APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao.

1936, November 17.

K. M. VENKATACHALA CHETTY (DEFENDANT), APPELLANT,

v.

V. D. NATESA CHETTY (PLAINTIFF), RESPONDENT. *

Court-fee—High Court Fees Rules (Original Side) (Madras) 1933, rr. 35 and 36—"Final judgment"—Test to be adopted for finding out what is—Suit on the Original Side of the High Court for a declaration that a partnership subsisted between the parties and for dissolution—Judgment referring the suit to the Official Referee for taking the necessary accounts—If a "final judgment".

A judgment delivered on the Original Side of the High Court declaring that a partnership subsisted between the plaintiff and the defendant in an action for dissolution of partnership and referring it to the Official Referee for the taking of the necessary accounts is a "final judgment" within the meaning of Rule 35 of the High Court Fees Rules, 1933.

The test to be adopted for finding out whether a judgment is a "final judgment" pointed out and case law discussed.

On the reference of the Master as to the court-fee leviable on the memorandum of Original Side Appeal entered in the Stamp Register as No. 14872 of 1936.

G. Ramakrishna Ayyar for appellant.

ORDER.

The question involved in this reference relates to the amount of court-fee payable upon a memorandum of appeal presented against a judgment

* Stamp Register No. 14872 of 1936.

delivered on the Original Side of the High Court declaring that a partnership subsisted between the plaintiff and the defendant in an action for dissolution of partnership and referring it to the Official Referee for the taking of the necessary accounts. The provisions which regulate the payment of the court-fee are Rules 35 and 36 of the High Court Fees Rules, 1933. They run thus :

	RS.	A.	P.
" 35. Memorandum of appeal from a final judgment when the value of the subject-matter of the appeal does not exceed Rs. 2,500	225	0	0
36. Memorandum of appeal from any other judgment or order	100	0	0 ".

The fee of Rs. 100 was paid by the appellant under Rule 36 and he contends that it is sufficient. The argument of his learned Counsel is, as the matter has been referred to the Official Referee for accounts, the suit cannot be said to be finally disposed of, and there is no " final judgment " within the meaning of Rule 35, and he is not bound to pay a higher court-fee than what he has done. An appeal lies from the judgment of a single Judge in a suit instituted on the Original Side under Clause 15 of the Letters Patent. The word " final " is not to be found in Clause 15, but it occurs in Clause 39 of the Letters Patent where an appeal is provided to His Majesty in Council against the " final judgment ", decree or order of the High Court of Judicature at Madras. It may be noticed that Clause 40 of the Letters Patent provides a similar appeal against any preliminary or interlocutory judgment, decree or order of the High Court under certain conditions specified in the said clause. So far as our High Court is

VENKATA-CHALA v. NATESA.

concerned, there has been a judicial interpretation of what a "judgment" is within the meaning of Clause 15 of the Letters Patent in the Full Bench decision in *Tuljaram Row* v. *Alagappa Chettiar*(1), and ever since the date of the said decision, so far as I know, it has been treated as an authority on the said matter, and subsequent decisions have in this Court uniformly adopted the interpretation given therein. According to the said decision, the word "judgment" in Clause 15 would cover not only a "final judgment" but an "interlocutory or preliminary judgment". But, neither WHITE C.J. nor KRISHNASWAMI AYYAR J. defined what a "final judgment" is. KRISHNASWAMI AYYAR J. adopts the definition given by Black in his book on Judgments for explaining what an "interlocutory judgment" is. He seems to treat the terms "interlocutory" and "preliminary" as synonymous. It is unnecessary for me to consider whether this view is sound. I think it is enough to determine for the purpose of this reference what a "final judgment" means. If it is determined what a "final judgment" means, every judgment which is not final will be either "interlocutory or preliminary".

The cases in England on the question what is a "final judgment" are not easy to reconcile, but the Judicial Committee for the purpose of the Letters Patent seems to have adopted the definition of "final judgment" as given by COTTON L.J. in *Ex parte Chinery*(2) and by Lord ESHER M.R. in *Onslow* v. *Commissioners of Inland Revenue*(3); vide *Tata Iron and Steel Company, Limited* v.

(1) (1910) I.L.R. 35 Mad. 1 (F.B.).
(2) (1884) 12 Q.B.D. 342.
(3) (1890) 25 Q.B.D. 465.

Chief Revenue-authority of Bombay(1). In *Ex parte Chinery*(2) COTTON L.J. observes :

"I think we ought to give to the words 'final judgment' in this sub-section their strict and proper meaning, i.e., a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established."

In *In re Riddell. Ex parte Earl of Strathmore*(3) Lord ESHER M.R., after citing with approval the opinion of COTTON L.J., explains what a "final judgment" means thus :

"A 'final judgment' means a judgment obtained in an action by which the question whether there was a pre-existing right of the plaintiff against the defendant is finally determined, in favour either of the plaintiff or of the defendant. I think that definition will be found to cover most cases, though perhaps not every one. . . .

In my opinion the question is, not only was the claim determined, but was it finally determined? It can only have been finally determined if between the two parties to the action it cannot be raised again. If between those two parties the question of the plaintiff's alleged right as existing before he brought the action was finally determined, then, whether it was tried 'on the merits' or not, the order . . . is a 'final judgment'."

If this test is adopted there can be no question that the judgment in a suit for dissolution of partnership, or in a suit for account, which determines the liability of the parties finally, in the sense that so long as that judgment stands it cannot be raised again, will be a "final judgment" within the meaning of Rule 35 of the Fees Rules.

This view is also borne out by the opinion expressed by the Judicial Committee in more cases than one on the language of section 595 of the Code of Civil Procedure, 1882. Under clause (*c*)

(1) (1923) I.L.R. 47 Bom. 724, 733 (P.C.).
(2) (1884) 12 Q.B.D. 342.
(3) (1888) 20 Q.B.D. 512, 516.

VENKATACHALA v. NATESA.

of that section, which corresponds to section 109 (*c*) of the present Code, an appeal was held to lie to His Majesty in Council from any final decree passed on an appeal by a High Court or any other Court of final appellate jurisdiction. In *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1) a question arose thus: the decree directed the taking of accounts which the defendants contended ought not to be taken at all; this was passed by the Judge sitting on the Original Side of the High Court and it was confirmed in appeal by a Bench of two Judges; against the decision in appeal, leave to appeal to His Majesty in Council was sought. The High Court declined leave on the ground that it was not a final decree within the meaning of section 595, clause (*c*), Civil Procedure Code. The Privy Council expressed the opinion that this view was wrong. Lord HOBHOUSE observed thus:

> "The real question in issue was the liability, and that has been determined by this decree against the defendant, in such a way that in this suit it is final. The Court can never go back again upon this decree so as to say that, though the result of the account may be against the defendant, still the defendant is not liable to pay anything. That is finally determined against him, and therefore in their Lordships' view the decree is a final one within the meaning of section 595 of the Code."

It will be seen that this view is in accord with the view expressed by Lord ESHER referred to above in *In re Riddell. Ex parte Earl of Strathmore*(2). The interpretation put on the word "final" was again re-affirmed by the Privy Council in *Saiyid Muzhar Hossein* v. *Mussamat Bodha Bibi*(3). What is meant by "final" is further

(1) (1890) I.L.R. 15 Bom. 155, 159 (P.C.).
(2) (1888) 20 Q.B.D. 512.
(3) (1894) I.L.R. 17 All. 112 (P.C.).

made clear by the following observations of their Lordships in the above judgment:

"The question is whether the decree of the High Court is final. It appears to their Lordships that it is final. The case is analogous to that of *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1). There the defendant denied his liability to account to the plaintiff. The High Court affirmed his liability and directed an account. Of course the account might turn out in the defendant's favour. But their Lordships held that the order establishing liability was one which could never be questioned again in the suit, and that it was the cardinal point of the suit."

As observed by the learned Judges in *Chundi Dutt Jha* v. *Pudmanund Singh Bahadur*(2), the decision of the Privy Council in *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1) clearly indicates that in their opinion final decree in section 595 does not mean the last decree but the decree determining the rights finally. Even under the new Code, where the wording differs materially from that of the old Code, their Lordships of the Privy Council expressed the opinion that the decision in *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1) will also govern cases arising under the new Code. Referring to these two cases, *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1) and *Saiyid Muzhar Hossein* v. *Mussamat Bodha Bibi*(3), the Privy Council observed thus in *Abdul Rahman* v. *D. K. Cassim & Sons*(4):

"Two other cases before this Board were relied on by the learned Judges, viz., *Rahimbhoy Habibbhoy* v. *C.A. Turner*(1) and *Saiyid Muzhar Hossein* v. *Mussamat Bodha Bibi*(3). But both of these cases were decided with reference to the Civil Procedure Code of 1882, in which the wording of the relevant sections differed materially from that of the Code of 1908. Special leave to appeal was given in each of these cases on the ground that the suit had been fully tried in the lower Court and the 'cardinal point' decided, leaving, in the one case, only a reference for

(1) (1890) I.L.R. 15 Bom. 155 (P.C.). (2) (1895) I.L.R. 22 Cal. 928.
(3) (1894) I.L.R. 17 All. 112 (P.C.). (4) (1932) I.L.R. 11 Ran. 58, 63 (P.C.).

VENKATACHALA v. NATESA.

accounts, and, in the other, only subordinate points for decision which should have been dealt with by the appellate Court. In the first case, *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1), *it is clear that an appeal to His Majesty in Council would have lain as of right under the provisions of the present Code.*"

This case clearly indicates that the principle enunciated in *Rahimbhoy Habibbhoy* v. *C. A. Turner*(1) is that, where the cardinal point in the case is decided and the matter is referred for the taking of accounts, the judgment would be a "final judgment". Therefore it seems to me that a judgment which decides finally the liability to account so far as the Court deciding it is concerned would be a "final judgment" within the meaning of Rule 35 of the Fees Rules, though there is a reference for the taking of accounts to the Official Referee. The appellant is therefore liable to pay court-fee under Rule 35 of the Original Side Fees Rules.

Mr. Ramakrishna Aiyar submitted that, if he were to appeal against the decree passed after the consideration of the report of the Official Referee, he would have to pay another *ad valorem* fee within the meaning of Rule 35 and it would work hardship. But that is a matter for amendment of the rules. In cases arising under the Court Fees Act it may be noticed that such hardship does not occur ordinarily because, as pointed out in *Supputhayammal, In re*(2), in an appeal against the final decree in a suit credit is given to the court-fee paid on the memorandum of appeal presented against the preliminary decree. The appellant is given ten days' time from to-day to pay the additional court-fee.

G.R.

(1) (1890) I.L.R. 15 Bom. 155, 159 (P.C.). (2) (1932) I.L.R. 55 Mad. 664.