreeing with the High Court, we hold that there can be no doubt that actual delivery of possession of the suit properties was effected by the Amin to the auction-purchaser on 12-7-1099.

No doubt, in the proceedings under s. 145 of the Criminal Procedure Code, there is a finding to the effect that the appellant was in possession. That, however, means only this, that he was in possession at the date of the preliminary order made in those proceedings. In view of our finding that actual delivery of possession was effected to the auction-purchaser on 12-7-1099, it must be said that the appellant's possession on the date of the preliminary order could only have originated in a trespass subsequent to the delivery of possession on 12-7-1099, and probably during the disputes by reason of which the respondents were compelled to take proceedings under s. 145 of the Criminal Procedure Code. The present suit cannot therefore be regarded as one by auction-purchasers for recovery of property on the strength of an execution sale in their favour but only one for eviction of a person who obtained wrongful possession of property by trespass after delivery of possession had been effected through court. As we have already pointed out,

after the application was made by the respondents under s. 145 of the Code of Criminal Procedure, the Magistrate before whom it was made ordered attachment of property and placed it in the possession of the Receiver who continued to be in possession till the final decision of those proceedings. The possession of the Receiver during this period would necessarily ensure for the benefit of the successful party. If, therefore, this period is taken into account the respondents' suit would be well within time.

The next point urged by learned counsel is that Anantha Iyer and his brother got no rights by reason of the attachment and sale of the hypothecation bond executed by Ittiyavira in favour of Ramalinga Iyer because long before their purchase, Ramalinga Iyer had assigned that bond to Sankara Rama Iyer. The contention of the respondent is that Ex. V under which the alleged assignment was made is a sham document executed by Ramalinga Iyer in order to screen the hypothecation bond from his creditors and to preserve the amount thereunder for his own benefit. It is clear from the evidence including that of the appellant himself that Ramalinga Iyer was deeply in debts at the time of the execution of Ex. V. After the execution of Ex. V, Ramalinga Iyer who produced that document for registration before the Sub-Registrar himself obtained the document back from him. There is no evidence to show that thereafter he handed it over to Sankara Rama Iyer or that the latter had accepted the transaction. The major part of the consideration recited in Ex. V consisted of amounts alleged to be due from Ramalinga Iyer to his creditors which the assignee was supposed to discharge. The balance of the consideration was not paid at the time of the execution of the said document but was said to have been adjusted against the amounts due from Ramalinga Iyer to the assignee Sankara Rama Iyer. There is no evidence to show that any of the debts recited in

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the document were actually due from Ramalinga Iyer or that any money had been received by him from Sankara Rama Iyer. The appellant does not even say that he had made enquiries concerning the consideration of this document. It is further to be borne in mind that though the document was executed in the year 1082, right uptill now, neither Sankara Rama Iyer nor any person claiming under him has made any attempt to realise the amounts due under the hypothecation bond. The High Court has pointed out thus:

> "If the assignment was a genuine transaction and was intended to take effect the assignee would not have foregone the amount under the hypothecation bond, especially when he had to get such a large amount from Ramalinga Iyer and also paid a further consideration as mentioned in Ex. V. That one circumstance, that the assignee has not made any attempt to realise the amount under the hypothecation bond during the 32 years that had elapsed after the assignment and before the institution of the present suit amounts almost to proof positive of the fact that the assignment was not a genuine transaction and was only a sham document executed for the purpose of screening the amount under the hypothecation bond for the benefit of Ramalinga Iyer himself."

We agree with the observations of the High Court and would add that this circumstance as well as the omission of the appellant to examine any person directly connected with the execution proceedings would justify an inference that the transaction evidenced by Ex. V is not a genuine one and that the document itself is sham and bogus. Upon this view, we hold that the sale in execution of the decree obtained by Anantha Iyer conveyed to the auction-purchaser all the rights of the hypothecation bond

executed by Ittiyavira in favour of Ramalinga Iyer.

The next and the last point urged by learned counsel is that the appellant is not bound by the decree in O. S. No. 59 of 1093, because he was not made a party thereto. If in fact the assignment of the properties by Ittiyavira in favour of the appellant was a genuine one, the appellant's contention would have to be upheld. The document on which the appellant relies is Ex. XXIX. According to the respondents, this document is sham and bogus and was executed by Ittiyavira for the purpose of screening the property for his own benefit. The trial court held that the document was a genuine one but the High Court has reversed that finding. At the outset, we have to bear in mind the fact that the alleged sale was by a father in favour of his son and that the son at the date of that transaction was not shown to have had any independent means of his own from which to provide for the consideration for the sale. According to the document, the consideration was Rs. 3,000/- which consisted of Rs. 1,500/- said to have been paid by the appellant to his father from time to time before the transaction, Rs. 1,000/- either paid or agreed to be paid by him to his mother in discharge of a debt by his father to her, and Rs. 500/- which had already been paid to his younger brother in discharge of a debt which the father owed to him. We agree with the High Court that the recitals excite suspicion. There is no proof of these payments except the interested testimony of the appellant himself. In the proceedings under s. 145 of the Criminal Procedure Code, the appellant had stated that he had obtained the necessary funds for obtaining Ex. XXIX from his mother; but in view of a recital in that document that he had to pay Rs. 1000/- to his mother, it would appear that he has prevaricated. Then again, the younger brother who is said to have loaned Rs. 500/- to the appellant's father was only 14 years of age at the time of

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execution of that document. It is impossible to believe that a young boy like him could have been in the position to loan Rs. 500/- to his father. It was urged before us by Mr. Paikedy that what the parties really meant was that the appellant was to pay the sums of Rs. 1,000/- and Rs. 500/- respectively to his mother and younger brother so as to discharge his father's liability to pay them. If there was any substance in this contention, it should have been advanced before the courts below and not raised for the first time before us. Apart from that it would appear that despite the execution of the document, Ittiyavira continued to be the owner of the properties comprised in it. No doubt, the appellant claims to have been in actual possession of the properties and possibly he was, but, as has been pointed out by the High Court, his possession was no more than that of an agent of Ittiyavira. We, therefore, agree with the High Court that Ex. XXIX was a sham and bogus document and that the transaction evidenced by it is not genuine.

Having thus failed on all the contentions on merits, learned counsel has sought to urge a new point before us. The point is that the appeal before the High Court should have been heard not by a Division Bench of merely two judges, but by a Bench of three judges, as provided in s. 11 (1) of the Travancore High Court Act. 1099 (IV of 1099). Learned counsel admits that the appeal was heard not by the Travancore High Court but by the High Court of Travancore-Cochin which came into being after the merger of the two States of Travancore and Cochin. He admits that the Travancore High Court Act, 1099 was repealed by Ordinance II of 1124 which was re-enacted by Act V of 1125; but he says that s. 25 of that Act provided that a Full Bench will hear and decide all appeals from the decrees of the District Courts in which the amount or value of the subject-matter is in excess of

Rs. 5,000/-. This provision was also repealed before the appeal in question was even preferred. According to him, however, the appellants were entitled to prefer an appeal before a Tribunal which existed when the suit itself was instituted. The rights of parties to a suit in the matter of preferring an appeal are governed by the law as it obtained when the suit was instituted and, therefore, according to him, as under that law in a suit of that kind an appeal lay before a Bench of three judges, it could be heard only by such a Bench and not one consisting of a lesser number of judges.

There are two reasons why this argument cannot be accepted. In the first place, the High Court of Travancore was itself abolished as a result of the merger and a new High Court came into being—the High Court of Travancore-Cochin. The rights of parties to prefer appeals to that High Court were governed initially by Ordinance II of 1124 and later by Act V of 1125. These provisions came into being subsequent to the institution of the suit. Therefore, the rights of a person aggrieved by the decision of a suit instituted prior to the coming into force of Act V of 1125 were only those which were conferred by that Act. A litigant has no right to contend that a Tribunal before whom he should have taken an appeal when he instituted the suit, should not be abolished. The Legislature has full power to enact a law of that kind and it is not contended before us that the repeal of the Travancore High Court Act was unconstitutional. It would, therefore, follow that whatever rights may have vested in the party in the matter of filing an appeal were abrogated by competent legislature. New rights were conferred in place of those which were taken away and it is only the new rights which could be availed of. After the new rights were conferred even they were modified in one respect and that was with regard to the hearing of certain kinds of appeals by a Full Bench. The rights

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to have the appeal heard by a Full Bench by virtue of the provisions of Act V of 1125 had never vested in any of the parties to the present litigation. Therefore, their abrogation by a later law cannot entitle them to make a complaint. There is yet another reason why the argument of the learned counsel cannot be accepted. That reason is that an appeal lay to a High Court and whether it is to be heard by one, two or a larger number of judges is merely a matter of procedure. No party has a vested right to have his appeal heard by a specified number of judges. An appeal lay to the High Court and the appeal in question was in fact heard and disposed by the High Court and, therefore, no right of the party has been infringed merely because it was heard by two judges and not by three judges. No doubt in certain classes of cases, as for instance, cases which involve an interpretation as to any provision of the Constitution, the Constitution provides that the Bench of the Supreme Court hearing the matter must be composed of judges who will not be less than five in number. But it does not follow from this that the legal requirements in this regard cannot be altered by a competent body. We therefore overrule the contention of the learned counsel and hold that the appeal was rightly heard and decided by a Bench of two judges.

In the result, we affirm the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.