APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Venkatasubba Rao.

1928, December 11.

P. A. SUNDARA AIYAR (PETITIONER), PETITIONER,

v.

THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS, AND TWO OTHERS (RESPONDENTS), RESPONDENTS.*

The Indian Court Fees Act (VII of 1870), art. 17 (1) of schedule—The Madras Hindu Religious Endowments Act (II of 1927), sec. 84 (2), application under.

The Court-fee payable on an application under section 84 (2) of the Madras Religious Endowments Act (II of 1927), to set aside an order of the Endowments Board under section 84 (1), is according to article 17 and not article 17-A, or 17-B of the Court Fees Act; and under article 17, it is 17 (1) alone that is applicable; hence the fee is rupees fifteen only and not rupees fifty; *Godasankara Valia Rajah* v. *Board of Commissioners, Hindu Religious Endowments, Madras,* (1928) M.W.N., 509, dissented from.

PETITIONS under section 115 of Civil Procedure Code (V of 1908) and section 107 of the Government of India Act, praying the High Court to revise the orders of the District Court of South Malabar, Calicut, in O.P. Nos. 42, 53, 80, 169, and 24 of 1927, 131 of 1926, 159, 70, 110, 126, and 55 of 1927 and 2 and 32 of 1928, respectively.

The facts and arguments are fully given in the Judgment.

P. G. Krishna Ayyar for petitioner.

P. Venkataramana Rao for respondents.

* Civil Revision Petition No. 1644 of 1927, etc.

JUDGMENT.

RAMESAM, J.—These revision petitions are filed against the orders of the District Judge of South Malabar in O.P. Nos. 42 of 1927, 131 of 1926, 159, 110, 126, 55, 53, 80, 169, 24 and 70 of 1927 and 2 and 32 of 1928. The point for decision is what is the correct court-fee payable on these petitions under section 84 (2) of the Madras Hindu Religious Endowments Act, II of 1927. Under schedule II of the said Act, the Court-fee on an application to modify or set aside the decision of the Board of Commissioners for Hindu Religious Endowments under section 84 (1) of the Act is the Court-fee leviable on a plaint under article 17, schedule II of the Madras Court Fees Amendment Act, 1922. The right to apply to set aside the decision was conferred by section 84, clause (2). When we refer to schedule II of the Madras Court Fees Amendment Act of 1922, we find there are articles numbered 17, 17-A and 17-B. The first question that arises is, whether "article 17" in the Madras Court Fees Amendment Act includes 17-A and 17-B, or in other words whether 17-A and 17-B are parts of article 17. On this point we are referred to a decision of our brothers, PHILLIPS and ODGERS, JJ., in *Godasankara Valia Rajah* v. *Board of Commissioners, Hindu Religious Endowments, Madras*(1), and as I respectfully differ from that decision, I think it is necessary to give my reasons at length.

When we refer to the practice of either the Imperial Parliament or the Imperial Legislature of India or the local legislatures, we find one definite rule of practice in numbering sections of enactments, the practice being to adopt the small letters of the English alphabet, (*a*), (*b*), (*c*), etc., to denote parts of a section and if

(1) (1928) M.W.N., 509.

SUNDARA AIYAR v. COMMISSIONERS, H.R.E. BOARD.

RAMESAM, J.

further subdivisions are required to use the Arabic numerals with or without brackets, but where a new section is required to be inserted between two sections and where they consider it desirable not to alter the number of the sections, they add the capital letters of the English alphabet, A, B, C, etc., without brackets to the Arabic numerals. Thus if a new section is required between sections 17 and 18, they use 17-A, but if section 17 contains only one clause and requires another sub-section, they would number the old section as 17 (*a*) and introduce a new sub-section 17 (*b*). The practice is so well established that it is impossible to imagine that any legislature is ignorant of it. I now proceed to give illustrations of this method of adding to enactments to show how conclusive it is against the view that clauses 17-A and 17-B can be parts of clause 17. In the Court Fees Act VII of 1870, the Imperial Legislature found it necessary to introduce a number of sections dealing with Court-fees relating to probate and letters of administration and certificates of administration. They found that these sections would properly come between sections 19 and 20. They therefore added sections 19-A to 19-K, these letters being added without any brackets. That these cannot be regarded as parts of section 19 is clear from the fact that they are so different in their nature from section 19 that the legislature found it necessary to put them in a separate chapter and numbered the chapter as Chapter III-A. Now it cannot be suggested that Chapter III-A is part of Chapter III, for if the legislature intended the new chapter to be part of the old and not a distinct chapter, all that they had to do was merely to add the sections to Chapter III with such method of numbering them as they liked but not to group all these new sections as an additional chapter. Thus, we see that Chapter III-A

and sections 19-A to 19-K cannot be parts of section 19. Exactly the same thing happened in the Indian Penal Code, where sections 120-A and 120-B are added as parts of a new Chapter V-A and similarly sections 171-A to 171-I are added, being made parts of a new Chapter IX-A. In the Criminal Procedure Code, we have got Chapter XLIV-A consisting of sections 528-A to 528-D and in the Government of India Act of the Imperial Parliament, we have got Part VI-A enacting section 14-A and other sections. In the above instances, it is not possible to say that the sections described by arabic numerals with the capital letters are parts of the preceding sections described by the numerals only. Section 516-A of the Criminal Procedure Code is added in Chapter XLIII whereas section 516 remains in Chapter XLII. This instance differs from the prior instances in the fact that whereas in the former group of instances a new chapter with new sections is added, in this case no new chapter is added but only a new section and we have got sections 516 and 516-A allotted to different chapters showing that 516-A is never thought of as part of 516. A similar example is that of section 129-A of the Government of India Act which is added to Part XII whereas section 129 remains in Part XI. Coming to Madras Acts, in Act VI of 1922, the Act succeeding the one we are dealing with, section 7 says "After section 19, the following shall be inserted, namely, section 19-A," the marginal note being "addition of a *new section* 19-A" and if the Statute Book of the Imperial Government from 1837 up to now is examined, this is always found to be the practice, the description of the marginal note of such sections is denoted by the addition of capital letters being that of new sections. As an example, I may mention section 2 of Act XVI of 1919 which adds the new sections 11-A and

SUNDARA AIYAR v. COMMISSIONERS, H.R.E. BOARD.

RAMESAM, J.

11-B to the Indian Naturalization Act of 1852. The marginal note is "insertion of new sections 11-A and 11-B." Where new sub-sections are intended to be added to a section, this method is not adopted, as for example, section 4 of Madras Act II of 1921 which amends the District Municipalities Act of 1920 and adds new sub-sections to section 368 of the main Act, the original section being re-numbered as sub-section (1) and sub-sections (2) to (5) being newly added. Such additions to a section are always described as sub-sections and not as new sections. The object of the method is to create new numerals between two consecutive numerals, which is merely a device of the Legislature intended not to disturb the numbering of the sections in the statute, so much so that sometimes where sections have been repealed, the numbers of the repealed sections remain unutilized and lower down a new section is added with the letters of the English alphabet. I am therefore clear that 17-A and 17-B cannot be regarded as parts of 17 but only as new sections. From a perusal of the judgment of our brothers PHILLIPS and ODGERS, JJ., we are led to conclude that these considerations have not been relied on before them and secondly that, in some portions of the judgment, the capital letters A and B are referred to with brackets, as 17 (A) and 17 (B) which is not a correct description of the articles in question. I am not aware of any instance of bracketting the capital letters of the English alphabet in enactments. The first conclusion, therefore, I come to, is that we should look at only article 17 of the Act. The learned Government Pleader referred to certain considerations such as the scheme of the Religious Endowments Act or the scheme of the Court-Fees Act or the history of articles 17, 17-A and 17-B as compared with the old articles 17 of the Court-Fees Act of 1870.

I do not see anything definite in these considerations to induce me to come to a different conclusion.

Now coming to article 17, all that we have got to do is to take the court-fee mentioned in that article and accept it as the court-fee for an application under section 84 (2) of the Religious Endowments Act, for the schedule to the Religious Endowments Act does not require us to apply article 17 of the Madras Court-Fees Amendment Act, but only requires us to take the court-fee mentioned there and use that as the court-fee for the application in question. Thus, in the first instance, we have not got to read the first column of article 17. In the first instance, our business is only to take the third column and take the figure mentioned there. We have nothing to do with the discussion whether the descriptions in the first column of article 17 is applicable to an application under section 84 (2). I have referred to this matter at this length because a good deal of argument has been addressed to us as to which description in the first column, that is, whether the description in 17 or 17-A or 17-B, is best applicable to an application under section 84 (2). But it seems to me this is an erroneous process. We have nothing to do with the description in the first column of article 17 or 17-A or 17-B. The argument was addressed to us with a view to induce us to hold that in this particular amendment Act, article 17 includes articles 17-A and 17-B and that only by so holding we could get to some description in the first column applicable to the application in question. But as a matter of fact, we find none of the descriptions in the first column of articles 17, 17-A and 17-B is applicable to the application in question, because all these three articles deal with a plaint or a memorandum of appeal, whereas we have got to do with an application and there is no section in the Religious Endowments

SUNDARA AIYAR v. COMMISSIONERS, H.R.E. BOARD.

RAMESAM, J.

Act saying that an application should be numbered as a suit as we find in the second schedule to the Civil Procedure Code relating to arbitration. See for instance, clauses 17 (2) and 20 (2). Similar examples occur in other enactments, for example, see section 83 of the Probate and Administration Act. We have nothing of the kind in the Religious Endowments Act.

While, therefore, holding that either 17, 17-A or 17-B has not got to be examined to see which is properly applicable to an application under section 84 (2) and that that mode of examining the articles cannot help us for the purpose of showing that 17 includes 17-A and 17-B, we find we have to look at the first column of article 17 for another reason. As I said we have got to take the figure in the third column of article 17 and if there is only one figure, there is no further question to be discussed. That figure represents the court-fee for an application under section 84 (2). Unfortunately, we have got two figures in the third column of article 17, namely, Rs. 15 and Rs. 50. We have now to choose between these two figures and solely for the purpose of choosing between these two, I have got to examine the three varieties of suits described in the first column of article 17, not that any of them does apply to an application under section 84 (2)—for we know that none of them applies—but solely for purposes of making a choice between Rs. 15 and Rs. 50. However much the three clauses in the first column of article 17 are inapplicable, I look at them merely to see which comes nearest to the application in question. I am of opinion that article 17 (i) resembles the matter we are now concerned with. By this, I do not mean that the description in article 17 (i) applies to the application we are dealing with. I refuse to discuss the question whether the word "Civil Courts" in article 17 (i)

applies to the tribunal called the Board of Commissioners for Hindu Religious Endowments. While inclined to agree with the view expressed by my brother VENKATASUBBA RAO, J., in another case that "Civil Courts" there would include other and special tribunals in the land established by the Indian Legislature which are not Criminal or Revenue Courts, at present, I simply refuse to discuss the question because the point is not whether any of the three sub-clauses of article 17 applies to the matter with which we are now concerned but which resembles it nearest. As I already said, I think article 17 (i) comes nearest. I therefore hold that Rs. 15 is the proper fee for all the petitions which have now come before us in the above civil revision petitions. Each party will bear its own costs in the High Court.

RAMESAM, J.

VENKATASUBBA RAO, J.—I agree. The question to be decided is, in respect of an application under section 84 (2) of the Madras Hindu Religious Endowments Act, what is the proper court-fee payable? Section 84 reads thus—

VENKATASUBBA RAO, J.

84. (1) If any dispute arises as to whether a math or temple is one to which this Act applies or as to whether a temple is an excepted temple, such disputes shall be decided by the Board.

(2) A trustee affected by a decision under sub-section (1), may, within one year, apply to the Court to modify or set aside such decision, but, subject to the result of such application, the order of the Board shall be final.

Under section 81, the proper fee for such an application is that set forth in schedule II of the Act. Now turning to that schedule, the material portion reads thus—

"84. (2) Application to modify or set aside the decision of the Board under sub-section (1).	The fee leviable on a plaint under article 17, schedule II of the Madras Court Fees Amendment Act, 1922."

SUNDARA AIYAR v. COMMISSIONERS, H.R.E. BOARD.

VENKATA-SUBBA RAO, J.

What we are called on to construe, is the expression "article 17" in the above column 3. The Madras Court Fees Amendment Act contains articles 17, 17-A and 17-B. The short question is, does the reference to article 17 include 17-A and 17-B? My learned brother has fully set forth the numerous instances to which we have been referred, which show by their variety, that there is a well-recognized method of creating new numbers by affixing capital letters to pre-existing figures. Thus, new sections are inserted without disturbing the original arrangement, the object of the device being to avoid imposing a needless strain on a mind which has learnt to associate certain sections with certain numbers. If this be remembered, 17-A and 17-B are in fact new figures and they can no more mean 17 than they can mean 18. The learned Government Pleader refers to the history of the section and says that 17, 17-A and 17-B of the Madras Act correspond to the original 17 of the Imperial Act. This, in my opinion, is quite beside the point. The reference in the Religious Endowments Act is to section 17 of the Madras Act. What does section 17 in that connexion mean? I am clearly of the opinion that 17 does not include 17-A and 17-B.

For the petitioners it is contended that the article applicable is 17 (i) which fixes a fee of Rs. 15. The Government contends, on the other hand, that the article applicable is 17-A (i) or 17-B. What the Government Pleader says is this:—You must look at the nature of the relief asked for in the application filed under section 84 (2), and then turn to the three articles (17, 17-A and 17-B) to find out which of them applies. Under the terms of 84 (2), the aggrieved party is required to *apply* to the Court to modify or set aside the decision of the Board. It is impossible to hold that either 17-A (i) or 17-B deals in terms with such a relief. As a matter of

fact, none of the three articles to which we have been referred, literally applies to an application of the kind with which we are dealing. We cannot therefore usefully apply the test suggested by the Government Pleader. That is a further reason for holding that we must confine our attention to the article expressly indicated in the schedule to the Religious Endowments Act and that article is, as I have said, article 17.

The learned Government Pleader strongly urges that the legislature meant to include 17-A and 17-B. He may be right, but it is our duty to gather the intention from the words employed and I must say that, if his contention is correct, apt language has not been used.

Then turning to 17, there are three subdivisions, the second and the third of them being utterly inapplicable. Then remains the first subdivision and we are driven to apply it, for the sole reason that it is the most reasonably appropriate part of the article.

N.R.