

ships of the Privy Council, and we do not see why we should regard the conduct of the learned Subordinate Judge in the case before us as in any way reprehensible.

The other case is that of *Har Narain Singh v. Bhagwant Kuar* (1). In this case, Janki Prasad, one of the arbitrators, had at one stage of the case sent in his resignation, but it was found that as a matter of fact he had all along been taking part in the arbitration proceedings. It was held that the proceedings were not in any way vitiated because of the resignation. The learned Judges referred to the case decided by the Privy Council, mentioned above, and upheld the award.

On authorities, therefore, the reference to arbitration continued to be valid in spite of the 'resignation,' dated the 23rd of February, 1927, sent in by the arbitrators.

The result is that the application fails on the merits and is hereby dismissed with costs.

BANERJI, J. :—I concur.

Application dismissed.

FULL BENCH.

Before Mr. Justice Sulaiman, Acting Chief Justice, Mr. Justice Mukerji and Mr. Justice Boys.

RAM SINGHA AND ANOTHER (DEFENDANTS) v. SHANKAR DAYAL AND ANOTHER (PLAINTIFFS).*

Procedure—Appeal—Change of law pending suit—Law by which the right of appeal will be governed.

A right of appeal in a suit is governed by the law prevailing at the date of the institution of the suit, and not

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by the law prevailing at the date of the decision of the suit or at the date of the filing of the appeal. *The Colonial Sugar Refining Company, Ltd., v. Irving* (1), *Delhi Cloth and General Mills Co., Ltd., v. Income-tax Commissioner* (2), *Dairanayaka Reddiyar v. Renukambal Ammal* (3) and *Bala Prasad v. Shyam Behari Lal* (4), followed. *Zamin Ali Khan v. Genda* (5), overruled.

THIS was a reference made by a Bench consisting of MUKERJI and BENNET, JJ., of the question:—
 “Whether the filing of an appeal is governed by the law obtaining at the date of the institution of a suit or by the law that may prevail at the date of the decision of it, or at the date of the filing of the appeal.”

The facts which gave rise to the reference were as follows:—

The plaintiff Shankar Dayal brought a suit against Ram Singha and others for recovery of arrears of rent. The suit was instituted on the 12th of July, 1926, when the Agra Tenancy Act of 1901 was still in force. The learned Assistant Collector decreed the suit on the 23rd of December, 1926. An appeal was filed by the defendants before the learned District Judge of Mainpuri. The learned Judge ordered the memorandum of appeal to be returned for presentation to the proper court, by a decision dated the 31st of August, 1927. The memorandum of appeal was thereupon taken before the Collector of Etawah and that learned officer was of opinion that he had no jurisdiction to entertain the appeal and referred the case to the High Court, under section 267 of the Agra Tenancy Act. The Bench before which the reference came up for hearing referred it to a Full Bench.

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

(2) (1927) I. L. R., 9 Lah., 284.

(3) (1927) I. L. R., 50 Mad., 857. (4) (1928) 26 A. L. J., 406.

(5) (1904) I. L. R., 26 All., 375.

On this reference—

Munshi *Badri Narain*, for the defendants.

Munshi *Baleshwari Prasad*, for the plaintiffs.

SULAIMAN, A. C. J., and MUKERJI and BOYS,

JJ:—This is a reference to the High Court under the Tenancy Act. The facts are clearly set forth in the referring order of MUKERJI, J., and it is not necessary to repeat them.

A suit for arrears of rent was filed in the court of the Assistant Collector when the old Tenancy Act was in force. Before it could be decided, the new Act came into force on the 7th of September, 1926. The suit was decreed on the 23rd of December, 1926.

Under the old Act a defendant had undoubtedly a right of appeal to the District Judge if the decree went against him. Under the new Act, there is no appeal from the decision of an Assistant Collector of the first class, when the valuation of the subject-matter is less than Rs. 200.

The point of law that arises, therefore, is whether the coming into force of the new Tenancy Act, under which no appeal is provided, deprives a defendant of his right of appeal, which he would have had if the old Tenancy Act had continued to be operative.

It is admitted that there is nothing in the new Tenancy Act expressly providing that it shall affect all pending actions, or that it shall have retrospective effect. If, therefore, the right of appeal was a substantive right and not a mere matter of procedure, it could not be taken away by the new Act. On the other hand if it merely involved a question of procedure, that right may have been destroyed.

In our opinion the point is concluded by the pronouncement of their Lordships of the Privy

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Council, in the case of *The Colonial Sugar Refining Company, Ltd.*, v. *Irving* (1). In that case, ordinarily an appeal lay to their Lordships of the Privy Council from an order of the Supreme Court. While the matter was pending in that court, the law was amended so as to allow an appeal to the High Court. Their Lordships of the Privy Council held that the new Act could not deprive the party of his right to appeal to the Privy Council. Lord MACNAGHTEN remarked at page 372: "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."

That principle was re-affirmed by their Lordships in the case of the *Delhi Cloth and General Mills Co., Ltd.*, v. *Income-Tax Commissioner* (2). The principle has been followed by a Full Bench of the Madras High Court in the case of *Dairavanayaka Reddiyar v. Renukambal Ammal* (3). DALAL, J., has taken the same view in the case of *Bala Prasad v. Shyam Behari Lal* (4).

An earlier case of this Court, *Zamin Ali Khan v. Genda* (5), was decided before the pronouncement of their Lordships of the Privy Council in the case of *The Colonial Sugar Refining Company, Ltd.* (1). That case decided that although a suit is disposed of while one Act is in force, the appeal is governed by a new Act which comes into effect before the appeal is filed. That case must be deemed to have been overruled by the pronouncement of their Lordships of the Privy Council.

We think there is no force in the contention that the Privy Council case proceeded on the general principles of Common Law and is therefore not applic-

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

(2) (1927) I. L. R., 9 Lah., 284.

(3) (1927) I. L. R., 50 Mad., 857. (4) (1928) 26 A. L. J., 406.

(5) (1904) I. L. R., 26 All., 375.

able to this case, which is governed by the U. P. General Clauses Act of 1904. Under section 6 of that Act, unless a different intention appears, the repeal of an Act cannot affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or affect any remedy or any investigation or legal proceeding commenced before the repealing Act shall have come into operation, and any such remedy may be enforced, and any such investigation or legal proceeding may be continued and concluded, as if the repealing Act had not been passed. It is clear to us that an appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, and that the right to continue that proceeding cannot be affected by a new Act, unless it expressly says so. The U. P. General Clauses Act does not operate differently.

Our answer to the reference is that the right to appeal to the court of the District Judge was governed by the law prevailing at the date of the institution of the suit, and not by the law that prevailed at the date of its decision, or at the date of the filing of the appeal.

The case will go back to the Bench concerned with this opinion.

Before Mr. Justice Boys, Mr. Justice Kendall and Mr. Justice King.

JAGAT NARAIN AND ANOTHER (PLAINTIFFS) *v.* MATHURA DAS AND OTHERS (DEFENDANTS).*

Hindu law—Joint Hindu family—Alienation of family property by managing member—Benefit to the estate—Whether transaction must necessarily be of a defensive nature—Criteria for judging propriety of transaction.

In order to sustain an alienation of joint family property made by the managing member of the family the transaction

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*First Appeal No. 421 of 1925, from a decree of Rup Kishen Agha, Subordinate Judge of Moradabad, dated the 25th of July, 1925.