been used to pay the debts due by the appellants' tarwad, and such being the case, we consider the tarwad property was properly declared liable for the amount decreed. We accordingly dismiss the appeal with costs.

As to the objections filed by the respondent. There is a conflict of evidence in regard to the payment of Rs. 1,000 in addition to Rs. 3,000, and we cannot say that the Subordinate Judge has not come to a correct finding. As to the interest awarded to the respondent as damages, we see no reason to interfere on appeal. He stated in his plaint that he entered on the management of the temple upon the execution of document A, and the appellants, it appears, resumed the management after the date of the final decree in suit No. 373 of 1883. The Subordinate Judge then declined to allow interest for the period during which the respondent had presumably the benefit of managing the temple, and we do not consider that he was in error in doing so. We therefore disallow the objections also with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

KARUPPAN (PLAINTIFF), APPELLANT,

and

AYYATHORAI (DEFENDANT No. 1), RESPONDENT.*

1886. July 24.

Civil Procedure Code, ss. 100, 101, 108, 540—*Appeal from ex parte decree.*

A defendant against whom a decree has been passed *ex parte*, and who has not adopted the procedure provided by s. 108 of the Code of Civil Procedure can appeal from such decree under the general provisions of s. 540. *Lal Singh* v. *Kunjan* (I.L.R., 4 All., 387) dissented from.

APPEAL from the decree of R. Vasudeva Ráu, Subordinate Judge at Negapatam, modifying the decree of V. Mulhari Ráu, District Múnsif of Mannárgudi, in suit 20 of 1885.

The plaintiff, Karuppan Chetti, sued the defendants Ayyathorai and Subbu Mudali, father and son, to recover Rs. 1,369-2-6 due on a bond executed by Rámalinga Mudali, deceased son of

* Second Appeal 967 of 1885.

KARUPPAN v. AYYATHORAI.

defendant No. 1, and Rs. 163-11-0 due for money lent and goods supplied to Rámalinga Mudali, as manager of the defendants' family.

Defendant No. 1 did not appear.

The issues framed were (1) whether the debts sued for were binding on defendant No. 2; (2) whether the claim on account of goods supplied was barred.

The Múnsif decreed payment of Rs. 1,369-2-6 as against defendant No. 1, and dismissed the suit as against defendant No. 2.

Defendant No. 1 appealed.

Respondent objected that no appeal lay, citing the Full Bench decision of the High Court of Allahabad in *Lal Singh* v. *Kunjan*.(1)

The Subordinate Judge held that he was bound to follow *Anantharáma Patter* v. *Mádhava Paniker*,(2) and, finding that the debt was a mere personal debt of the son, he held that the father was not bound to pay, and dismissed the suit. Plaintiff appealed on the grounds—

(1) That the issues were not properly framed.

(2) That as defendant No. 1 did not appear and it was understood by the parties and the Court that a decree would be given against him, plaintiff, being content with such a decree, did not let in evidence as to the nature of the debt.

(3) That no appeal lay to the Lower Appellate Court.

Rámachandra Ráu Saheb for appellant.

Subramanya Ayyar for respondent.

The Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT:—Although the first issue was defective in form, still the appellant had to show, as against defendant No. 2, that the debt was incurred for purposes binding on the family and produced evidence for that purpose. We are not prepared to hold that he has been misled by the frame of the issue. As to the question whether an appeal lies from an *ex parte* decree, it has been held by this Court since 1881 that an appeal does lie, *Anantharáma Patter* v. *Mádhava Paniker*.(2) The same view appears to have been taken by the Bombay High Court, *Luckmidás*

(1) I.L.R., 4 All., 387. (2) I.L.R., 3 Mad., 264.

Vithaldás v. *Ebrahim Oosman*.(1) There is a Full Bench decision of the Allahabad High Court, *Lal Singh* v. *Kunjan*,(2) in which a majority of the Court held that no appeal would lie. We are, however, not prepared to dissent from the view taken by the Division Bench of this Court. This second appeal must therefore fail, and we dismiss it with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

RÁJAGOPÁL AND OTHERS, *in re*.*

1886, August 3.

Letters Patent, s. 15—Civil Procedure Code, ss. 588, 592.

Section 15 of the Letters Patent of the High Court at Madras being controlled by s. 588 of the Code of Civil Procedure, no appeal lies from the order of a single Judge of the High Court made under s. 592 of the Code of Civil Procedure rejecting an application for leave to appeal *in formâ pauperis*.

APPEAL under s. 15 of the Letters Patent against an order made by Brandt, J., dated 27th April 1885, rejecting an application for leave to appeal *in formâ pauperis* against the decree in Suit No. 74 on the Original Side of the Court.

Ammayi Ammál, next friend of the appellants, Rájagopál Pillai and others, her minor sons, appeared in person.

The facts necessary for the purpose this report appear from the judgment of the Court (Collins, C.J., and Parker, J).

JUDGMENT:—An order passed under s. 592 of the Code of Civil Procedure rejecting an appeal *in formâ pauperis* is not appealable under s. 588, which provides that no appeal shall lie from orders not specified in that section.

It has already been decided in *Achaya* v. *Ratnavélu*(3) that s. 15 of the Letters Patent is controlled by a similar section in the Civil Procedure Code which provided that an order shall be final, and that enactments to such effect are not beyond the legislative powers of the Governor-General in Council.

There is no appeal and this application must be rejected.

* Letters Patent Appeal 8 of 1886.

(1) I.L.R., 2 Bom., 644.

(2) I.L.R., 4 All., 387.

(3) I.L.R., 9 Mad., 253.