APPELLATE CIVIL—FULL BENCH.

Before Sir William Phillips, Kt., *Officiating Chief Justice*, *Mr. Justice Beasley and Mr. Justice Anantakrishna Ayyar.*

DAIVANAYAKA REDDIYAR AND TWO OTHERS (DEFENDANTS), APPELLANTS, 1927, August 19.

v.

RENUKAMBAL AMMAL (PLAINTIFF), RESPONDENT.*

Appeal, forum of, whether High Court or District Court—Sec. 13 of Madras Civil Courts Act (III of 1873)—Change in Court Fees Act between date of suit and date of appeal—Retrospective effect.

If the value of a suit at its institution exceeds Rs. 5,000 according to the Court Fees Act then in force, an appeal from a decree therein lies (with reference to section 13 of the Madras Civil Courts Act) only to the High Court and not to the District Court though on the date of filing the appeal the suit would have had to be valued at less than Rs. 5,000 owing to an amendment of the Court Fees Act in the interval. *Colonial Sugar Refining Company* v. *Irving*, [1905] A.C., 369, followed.

APPEAL against the decree of C. S. MAHADEVA AYYAR, Subordinate Judge of Cuddalore, in Original Suit No. 11 of 1921.

By the Madras Court Fees Amendment Act (V of 1922) which came into force on 18th April 1922 section 7 (2) of the Court Fees Act (VII of 1870) was amended as follows :—

"In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be determined to be *in suits for maintenance, the amount claimed to be payable for one year and in other suits* to be ten times the amount claimed to be payable for one year."

* Appeal No. 226 of 1923.

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In this case the suit was filed on 21st March 1921. The decree of the trial Court was passed on 13th March 1923 and the appeal to the High Court was presented on 19th July 1923.

The facts are given in the Order of Reference.

This Appeal coming on for hearing the Court (KUMARASWAMI SASTRI and DEVADOSS, JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH :—

The respondent's vakil takes the preliminary objection that the appeal does not lie to the High Court but to the District Court. The plaintiff, a widow, claimed maintenance at the rate of Rs. 100 a month including value of cloths, etc., and valued her claim in the plaint at ten times the amount payable for one year, under section 7, clause 2 of the Court Fees Act. She also claimed past maintenance and a house to reside in. The total value of her claim according to the plaint is Rs. 14,600. The Subordinate Judge of Cuddalore gave her a decree for maintenance at Rs. 60 a month together with past maintenance. He also decreed that she should be given possession of a house for her residence during her life. The defendants have preferred this appeal against the decree of the Subordinate Judge. In their appeal they have valued the relief for maintenance at the amount allowed for one year under the Court Fees Amendment Act, section 5. The total value of the appeal together with the past maintenance and the value of the house is Rs. 2,633-5-4. The respondent's vakil contends that though the suit was valued at more than Rs. 5,000 under the law in force at the time of the 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 this Court is incompetent. But for the amendment of the Court Fees Act the appeal would have been valued at Rs. 14,600, as in the plaint. It is admitted that the monetary jurisdiction of the Court is determined by the value of the claim in the plaint and not by the value of the relief decreed. Under section 13 of the Madras Civil Courts Act III of 1873 "when the amount or value of the subject-matter of the suit exceeds Rs. 5,000 the appeal shall lie to the High Court." It is urged

that the subsequent change in the law as to valuation makes the value of the relief in the plaint less than Rs. 5,000 and therefore the appeal lies only to the District Court, and reliance is placed for this contention upon two recent decisions of this Court in A.S. No. 32 of 1924 and in A.S. No. 415 of 1923.

In A.S. No. 32 of 1924, RAMESAM and JACKSON, JJ., held that the appeal lay to the High Court against the decree in a suit in which the relief claimed was valued at less than Rs. 5,000 according to the Court Fees Act before its amendment by the Madras Act V of 1922 but which had to be valued at more than Rs. 5,000 under the amended Act. The learned Judges relied upon *Muttammal* v. *Chinnana Goundan*(1), and the proceedings of the High Court in (1870) 5 M.H.C.R., xliv. This case is converse to the present one. The point now raised was decided in A.S. No. 415 of 1923 which was also a suit for maintenance and PHILLIPS and ODGERS, JJ., held following the decision in A.S. No. 32 of 1924 that the appeal did not lie to the High Court as according to the valuation under the amended Court Fees Act, the relief claimed in the plaint was less than Rs. 5,000. In *Muttammal* v. *Chinnana Gounden*(1), the plaintiff sued to recover one-eighth of a mitta and obtained a decree. The defendant resisted the execution of the decree and claimed to be in possession of the lands as purchaser at a Court sale in execution of another decree. His objection was disallowed by the District Munsif and on appeal the District Judge upheld the decision of the District Munsif. The High Court set aside the order of the District Munsif and the District Judge and the petition was registered as a suit under the directions of the High Court. The District Munsif gave a judgment in favour of the defendant. The plaintiff appealed to the High court. The first ground of appeal was that the District Munsif had no jurisdiction because the value of the property in dispute was Rs. 9,000. A preliminary objection was taken by the respondent that no appeal lay to the High Court. KINDERSLEY and MUTTUSWAMI AYYAR, JJ., overruled the objection and observed "We think that the subject-matter in appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal and not of the suit which led to it." They held that according to the law in force at the date of appeal, the subject-matter of the suit exceeded Rs. 5,000 in

(1) (1882) I.L.R., 4 Mad., 220.

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value and therefore whether the District Munsif had or had not jurisdiction the appeal lay to the High Court. By proceedings, dated the 15th of November 1870, the High Court gave this ruling "The High Court are of opinion that the valuation of an appeal must be according to the Act in force at the time of its presentation, and that the original valuation under a law obsolete at the period of appeal can have no influence on the decision." (5 M.H.C.R., xliv.)

We should have felt bound to follow the decision in *Muttammal* v. *Chinnana Gounden*(1), and the two recent decisions in A.S. No. 32 of 1924 and A.S. No. 415 of 1923, but for the high authority of Lord MACNAGHTEN who delivered the judgment of their Lordships of the Privy Council in *Colonial Sugar Refining Company* v. *Irving*(2). In that case an appeal was presented to the Privy Council against the decision of the Supreme Court of Queensland. During the pendency of the suit in the Supreme Court, the Judiciary Act of 1903 was passed and by section 39, sub-section (2), right of appeal to the Privy Council from the decision of the Supreme Court was taken away but a right of appeal was given from the Supreme Court to the High Court of Australia. The respondent moved the Privy Council by a petition to have the appeal dismissed on the ground that the appeal did not lie as of right to the King in Council. Their Lordships rejected the petition holding that the matter was not one of procedure only but one touching a right in existence at the passing of the Act and that "the Judiciary Act was not retrospective by express enactment or by necessary intendment." Lord MACNAGHTEN observed "The only question is, was the appeal to His Majesty in Council a right vested in the appellant 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 restrospectively unless a clear intention to that effect is manifested."

(1) (1882) I.L.R., 4 Mad., 220. (2) [1905] A.C., 369.

It does not appear that this decision was brought to the notice of the learned Judges who decided the two appeals in A.S. No. 415 of 1923 and A.S. No. 32 of 1924.

An appeal to a certain forum is a vested right. It cannot be denied that an appeal to the High Court on facts is considered to be a very valuable right and it cannot be taken away except by an express statute. The present suit was valued at more than Rs. 5,000 and if the suit was decided on the date it was filed, namely, 21st March 1921, there would have been no question as to the maintainability of the appeal in the High Court. The Court Fees Act is only a fiscal enactment and in most cases the valuation for purposes of jurisdiction is the same as that for purposes of court fees. The jurisdiction value determines the forum for the appeal and the right of appeal to the High Court which either party to the suit had on the date of the plaint and some time after cannot be taken away by an enactment which amends some of the provisions of the Court Fees Act for the purpose of charging court-fees. As the decisions in A.S. No. 32 of 1924 and in A.S. No. 415 of 1923 are not reconcilable with the observations of their Lordships of the Privy Council, in *Colonial Sugar Refining Company* v. *Irving*(1) to which the attention of the learned Judges does not seem to have been directed, and as the point is of considerable importance and is likely to arise in many cases, we refer the following question 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?"

ON THIS REFERENCE—

E. V. Sundara Reddi (with *T. Rangachari*) for appellant.—Appeal in this case lies only to the High Court and not to the District Court. Subsequent change in the law of court-fees cannot take away a right of appeal to the High Court which was vested in a party at the time of suit. *Colonial Sugar Refining Company* v. *Irving*(1). (He was stopped.)

K. V. Krishnaswami Ayyar and *N. S. Srinivasa Ayyar* for respondent.—The appeal in this case lies only to the District

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

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Court. In cases of this class the exact appellate forum (whether High Court or District Court) will vary according to circumstances, as it is left to be determined by section 13 of the Madras Civil Courts Act, according to the value of the subject-matter of the suit, which valuation has been held by *Muttammal* v. *Chinnanna Goundan*(1), to be the valuation of the suit as on the date of the appeal. If the law relating to its valuation is changed before filing the appeal the change must take effect. *Colonial Sugar Refining Company* v. *Irving*(2) is distinguishable as the appellate forum therein was determined by the Queen's Ordinance of 1860 to be the Privy Council. Moreover the right of appeal therein was not repealed by the Judiciary Act, 1903, of Australia and the Privy Council held that if it really repealed the right retrospectively that Act was *ultra vires*. This is only *obiter dictum*. The Madras Court Fees Amendment Act of 1922 does not deal with any right of appeal and does not retrospectively take away any such right, as it merely prescribes a new method of valuation of the subject-matter of suit in this class of suits. There is no vested right of appeal to any particular Court and a right of appeal can be taken away with retrospective effect by subsequent enactment. See *Canada Cement Co.* v. *East Montreal (Town of)*(3). Even supposing that a right of appeal cannot be taken away retrospectively by a substantive enactment, if a processual law has determined the right to appeal to a particular Court, that processual law can itself take away retrospectively that right and vest it in another Court. See *Muttammal* v. *Chinnana Gounden*(1), Appeal No. 415 of 1923 (unreported) and A.S. No. 32 of 1924 (unreported).

E. V. Sundara Reddi for appellant.—The value of the suit when filed must be taken as constant for purposes of Appeal and Second Appeal with reference to section 13 of the Madras Civil Courts Act; *See Muthusami Pillai* v. *Muthu Chidambara Chetti*(4), *Kannayya Chetti* v. *Venkata Narasayya*(5). Right of appeal is not a matter of procedure but a substantive right. *Colonial Sugar Refining Company* v. *Irving*(2), *Salimamma* v. *Valli Husanabba Beari*(6). Right of appeal to a particular

(1) (1882) I.L.R., 4 Mad., 220. (2) [1905] A.C., 369.
(3) [1922] A.C., 205 at pp. 240 and 254. (4) (1874) 7 M.H.C.R., 356.
(5) (1917) I.L.R., 40 Mad., 1 (F.B.) at p. 8.
(6) (1911) 21 M.L.J., 764.

Court is a vested right ; *Ratanchand Shrichand* v. *Hanmantrav Shivbakas*(1). DAIVANAYAKA REDDIYAR v. RENUKAMBAL AMMAL.

N. S. Srinivasa Ayyar in reply.—The last case was a case of a pending appeal.

OPINION.

The question that has been referred for decision is,

"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?"

This question has been referred to us because there are two unreported decisions of this Court which hold that the valuation must be determined according to the amended Act and, according to that valuation, the appeal will lie either in the High Court or in the District Court. In neither of these cases was any reference made to the decision of the Privy Council in a case from Queensland, *Colonial Sugar Refining Company* v. *Irving*(2). In that case in certain suits a right of appeal to the Privy Council was given by an Ordinance of 1860. Subsequently by the Judiciary Act of 1903 the decision in those suits was held to be final subject to an appeal to the High Court of Australia. The question for decision was whether in a suit filed before the passing of the Judiciary Act of 1903 the appeal still lay to the Privy Council or to the High Court in Australia, and it was held that the new enactment could not take away a vested right, unless in express terms it had retrospective effect. The remarks of Lord MACNAGHTEN in his judgment are entirely applicable to the present case :

"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

(1) (1869) 6 Bom. H.C.R., 166. (2) [1905] A.C., 369.

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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."

This clearly disposes of the point before us, for the question is whether the amendment of the Court Fees Act which came into force after the present suit was filed would deprive the plaintiff of a right of appeal to this Court which he had when he filed the suit. Under section 13 of the Civil Court Act, appeals from subordinate Courts lie either to the District Court or to the High Court, according to whether the value of the subject-matter of the suit is over or below Rs. 5,000. 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 authorized to hear appeals and the question of whether that 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 in 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. We may also refer to a case decided in *Ratanchand Shrichand* v. *Hanmantrao Shivbakas*(2), where the same principle was enunciated.

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(1) [1905] A.C., 369. (2) (1869) 6 Bom. H.C.R. (A.C.J.), 166.

Respondent relies on some observations in *Canada Cement Co.* v. *East Montreal (Town of)*(1). These observations do seem to give some support to the contention that a right of appeal can be taken away by a subsequent enactment, but there is no decision to that effect and no reference whatever to the previous decision of the Court in *Colonial Sugar Refining Company* v. *Irving*(2). The observation is obiter and can, therefore, have no force as against the prior decision which we must follow.

The answer to the question before us may also be put upon another ground and that is that the forum of appeal from a Subordinate Judge's Court depends on the value of the subject-matter of the suit. Presumably the value of the subject-matter of the suit is its value at the time of filing. Such value has to be set forth in the plaint and court-fees paid accordingly. It is, however, contended that the value varies according to the particular enactment in force at the time; and that, although it may have a particular value when it is filed, the value of the suit can be changed if the law in respect of valuation is altered. This contention was distinctly negatived so long ago as 1874 in *Muthusami Pillai* v. *Muthu Chidambara Chetty*(3), where it was held that it is the money value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages. If this is so, the value of the subject-matter of the suit is the same throughout and it cannot be altered after the decree has been passed simply by an alteration in a fiscal enactment. To hold otherwise would lead to very great difficulties in the question of jurisdiction. A suit which when filed was within the jurisdiction of the District Munsif might subsequently

(1) (1922) 1 A.C., 249 at 254. (2) [1905] A.C., 369.
(3) (1874) 7 M.H.C.R., 356.

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become one which must necessarily be filed in a Subordinate Court or *vice versa*.

For both these reasons, therefore, we hold that in the suit referred to, the appeal lies to the High Court.

N.R.

APPELLATE CIVIL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, and Mr. Justice Srinivasa Ayyangar.*

1927, January 6.

SRI RANGA THATHACHARIAR (PLAINTIFF), APPELLANT,

v.

SRINIVASA THATHACHARIAR *alias* SRINIVASA RAGHAVACHARIAR (FIRST DEFENDANT), RESPONDENT.*

Hindu Law—Minor—Suit by minor for partition—Preliminary decree—Division of status, whether from date of plaint or of preliminary decree—Manager, accountability of—Nature of liability of manager to account—Difference as to nature of accountability, prior to and after suit—Civil Procedure Code (Act V of 1908), O. XLI, rule 22—"Decree" in rule 22, meaning of—Respondent's right to support decree on other grounds, in what cases permitted, without filing an appeal or memorandum of objections.

In a suit for partition instituted on behalf of a Hindu minor, if the Court holds that a division is necessary in the interests of the minor and passes a preliminary decree for partition, it must be deemed that the divided status of the plaintiff dates from the date of the plaint and not from that of the preliminary decree; and the fact that the preliminary decree was passed on a consent statement of the parties does not make any difference: *Krishnaswami Thevan* v. *Pulukaruppa Thevan*, (1925) I.L.R., 48 Mad., 465, followed; *Chelimi Chetty* v. *Subbamma*, (1918) I.L.R., 41 Mad., 442, distinguished.

In an ordinary suit for partition, in the absence of fraud or other improper conduct, the only account the kartha or manager is liable for is as to the existing state of the property divisible and the parties have no right to look back and claim relief

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* Appeal No. 134 of 1923.