APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Russell.

1903. December 15, 16, 22.

CHINNASAMI MUDALI (PLAINTIFF), APPELLANT,

v.

ARUMUGA GOUNDAN (DEFENDANT), RESPONDENT.*

Letters Patent, Art. 15—"Judgment"—Order not deciding question of right, but merely refusing to interfere on revision petition—Appeal.

An order of the Court passed in a proceeding in which the Court is not necessarily bound to enter upon a consideration of the controversy between the parties, but may abstain from doing so and does so abstain is not a "judgment" within the meaning of article 15 of the Letters Patent, and no appeal lies therefrom.

A case of revision under section 25 of the Provincial Small Cause Courts Act is of such a nature, and no appeal lies against an order passed on it unless the order is more than a mere refusal to entertain the case as one fit for revision.

A plaintiff whose suit in a Small Cause Court had been dismissed applied under section 25 of the Provincial Small Cause Courts Act for revision. The petition was heard by a single Judge who refused to interfere and dismissed it with costs. On an appeal being preferred under article 15 of the Letters Patent

Held, that no appeal lay as the order was a mere refusal to entertain the case as one fit for revision, and as such was not a "judgment" within the meaning of article 15 of the Letters Patent.

But where the Court is bound to decide one way or other any question of right or liability, such an order is a "judgment," irrespective of the language in which it is expressed, for it has the effect of concluding the parties with reference to the right or liability.

APPEAL under article 15 of the Letters Patent. Appellant had filed a suit on the Small Cause Side of a District Munsif's Court, which was dismissed. He then applied to the High Court, under section 25 of the Provincial Small Cause Courts Act, for a revision

* Appeal No. 40 of 1903 under article 15 of the Letters Patent, presented against the judgment of Mr. Justice Boddam in Civil Revision Petition No. 407 of 1902, preferred from Small Cause Suit No. 10 of 1902 on the file of the additional District Munsif's Court of Salem.

of that decree. The application came before a single Judge, when the following order was passed :—

"This petition coming on for hearing: upon perusing the petition, the judgment and decree of the lower Court and the record in the case; and upon hearing the arguments of K. S. Ramaswamy Sastri, vakil for the petitioner, and of Mr. C. Krishnan, counsel for the respondent, it is ordered that this petition be, and the same hereby is, dismissed, and it is further ordered that the petitioner do pay to the respondent Rs. 2-7-7 for his costs in opposing this petition."

Against that order the present appeal was preferred.

Mr. *C. Krishnan*, for respondent, raised the preliminary objection that no appeal lay, as the order appealed against was not a "judgment" within the meaning of article 15 of the Letters Patent.

K. S. Ramaswami Sastri for appellant.

JUDGMENT.—In this case, the plaintiff's suit filed on the Small Cause Side of the District Munsif's Court at Salem having been dismissed, the plaintiff applied under section 25 of the Provincial Small Cause Courts Act to have the decree against him revised. On the application coming on before Mr. Justice Boddam, it was dismissed, and the question is whether in the circumstances of the case, the present appeal, which purports to be an appeal against the decision of the learned Judge under section 15 of the Letters Patent, lies.

Unless the order of the learned Judge is a "judgment" within the meaning of the said section 15 there can, of course, be no appeal against it; and in the absence of anything in the context suggesting the contrary, the word itself has to be understood in its ordinary signification as a legal term. In Tidd's 'Practice' it is stated to mean "the conclusion of law upon facts found or admitted by the parties, or upon their default in the course of the suit" (page 930). Blackstone explains the word as "the decision or sentence of the law given by a Court of Justice or other competent tribunal as the result of proceedings instituted therein for the redress of an injury" (3 Bl. Com., 395). Another writer puts it thus well :—"Litigious contests present to the Courts facts to appreciate, agreements to be construed and points of law to be resolved. The judgment is the result of the full examination of

CHINNASAMI MUDALI v. ARUMUGA GOUNDAN.

all these." In other words "judgment" necessarily implies the determination of some question of right or liability in issue between the parties and it is hardly denied that that is the view uniformly adopted with reference to this term in construing the section referred to. Now there can be no ambiguity with reference to an order passed in a proceeding in which the Court is bound to decide one way or the other any question of right or liability; for every order in such a case, which would have the effect of concluding the parties with reference to the right or liability, would be a judgment irrespective of the form or language in which it is expressed. Where, however, the proceeding is one in which the Court is not necessarily bound to enter upon a consideration of the controversy but may abstain from doing so, an order which expresses such abstention is obviously not a judgment. As a case of revision under section 25 of the Provincial Small Cause Courts Act is a proceeding of the latter description, no appeal can be held to lie against an order passed thereunder unless it is more than a mere refusal to entertain the case as one fit for revision. And as there may be such a mere refusal notwithstanding the records are called for or the parties heard, neither of those circumstances nor the award of costs against the party applying for revision would necessarily make the order a judgment. Nothing more being relied on in the present case in support of the contention that there was a judgment, it follows there is no appeal.

The petition is accordingly dismissed with costs.