

Legal Analysis: The Second Appeal, Amendment of Clause 15, and Appellants' Contention

That second appeal was heard by a Single Judge and was dismissed on the 4th April, 1928. In the meantime Clause 15 of the Letters Patent was amended on the 14th January 1928 so as to provide that no further appeal should lie from the decision of a Single Judge sitting in second appeal unless the Judge certified that the case was a fit one for appeal. In this case the learned Judge who dismissed the second appeal on the 4th April, 1928, declined to give any certificate of fitness. The plaintiffs on the 30th April, 1928, filed an appeal on the strength of clause 15 of the Letters Patent as it stood before the amendment. The contention of the appellants was that the amended clause could not be applied to that appeal, for to do so would be to apply it retrospectively and to impair and indeed to defeat a substantive right which was in existence (1) Bom. (3) A. I. R 1928 Lah. (2) (1927) L.R. 54 I.A. Lah. (4) Cal. 994 prior to the date of the amendment. The appellants claimed that on the 7th October, 1920, when the suit was filed they had vested in them by the existing law a substantive right to a Letters Patent appeal from the decision of a Single Judge and that an intention to interfere with it, to clog it with a new condition or to impair or imperil it could not be presumed unless it was clearly manifested by express words or necessary intendment. In giving effect to the contentions of the appellants Rankin C.J. observed at p. 518: Now, the reasoning of the Judicial Committee in The Colonial Sugar Refining Company 's case is a conclusive authority to show that rights of appeal are not matters of procedure, and that the right to enter the superior court is for the present purpose deemed to arise to a litigant before any decision has been given by the inferior court. If the latter proposition be accepted, I can see no intermediate point at which to resist the conclusion that the right arises at the date of the suit. " It was held that the new clause could not be given retrospective effect and accordingly the date of presentation of the second appeal to the High Court was not the date which determined the applicability of the amended clause of the Letters Patent and that the date of the institution of the suit was the determining factor. As against the last mentioned decision of the Calcutta High Court Sri Ganapathy Aiyar, appearing for the respondent, refers us to the decision of a Bench of the Bombay High Court in the case of Badruddin Abdul Rahim vs Sitaram Vinayak Apte (1), where it was held that the amendment of clause 15 of the Letters Patent operated retrospectively. That case followed an earlier decision of the same High Court in Fram Bomanji vs Hormasji Barjorji (2). The decision in the old case proceeded upon two grounds, namely, (1) that the question was one of procedure and (2) that sec (1) Bom. 753; A.I.R. (1928) Bom. (2) (1866) Bom. H.C. (O.C.J.) 49. 995 tion 2 of the New Letters Patent of 1865 gave retrospective operation to the Letters Patent by making it applicable to all pending suits. In so far as the first ground is concerned it clearly runs counter to the decision of the Privy Council in Colonial Sugar Refining Co. Ltd. vs Irving (supra) and must be taken as overruled as Fawcett J. himself acknowledged at page 756.