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right, and the temple committee had no right to institute this suit.

The appeal fails and is dismissed with costs of respondents 1, 5 and 6.

PAKENHAM WALSH, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Anantakrishna Ayyar.

1929, April 30.

RAMANAYYA (2ND RESPONDENT), APPELLANT,

v.

KOTAYYA AND ANOTHER (APPELLANT AND 1ST RESPONDENT), RESPONDENTS.*

Letters Patent, clause 15 *(amended)—Decision of single Judge in Second Appeal—Refusal of leave to appeal—No appeal against refusal.*

When, after the amendment of clause 15 of the Letters Patent, a single Judge of the High Court decides a second appeal and refuses leave to appeal, not only does no appeal lie from the judgment on the merits, but also no appeal lies from his refusal. *Lane* v. *Esdaile* [1891] A.C., 210, followed.

APPEAL under clause 15 of the Letters Patent against the order of VENKATASUBBA RAO, J., refusing to grant leave to file a Letters Patent Appeal against his judgment in Second Appeal No. 1506 of 1928 on the file of the High Court (A.S. No. 261 of 1928 on the file

* Letters Patent Appeal No. 38 of 1929.

of the District Court of Guntūr—O.S. No. 605 of 1928 on the file of the Court of the District Munsif of Narasaraopet).

Ch. Raghava Rao for appellant.

P. Venkataramana Rao for respondent.

The JUDGMENT of the Court was delivered by

ANANTAKRISHNA AYYAR, J.—This is an appeal purporting to have been preferred under section 15 of the Letters Patent against the refusal by a learned Judge of this Court of leave to appeal from the judgment passed by him in a Second Appeal.

A preliminary objection is taken by Mr. Venkataramana Rao, the learned Advocate who appeared for the respondent, that no appeal lies from such orders of refusal of leave to appeal.

Clause 15 of the Letters Patent of this High Court was recently amended on 3rd November 1927 and on 12th December 1928. The effect of these amendments is to declare that no appeal shall lie to the High Court from the judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court (and not being an order made in the exercise of a revisional jurisdiction or in the exercise of criminal jurisdiction) of one Judge of the High Court, or of one Judge of any Division Court pursuant to section 108 of the Government of India Act, made on or after 1st February 1929, unless the Judge who passed the judgment declares that the case is a fit one for appeal. The Second Appeal in question was heard by the learned Judge after 1st February 1929 and the learned Judge when moved by the present appellant has declined to grant

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leave to appeal under clause 15 of the Letters Patent. The appellant has preferred this appeal against the said refusal by the learned Judge to grant leave to appeal. The question is whether this appeal is maintainable.

As remarked by the Privy Council in *Minakshi v. Subramanya*(1),

"It is not to be assumed that there is a right of appeal in every matter which comes under the consideration of a Judge; such right must be given by the enacted law or equivalent authority."

The Privy Council made a similar observation in *Mayor, etc., of Montreal v. Brown and Springle*(2),

"The rule of law in this country is that an appeal does not lie, unless given by express legislative enactments."

See also *Lane* v. *Esdaile*(3), per Lord HALSBURY, L.C. That being so, the appellant must point out the provision of the law under which he claims this right of appeal. The rule would apply with equal, if not with greater, force, when it is sought to prefer an appeal against the decision of one learned Judge of a Court to a Division Bench of that Court. Under section 108 of the Government of India Act, the Chief Justice shall determine what Judge in each case is to sit alone and what Judges of the Court are to constitute the several Division Courts. The decision passed by such Judge or Division Court would be final, unless a right of appeal be specifically given. Clause 15 of the Letters Patent is the only provision which has been brought to our notice, and it is under that clause that the present Letters Patent Appeal has been preferred. On a reading of clause 15 as amended, it is clear

(1) (1887) I.L.R., 11 Mad., 26.
(2) (1871) 2 A.C, 168 at 184. (3) [1891] A.C., 210.

to us that no appeal would lie to the High Court from a judgment passed by one Judge of the High Court in Second Appeal after 1st February 1929. No further appeal to the High Court is available except where the Judge who passed the judgment declares that the case is a fit one for appeal.

When a right of appeal is given subject to any condition, it is clear that the said condition should be strictly complied with before the right of appeal could be taken advantage of. As stated in Maxwell's Interpretation of Statutes, 6th edition, page 648, Chapter XII, section 3—

"Where it was provided that no appeal should be entertained unless certain rules were complied with, the neglect of the statutory requisites would obviously be fatal."

Mr. Raghava Rao, the learned advocate for the appellant, argues, however, that what clause 15 prohibits is only an appeal from the judgment of one learned Judge on the merits of a Second Appeal and that the clause does not prohibit a right of appeal from the refusal of one learned Judge to declare that the case is a fit one for appeal; in the case of such refusal, he argues there is right of appeal, and if the Appellate Bench also agrees with the learned Judge on the question that the case is not a fit one for appeal, then only is there an end of the right of appeal. In other words, if we understood his contention correctly, he argues that while there is no right of appeal against the judgment passed on the merits in the Second Appeal, there is a right of appeal from the refusal in such a case to grant leave and the Appellate Bench should decide, as best as it could, whether the refusal to grant leave to appeal was right or not. He did not hide from us the fact that the Appellate Bench may have for

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this purpose to go into the merits of the case itself to such extent as it thought necessary.

He also argued that the question now is not in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court, but that it is with reference to a judgment passed by the High Court itself, and that the restrictions referred to in clause 15 do not apply to a judgment of the High Court.

We are clear that the arguments of the learned Advocate for the appellant are untenable and that the present appeal is not maintainable.

The practice of providing a right of appeal subject to conditions, though comparatively new to India, has been prevailing for a long time in England ; sometimes leave of the Judge who decided the case or of the Court is made the condition precedent for the entertainment of an appeal ; in other cases, leave of either a Judge or the Court on the one hand or of the Court of Appeal on the other is made condition precedent. An instance of the former is furnished by section 45 of the Judicature Act of 1873, and an instance of the latter is furnished by the Judicature Act of 1894, section 1 (5). In India, we have got an instance furnished by section 75, clause 3 of the Provincial Insolvency Act, where a right of appeal to the High Court is given on obtaining leave of the District Court or of the High Court, in respect of certain orders mentioned therein.

English Courts had to consider the very question raised in this appeal before us, namely, whether there is any right of appeal from the refusal of a Judge to grant leave to appeal.

In *Kay* v. *Briggs*(1), the Court of Appeal held

(1) (1889) 23 Q.B.D., 343.

"Where a Divisional Court has refused special leave to appeal under section 45 of the Judicature Act, 1873, from their decision given in an appeal from a County Court, the Court of Appeal has no jurisdiction to hear an appeal from such refusal."

The following passage occurs in the judgment of Lord ESHER, M.R. :—

"If this Court could overrule the discretion given by that section to Divisional Courts, the practical effect would be to allow an appeal here in every case, because the facts of each would be brought before us in order to enable us to decide whether or not we ought to overrule that discretion. I think that the real meaning of section 45 is to confine the power to give leave to appeal absolutely to the Divisional Courts. I am of opinion therefore that we have no jurisdiction to interfere with the exercise of their discretion".

FRY, L.J., observes as follows in the same case :—

"If an appeal from the refusal of the Divisional Court to grant leave to appeal could be brought to this Court, our order would not satisfy the only contingency upon which the section provides that the decision of the Divisional Court shall not be final, because special leave to appeal would be given not by the Divisional Court, but by this Court. The decision of the Divisional Court would cease to be final, although the contingency remained unsatisfied."

In *Lane* v. *Esdaile*(1), the House of Lords decided that

"No appeal lies to this House from a refusal of the Court of Appeal to grant special leave to appeal from a judgment of the High Court; . . . such a refusal is not an order or judgment of the Court of Appeal within the meaning of section 3 of the Appellate Jurisdiction Act, 1876."

At page 215, Lord HERSCHELL observed as follows :—

"If the contention of the appellants were well founded, I think it would follow that under this section (45 of the Judicature Act of 1873), there could be an appeal to the Court of Appeal from a refusal by a Divisional Court, and an appeal again from the Court of Appeal to this House; so that every County Court case might be brought up to this House upon the question whether an appeal should be allowed or not."

(1) [1891] A.C., 210.

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Lord FIELD remarked at page 216 :—

"It seems to me that if your Lordships were to say now, 'we will give leave', and the Court of Appeal must enforce that, it would be imposing upon them the duty of giving a leave, as their leave, which they in their own judgment think ought not to be given."

We may refer to one more case, *Ex parte Stevenson*(1), where

"A Judge at chambers having refused to grant leave under Schedule II, clause 26 (*a*) of the Housing of the Working Classes Act, 1890, the Divisional Court held that no appeal lay to them from his decision."

The Court of Appeal held that no appeal lay.

Lord ESHER, M.R., at page 611, laid down the law in the following words :—

"I am, on principle, and on consideration of the authorities that have been cited, prepared to lay down the proposition that, wherever power is given to a legal authority to grant or refuse leave to appeal, the decision of that authority is from the very nature of the thing, final and conclusive and without appeal, unless an appeal from it is expressly given . . . The very nature of the thing really concludes the question; for, if, where a legal authority has power to decide whether leave to appeal shall be given or refused, there can be an appeal from that decision, the result is an absurdity and the provision is made of no effect. If the contention for the claimant be correct, it would follow that the case might be taken from one Court to another till it reached the House of Lords on the question whether there should be leave to appeal. That cannot be so. For these reasons, I think the appeal must be dismissed."

FRY, L.J., gives some other reasons in support of the same position, at page 612 :

"Is the order granting or refusing leave to appeal, subject to appeal? In my opinion it is not. I do not come to that conclusion on the ground that the word 'order' is not properly applicable to it, but from the nature of the thing and the object of the legislature in imposing this fetter on appeals. The object clearly was to prevent frivolous and needless appeals. If, from

(1) [1892] 1 Q.B., 609.

an order refusing leave to appeal, there may be an appeal, the result will be that in attempting to prevent needless and frivolous appeals, the legislature will have introduced a new series of appeals with regard to the leave to appeal . . . It appears to me that would be an absurd result in the case of a provision the object of which is to prevent frivolous and needless appeals. Therefore, from the very nature of the thing, the decision of the Court which has the power of giving leave to appeal is, in my opinion, final."

It is perhaps useful to quote one or two sentences from the judgment of LOPES, L.J., at page 612:

"Where an appeal is given that is made subject to the leave of the Court or a Judge, or any other legal authority, I think that the granting or refusal of leave by such Court, or Judge, or other legal authority, is final and unappealable. The object of making appeals subject to leave is to prevent unnecessary and frivolous appeals. If an appeal were allowed from the granting or refusal of leave to appeal, the result would be that, instead of checking appeals, they might be multiplied to a most mischievous extent, for an appeal from the granting or refusal of leave might be carried from the Divisional Court to this Court and from this Court to the House of Lords. For these reasons, I think that the preliminary objection must prevail."

It was argued that the order passed by the learned Judge refusing leave to appeal in this case should be taken to be a judgment within the meaning of the Letters Patent and in support of that position certain decisions of this Court were cited to us, *Tuljaram Row* v. *Alagappa Chettiar*(1), *Sonachalam Pillai* v. *Kumaravelu Chettiar*(2), *Official Assignee of Madras* v. *Ramalingappa*(3), and *Maharaja of Pithapuram* v. *Rama Rao*(4). Having regard to the decision of the House of Lords in 1891, A.C., 210, already referred to, it is, to say the least, very doubtful whether such an order refusing leave could be said to be a "judgment" for the purpose now under consideration, within the

(1) (1910) I.L.R., 35 Mad., 1.
(2) (1923) I.L.R., 47 Mad., 316.
(3) (1925) I.L.R., 49 Mad., 539.
(4) (1927) I.L.R., 50 Mad., 770.

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meaning of clause 15 of the Letters Patent. But we are clear, reading clause 15 as a whole, that the intention of the legislature is that a judgment passed by a single Judge in a Second Appeal after 1st February 1929, is final and not appealable, and that an appeal could be entertained against the said judgment only if the judge who decided the Second Appeal granted leave to appeal. This, to our mind, is clear from the provisions of clause 15 of the Letters Patent. The learned Judge having in this case declined to grant leave to appeal, the judgment in Second Appeal is final. Whether the order refusing leave to appeal be a "judgment" or not, it is clear that no leave that might be granted by a Division Court would satisfy the requirements of the clause which provides that an appeal would lie only when the Judge who heard the Second Appeal grants leave to appeal. The English cases fully support the above position. A decision of this Court reported in *Madhava Aiyar* v. *Muthia Chettiar*(1), referred to by the learned Advocate for the respondent, supports this view, though we think that the grounds for holding that no appeal lies in the present case are probably stronger than the grounds mentioned in that case.

For the above reasons, we are clear that no appeal lies from the refusal of leave to appeal by a learned Judge from a judgment passed by him in a Second Appeal after 1st February 1929, under the amended clause 15 of the Letters Patent, and we dismiss the appeal with costs of the first respondent (plaintiff).

N.R.

(1) (1916) 5 L.W., 168.