APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Spencer.

SUBRAMANIA PILLAI (PETITIONER, PLAINTIFF), APPELLANT,

v.

SEETHAI AMMAL AND ANOTHER (RESPONDENTS NOS. 2 and 3, DEFENDANTS), RESPONDENTS.*

1911. August 18, 22.

Limitation Act (IX of 1908), article 182—Revision to the High Court—Order in, not giving any fresh starting point for execution of original decree—Effect of reversal or modification in revision—'Appeal' meaning of, in Limitation Act—Letters Patent Appeal from revision, no 'appeal.'

An order of the High Court passed in the exercise of its revisional powers is not an order on an 'appeal' within the meaning of article 182, sub-clause (2), so as to create a fresh starting point for the calculation of limitation.

Per curiam.—Unlike the word 'appeal' in sections 15 and 39 of the Letters Patent, the word 'appeal' in the Limitation Act is used in the narrower sense so as to exclude a revision; this is clear from the three classifications in the Limitation Act, *viz.*, 'suits, appeals and applications,' which last include applications for revision.

If the High Court interferes on revision, either there is a decree passed by the High Court which may be executed under the first clause of article 182 or the case is sent down with a direction to the Lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any sub-clause other than sub-clause (1) or the new sub-clause (4). Where a revision petition is simply dismissed, no fresh starting point of limitation arises. When the order appealed against cannot give any fresh starting point (viz., the order in the revision petition) an order in a Letters Patent Appeal therefrom, cannot give one, as if it were an appeal within the meaning of article 182.

Chappan v. *Moidin Kutti* (1899) I.L.R., 22 Mad., 68, *Secretary of State for India in Council* v. *British India Steam Navigation Company*, [(1911) 15 C.W.N., 848] and *Harish Chundra Acharja* v. *Nawab Bahadur of Murshidabad*, [(1911) 15 C.W.N., 879], distinguished.

Judgment of WALLIS, J., confirmed.

APPEAL under section 15 of the Letters Patent (24 and 25 Vict., Cap. 104) against the judgment and order of the Hon'ble Mr. Justice WALLIS, in Civil Revision Petition No. 230 of 1910 presented against the order of V. DANDAPANI PILLAI, the District Munsif of Kumbakonam, in Execution Petition No. 655 of 1909.

* Letters Patent Appeal No. 9 of 1911.

AYLING AND SPENCER, JJ.

SUBRAMANIA PILLAI v. SEETHAI AMMAL.

The facts of this case are stated in the judgment of WALLIS, J., as follows :—

"Under article 182 of the Indian Limitation Act, sub-clause (2), there is a fresh starting point for execution 'where there has been an appeal', sub-clause (3), applies where there has been a review, sub-clause (4), where there has been an application for execution or to take a step in aid of execution and so on. It is now argued before me that the filing of a petition under section 25 of the Small Cause Courts Act is an appeal for the purposes of sub-clause 2 and gives rise to a fresh starting point. No authority has been cited for this proposition and I am unable to accept it. The Limitation Act must, I think, be read with the Civil Procedure Code to which it constantly refers, and so reading it I do not think the word 'appeal' in sub-clause (4) can be read as including a 'revision petition' either under section 25, Small Cause Courts Act or under section 115 of the present Civil Procedure Code. If the legislature had intended that the filing of a revision petition should give rise to a fresh starting point, no doubt they would have said so in express terms. Where a revision petition has been filed and dismissed I think that time runs from the date of the original decree under sub-clause (1). Where the decree is modified in revision, than the decree as modified by the order is to be executed and time runs under sub-clause (1) from the date of the order and where the revision petition is dismissed with costs as here, I think that for the execution of the original decree time runs from the date of the decree, and for the execution of the appellate order for costs time runs from the date of the High Court's order.

The petition is dismissed with costs."

K. Bhashyam Aiyangar for appellants.

The Hon. Mr. *T. V. Seshagiri Ayyar* for respondents.

JUDGMENT.—The question for decision is whether an order of the High Court passed in the exercise of its revisional powers under section 115 of the Code of Civil Procedure is an order on an appeal within the meaning of article 182, sub-clause (2) of the Limitation Act so as to create a fresh starting point for the calculation of limitation. WALLIS, J., has held that it is not, and we are inclined to agree with him. The decisions in *Chappan* v. *Moidin Kutti*(1) in *Secretary of State for India in Council* v

(1) (1899) I.L.R., 22 Mad., 68.

British India Steam Navigation Co.(1) and in *Harish Chandra Acharja* v. *Nawab Bahadur of Murshidabad*(2) do not really touch the question. They only consider the effect of orders passed by the High Court in the exercise of its revisional jurisdiction as they stand in relation to the power of appeal conferred by sections 15 and 39 of the Letters Patent.

When a question was raised whether an order passed under section 622, corresponding to section 115 of the present Code of Civil Procedure was passed in the exercise of the High Court's original or appellate jurisdiction it involved no straining of language to decide that the word appeal used in sections 15 and 39 was used in a comprehensive sense so as to include both what is described technically as an appeal as also the Common Law writ of error. But the word appeal seems to be used in its narrower sense in the Limitation Act, for in the first schedule of the Act a division is made between suits, appeals and applications and it could never be contended that the second division includes revision petitions among appeals for which ninety days limitation is prescribed. There is no reason to suppose that the word is used in a narrower sense in articles 150 to 157 and in a more extended sense in article 182 of the same schedule. If a High Court interferes on revision either there is a decree passed by the High Court which may be executed under the first sub-clause of article 182 or the case is sent down with a direction to the Lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any sub-clause other than sub-clause (1) or the new sub-clause (4). Where a revision petition is simply dismissed, as was the case here with the revision petition presented under section 25 of the Provincial Small Cause Courts Act, no fresh starting point of limitation arises.

At first sight it may seem somewhat anomalous, to take a concrete instance, that if a Small Cause Court passes a decree for Rs. 100, and the sum is reduced on revision to Rs. 50, the decree holder should while getting less money be allowed more time to recover it than he would have if the revision petition were simply dismissed. But even greater anamolies would arise were we to accept the position which the appellant wishes us to take. We

(1) (1911) 15 C.W.N., 848. (2) (1911) 15 C.W.N., 879.

AYLING AND SPENCER, JJ.

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should, for instance, be driven to the conclusion that the word appeal was used in two different senses in the same Act. We are also conscious of the fact that in the present instance it may be said that there has been an appeal under the Letters Patent but it is evident that the decision of this Court cannot provide a new starting point in a case where the order appealed against did not give any.

This appeal is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Ayling.

1911. Sept. 6.

JAMNA DOSS (RESPONDENT, AGENT AND WITNESS FOR THE PLAINTIFF), APPELLANT,

v.

A. M. SABAPATHY CHETTY (PETITIONER, SECOND DEFENDANT), RESPONDENT.*

Criminal Procedure Code (Act V of 1898), sec. 195, cl. 7 (c).—Order granting sanction by Presidency Small Cause Court—Appeal to High Court—Jurisdiction to Appellate and not Original Side—'Principal Court of Original Jurisdiction', meaning of.

From an order of the Presidency Small Cause Court giving or refusing sanction, an appeal lies to the High Court generally and not to any particular branch of it. But the jurisdiction it exercises being Appellate and not Original, it is the Appellate side alone that can dispose of such matters. The effect of clause 7 (c) of section 195, Criminal Procedure Code, is merely to designate the Court to which an appeal lies under that clause and not to describe the nature of the jurisdiction which it exercises in dealing with orders of the Small Cause Court. Its effect is only to make the High Court the appellate tribunal.

Sew Bollock Singh v. *Ramdhan Bania*, [(1910) 14 C.W.N., 806], followed.

Per curiam.—When one Court deals with a judgment of another Court having power to confirm or to set it aside, the jurisdiction it exercises is appellate jurisdiction. Original jurisdiction is the jurisdiction in original proceedings instituted in the Court, whether suits, petitions or other proceedings. The Original Side of the High Court is not a different *Court* from the Appellate Side: the Court is one; but it exercises both original and appellate jurisdiction.

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* Appeal Against Order No. 184 of 1910.