tiffs' mortgage be also declared in Court by the District Munsif on or before the 15th January 1903. The decree will also give further necessary directions for the first defendant redeeming, on or before the 15th April 1903, the plaintiffs, on the latter redeeming the second defendant and also for the first defendant redeeming both by payment into Court, in default of plaintiffs redeeming the second defendant, with additional provisions for sale in default of redemption. The plaintiff must pay the second defendant's costs throughout and the first defendant must pay the plaintiff's costs throughout, excluding the costs which the plaintiff will have to pay to the second defendant.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), APPELLANT,

v.

ROBERT FISCHER (PLAINTIFF), RESPONDENT.*

1902. November 18, 19.

Assessment of Land Revenue Act—(Madras) Act I of 1876, s. 7—Appeal to Board of Revenue from assessment fixed by Collector—Limitation—Revenue Recovery Act—(Madras) Act II of 1864, s. 45—Regulation II of 1803, s. 18—Effect of Act I of 1876 on the procedure prescribed by s. 18 of Regulation II of 1803.

The period of ninety days prescribed by section 7 of Act I of 1876, during which an appeal may be preferred to the Board of Revenue from an order by a Collector apportioning the assessment on land, runs from the date when the Collector declares the apportionment of assessment, after the apportionment proposed by him to the Board of Revenue has been sanctioned. It does not commence to run, under the Act of 1876, from the date when the Collector himself fixes the amount and submits his proposal to the Board of Revenue for sanction.

Under section 18 of Regulation II of 1803, the Collector was bound, when transmitting for the consideration of the Board a statement of the assessment to be apportioned on the sub-division, to furnish a copy of such statement to the proprietor of the estate, who was directed to appeal if he objected to the assessment. Under that Regulation the appeal was against the proposal for

* Appeal No.70 of 1901 presented against the decree of T. Varada Rao, Subordinate Judge of Madura (East), in Original Suit No. 68 of 1899.

SECRETARY OF STATE FOR INDIA IN COUNCIL v. FISCHER.

apportionment, and time ran from the date of the proposal. But the effect of Act I of 1876 has been to supersede the procedure prescribed under section 18 of Regulation II of 1803, and the right of appeal given by the later Act is against the apportionment made under section 2 after it has acquired validity by being sanctioned by the Board of Revenue.

SUIT for a declaration that plaintiff's sub-division of a zamindari is liable to pay a fixed assessment of only Rs. 2,757-4-1.

The following statement of facts is taken from the judgment of the High Court :—

"The plaintiff, in whose name Kondagai, a sub-division of the Sivaganga zamindari, has been registered under Madras Act I of 1876, sues the Secretary of State for India in Council in effect to obtain a declaration that his sub-division is liable to pay a fixed assessment of only Rs. 2,757-4-1 and not Rs. 3,027-4-8, the amount claimed on behalf of the defendant. On the 13th November 1890 the Collector of Madura, after determining that the plaintiff was entitled to separate registration of Kondagai, submitted to the Board of Revenue, for its sanction, his proposal to fix the assessment on the separated portion at Rs. 2,757-4-1. The Board of Revenue by its proceedings, dated 5th December 1890, signified to the Collector its sanction. On receipt of the sanction the Collector deducted from the peishcush payable in respect of the whole zamindari, the assessment sanctioned by the Board of Revenue in respect of the Kondagai sub-division and the separate assessment of Kondagai and the reduction of the peishcush of the whole zamindari was communicated by the Treasury officer, on the 19th January 1891, to the lessees of the zamindari, fixing the instalments in which the peishcush of the zamindari, as thus reduced, was payable. The lessees and the zamindar being aggrieved by such apportionment, presented appeals to the Board of Revenue under section 7, on the 15th March and 18th April 1891, respectively; and the Board of Revenue, after calling for further information from the Collector, passed an order, dated 17th August 1891, whereby it enhanced the assessment payable by the plaintiff in respect of Kondagai to Rs. 3,027-2-8, and made a corresponding reduction of peishcush payable by the Zamindar on the rest of the zamindari. The suit is brought by the plaintiff for a declaration that this order of the Board of Revenue is *ultra vires*.

"The Subordinate Judge upheld the plaintiff's contention that the period of ninety days prescribed by section 7 of Act I of 1876,

for an appeal to the Board of Revenue, should be reckoned from the 13th November 1890, the date on which the Collector fixed the assessment at Rs. 2,757-4-1 and submitted his proposal for the sanction of the Board of Revenue, and not from the 19th January 1891, the date when the apportionment as sanctioned by the Board was effected and communicated to the Zamindar and the lessees of Sivaganga. The Sub-Judge also held that it was incompetent to the Board of Revenue to exercise its appellate jurisdiction by entertaining an appeal preferred after the expiration of the period prescribed by section 7, and that its order allowing the appeal was *ultra vires*. The Sub-Judge further overruled certain pleas taken on behalf of the defendant to the maintainability of the suit, and passed a decree in favour of the plaintiff declaring that the plaintiff was not bound to pay the enhanced assessment fixed by the Board of Revenue on the 17th August 1891.

"Against this decree this appeal is preferred on behalf of the Secretary of State for India in Council and it is urged in support of the appeal that the declaration of assessment referred to in section 7, from the date of which the period of ninety days therein prescribed for an appeal to the Board of Revenue begins to run, is not the proposal made and submitted by the Collector to the Board of Revenue for its sanction, but the declaration referred to in section 3, which, it is contended, is the one made by the Collector after receipt of the sanction of the Board of Revenue, whereby the apportionment of the assessment is made. It is also contended that it is competent to the Board of Revenue to entertain an appeal which may be preferred after the prescribed period."

The Acting Government Pleader for appellant.

V. Krishnaswami Ayyar and *T. Rangachariar* for respondent.

JUDGMENT.—[After setting out the statement of facts which has already been printed]:—Assuming (without deciding) that section 5 of the Indian Limitation Act is inapplicable to an appeal preferred to the Board of Revenue under section 7 of Act I of 1876, we are clearly of opinion that the period of ninety days is to be reckoned only from the date when the Collector declared the apportionment of the assessment, after the apportionment proposed by him to the Board of Revenue had been sanctioned, and not from the date when he submitted his proposal to the Board of Revenue. The plaintiff has neither alleged nor shown that the appeal to the Board of Revenue was preferred more than ninety days

SECRETARY OF STATE FOR INDIA IN COUNCIL v. FISCHER.

after the date of such declaration. On the contrary, the evidence in the case shows that, after the Board's sanction was received by the Collector, the apportionment of assessment was declared and communicated by the Treasury officer to the lessees of Sivaganga on the 19th January 1891, the date of exhibit II, and there is nothing on the record to show that there was any such declaration prior to the said date Both the lessees' appeal and the Zamindar's appeal were preferred to the Board of Revenue within ninety days from that date. That the right of appeal conferred by section 7 is from the apportionment of assessment which is declared and made after the Collector's proposal had been sanctioned by the Board of Revenue, is made clear by the language as well as the scheme of Act I of 1876—an enactment which, in respect of its subject-matter, aims at being exhaustive and complete in itself. Even prior to the passing of that Act, there were certain provisions enacted in Regulation XXV of 1802 (sections 8 and 9), Regulation II of 1803 (sections 17 and 18) and Madras Act II of 1864 (sections 45 and 46) under which alienated portions of permanently-settled estates were separately assessed and registered. But as such provisions were considered inadequate, Act I of 1876 was passed to make better provision for the separate assessment of portions of permanently-settled estates when such portions were voluntarily alienated. The enquiry under section 2 of that Act, made after giving due notice to the parties, is confined to ascertaining whether the alleged alienation has taken place, and whether objections, if any, to the separate registration, should be allowed or disallowed.

If, on such enquiry, the Collector comes to the conclusion that separate registration should be effected, he is directed to proceed to register the alienated portion and to apportion the assessment on the alienated portion in the manner provided in Madras Act II of 1864, subject to the sanction of the Board of Revenue as prescribed by section 45 of that Act.

The proceedings which the Collector takes under section 45 are taken by him purely as a fiscal officer and the enquiry in the presence of parties under section 2 of Act I of 1876 does not extend to the proceedings under section 45 of Act II of 1864. Under that section he fixes the assessment and submits his proposal to the Board for sanction, and section 45 expressly declares that the amount so fixed by the Collector shall have no validity until it

has been confirmed by the Board of Revenue. Under the law as it stood prior to Act I of 1876, the Collector was bound, under section 18 of Regulation II of 1803, when transmitting for the consideration of the Board a statement of the assessment to be apportioned on the sub-division, to furnish the proprietor of the estate with a copy of such statement, and should the proprietor object to the same and appeal to the Collector, the latter was directed to at once submit the appeal with his remarks to the Board.

If this section, so far as it relates to alienation of portions of permanently-settled estates, had been, like sections 45 and 46 of Act II of 1864, incorporated in Act I of 1876, and if the same had not been superseded in respect of such alienations, there would have been no necessity to provide for a right of appeal to the Board of Revenue under section 7 of the Act, so far at any rate as the proprietor of the estate is concerned, and the appeal by the proprietor would have been, in the absence of section 7, against the proposal for the apportionment made to the Board of Revenue by the Collector, and the respondent's present contention would in that case be well founded; but under Act I of 1876 the procedure under section 18 of the Regulation does not apply, and the right of appeal is given in favour both of the proprietor and of the alienee of a portion of the estate, against the apportionment of the assessment made under section 2 of the Act, after it has acquired validity by the sanction of the Board of Revenue. Section 7 expressly provides that the period of ninety days allowed by it for exercising the right of appeal conferred by it is to be reckoned from the date of the *declaration* of such assessment, and section 3 makes it clear that such declaration is made after the receipt of the Board's sanction, for it is absurd to suppose that the Collector would be required to deduct the peishcush proposed for the alienated portion from the existing peishcush of the entire estate, before the proposal acquired validity by the sanction of the Board. Even assuming for the sake of argument, that the procedure prescribed by section 18 of Regulation II of 1803 has not been superseded by Act I of 1876 in cases falling under that Act and can co-exist with it, this cannot affect the exercise of what in this view would be an additional right of appeal given by section 7 of the Act.

Section 3 assumes that, on the receipt of the Board's sanction, the Collector, who is the authority to give effect to the

SECRETARY OF STATE FOR INDIA IN COUNCIL v. FISCHER.

apportionment, will declare the apportionment in such mode as may be customary, so that the parties concerned may have an opportunity of knowing it, and of appealing therefrom to the Board if aggrieved by the apportionment. The proposed apportionment of the assessment by the Collector, and the sanction of the Board being both the result of *ex parte* proceedings, there is nothing anomalous in allowing a party affected thereby to appeal to the Board against the apportionment thus made. The Board of Revenue, therefore, did not act *ultra vires* in entertaining the appeals of the lessees and of the Zamindar against the apportionment of assessment which was declared by the Collector on the 19th January 1891, and in revising that apportionment.

In this view it becomes unnecessary to decide the other questions argued before us.

We therefore allow the appeal and dismiss the suit with costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Subramania Ayyar, Mr. Justice Davies and Mr. Justice Benson.

1902. November 5, 6. December 9, 12, 15.

SEVAKOLANDAI, ACCUSED,

v.

AMMAYAN, COMPLAINANT. *

Criminal Procedure Code—Act V of 1898, *s.* 528—*Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Regulation IV of* 1821.

The jurisdiction which a District or Sub-Divisional Magistrate has, under section 528 of the Code of Criminal Procedure, to transfer a criminal case from the file of a Village Magistrate is limited to the cases (namely those relating to petty thefts) which a Village Magistrate is empowered by Regulation IV of 1821 to try and punish.

REFERENCE for orders. The letter of Reference set out the facts as follows :—

---

* (Criminal Revision Case No. 454 of 1902.) Case referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. A. Elwin, District Magistrate of South Arcot, in his letter, dated 15th September 1902.