BOMBAY HIGH COURT

Kavasji Pestonji Dalal

Vs.

Rustomji Sorabji Jamadar

O.C.J. Suit No. 385 of 1946

(M.C. Chagla, C.J. and Tendolkar, J.)

06.04.1948

JUDGMENT

M.C. Chagla, C.J.

1. This is a suit filed by the plaintiff to eject his tenant. The defendant has pleaded the protection of the Rent Restriction Act. At the hearing; of the suit before Mr. Justice Desai attention was drawn to the relevant provisions. of Bombay Act LVII of 1947 under which all pending suits relating to recovery or fixing of rent or possession of premises to which that Act applied had to be transferred to and continued before the Court of Small Causes, Bombay. It was then contended both by the plaintiff and the defendant that Sections 28, 29 and 50 of that Act were ultra vires of the Provincial Legislature and were also repugnant to existing law and void and of no effect. Mr. Justice Desai directed that the plaint should be amended to make the necessary averments and that the Province of Bombay should be made a party to the suit. Consequently the plaint was amended and para, 2-A was added, containing the relevant averments and the Province of Bombay was made a party defendant to the suit. As the questions raised were of considerable importance, Mr. Justice Desai requested me to constitute a divisional bench to hear the suit. I thereupon directed that the suit should be placed before me and my brother Tendolkar J. and it has now come on for hearing.

2. The contention that Sections 28, 29 and 50 of Act LVII of 1947 were repugnant to any existing law and therefore void and of no effect was not pressed at the hearing and in fact given up. Therefore, two of the three preliminary issues which arise survive and have to be considered by us, and these are whether Sections 28, 29 and 50 are ultra vires of the Provincial Legislature and whether this Court has jurisdiction to try the suit.

3. Act LVII of 1947 is an amending and consolidating Act relating to the control of rents and repairs to certain premises and of rates of hotels and lodging houses and of evictions. In order to determine whether the impugned Sections 28, 29 and 50 are ultra vires of the Provincial Legislature, we have to consider not the form of these sections but their pith and substance. The effect of these sections is that in Greater Bombay the Court of Small Causes and elsewhere in the Province the Court of the Civil Judge (Junior Division) are constituted the sole Courts for trying

suits or proceedings between a landlord and tenant relating to the recovery of rent or possession of any premises and of deciding any application made under the Act and for dealing with any claim or question arising out of the Act. It is provided that an appeal shall lie in Greater Bombay from a decree or order made by the Court of Small Causes to a bench of two Judges of the same Court which bench is not to include the Judge who passed such decree or order and elsewhere an appeal is provided to the District Court from a decree or order made by a Civil Judge. It is also provided that all suits and proceedings other than execution proceedings and appeals of the nature cognizable by the Small Causes Court and the Court of the Civil Judge (Junior Division) under Section 28 pending in any Court are to be transferred to and continued before those Courts.

4. As I read Section 28, it deals with original suits or proceedings or applications between a landlord and a tenant and this section requires that they have to be filed either in the Court of Small Causes in Greater Bombay or in the Court of the Civil Judge (Junior Division) elsewhere. Therefore, it is clear that as far as the High Court is concerned, where it had jurisdiction before to entertain such suits, proceedings or applications, that jurisdiction has been taken away. The prohibition against Courts other than the Court of Small Causes and the Court of the Civil Judge (Junior Division) to deal with any claim or question arising out of the Act or any of its provisions refers only to my mind to such claims or questions arising in suits, proceedings or applications. What is therefore affected is the ordinary original civil jurisdiction of this Court. This argument receives further support from considering the provisions of Section 29 which deals with appeals while Section 28 deals with original hearing. It is to be noted that any revision that may lie from any order or decree passed by the Court of Small Causes or the Court of the Civil Judge. (Junior Division) is not barred under the Act and therefore it is again clear that the revisional power of the High Court has in no way been affected. Both the Court of Small Causes and the Court of the Civil Judge (Junior Division) are Courts subject to the superintendence of the High Court and the power given to the High Court under Clause 13 of the Letters Patent to remove and to try and determine any suit falling within the jurisdiction of either of these Courts also remains unaffected. To sum up, the High Court has ceased to possess ordinary original jurisdiction with regard to suits between a landlord and tenant which were cognisable by it under el. 12 of the Letters Patent, but its extraordinary original civil jurisdiction under Clause 13 of the Letters Patent and its revisional powers under Section 115 of the Code are otherwise continued as before and have been in no way affected or modified. To my mind, the contention of Mr. Seervai that the High, Court is debarred from dealing with any claim or question arising out of the Act or any of its provisions, however such claim or question may arise or in whatever proceeding, is untenable. "To deal with such claim or question" must be read with reference to "any such suit, proceeding or application," and the prohibition only applies to "such suit, proceeding or application" The Legislature has provided no prohibition against the High Court dealing with such claim or question otherwise than in the exercise of its ordinary original civil jurisdiction. The very fact that under Section 50 execution proceedings and appeals are allowed to continue before the High Court, if they were already pending, clearly shows that the prohibition is not a total prohibition but only of a restricted character.

5. The short question that therefore arises is whether the Provincial Legislature has the power to deprive the High Court of its original civil jurisdiction in certain stated matters. The scheme of the Government of India Act, 1935, is to distribute legislative powers between the Central and Provincial Legislatures. The Seventh Schedule to the Act contains three Lists : List I enumerates matters with respect to which the Federal Legislature has the sole power to make laws ; List II

enumerates matters with respect to which the Provincial Legislature has the sole power to legislate; and List III enumerates subjects in respect of which both the Federal Legislature and the Provincial Legislature have the power to make laws. In case of conflict or overlapping, List I prevails over List II and List III prevails over List II. Item No. 21 in List II deals among other things with land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents, and it is not disputed that the subject matter of Act LVII of 1947 falls within this item. Item No. 2 in the same List deals with jurisdiction and powers of all Courts, except the Federal Court with respect to any of the matters in this List, and it is also not disputed that the Provincial Legislature can affect the jurisdiction and power of the High Court with respect to questions relating to tenancy legislation. Civil Procedure falls in List III being item 4. It is also now well settled that within its own domain although the Provincial Legislature is the creature of the Government of India Act, it is supreme and sovereign.

6. Mr. Seervai has forcefully and eloquently emphasized the fact that the result of this legislation would be to confer upon the Small Causes Court jurisdiction to try suits which may involve questions of title, that the Small Causes Court is a Court of summary jurisdiction and that it is not suited or equipped to try suits of such a nature, that the jurisdiction of the High Court has been completely excluded and a litigant has not even the right to come in appeal to the High Court, and that for the first time the Court of Small Causes has been constituted a Court of Appeal in landlord and tenant suits. All this may be very valid criticism against this legislation which we are considering, but a Legislature which is sovereign is not bound to exercise its power with discretion, and it is not for the Court to consider the wisdom, the expediency or the policy of the legislation that it may enact. The only question that the Court has to consider is whether the legislation is within the legislative competency of the Legislature.

7. It is contended that the Provincial Legislature cannot in any way affect the provisions of the Government of India Act, 1935, and that the legislation we are considering has affected Sections 224 and 225 of that Act. Section 224 confers the power of superintendence upon the High Court over all Courts subject to its appellate jurisdiction. It then enumerates the various things that the High Court can do in the exercise of such power and Sub-clause (2) provides that "nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision." There was a similar provision in the High Courts Act of 1861, Section 15, and the Government of India Act, 1915, Section 107. Section 224 has been enacted with three alterations in Section 15 of the High Courts Act and Section 107 of the Government of India Act, 1915. These three alterations are that the marginal note in Section 107 which was "powers of High Courts with respect to subordinate Courts" has been altered to "Administrative functions of High Courts," that Sub-clause (b) in Section 107 which referred to "the power of the High Court to transfer any suit or appeal" has been omitted, and Sub-clause (2) has been added to the section. The view taken by this High Court before the section was amended and enacted in its new form in the Government of India Act, 1935, was that it gave the power to this Court of judicial interference. A special bench consisting of Sir John Beaumont, Chief Justice, Mr. Justice Broomfield and Mr. Justice Nanavati were considering the powers of the Special Courts in *Emperor v. Balkrishna Phansalkar*[1], set up by the Emergency Powers Ordinance passed by the Governor-General, and the question that arose was whether this Court had the power to entertain a revisional application from an order of the Special Court, and the Court held that as the right of appeal was provided in certain cases from the Special Courts, these Courts were under the superintendence of the High Court and the

High Court had the power to interfere judicially under Section 107 of the Government of India Act. Sir John Beaumont says (p. 1545):

> Under Section 107 the High Court has superintendence over all Courts for the time being subject to its appellate jurisdiction. It is not disputed that rights of superintendence include not only-superintendence on administrative points, but superintendence on the judicial side too, and that under its power of superintendence the High Court can correct any error in a judgment of a Court subject to its appellate jurisdiction.

8. In *Emperor v. Jamnadas* [2]*Nathji* Mr. Justice Broomfield and Mr. Justice Sen invoked their jurisdiction under Section 107 to reverse a conviction which was wrong on the face of it. In that case a party who could have appealed had not appealed and therefore no application by him in revision could be entertained by the High Court. But in order to prevent an obvious miscarriage of justice the Court interfered.

9. It is contended by the Advocate General that whatever the position might have been prior to the Government of India Act, 1985, the position now is that Section 224 is confined to the administrative functions of High Courts and does not give them any right of judicial interference. Attention in the first place is drawn to the marginal note, then it is pointed out that the power of the High Court to transfer suits and appeals has been advisedly omitted and a new Sub-section (2) is added which precludes the High Court from questioning any judgment of any inferior Court which is not otherwise subject to appeal or revision.

10. With regard to the marginal note, it is clear that it cannot control the construction of the section if the words used are clear and unambiguous. With regard to the omission of the power to transfer suits and appeals, it was obviously unnecessary to embody that power in this section, because that finds an appropriate place both in the Letters Patent and in the Procedure Codes. The prohibition under Sub-section (2) only refers to those judgments of an inferior Court which are not otherwise subject to appeal or revision to the High Court. But the prohibition cannot and does not apply to judgments which are subject to appeal or revision. If Section 224(1) gave the High Court the power of judicial interference, that power obviously has not been wholly taken away, but it has been taken away to the extent of those judgments which are not subject to appeal or revision. In other words, if a judgment is subject to appeal or revision, it seems that the High Court would still have the power to interfere judicially apart from and over and above merely dealing with those judgments in appeal or revision. But for such a power the High Court could not have interfered in the case to which I have just referred, *Emperor v. Jamnadas Nathji*. Mr. Seervai has contended that the prohibition in Sub-section (2) refers to judgments of

[1] AIR 1933 Bom 1 : (1932) 34 BOM LR 1523 : ILR 1933 57 Bom 93
[2](1936) 39 Bom. L.R. 82

inferior Courts which are not subject to the appellate or revisional jurisdiction of the High Court. According to him if a Court is subject to such a jurisdiction, then the powers of the High Court under Sub-section (1) are not affected. It is impossible to accept that contention. It is true that the pronoun "which" appearing immediately after "inferior Court" should ordinarily qualify that noun and not the noun "judgment" which comes before it. But a Court cannot be subject to appeal or revision, it is only a judgment which can be so subject, and therefore looking to the plain grammatical construction of Sub-section (2) "which" qualifies "judgment" and not "inferior

Court" the prohibition refers to "judgment" and not to an "inferior Court".

11. The Advocate General has referred us to several cases which have taken the view that Section 224 as enacted has completely taken away the judicial powers of the High Court. Mr. Justice Abdur Rahman of the Madras High Court in *Adiraju Somanna, In re*[3] took the view that the power of the High Court to revise orders was taken away by the amendment of Section 107 of the Government of India Act. The Lahore High Court in *Amar Singh v. Secy. of State*[4] the Nagpur High Court in *Dattatraya v. Registrar, Co-op. Societies*[5] and *Dattatraya v. Emperor*[6], and the Patna High Court in *Bhutnath Khawas v. Dasrathi Das*[7], took the same view. But with great respect to those High Courts and the Judges who decided the cases, they have merely made a passing reference to this section and have not given a considered decision as to what is the effect of amending Section 107 in the manner in which it has been amended. Mr. Justice Lokur also considered this question in *Muljee Sicka & Co. v. Muncipal Commissioner*[8], He was there considering along with Mr. Justice Macklin the power of the High Court to issue a writ of certiorari With very great respect to the learned Judge, after saying in his judgment at p. 988 that Sub-section (2) could not have been intended to curtail any of the powers possessed by the High Court before the Act of 1935 was passed, goes on to observe that Section 224 now deals merely with the administrative functions of the High Court as the marginal note shows. The marginal note was permitted to play a more important and significant part by the learned Judge than it has any right to do. I might also mention that Clause 15 of the Letters Patent excludes from the judgments of a single Judge which are made subject to appeal under that clause a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act That seems to make it clear beyond any doubt that Section 107 conferred revisional jurisdiction upon the High Court in exercise of which it could pass a sentence or an order. But assuming that the High Court has still got the power of judicial interference under Section 224, in the view I have taken as to the effect of Sections 28, 29 and 50, these sections do not in any way affect that power.

12. It has also been argued that Section 49(2)(iii) gives the power to the Provincial Government to make rules with regard to the procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants), applications, appeals and execution of orders, and that impinges upon the power of the High Court under Section 224(1)(b) to make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts. But this power of the High Court is subject to an important proviso that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall

[3](1938) 1 F.L.J. 81 [5] A.I.R. [1941] Nag. 282 [7] AIR 1941 Pat 544
[4] A.I.R. [1938] Lah. 442 [6] AIR 1944 Nag 286 [8](1939) 41 BOM LR 984 : AIR 1939 Bom 471

require the previous approval of the Governor. Therefore, the very proviso contemplates any competent law providing for these very matters and the power of the High Court is only to make rules which are not inconsistent with any law for the time being in force, and therefore it is perfectly competent to the Provincial Legislature to make rules regulating the procedure of suits to be filed under the Act.

13. It is next argued that the impugned sections affect the power of the High Court under Section 225 to transfer a case to itself for trial which involves the question of the validity of any Federal or Provincial Act. An order under Section 225 can only be made on the application of the

Advocate General for the Province in relation to a Provincial Act. The High Court can only exercise this power provided it has the power to transfer the particular case to itself for trial. As I have pointed out already, the power of the High Court to transfer cases to itself under Clause 18 of the Letters Patent remains unaffected and, therefore, the power of the High Court under Section 225 has not been in any sense taken away by the impugned legislation.

14. The interesting question was also debated at the Bar whether the Provincial Legislature has now the power to affect a section of the Government of India Act. It is unnecessary to decide that question, but I shall only notice it in passing. It was contended on the one hand by the Advocate General that Section 110 which prohibited the Central or the Provincial Legislature from making any law amending any provision of the Government of India Act has been omitted when the Government of India Act, 1935, was adapted under the Independence Act Section 223 is also relied upon by him as enabling the Provincial Legislature to legislate with regard to the jurisdiction of the High Court in respect of those subjects about which it is competent to legislate. On the other hand Mr. Seervai has relied on Section 99 of the Act which entitles the Provincial Legislature to make laws for the Province or any part thereof only subject to the provisions of that Act, and it is argued that Section 224 and Section 225 constitute the provisions of the Act which the Provincial Legislature cannot affect or modify. It is also argued that the Provincial Legislature being the creature of the Constitution Act cannot amend or modify the Constitution Act itself, and attention is drawn to the fact that under the Independence Act power is expressly given to the Central Legislature when sitting as Constituent Assembly to modify or amend the Government of India Act, 1985, and no such power is given to the Provincial Legislature. Interesting as these questions are, it is unnecessary further to deal with them in view of our decision that neither Section 224 nor Section 225 is in any way affected or modified by the Provincial Legislature.

15. It is common ground that the legislation we are considering does affect the powers and jurisdiction of the High Court under the Letters Patent, and the question that arises is whether the provisions of the Letters Patent are subject to the legislative powers of the Provincial Legislature. Under Clause 44 they are made expressly subject to the legislative powers of and may be in all respects amended and altered by the Governor-General in Legislative Council and also by the Governor General in Council under Section 71 of the Government of India Act, 1915, and also by the Governor General in cases of emergency under Section 72 of that Act. Mr. Seervai's contention is that even now after the passing of the Government of India Act, 1985, it is only the Central Legislature that can amend or alter the Letters Patent. Section 292 of the Government of India Act, 1935, provided that the existing law of India was to continue in force until altered or repealed or amended by a competent Legislature or other competent authority, and Section 293 provided for the adaptation of existing Indian laws. Both Sections 292 and 293 have been omitted from the Government of India Act as adapted, but Section 18(3) of the Independence Act contains provisions similar to Section 292. But under Section 292 an Order was made known as the "Government of India (Adaptation of Indian Laws)" and Clause 7 of that Order provided that any reference by whatever form of words in any Indian law in force immediately before the commencement of that Order to an authority competent at the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part of British India shall, where a corresponding new authority by or under any part of the Government of India Act, 1985, have effect as if it were a reference to that new authority. Section 293 was not made applicable to an Act of Parliament and the expression "any law in force in British India" was defined as

including any Ordinance, by-law or rule or regulation having in British India the force of law. The Letters Patent are not an Act of Parliament. They were issued pursuant to an Act of Parliament and it is clear they were the law in force in British India both when Section 293 was enacted and the Order-in-Council to which I have just referred was passed. Therefore, the position is clear that although Clause 44 permitted only the Central Legislature to amend the Letters Patent after the passing of the Government of India Act, 1935, it was the appropriate Legislature which was given that power and under the Government of India Act, 1935, the only appropriate Legislature which can modify or alter the Letters Patent is the Provincial Legislature with regard to those matters which fall within its competence, and if the matter is tenancy legislation, then the jurisdiction of the High Court can only be affected by the Provincial Legislature. The same view of the powers of the Provincial Legislature has been taken by Sir Leonard Stone and Mr. Justice Kania in *Hirji Laxmidas v. Fernandez*[9]*,*

16. The next point that is urged is that the impugned legislation excludes the jurisdiction of the Federal Court which it is not competent to the Provincial Legislature to do. The argument briefly stated is that suits between a landlord and tenant which were filed in the High Court could go in appeal to the appellate division of the High Court and from there in appropriate cases an appeal would lie to His Majesty in Council. Under Act I of 1948 appellate jurisdiction has been conferred upon the Federal Court and appeals which lay to His Majesty in Council now lie to the Federal Court, and the contention is that inasmuch as a litigant will not be able to file the suit in the High Court at all with regard to matters falling under Act LVII of 1947, he would also be deprived of his ultimate right to go in appeal to the Federal Court. In order to appreciate this argument, it is necessary to consider what the jurisdiction of the Federal Court is. Under Section 204 of the Government of India Act it has been given certain original jurisdiction. Under Section 205 it is given appellate jurisdiction in appeals from High Courts. That jurisdiction is confined to cases where the High Court certifies that a case involves a substantial question of law as to the interpretation of the Government of India Act or any Order in Council made thereunder. Under Section 206 power is given to the Central Legislature to enlarge its appellate jurisdiction by providing that appeals shall lie in such civil cases as may be specified from a judgment, decree or final order of a High Court, and it is under the power given to it under Section 206 that the Central Legislature passed Act I of 1948 and this Act provides that appeals would lie to the Federal Court from any judgment decree or final order of a High Court in a civil case from which a direct appeal could have

[9] AIR 1945 Bom 352 : (1945) 47 BOM LR 294

been brought to His Majesty in Council. Therefore, the jurisdiction of the Federal Court, whether under Section 205 or Section 206, arises only on a judgment, decree or final order being passed by the High Court and it cannot possibly be suggested that Act LVII of 1947 excludes any appeal to the Federal Court from a decision of the High Court.

17. But it is argued that with regard to the pending suits which are sought to be transferred under Section 50, the litigant had a vested right of appeal to the Federal Court and in taking away that right, the jurisdiction of the Federal Court is excluded. It is a well established principle of law that no litigant has any right to have his litigation decided by any particular procedure and all procedural laws are therefore retrospective in their character and affect even suits filed prior to the passing of such legislation. But a right of appeal which a suitor has in a pending action is not merely a matter of procedure. It is a vested right and the Legislature cannot take away that right retrospectively unless it does so by express words or necessary intendment. In *Colonial Sugar*

Refining Co. v. Irving[10] the right of appeal from the Supreme Court of Queensland to His Majesty in Council was taken away by the Australian Commonwealth Judiciary Act, 1903. That Act received the Royal assent on August 25, 1903, and the writ in a particular action was issued in the Queensland Court on October 25, 1902, On September 4, 1904, the Supreme Court of Queensland decided the action and the question that arose was whether by the Australian Commonwealth Judiciary Act the losing party had lost his right to appeal to His Majesty in Council and the Privy Council held that the Australian Judiciary Act did not have retrospective effect and the right of that litigant to appeal to the Privy Council was not taken away. It is to be noted that the Privy Council conceded that such a right could have been taken away if a clear intention to that effect had been manifested in the legislation itself.

18. A special bench of the Calcutta High Court in *Sadar Ali v. Dalimuddin*[11] considered the effect of the amendment of the Letters Patent of the Calcutta High Court in 1927, which came into effect on January 14, 1928, whereby it was provided that there was no right of appeal from the decision of a single Judge sitting in second appeal in the absence of a certificate from him, that the case was a fit one for appeal, and the Court held that the date of presentation of a second appeal to the High Court was not the date which determined the applicability of the amended clause of the Letters Patent; the relevant date was the date of the institution of the suit from which the appeal arose. Chief Justice Rankin took the view that the right of appeal arises at the date of the suit and that the litigant had the right to take the matter to the final Court of appeal in due course of existing law and that suits and appeals are all steps in the legal pursuit of a remedy connected by an intrinsic unity. But in this case there can be no question that by Section 50 the Legislature has in terms taken away the right of those litigants whose suits are pending in the High Court of appeal to the High Court itself and perhaps ultimately to the Federal Court, The only question that can arise, therefore, is whether it was open to the Provincial Legislature to deprive a litigant of his vested right to appeal to the Federal Court.

19. Mr. Seervai argues that to deprive a litigant of his right to appeal to the Federal Court is interfering with the jurisdiction of the Federal Court, because to the extent that the right of appeal to the Federal Court is taken away, the Federal Court does not have the

[10][1905] A.C. 363 [11] I.L.R. (1928) Cal. 512

jurisdiction to deal with those appeals. There can be no doubt that if Mr. Seervai is right, if the jurisdiction of the Federal Court is interfered with, then the Provincial Legislature is certainly not competent to pass any such legislation. But this very question arose before the Federal Court in *Emperor v. Benoari Lall*[12], It was argued before Varadachariar C.J. and Zafrulla Khan and Rowland JJ. that Ordinance II of 1942 was beyond the power of the Indian Legislature inasmuch as it affected the jurisdiction of the Federal Court in so far as it took away the appellate and revisional jurisdiction of the High Court. The answer given by the Federal Court to that argument was that all that the Constitution Act declared about the jurisdiction of the Federal Court was that appeals should lie to that Court from the decisions of the High Court. Such a provision did not admit of the interpretation that the jurisdiction of the High Court should never be affected by Indian legislation because the indirect effect thereof might be to affect the number or classes of cases which might otherwise come up before the High Court and thus afford a possibility of their being carried on appeal to the Federal Court. This is exactly the argument now advanced before us by Mr. Seervai. He says that the indirect effect of this legislation is to affect the number or classes of cases which would otherwise have come up to the High Court and thereby the number of appeals that might go to the Federal Court has also been affected. Mr. Seervai has tried to

distinguish this case by urging that the Court was not considering pending cases but cases which might be filed, and Mr. Seervai says that there is a vital distinction between the two, because in the case of a pending litigation there is a vested right of appeal whereas there is no such vested right in the case of a suitor who is deprived of his right of appeal before he has filed his suit. But that distinction only emphasizes the point as to the retrospective nature of the legislation. It does not detract from the decision of the Federal Court as to the competence of the Legislature to pass laws which indirectly affect appeals going up to the Federal Court. The Provincial Legislature has the competence and when the Court considers the legislation it has passed, it has got to determine whether the legislation is retrospective or not in its character. If it is retrospective, then it affects even the vested rights of litigants to appeal to the Federal Court. If it is not retrospective in its nature, then although it may affect future litigation, it cannot affect suits which are already pending; and I might point out that in the case before the Federal Court Section 5 of Ordinance II of 1942 gave power to the Provincial Government to direct what eases should be tried by Special Judges and those included cases which were pending in the ordinary criminal Courts, and though the point was not expressly argued, in considering the question of ultra vires the Federal Court did have before it the provision of the Ordinance which would make it possible for the Provincial Government to transfer pending cases and notwithstanding that the Federal Court came to the conclusion that the legislation was intra vires.

20. The last argument advanced by Mr. Seervai is that the effect of this legislation is to constitute a serious encroachment on the rights and powers of the High Court with the result that the High Court would cease to occupy that position which the Government of India Act designed it should fill. It is pointed out that before the Independence Act was passed, in the Instrument of Instructions to Governors and the Governor General it was specially provided that they should not assent to any bill which, if it became law, would so derogate from the powers of the High Court as to endanger the position in which that Court was by the Act designed to fill. It is contended that the High Court as much as the Federal Court is an essential and fundamental feature of the constitution of the country

[12] AIR 1943 FC 36

and it can never be competent to the Provincial Legislature to undermine the integrity and authority of the High Court. Mr. Seervai says that the attempt of the Provincial Legislature is gradually to deprive the High Court of its original jurisdiction in respect of various classes of cases so that ultimately its powers should become truncated and its prestige should disappear. Mr. Seervai has relied on a decision of the Privy Council in *Attorney-General for Alberta v. Attorney-General for Canada*[13] In that case the Privy Council had to consider the conflicting claims of the Dominion and Provincial Legislature to legislate in Canada with regard to a particular subject. Banking was a Central subject and taxation for the purpose of rasing of a revenue for Provincial purposes was within the exclusive competence of the Provincial Legislature. The Provincial Legislature passed an Act which although on the face of it purported to raise revenue by taxing banks, its effect was practically to destroy banking institutions by taxing them out of existence, and the Privy Council held that the bill was merely part of a legislative plan to prevent the operation within the Province of banking institutions which had been called into existence and given the necessary powers to conduct their business by the only proper authority, viz. the Parliament of the Dominion. Mr. Seervai says that here also there is a plan to take away gradually the powers and jurisdiction of the High Court and Mr. Seervai wants us to consider other pieces of legislation passed by the Provincial Legislature or which it intends to pass affecting the jurisdiction of this Court. I am afraid Mr. Seervai is taking too gloomy a view of the

whole matter. Merely to pass a law with regard to tenancy legislation and to confer jurisdiction upon certain Courts and take away the jurisdiction of the High Court is not something so outrageous as to call for this criticism especially when, as we have held, the High Court continues to retain its power and jurisdiction unimpaired and unaffected to exercise its revisional power and also its extraordinary original jurisdiction. As I said before, it would be wholly wrong for the Court to go into questions of policy. Whether it is right or wrong for the Legislature to confer such vast powers upon a Court of summary jurisdiction is entirely a matter for Government and for the Legislature. We are only concerned with the legislative competence of the Provincial Legislature. Whether the Legislature has acted wisely or not is a question which is not within our competence to consider and decide. In my opinion, therefore, the impugned sections are not ultra vires of the Provincial Legislature.

21. I would answer the three preliminary issues as follows :- No. 1 in the negative. No. 2 given up, and No. 3 in the negative. This suit will therefore be transferred to the Small Causes Court under Section 50 of the Act. No order as to costs of the hearing before us. Certificate granted under Section 205 of the Government of India Act.

Tendolrar, J.

22. This is a suit filed by a tenant against a sub-tenant for ejectment and other reliefs. The suit was actually filed before the Bombay Rents, Hotel and Lodging House Hates (Control) Act (Bombay LVII of 1947) became law on January 19, 1948; but when it came on for hearing, the position under the proviso to Section 50 of that Act was that all pending suits must be transferred to the Court of Small Causes at Bombay. Neither the plaintiff nor the defendant desires that this case -should be so transferred; and they, therefore, challenge the validity of the said Act on the ground that certain provisions thereof are ultra vires the local Legislature. Upon this plea Desai J., before whom the

[13][1939] A.C. 117

matter came up in the first instance, directed that the Province of Bombay should be made a party-defendant in the suit in order that the question of the validity of this Act may be determined in this suit. As the question involved was of considerable importance, the learned Chief Justice directed that the suit should be tried by a division bench, and it has accordingly come up before us.

23. At the trial of this suit three issues were raised on behalf of the Province of Bombay by the Advocate General. They are as follows:

> 1. Whether Sections 28, 29 and 50 of Bombay Act LVII of 1947 are ultra vires the Provincial legislature?
> 2. Whether the said sections are repugnant to existing law and void and of no effect, and if so, to what extent?
> 3. Whether this Honourable Court has jurisdiction to try this suit?
>
> We decided to try these issues as preliminary issues : The argument before us has been restricted to the first issue; and it has not been suggested that the provisions of Act LVII of 1947 are in any way repugnant to existing law although that is the second issue. Mr. Seervai for the plaintiff has submitted before us that Act LVII of 1947 is beyond the

powers of the local Legislature as it affects,

(1) the jurisdiction of the High Court under Section 224 of the Government of India Act, 1935;

(2) the jurisdiction of the High Court under Section 225 of the said Act;

(3) the jurisdiction of the Federal Court; and

(4) the jurisdiction of the High Court under the Letters Patent.

Before proceeding to consider these objections, I may state that the Act which has been challenged is admittedly within the scope of the legislative authority of the local Legislature. The Act seeks to amend and consolidate the law relating to control of rents and repairs of certain premises, rates of hotels and lodging houses and eviction. In that regard it prescribes the powers of the Courts and makes provisions for the procedure to be followed by these Courts. The persons affected by this legislation are landlords and tenants. The Act is covered by items 2 and 21 in the Provincial Legislative List, being Part II in the seventh schedule to the Government of India Act, Item 2 deals with the jurisdiction and powers of all Courts except the Federal Court with respect to any of the matters in the said list and item 21 deals with land including relations of landlord and tenant and collection of rents. So far as the Act deals with procedure, that is covered by items 4 and 15 in the Concurrent Legislative List being Part III in the said schedule. These provisions in the Government of India Act have been preserved by Section 8 of the Indian Independence Act, 1947.

24. Taking the objections in the order in which Mr. Seervai has raised them, we have first to consider what are the powers of the High Court under Section 224 of the Government of India Act. It is contended by Mr. Seervai that these powers include a power of judicial superintendence, while, on the other hand, it is contended by the Advocate General that the powers conferred on the High Court by this section are administrative only.

25. In order to determine which of these two contentions is correct, it is necessary to refer to prior legislation. Section 224 of the Government of India Act, 1935, takes the place of Section 107 of the earlier Government of India Act, 1915. The powers conferred upon the High Court by Section 107 of that Act undoubtedly included powers of judicial correction as is apparent from a reference to Clause 15 of the Letters Patent, which refers to "sentence or order passed in the exercise of the powers of superintendence under the provisions of Section 107." Section 107 was considered by a Special Bench of this Court consisting of Beaumont C.J. and Broomfield and Nanavati JJ. in *Emperor v. Balkrishna Phansalkar*[14], which was a case under the Emergency Powers Ordinance (Ordinance II of 1932). There were Special Courts established under that Ordinance and rights of appeal from the judgments of such Courts were conferred on the High Court only in a limited class of cases. The question for decision was whether in respect of other judgments of these Special Courts, they were subject to judicial correction by the High Court under Section 107. Dealing with this question Beaumont C.J. observed (p. 1545):

> It is not disputed that rights of superintendence include not only superintendence on administrative points, but superintendence on the judicial side too, and that under its powers of superintendence the High Court can correct any error in a judgment of a Court subject to its appellate jurisdiction.

> The learned Chief Justice then proceeded to hold that the Special Courts were subject to the appellate jurisdiction of the High Court because the High Court had power to hear appeals in some cases from these Courts, and that, if there was a right of appeal in any case, the Court from whose judgments such right of appeal was allowed was subject to the superintendence of the High Court in respect of all cases and not only in respect of cases in which a right of appeal was specifically granted. This judgment of the Special Bench was followed by a division bench of this Court in *Emperor v. Jamnadas Nathji*[15] The facts of that case were somewhat peculiar. Several people had been convicted of an offence under the Prevention of Gambling Act. Some of these persons filed an appeal and were acquitted. Those who had not appealed thereupon presented a revision application which could not be entertained under Section 439(5) of the Criminal Procedure Code, because they had not chosen to appeal. The question was whether the High Court had jurisdiction to acquit them. Broomfield and Sen JJ. held that it had such jurisdiction under Section 107 and acquitted them although there was no appeal or revision application by them, as the High Court considered that the conviction was wrong on the face of it and that the ends of justice demanded their acquittal. There is no doubt, therefore, that Section 107 conferred upon the High Court a power of judicial superintendence, including of course a power of judicial correction, and, so far as the decisions of this Court went, that power could also be exercised in cases where there was no right of appeal or revision to the High Court, provided the case was tried by a Court which was subject to the appellate jurisdiction of the High Court.

26. The question that we have to consider next is whether Section 224 of the Government of India Act has made any difference to the law. Section 224 differs from Section 107 in three respects; firstly, Clause (b) of Section 107 has been omitted from Section 224; secondly, the marginal note to Section 107 which was "powers of High Court with respect to subordinate Courts" has been altered to "Administrative Functions of High Courts";

[14] AIR 1933 Bom 1 : (1932) 34 Bom LR1 523 : ILR 1933 57 Bom 93

[15](1936) 39 Bom. L.R. 82

and, lastly, a new sub-section, Sub-section (2) has been introduced in Section 224.

27. I will now proceed to consider the effect of these alterations on the law as it stood under Section 107 of the Government of India Act. The deletion of Clause (b) of Section 107 to my mind makes no difference to the law. That clause empowered the High Court to transfer cases from one Court to another. Quite obviously it was omitted because it was wholly redundant having regard to the fact that powers of transfer were conferred on the High Courts by the Codes of Civil and Criminal Procedure, Then, again, the change in the marginal note cannot, in my opinion, effect any change in the meaning to be given to the section, for it is clear law that a marginal note in an Act of Parliament does not control the meaning of the section. That brings me to Sub-section (2) of Section 224 which is in these terms:

> (2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

> It is contended by Mr. Seervai that the word "which" qualifies "Court" and not "judgment". That contention to my mind is wholly untenable. I have never heard of a Court being subject to appeal or revision. It is only the judgment or order of a Court that can be subject to appeal or revision. In my opinion the word "which" qualifies "judgment", and this sub-section excludes superintendence of the High Courts in respect of judgments which are not subject to appeal or revision; but it does not affect the superintendence of the High Courts in respect of judgments which are subject to appeal or revision.

28. The Advocate General has contended that this sub-section deprives the High Court of all powers of judicial superintendence. I cannot accept that contention. The sub-section in terms seeks to take away from the operation of Sub-section (1) certain classes of judgments. That in itself, to my mind, shows that but for this sub-section there would have been judgments which could be questioned by the High Court under its power of superintendence. Sub-section (1) is identical in terms with Section 107 of the Government of India Act, 1915, except of course with regard to the deletion of Clause (b) of Section 107, and in my opinion Sub-section (1) includes the power which existed under Section 107 of the Government of India Act, 1915, of judicial superintendence and correction. By reason of Sub-section (2) that power is taken away only with regard to judgments which are not subject to appeal or revision.

29. This section has come up for discussion in certain decisions of High Courts in India. The first of such cases is *Adiraju Somanna, In re*[16] That was a case of a petition for revision against an order passed by the District Judge of East Godawari declaring the petitioner to be a tout under the Legal Practitioners Act. It was contended that the order was not open to revision by reason of Section 224(2) of the Government of India Act. Sir Abdul Rahman J. upheld the contention and observed:

> The amendment contained in the new Government of India Act makes it clear that the High Court would not be entitled to revise the order in question under Section 224 of the Act, if it is not capable of being revised under any other provision of law.

[16](1938) 1 F.L.J. 81

I read this to mean that if the order is not subject to revision, the power of judicial superintendence of the Court is not applicable. We next have the decision of the Lahore High Court in *Amar Singh v. Secy. of State*[17] In a very brief judgment Skemp J. states (p. 442):

> Section 224(2) of the later Act limits High Court's powers to question judgments of inferior Courts to those given under the ordinary law.

With respect to the learned Judge I am unable to agree. The learned Judge has thought fit to give no reasons why he came to that conclusion; but as I have pointed out above, there is in the High Courts a power, outside the ordinary law, of judicial superintendence over decisions of inferior Courts, such power, for instance, as was exercised by this Court in *Emperor v. Jamnadas Nathji.*

We next have a decision of the Nagpur High Court, *Dattatraya v. Registrar, Co-op. Societies*[18] In that case Niyogi J. held that the High Courts in India other than Chartered High Courts had no power to issue a writ of certiorari. In that connection the learned Judge considered the provisions of the Government of India Act regarding the jurisdiction of the High Courts, and in summarising his conclusions states (p. 287):

> Section 224(2), Government of India Act, denies to the High Courts jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision." The next decision is *Bhutnatk v. Dasarathi Das*[19], The actual question decided in that case was that the High Court has no jurisdiction to expunge objectionable remarks from the judgment of an inferior Court when that judgment is not before the High Court to be dealt with on the merits Dhavle J. in his order makes a passing reference to Section 224 in these words (p. 546):
> ...but the latest Government of India Act makes it perfectly clear that the superintendence given to the High Court under Sub-section (2) of Section 224 of the Act is not to be construed, see Sub-section (2), as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision.

With respect, I entirely agree with this observation. We next have the case of *Dattatraya v. Emperor*[20] It was decided by a division bench consisting of Pollock and Bobde JJ. It was a habeas corpus application under Section 491 of the Criminal Procedure Code and the Court held that that section did not apply. Section 224 of the Government of India Act was also invoked, and in passing the order the learned Judges dealt with this part of the case and stated (p. 287):

> But that section does not add to the appellate or revisional powers of the High Court as has been expressly stated in its Sub-section(2). So whatever appellate or revisional powers the High Court possesses have to be sought elsewhere.

With respect, I am unable to agree with these observations. We next have certain

[17] A.I.R. [1938] Lah. 442
[18] A.I.R. [1941] Nag. 282
[19] AIR 1941 Pat 544
[20][1944] A.I.R. Nag 286

observations of Lokur J. in the case of *Mulji Sicka & Co. v. Municipal Commissioner*[21] That was a case dealing with a writ of certiorari where the question as to whether the powers of judicial superintendence were preserved by Section 224 of the Government of India Act, 1935, did not directly arise for decision. After setting out Section 224(2) in his judgment Lokur J. observed as follows (p. 988):

> This clause cannot have been intended to curtail any of the powers possessed by the High Courts before the Act of 1935 was passed. In fact Section 223 preserves those powers. All that Sub-section (2) of Section 224 means is that the High Courts cannot so interpret Sub-section (1) of that section as to usurp the powers which they did not possess before. This is clear from the expression 'not otherwise subject to appeal or revision.' It is true that this clause may throw some doubt as to whether the remarks made in *Sholapur Municipality v. Tuljaram Krishnasa*, that though an order of a subordinate Court may not be subject to

revision under Section 115 of the Civil Procedure Code, it can be revised in the exercise of the powers of superintendence conferred by Section 107 of the Government of India Act of 1915, can now hold good. All this discussion is more or less academical, since Section 224 of the Government of India Act of 1935 deals with the administrative functions of the High Courts, as the marginal note shows.

With respect to the learned Judge, I am unable to find what the learned Judge considered to be the true interpretation of Section 224(2). The opening words of the above quotation indicate that the learned Judge thought that the powers which the High Court had before the Act of 1935 were not in any respect curtailed. If that is so, then the powers were as-found by the Special Bench in *Emperor v. Balkrishna Phansalkar.* These certainly were not purely administrative powers. But the learned Judge ends by saying that Section 224 deals with administrative functions only. Again in doing so, the learned Judge relies on the marginal note to the section as authority for that proposition, which it is not open to a Court to do, because it is well-established law that the marginal note does not control the meaning of the section. With respect, I am unable to understand the force of the observation that Sub-section (2) merely means that the High Courts cannot so interpret Sub-section (1) of that section as to usurp the powers which they did not possess before. I should have thought that no Court has a right to usurp powers which it does not possess, and no legislative enactment is necessary to make such a provision. With respect, therefore, these observations of Lokur J. are not helpful to determine the true meaning to be placed on Section 224 of the Government of India Act. Lastly, we have another decision of a Division Bench of this Court, *Mithalal Ranchhoddas v. Manecklal Mohanlal*[22] That was an application under Order 21, Rule 95, of the Civil Procedure Code, by an auction purchaser to get possession of the property from the judgment-debtor. The application had been rejected by the trial Court on the ground that it was time-barred. It was held that the High Court had no power to interfere in revision under Section 115 of the Civil Procedure Code. In delivering judgment Broomfield J. at p. 482 casually observed : "under the present Government of India Act the High Court's power of superintendence does not extend to interference with judicial orders." With respect to the learned Judge, since he assigns no reasons for coming to that conclusion, I

[21](1989) 41 Bom. L.R. 984

[22](1940) 43 Bom. L.R. 480

find myself unable to agree with that interpretation of Section 224.

30. The result, therefore, is that, in my opinion, Section 224 still retains the jurisdiction of the High Court of judicial superintendence and correction, but such jurisdiction is excluded only in cases of judgments against which there is no appeal or revision. In my opinion, it would still be open to the High Court to interfere in. a case similar to *Emperor v. Jamnadas Nathji*, unless no appeal or revision against the order of conviction was provided by law. In other words, where an appeal or revision against a judgment is permissible under the law, whether or not such an appeal

or revision application is in fact filed, the High Court has power under Section 224 of judicial correction of such judgment.

31. That being my view of the section, I have next to consider whether the provisions of Act LVII of 1947 affect Section 224 in any manner. Section 28 of that Act deals with the jurisdiction of the Courts and states that the Court of Small Causes in Greater Bombay and the Court of a Civil Judge elsewhere shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions; and no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

> Now it is contended by Mr. Seervai that the words "deal with any claim or question arising out of this Act or any of its provisions" deprive the High Court of its power of judicial superintendence under Section 224. I am not prepared to read these words in that light or to give them such a wide meaning. It is a wellknown canon of construction that in dealing with a statute which affects the jurisdiction of superior Courts the jurisdiction of such Courts shall not be excluded except by clear words to that effect. I read the words "deal with any claim or question arising out of this Act or any of its provisions" ejusdem generis. These words, in my opinion, only refer to the exercise of the ordinary original civil jurisdiction and not to any other jurisdiction. I am strengthened in this opinion by the fact that the right of appeal is separately dealt with in Section 29. That section provides that from the decree or order of the Court of Small Causes an appeal shall lie to a bench of two Judges of that Court and from a decree or order of the Civil Judge to a District Judge; and that there shall be no further appeal. Section 28, therefore, to my mind, does not in the least affect the jurisdiction of the High Court under Section 224. Moreover, there is no provision in this Act which deprives the High Court of its power of revision; and therefore, in any event, the Court would have the right in a proper case to exercise its power of judicial superintendence in respect of all decrees and orders of the Court of Small Causes which under Section 6 of the Presidency-towns Small Causes Courts Act is subject to the superintendence of the High Court. The first objection of Mr. Seervai, therefore, fails.

32. Mr. Seervai's next objection relates to Section 225 of the Government of India Act. Now that section provides for a transfer to the High Court of cases which involve or are likely to involve questions of the validity of legislation, in certain circumstances. Under that section the High Court can transfer to itself a case "which the High Court has power to transfer to itself for trial". Now of course Section 28 of the Act LVII of 1947 undoubtedly prevents the High Court from trying any suit under that Act in its ordinary original civil jurisdiction; but I do not think that there is anything in Act LVII of 1947 to restrict the extraordinary original civil jurisdiction which the High Court enjoys under Clause 13 of the Letters Patent. Under that clause the High Court has jurisdiction to transfer to itself for trial a case pending before any Court which is subject to its judicial superintendence. The Small Causes Court is one of such Courts; and I have no doubt,

therefore, that the High Court has under is extraordinary original civil jurisdiction power to transfer to itself for trial a case pending before the Small Causes Court and arising out of Act LVII of 1947. If, therefore, there was any occasion for the application of Section 225, I have no doubt that Section 223 would apply; and there is nothing in Act LVII of 1947 which affects the jurisdiction of this Court under Section 225.

33. I next come to the third contention advanced by Mr. Seervai, namely, that Act LVII of 1947 affects the jurisdiction of the Federal Court. The argument under this head is a somewhat ingenious one; and has been particularly stressed by Mr. Seervai. The argument is that the Act deprives the High Court of jurisdiction in cases falling within the scope of that Act and that, therefore, there is no possibility of an appeal going up to the Federal Court in any of such cases. That, Mr. Seervai contends, affects the jurisdiction of the Federal Court. To my mind, this argument is entirely untenable. The appellate jurisdiction of the Federal Court is derived from Sections 205 and 208 of the Government of India Act. Under Section 205 an appeal lies to that Court from a decision of the High Court when certain points regarding the interpretation of the Constitution are involved. Under Section 206 the Dominion Legislature is empowered to enlarge the appellate jurisdiction of the Federal Court and it has in fact proceeded to do so by enacting the Federal Court (Enlargement of Jurisdiction) Act, 1947, being Act I of 1948. Under that Act an appeal lies to the Federal Court from a judgment, decree or final order of a High Court in certain cases. It is apparent, therefore, that both under Section 205 and under Act I of 1948 an appeal can lie to the Federal Court from a judgment, decree or a final order of the High Court. This right of appeal is in no way taken away by Act LVII of 1947. In any case or class of cases, if the competent legislative authority provides that the High Court shall have no jurisdiction, then in respect of such case or class of cases there can be no decree, judgment or final order against which an appeal can lie to the Federal Court; and, therefore, no occasion arises for the exercise of the jurisdiction by the Federal Court. It is not a case of affecting the jurisdiction of that Court at all. That jurisdiction remains intact : the only effect of such a legislation is possibly to reduce the number of cases that may have gone up to the Federal Court but for such legislation.

34. I am strengthened in my opinion by a decision of the Federal Court in *Emperor v. Benoari Lall*[23], In that case Ordinance II of 1942 had established Special Criminal Courts and deprived the High Courts of jurisdiction in respect of cases tried by such Courts. Varadachariar C.J. and Zafrulla Khan J. held (Rowland J. dissenting) that the Ordinance was ultra vires. But, in dealing with an argument that the Ordinance was ultra vires on the ground that it affected the jurisdiction of the Federal Court inasmuch as the High Court had been deprived of jurisdiction and, therefore, no appeal could go up to the Federal

[23] AIR 1943 FC 36

Court, Varadachariar C.J. observed as follows (p. 42):

> There is little force in this objection. All that the Constitution Act declares about the jurisdiction of the Federal Court is that appeals shall He to that Court from the decisions of the High Court, when certain points are involved therein. Such a provision does not admit of the interpretation that the jurisdiction of the High Court should never be affected by Indian legislation because the indirect effect thereof might be to affect the number or classes of cases which might otherwise come up before the High Court and thus afford a possibility of their being carried on appeal to the Federal Court. Under the express terms

> of Section 223, it is within the power of the Indian Legislature to alter the jurisdiction and powers of the High Court.

35. Rowland J. dissented from the judgment of the majority on the main issue but he also took the same view with regard to this particular argument. The case went up to the Privy Council where it was held that the Ordinance was valid; but the argument that it was ultra vires by reason of the fact that it affected the jurisdiction of the Federal Court was apparently considered to be so untenable that it was not even mentioned before their Lordships.

36. It is true that the jurisdiction of the Federal Court has been extended since that judgment was given; but it has not been suggested that this makes any difference to the position. Mr. Seervai has attempted to distinguish this judgment by submitting that although this may be good law in respect of legal proceedings that have not commenced, it is not good law with regard to pending litigation. He contends that every litigant has a vested right to pursue his remedy in all its stages including the right of appeal to the High Court and to the Federal Court, if any, and that if he is deprived of such right, it affects the jurisdiction of the High Court and the Federal Court, as the case may be.

37. Now, there is no doubt that Section 50 of Act LVII of 1947 provides for a transfer of all suits pending before the High Court to the Court of Small Causes; and in such suits there can be no appeal to the High Court by reason of Section 29, with the result that there is no possibility of an appeal to the Federal Court in any of such cases. Equally, there is no doubt that once legal proceedings are commenced the litigant has a vested right to have them decided in the manner then provided by law, which includes all rights of appeal that he may have had under the law as it then stood. This proposition is borne out by the cases relied on by Mr. Seervai, viz. *The Colonial Sugar Refining Co. v. Irving*[24] and *Sadar Ali v. Dalimuddin*[25] But it is clear law that vested rights can be taken away by the express words of a statute. In this case the proviso to Section 50 of Act LVII of 1947, which provides for the transfer of pending suits to the Court of Small Causes, concludes with the following words:

> And thereupon all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings.In a judgment delivered by me on February 23 in *Suleman Haji Ahmed Omar v. R.J. Patel*[26] I have held that by reason of this part of the proviso vested rights, if any, have been retrospectively affected; and

[24][1905] A.C. 369
[25] I.L.R. (1928) Cal. 512
[26](1946) O.C.J. Suit No. 2313 of 1946

there is no question that under the new Act there will be no right of appeal to the High Court.

38. Depriving litigants of their right to go to the Federal Court in a possible contingency is not to my mind depriving the Federal Court of jurisdiction in any sense of the word. Jurisdiction of the Court and the right of the litigant to resort to it are, in my opinion, two distinct matters. I do not think that the jurisdiction of the Federal Court is in any any manner affected, because the litigants in pending suits have been deprived of their right to go to the Federal Court in a possible contingency. This argument of Mr. Seervai must also, therefore, fail.

38. The last submission of Mr. Seervai is that Act LVII of 1947 affects the jurisdiction conferred upon the High Court by the Letters Patent. That it does so is not disputed. But the Advocate General contends, and in my opinion rightly, that the local Legislature has jurisdiction to amend the Letters Patent or to alter it. This view was accepted by a division bench of this Court consisting of Stone C.J. and Kania J. (as he then was) in *Hirji Laxmidas v. Fernandes*[27], Their Lordships there held that by the conjoint effect of Section 293 of the Government of India Act, 1985, and Sections 2 and 7 of the Government of India (Adaptation of Indian Laws) Order, 1937, the reference to the Governor-General-in-Council in Clause 44 of the Letters Patnet also refers to all other competent authorities, and that, therefore, the Letters Patent could be altered not only by the Central Government, but also by the Provincial Legislatures. I respectfully follow that decision and can usefully add nothing whatever to it. It is true that subsequent to this decision Section 293 of the Government of India Act, 1935, has been omitted from that Act; but it is not suggested that this makes any difference because a similar section is now to be found in the Indian Independence Act, 1947, being Section 18 thereof. This objection of Mr. Seervai must therefore also fail.

39. In the course of argument Mr. Seervai drew our attention to Clause 13(b) of the Instructions passed under the Royal Sign Manual and Signet to the Governor General of India on March 8, 1937. That clause provides that the Governor-General shall reserve for the assent of His Majesty any bill which in his opinion would, if it became law, "so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the Act designed to fill." Of course the instrument is no longer in force; but Mr. Seervai contends that it lays down a very wholesome principle that nothing should be done to endanger the position which the High Court has been designed to fill. It is his submission that Act LVII of 1947, taken in conjunction with other Acts which the local Legislature has recently put on the statute book, is calculated to endanger the position which the High Court was designed to fill. I cannot countenance any such argument. In my opinion if the local Legislature is legislating with regard to any matters within its legislative competence, the only limits to the exercise of that jurisdiction are in the restrictions that may be found in the Indian Independence Act or the Government of India Act. This Court is not concerned with what the effect of such legislation would be on its own jurisdiction. But, even assuming that it was open to us to consider whether the cumulative effect of such legislation might be to endanger the position which the High Court was designed to fill, in my opinion there is at present no reasonable cause for any

[27] AIR 1945 Bom 352 : (1945) 47 Bom LR 294

such apprhension. Depriving the High Court of jurisdiction in cases falling within Act LVII of 1947 does not in the least affect the position which the High Court was designed to fill. Certain other Acts passed by the local Legislature have recently taken away from the High Court its original civil and criminal jurisdiction in certain matters. But that again, to my mind, does not in any sense endanger the position occupied by the High Court. There are many High Courts in India which do not exercise original jurisdiction at all. The fears entertained by Mr. Seervai, therefore, that the local Legislature has some kind of a plan to endanger the position which the High Court occupies under the Constitution are to my mind entirely baseless. The result, therefore, is that Act LVII of 1947 is not ultra vires the local Legislature.

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