

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

ACHAYA (PLAINTIFF), APPELLANT,

and

RATNAVÉLU (DEFENDANT No. 2), RESPONDENT.*

1885.
October 27.

Letters Patent, s. 15—Civil Procedure Code, ss. 629, 632—Indian Council's Act, 1861, s. 22—High Court's Act, s. 9.

Section 15 of the Letters Patent for the High Court of Judicature at Madras, which allows an appeal to the High Court from the judgment of one Judge of that Court, is controlled by s. 629 of the Code of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final.

APPEAL from an order, dated 10th March 1885, made by Hutchins, J., in Civil Suit No. 139 of 1884, dismissing an application for review of judgment.

The facts necessary for the purpose of this report appear from the judgment.

Mr. Norton for appellant.

Anandácharlu for respondent.

JUDGMENT:—The appellant instituted a suit on the Original Side of this Court upon a promissory note C, which purported to be executed by the respondent's father and another. Mr. Justice Hutchins, who tried that suit, found that the respondent's father did not execute the document and disallowed the claim against the respondent. The appellant then applied for review of judgment on the ground that, subsequently to the decree, he became aware of the existence of a ledger and an index kept by the respondent under the direction of his father, and that those accounts contained entries which afforded strong corroborative proof of his averment that the latter was indebted to him. This application was, however, rejected, and from the order of rejection this appeal is preferred. At the conclusion of the argument, we intimated to the learned Counsel for the appellant that, by the exercise of due diligence, the appellant might have acquired a

* Appeal 7 of 1885.

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knowledge of the existence of the ledger and the index and produced them at the original trial and that on that ground, at all events, the appeal must fail. We reserved judgment, however, to consider the question whether an appeal lies and we are now satisfied that it does not. It is provided by s. 629 of Act XIV of 1882 that the order of a Civil Court rejecting an application for review of judgment shall be final, and this section is declared to be applicable to the High Court by s. 632 of the Code of Civil Procedure. It is then argued for the appellant that an appeal is allowed from the order of a single Judge of this Court by s. 15 of the Letters Patent of 1865 issued by Her Majesty pursuant to s. 9 of the High Court's Act, 24 & 25 Vict., c. 104, and that the right is saved by s. 22 of the Indian Council's Act of 1861, 24 & 25 Vict., c. 67. It is true that by s. 15 of the Letters Patent, Her Majesty directs that an appeal shall lie to the High Court from the judgment [not being the sentence or order passed or made in any Criminal trial] of one Judge of that Court. It is also true that, by s. 9 of the High Court's Act, the High Court has all such Civil Jurisdiction, Original and Appellate, and all such powers and authority for, and in relation to, the administration of justice as Her Majesty by Letters Patent may direct and grant, and that, save as by such Letters Patent is otherwise directed, the High Court has all the jurisdiction and every power and authority whatsoever in any manner vested in the late Supreme Court (which was abolished by that Act), at the time of the abolition. But it must be observed that in both s. 9 of the High Court's Act and s. 44 of the Letters Patent it is distinctly stated that the provisions of the Letters Patent and that the jurisdiction and authority of the late Supreme Court vesting in the High Court under s. 9 are subject to the Legislative powers of the Governor-General in Council exercised at meetings for the purpose of making laws and regulations. The question, therefore, is whether s. 629 and s. 632 were enacted in the due exercise of the legislative powers vesting in the Governor-General in Council. By s. 22 of the Indian Council's Act power is conferred upon the Governor-General subject to the provisions therein contained to repeal, amend, or alter any law or regulation in force in Her Majesty's Indian territories and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for *all* Courts of justice whatever, &c. One of the provisions

contained in that statute is that the Governor-General in Council shall *not* have the power of making any laws or regulations, which shall repeal or in any way affect "any provisions of any Act passed in the then Session of Parliament or thereafter to be passed in any wise affecting Her Majesty's Indian territories or the inhabitants thereof."

As the High Court's Act was passed in the same Session of Parliament it was certainly not open to the Governor-General in Council to legislate so as to modify its provisions. But it should be remembered that it is open to the Imperial Legislature to subject any of its enactments in whole or in part specially to the legislative power of the Governor-General in Council. The general rule prescribed by s. 22 of the Indian Council's Act is that the Governor-General in Council shall have power to repeal or alter any law in force in regard to any Court of justice in Her Majesty's Indian territories, and the section then goes on to specify certain exceptions to that rule. The effect of the words in s. 9 of the High Court's Act "subject and without prejudice to the legislative powers of the Governor-General in Council" is to take the High Court's Act, so far as it relates to matters dealt with by that section, from the group of exceptions and to place it under the general rule contained in s. 22 of the Indian Council's Act. Unless those words are referred to the general rule they would be without meaning, for the combined effect of the general rule and the exception would be that the Governor-General in Council had no legislative power to affect the provisions of Acts passed in the same Session of Parliament or thereafter, and therefore there was no necessity for introducing a clause to save a power which did not exist. It will be noted that those words occur only in s. 9, and it follows that the other sections of the Act, which deal with several other matters relating to the High Court, are not subjected to the legislative power of the Governor-General in Council. Again, the words used are "subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council." These words disclose an intention on the part of the Imperial Legislature to consider the general rule contained in the s. 22 of the Indian Council's Act apart from its exceptions and to treat it as unrestricted in regard to matters specified in s. 9. The true construction then is that those words amount to a special

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direction by the Imperial Legislature that the provisions of the High Court's Act in so far as they relate to matters dealt with by s. 9 shall be subject to the general rule regarding the Legislative power of the Governor-General in Council. This view is confirmed by the subsequent course of legislation in regard to the Criminal jurisdiction of Magistrates in the Mufassal over European British Subjects, which is fully explained in *Queen v. Meares*. (1) Here we may refer to 34 & 35 Vict., c. 62, s. 3, which, adverting to certain Acts passed by the Governors of Madras and Bombay in Council in regard to Criminal jurisdiction over European British Subjects, enacts that the said Acts shall be deemed to be as valid as if they had been passed by the Governor-General of India in Council at a meeting for the purpose of making laws and regulations. Even assuming that the words in s. 9 mentioned above cannot be so construed as to give a special power to the Governor-General in Council, then s. 15 of the Letters Patent cannot be treated, as observed in that case by Couch, C.J., as part of the High Court's Act within the meaning of s. 22 of the Indian Council's Act. We are, therefore, of opinion that s. 15 of the Letters Patent does not apply to the case provided for by s. 629 of Act XII of 1882 and that this appeal must be dismissed with costs.

Solicitor for appellant, Alasingacháryár.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar.

H. H. THE NIZAM OF HYDERABAD,

*In re.**

Civil Procedure Code, ss. 130, 387, 591, 622—Interlocutory orders not subject to revision.

Under s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 387 refusing applications for the issue of a commission to examine witnesses, or, under s. 130, directing the production of documents, cannot be revised.

THIS was a petition, under s. 622 of the Code of Civil Procedure,

(1) 14 B.L.R., 110,

* Civil Revision Petition 24 of 1886.