

1869
August 25.

Civil Petition.

Ratanchand Shrichand *Petitioner.*
Hanmantrav Shivbakas *Opponent.*

Appeals—Bombay Civil Courts' Act.

Held, that appeals in suits, wherein the subject matter exceeds Rs. 5000 in value, decided before the Bombay Civil Courts' Act (XIV. of 1869) came into operation, lie to the District Courts as before the Act, and not to the High Court.

This was an application for permission to file an appeal in the High Court against a decree of the Principal Sadr Amin of Dhulia in Original Suit No. 382 of 1866. The application was the first under the new Bombay Courts Act, and the circumstances under which it was made were briefly as follow:—

The plaintiff, who was the grandson and heir of Shivram Radhakisan, deceased, sued Ratanchand Shrichand, the partner of his grandfather, in the Court of the Principal Sadr Amin of Dhulia, for his share of the partnership profits, valuing his claim at Rs. 23,319. The Principal Sadr Amin decided the suit on the 29th of January 1869 in favour of the plaintiff, allowing the greater part of his claim.

The defendant applied to be allowed to appeal *in forma pauperis* to the District Judge, who, after inquiry, refused to allow him to appeal as a pauper, but granted him further time to appeal in the ordinary way. Before this period expired the Bombay Civil Courts' Act was passed on the 19th of March 1869, and the District Judge informed the applicant that, by the new Act, appeals in suits for sums exceeding Rs. 5,000 in value did not lie to the District Court and referred him to the High Court, which alone had jurisdiction to hear such appeals.

A petition of appeal was accordingly presented by the defendant to the High Court on the 10th of June 1869. The petition was presented to a Division Court, by which it was referred to the Full Bench, to determine whether an appeal lay to the High Court, under the Bombay Civil

Courts' Act, or to the District Court, in the case of suits decided before the passing of the Act.

The case was argued before COUCH, C. J., WARDEN, GIBBS, and MELWILL, JJ., on the 21st of July 1869.

The Honourable J. S. White (Advocate General) for the Applicant: The subject-matter of this suit exceeds Rs. 5,000 in amount, and therefore the Principal Sadr Amin (under the new law called a Subordinate Judge of the First Class) decided this suit in his special original jurisdiction (Sec. 25). Sec. 26 provides that appeals in such suits shall be direct to the High Court. The Act makes no express provision for appeals in suits decided before its passing, although, in Sec. 31, it reserves over all pending proceedings to the Courts of the Subordinate Judges the same jurisdiction which belonged to the Principal Sadr Amin, &c., under the old law, as if the Act had not been passed. While original suits, pending in the subordinate Courts are thus provided for, no provision has been made for the disposal of appeals from suits decided before the Act came into force. This omission is significant, and indicates that the Legislature intended that all appeals should be regulated by the new law.

The applicant has been guilty of no laches. He presented his first petition for leave to appeal in *forma pauperis* in time, and the Judge thereupon granted him further time to appeal on a full stamp, rejecting his application to appeal as a pauper. Before the expiration of this further period, the District Judge, thinking he had no jurisdiction under the new Act, which came into force on the 19th of March 1869, referred him to this Court. Thirty days time is allowed by the Code to file an appeal to the District Court, and the days taken in furnishing copies of the record do not count; by this reckoning, the time for appealing to the District Court expired on the 22nd March, three days after the new Act came into operation. Neither has there been laches or delay in the presentation of the petition of appeal to this Court. The Code allows ninety days for such appeals, and the days taken in furnishing copies do not count. The time of presenting an appeal to the High

1869

Ratanchand
Shrichand
c.Hanmantrav
Shivbakae.

1869

Ratanchand
Shrichand

v.

Hannantrav
Shivbakas.

Court expired in May, when the Court's vacation commenced, and the appeal was presented when the Court first sat after vacation.

The question, then, is purely a technical one. The English cases lay down a very important distinction between rights of action and mere matters of procedure. In *Wright v. Hale* (a) Wilde, B., says: "Where you are dealing with a right of action, and an Act of Parliament passes, unless some thing express is contained in that Act, the right of action is not taken away; but where you are dealing with mere procedure, unless something is said to the contrary, and the language in its terms applies to all actions, whether before or after the Act, there I think the principle is, that the Act does apply without reference to the former law or procedure." Is then a right to appeal to a particular Court, a right of action, or a mere matter of procedure? If it is the latter, the Act will apply irrespective of former law or procedure to a case like the present, for there is no reservation in the law in favour of pending appeals, and the language of Sec. 26 applies to all appeals from the particular class of suits which constitutes the special original jurisdiction of a First-Class Subordinate Judge. This point has been decided in *Frámji Bomanji v. Hormasji Barjorji* (b), where it was held that the right of appeal from a Division Court of two Judges to three Judges of the High Court, preliminary to an appeal to the Privy Council, which was allowed by Sec. 14 of the old Charter, was taken away by Sec. 15 of the new Charter, which only allowed an appeal to the Privy Council, even in the case of suits pending in the High Court, and decided, but not appealed from, before the publication of the new Charter, on the express ground that a right to appeal to a particular Court was a matter of procedure; and unless something is said to the contrary, the new law, where its language is general in its terms applies without reference to the former law or procedure. The present case is exactly in point, and must be governed by the same principles.

Cur. adv. vult.

(a) 80 L. J. Ex. 40. (b) 8 Bom. H. C. Rep. O. C. J. 49.

25th August—COUCH, C. J. (after stating the facts of the case, and the general provisions of the Act as to appeals, proceeded):—

1869

Ratanchand
Shrichandv.
Hanmantray
Shivbakas.

It is clear it was not the intention of the Legislature to take away the right of appeal in any case in which it existed at the date of the passing of the Bombay Courts' Act. It is true that the existing Regulations by which the procedure in appeal was governed were repealed by that Act, but this does not necessarily take away the right of appeal. Sec. 6 of Act I. of 1868 is as follows:—"The repeal of any Statute, Act, or Regulation shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation."

The question is whether the word "proceedings" is sufficiently comprehensive to include a suit in which a decree has been given. We are of opinion that it is, and this opinion is in accordance with the construction of Sec. 2 of the Amended Letters Patent of the High Court, of December 1865, which was adopted by the Court in the case of *Framji Bomanji v. Hormasji Barjorji (ubi supra)*. The words of that section are "that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced after the date thereof." A suit is a judicial proceeding, and the word "proceedings" must be taken to include all the proceedings in the suit from the date of its institution to its final disposal, and therefore to include proceedings in appeal. It follows, in the judgment of the Court, that in all suits commenced before the passing of the Bombay Courts' Act, the procedure must (unless another mode of procedure is expressly substituted by that Act) be the same as it would have been if that Act had not been passed. The appeal, therefore, in the case before the Court must be made, not to the High Court, but to the District Judge to whom the appeal would have lain, if the Bombay Courts' Act had not been passed.

1869

Ratanchand
Shrichand
v.
Hanmantrav
Shivbakas.

The order of the Court is, that the application to file the appeal be refused, but that the petition be returned with an endorsement directing the party to present it to the Court of the District Judge.

Application refused.

Aug. 26

Civil Petition.

In re R. J. Abraham.

Attachment before judgment—Execution of decrees in Presidency Town—Act XXIII. of 1840—Act VIII. of 1859, Sec. 81

It is competent to the High Court, under Act XXIII. of 1840 to order a warrant of attachment before judgment issued by a Mofussil Court to be executed within the limits of the High Court's ordinary original civil jurisdiction.

This was an application to set aside an order made by Melvill, J., by which he directed the Sheriff of Bombay to execute a warrant of attachment before judgment issued by the Assistant Commissioner of Berar, and by him sent to be enforced within the limits of the ordinary original civil jurisdiction of the High Court.

Melvill, J., endorsed the warrant, and directed it to be executed by the Sheriff of Bombay, in accordance with the provisions of Act XXIII. of 1840.

The petition came on for hearing before GIBBS and MELVILL, JJ.

Gerguson for the Petitioner: The warrant of the Assistant Commissioner is bad on its face, or at least it is one which he had no jurisdiction to issue, and which, therefore, the High Court will not endorse. The procedure of the Court in Berar is governed by the Code of Civil Procedure, and that Code, it is submitted, gives no power to Courts to attach property before judgment out of the limits of the district in which they are situated. Sec. 81 shows that the mischief to be prevented is the removal of property by sale or otherwise from the jurisdiction of the Court in which the suit is pending; for a removal of property into a foreign