conviction in order to show that a convicted person cannot avoid being sentenced, I see no reason why previous convictions should not be used by the Court in exercising its discretion in regard to the quantum of the sentence.

I find no ground for interference. The Criminal Revision Petition is dismissed.

B.C.S.

APPELLATE CIVIL—FULL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, Mr. Justice Kumaraswami Sastri, Mr. Justice Wallace, Mr. Justice Beasley and Mr. Justice Pakenham Walsh.*

VASUDEVA SAMIAR ALIAS VASUDEVA PILLAI (APPELLANT), APPELLANT.*

1928, October 18.

Letters Patent (Madras), cl. 15—Judgment—Appeal—Amendment of cl. 15 of the Letters Patent, taking effect on 31st January 1928—Suit filed before amendment—Second Appeal filed before, but judgment of single Judge after, amendment—Appeal under Letters Patent, filed without obtaining leave from the learned Judge—Appeal, whether competent—Amendment, whether retrospective.

In a suit instituted on the 30th July 1919, a Second Appeal was presented on the 15th July 1924 and was finally disposed of by a single Judge of the High Court on the 9th February 1928. On an appeal being preferred against the judgment, under the Letters Patent, on the 24th April 1928, without leave to appeal having been obtained from the learned Judge, objection was taken to the maintainability of the appeal by reason of the amendment of the Letters Patent requiring such leave, which had come into force on the 31st January 1928.

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* S.R. No. 12176 of 1928.

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Held, that the institution of a suit carries with it the implication that all appeals *then* in force are preserved to it through the rest of its career, unless the legislature has either abolished the Court to which an appeal *then* lay, or has expressly or by necessary implication given the Act a retrospective effect;

and that the words of the amended Letters Patent do not admit of such an interpretation;

and that, consequently, the appeal under the Letters Patent was competent; *Sheikh Sadar Ali* v. *Sheikh Dolliluddin,* (1928) 48 Calc. L.J., 150, followed; *Colonial Sugar Refining Co.* v. *Irving,* [1905] 1 A.C., 369, applied; *Canada Cement Co. (Ltd.)* v. *East Montreal (Town of),* [1922] 1 A.C., 249, distinguished; *Badruddin* v. *Sitaram,* (1928) 30 Bom. L.R., 942, dissented from.

APPEAL sought to be preferred under clause 15 of the Letters Patent against the judgment of DEVADOSS, J., dated 9th February 1928, in Second Appeal No. 790 of 1924, preferred against the decree of the Subordinate Judge of Kumbakonam in A.S. No. 22 of 1923 filed against the decree of the District Munsif of Valangiman in O.S. No. 295 of 1919.

In this case a suit was instituted in the District Munsif's Court on the 30th July 1919, and a Second Appeal was filed therein in 1924 (S.A. No. 790 of 1924). The Second Appeal was finally disposed of by DEVADOSS, J., on the 9th February 1928. An appeal under the Letters Patent was preferred against the judgment on the 24th April 1928; but no leave to appeal had been obtained from the learned Judge. The Letters Patent, clause 15, as amended, requiring such leave, came into force on the 31st January 1928. Objection was taken by the office of the High Court as to the maintainability of the appeal, as no leave to appeal had been obtained from the learned Judge as required by the amendment of the Letters Patent. The case was placed before the Full Bench under the orders of the learned CHIEF JUSTICE for the determination of this question.

A. Krishnaswami Ayyar (with *T. S. Srinivasa Ayyar*) for the appellant.—The right to appeal under the Letters Patent in this case is governed by the Letters Patent, clause 15, as it stood before it was amended; the amendment has no retrospective effect. The suit was filed in 1919. All rights of appeal attached to the case as they existed on the date of suit. When a litigant institutes a suit, he has a right of appeal and of further appeals as they existed at that time. They are vested rights, and are not mere rules of procedure. The legislature can take away the right of appeal by express enactment, or necessary intendment. Further, the Second Appeal to the High Court, having been preferred before the amendment of the Letters Patent in this case, the right to have an appeal under the original Letters Patent is not affected by the amendment subsequent to the filing of the Second Appeal. The latest decision of the Calcutta High Court is in favour of this view. *See Sheikh Sadar Ali* v. *Sheikh Dolliluddin*(1). The leading case is *Colonial Sugar Refining Co.* v. *Irving*(2). The Privy Council case has been followed in 2 Full Bench cases of this High Court in *Ramakrishna Iyer* v. *Sithai Ammal*(3), and *Daivanayaka Reddiyar* v. *Renukambal Ammal*(4). The decision of a Full Bench of the Allahabad High Court holds that an appeal is a continuation of the suit and is not taken away by a later Act; see *Ram Singha* v. *Sankar Dayal*(5). The decision in *Delhi Cloth and General Mills Co.* v. *Income-tax Commissioner, Delhi* (6) shows that a right of appeal given by a new Act (which gave a right of appeal to the Privy Council) cannot apply retrospectively. The decision in *Canada Cement Co.* v. *East Montreal (Town of)*(7) is distinguishable, as there the Court of appeal itself was abolished.

Government Pleader (*P. Venkataramana Rao*), *amicus curiæ*?—The jurisdiction of the High Court, original and appellate, is given by section 9 of the Charter Act, now section 106 of the Government of India Act. The jurisdiction of the High Court to hear appeals from judgments of a single Judge of that Court is taken away by the amendment of the Letters Patent, clause 15. The amended Letters Patent takes away the appellate jurisdiction of the High Court and confers only a limited

(1) (1928) 48 Calc. L.J., 150 (F.B.). (2) [1905] A.C., 369 (P.C.)
(3) (1924) I.L.R., 48 Mad., 620 (F.B.). (4) (1927) I.L.R., 50 Mad., 857.
(5) (1928) A.I.R. (All.), 437. (6) (1927) I.L.R., 9 Lah., 284 (P.C.).
(7) [1922] 1 A.C., 249.

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appellate jurisdiction. *See Framji Bomanji* v. *Hormasji Barjorji*(1), and *Badruddin* v. *Sitaram*(2). The party has no vested right of appeal to two Judges as soon as a Second Appeal is filed in the High Court, for the Second Appeal may be disposed of by two Judges or a single Judge. It is only a contingent right until a judgment is delivered by a single Judge.

JUDGMENT.

COUTTS TROTTER, C.J.

COUTTS TROTTER, C.J.—This case appears to me to be indistinguishable from the case of *Sheikh Sadar Ali* v. *Sheikh Dolliluddin*(3). For the sake of clearness, I will set out the material dates. The plaint was presented on the 30th July 1919. The Second Appeal was presented on the 15th July 1924. The Judge who heard the Second Appeal called for a finding and, in consequence of that inevitable delay, gave his judgment on the 9th February 1928. On the 24th April 1928 a Letters Patent Appeal was filed against the judgment of the learned Judge who, sitting alone, had decided the Second Appeal. Before that Letters Patent Appeal was presented, the amended Letters Patent of 1928 had become applicable to this Presidency on the 31st January.

I should, in any case, differ from the decision in the Calcutta case cited above with great reluctance, because it would lead to the result that a Second Appeal would lie in Calcutta whereas it would not lie in Madras. I should, therefore, not venture to differ from the considered opinion of the Calcutta Full Bench on any other ground than that I felt not merely that I was inclined to the opposite opinion but that I felt that the decision offended against some standard principle of statutory construction. So far from that being the case, I entirely concur in the reasoning of RANKIN, C.J., who delivered the

(1) (1866) 3 Bom. H.C.R., 49. (2) (1928) 30 Bom. L.R., 942.
(3) (1928) 48 Calc. L.J., 150.

judgment of the Court, and see no answer to it. The result is regrettable, because it makes the amended Letters Patent, which were doubtless brought into being to relieve the heavy burden of Second Appeals, which in this Court have now reached the startling figure of 5,000 cases, unable to effect any substantial relief to us for five years.

I have only one observation to add to the judgment of the Calcutta High Court, and that is in reference to an argument addressed to us on a case which apparently was not cited to the Calcutta High Court. That is the case of *Canada Cement Co.* v. *East Montreal (Town of)*(1) and it was suggested that the sentences which are to be found at the end of their Lordships' judgment were irreconcilable with the doctrine so clearly laid down by Lord MACNAGHTEN in *Colonial Sugar Refining Company* v. *Irving*(2), and that the later case should be followed, if there was such a conflict, and not the earlier. In our opinion, arrived at after a careful scrutiny of the Canada Cement Company's case, no such conflict arises. In that case what was taken away was not the right of appeal but the very Court to which the appeal lay, namely, the superior Court of Montreal sitting in review. By 10 George V Chap. 79 (Quebec), the right of appeal was transferred from the abolished Court to the Appellate Side of the Court of King's Bench in Quebec, but no provision was made for the transference of appeals which would have lain to the abolished Court to the newly constituted Appellate Court. In these circumstances, their Lordships of the Privy Council held that an appeal from the Circuit Court to the Court of King's Bench did not lie; but in no way did their Lordships' opinion conflict with their earlier decision in

(1) [1922] 1 A.C., 249. (2) [1905] A.C., 369.

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the Colonial Sugar Refining Company's case. I may add that, in the later case of *Delhi Cloth and General Mills Co.* v. *Income-tax Commissioner, Delhi*(1) decided in 1927, the decision of the Board in *Colonial Sugar Refining Company* v. *Irving*(2) was authoritatively adopted and re-affirmed.

We must therefore hold, however reluctantly, that the institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect. We agree with the Calcutta High Court that the words of the amended Letters Patent do not admit of such an interpretation.

Since the above was written, our attention has been called to the case of *Badruddin* v. *Sitaram*(3), decided by a Bench of the Bombay High Court (FAWCETT and MIRZA, JJ.), as recently as April of this year. That decision was in effect based on the case of *Framji Bomanji* v. *Hormasji Barjorji*(4), which dates as far back as 1866. We appreciate the desire of the Bombay Court to uphold a decision which had stood for over half a century without being explicitly reversed. But in our opinion it was overruled by necessary implication in the Colonial Sugar Refining Company case(2), and can no longer be regarded as an authority. Framji's case purports to establish two propositions which may be summarized shortly as follows: (1) That a deprivation of a right of appeal from a Judge or Bench of a Court to a larger Bench of the same Court is a mere matter of procedure: (2) that a statute similar in terms to the amended Letters Patent that we have

(1) (1927) I.L.R., 9 Lah., 284 (P.C.)
(2) [1905] A.C., 369.
(3) (1928) 30 Bom. L.R., 942.
(4) (1866) 3 B.H.C.R., 49.

to consider, must be construed as being retrospective in its operation. The first ground is disposed of by the Colonial Sugar Refining Company's case; the second by the judgment of the Full Bench of the Calcutta High Court and the English cases cited in that judgment. We feel that in this matter we must reluctantly dissent from the view of the High Court of Bombay, and agree with the conclusion arrived at by the Full Bench in Calcutta.

KUMARASWAMI SASTRI, J.—I agree.

WALLACE, J.—I agree.

BEASLEY, J.—I agree.

PAKENHAM WALSH, J.—I agree.

[The Letters Patent have, since this judgment, been amended so as to apply to all judgments delivered on or after the 1st February 1929.—Ed.]

K.R.

SPECIAL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice*, *Mr. Justice Beasley and Mr. Justice Reilly.*

M. V. KRISHNA AIYAR AND SONS (ASSESSEE),

1928, October 26.

v.

COMMISSIONER OF INCOME-TAX (REFERRING OFFICER).*

Indian Income-tax Act (XI of 1922), sec. 2 (14) and rr. 2, 3 and 4 of Part I—Registration of a firm—Deed of partnership, not in force at the time of application for registration —Continuance of partnership.

A firm can be treated as a "registered firm" within the meaning of section 2 (14) of the Indian Income-tax Act (XI of 1922), only if the deed constituting the partnership is registered

* Original Petition No. 133 of 1928.