acted on the same principle. Admitting Nadars and Shanars into a Hindu temple is, of course, not strictly illegal; the rejection of the compromise recognizing such a right, could be only on the ground that the trustee betrayed his trust and was not acting in its interests.

The point is clear beyond doubt and the Courts ought not to give countenance to the doctrine so strenuously contended for in this case, that their duty consists in merely registering a compromise, however detrimental it may be to a public trust.

It only remains to add that there is no substance in the argument that the lower Court's finding is not borne out by evidence. It is idle to contend that a Court cannot act upon affidavits in a case of this kind and that it is bound to call on the parties to adduce oral evidence. The order of the lower Court is confirmed and the appeal is dismissed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Anantakrishna Ayyar.

BULLIRAJU *alias* ACHAYAMMA (PLAINTIFF), APPELLANT,

v.

SATYANARAYANAMURTI (DEFENDANT), RESPONDENT.*

1929, October 23.

Letters Patent, cl. 15—*Decision of a single Judge of High Court—Leave to appeal—Test to be applied in granting leave.*

Under clause 15 of the amended Letters Patent, the Judge of the High Court, who decides a second appeal, has a discretion

* Second Appeal No. 1315 of 1927.

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in granting leave to appeal from his judgment, and must be satisfied that the case is a fit one for further appeal.

Considerations in granting leave discussed.

SECOND APPEAL against the decree of the Court of the Subordinate Judge of Rajahmundry in Appeal Suit No. 60 of 1925, preferred against the decree of the Principal District Munsif of Rajahmundry in Original Suit No. 184 of 1923.

On dismissal of the second appeal, an application was made for leave to appeal under clause 15 of the Letters Patent.

G. Lakshmanna for appellant.

B. Somayya for respondent.

JUDGMENT.

Under section 15 of the amended Letters Patent, an appeal would lie from the decision of a single Judge of the High Court passed in a second appeal, where the Judge who passed the judgment declares that the case is a fit one for appeal. In *Ramanayya* v. *Kotayya*(1) a Bench of this Court held that no appeal lay from the refusal of such leave by the Judge.

The question has been raised before me as to the grounds on which leave to appeal should be granted or refused in such cases. The section only enacts, that the Judge concerned should declare "that the case is a fit one for appeal." The principles that should guide him in dealing with such applications are not specified in the section.

It was argued that, if there was any question of law, leave must be granted. It was further argued, that if a second appeal was allowed, and the decision of the lower Appellate Court reversed, or modified, leave must be given since the single Judge had no jurisdiction to interfere with the judgment of the lower Appellate Court

(1) (1929) 57 M.L.J., 393.

in a second appeal except on a question of law, and his interference with the lower Appellate Court's decision was proof positive that there was a question of law.

It was also argued that when the valuation of the second appeal was not insignificant, leave should similarly be granted.

I am of opinion that the considerations mentioned above are by themselves not conclusive for the grant of such leave. A second appeal would lie to the High Court under section 100 of the Code of Civil Procedure only on a question of law, or on one of the grounds specified in section 100, Civil Procedure Code. When a second appeal is admitted and notice is issued to the respondents, it may generally be taken that the second appeal is assumed to involve a question of law. If the petitioner's contention be correct, then from every decision passed by a single Judge after notice is issued to the respondent, leave to appeal should be granted, even though the second appeal is dismissed. The same reasoning would also apply when a second appeal is rejected under Order XLI, rule 11, Civil Procedure Code, on the ground that the decision of the lower Appellate Court was right and in accordance with law, though a question of law might be involved in the case. Section 100, Civil Procedure Code, makes it clear that it is only when the decision of the lower Appellate Court is contrary to law, etc., that a second appeal would be successfully entertained. The wording of section 15 of the amended Letters Patent makes it abundantly clear that the circumstance that the decision was passed in a second appeal is not enough to entitle the unsuccessful party to leave to appeal ; but the Judge must be satisfied that the case is a "fit one" for further appeal and should "declare" accordingly. The circumstance, therefore, that the decision of the lower Appellate Court was

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reversed by the High Court does not by itself entitle the petitioner to leave to appeal. Nor does the valuation of the appeal by itself so entitle him.

Similar questions have arisen in England and the English Courts have held that the object of such a provision is to prevent frivolous and needless appeals. For example, in *Lane* v. *Esdaile*(1), Lord HALSBURY observed: "It is intended as a check to unnecessary or frivolous appeals." FRY, L.J., *In re Housing of the Working Classes Act*, 1890, *Ex parte Stevenson*(2) remarked:

"The object was to prevent frivolous and needless appeals."

See also remarks of LOPES, L.J., at page 613. In the English Bankruptcy Act of 1849 (12 and 13 Vic., Ch. 106), section 18 provided as follows:—

"If it was deemed that any matter of law or equity brought before Court to be of sufficient difficulty, or importance, to require the decision of the House of Lords, leave to appeal might be given."

The provision was not re-enacted in the subsequent Bankruptcy Acts. Yet, the Court of Appeal in England, held that the same principles apply, and that the test to be applied before leave to appeal is granted was to see whether the question before the Court was of sufficient difficulty or importance. See *In re Calthrop*(3) and *Ex parte Jackson, In re Bowes*(4). As observed by Lord CAIRNS, L.J., in *In re Calthrop*(3).

"Of course it would always be very much more agreeable to the Court to find no impediment in the way of its decision being reviewed by a Court of Appeal; but the Legislature has thought fit to impose upon this Court the duty of determining whether in any case any matter of law or equity is of sufficient difficulty or importance to require the decision of the House of Lords, and that duty the Court must discharge like any other duty which is put upon it. . . . But I cannot say that I

(1) [1891] A.C., 210 at 212.
(2) [1892] 1 Q.B., 609 at 612.
(3) (1868) L.R., 3 Ch. App., 252.
(4) (1880) 14 Ch.D., 725.

think this a matter of sufficient difficulty to require the decision of the House of Lords. I may be wrong, but I am bound to express my opinion."

His Lordship, held, that simply because there was a "fragment of law" it did not follow that he should grant leave. In *Ex parte Jackson, In re Bowes*(1), it was argued that the amount at stake was large and that the point in the case was important but the Court of Appeal refused leave. BAGGALLAY, L.J., remarked at page 747.

"Though the same limitations and requisites are not to be found in the present Bankruptcy Act as existed under the Act of 1849, we think we ought to act upon similar principles. And, speaking for myself, I am bound to say that I do not entertain the slighest doubt as to the correctness of the decision at which we have arrived."

COTTON and THESIGER, L.JJ., concurred. In *Ex parte Pillers, In re Curtoys*(2) LUSH, L.J., stated

"None of us entertains the least doubt of the correctness of our decision."

Leave was therefore refused. Similarly COTTON, L.J., held in *Ex parte Edwards, In re Tollemache*(3).

"In my opinion leave to appeal ought not to be given. There is not any doubtful question of law raised."

Similarly BRETT, M.R., observed that

"Leave to appeal should not be given when the judgment is so clearly right."

No doubt the single Judge may find that the questions that arose for decision were difficult and that he was not himself quite sure whether his decision was right. A Judge is bound to give judgment in every case that comes before him, including cases where the question raised is difficult or complicated ; but if he felt any reasonable doubt as to the correctness of his judgment, it is appropriate that he should "declare

(1) (1880) 14 Ch. D., 725.
(2) (1881) 17 Ch. D., 653.
(3) (1884) 14 Q.B., 415.

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that the case is a fit one for further appeal". It may also happen that after the argument in an appeal had progressed to a considerable extent, he may feel some doubt about the correctness of a decision, to which he is referred and which is binding on him, and in the circumstances he may consider it proper that he should record his judgment. In such cases, leave to appeal should be given, so that the matter might be re-agitated before the proper Court. Further, in such cases, if the circumstances were exactly known to him at the opening of the case, it would even be open to him to have the matter referred to the decision of a Bench of two judges. In considering applications for leave to appeal, it is also relevant to consider whether the question raised is one of private or public importance; whether the same will ordinarily govern other pending cases between the parties, and whether the dispute relates to a recurring right. The Court may also take into consideration the circumstance that under section 111 of the Code of Civil Procedure, the only further right of the unsuccessful party would be to apply to the Privy Council for special leave to appeal. In proper cases, the Judge may consider it more appropriate that the matter should be considered by a Bench of two Judges, before the same is taken up before the Privy Council. At the same time I should like to point out that leave to appeal should not be refused simply because the Judge was of opinion that his decision was correct. Most often learned Judges do think so; but if the question is one of principle and a novel one, ordinarily, leave to appeal should be granted. In *Ex parte Gilchrist, In re Armstrong*(1) Lord ESHER, M.R., said

"Merely to say that they are satisfied that their decisions is right is not, I venture to suggest, a sufficient reason for

(1) (1886) 17 Q.B.D., 521 at 528.

refusing leave to appeal, when the question involved is one of principle, and they have decided it for the first time. If that was carried to its legitimate conclusion, they ought to refuse leave to appeal in every case."

As put in section 504 of Halsbury's Laws of England, Volume II, page 303, that

"leave as a rule should be given if the question is one of principle and novel."

When an unrestricted right of appeal is conferred by statute, an appeal would lie even on a "technical point". How the Court of appeal would eventually deal with the "technical point" is a question for that Court to consider. But the circumstances that "a technical point" arises in a second appeal is by itself not a sufficient ground which would entitle the appellant to leave to appeal. Substantial justice should not altogether be lost sight of in considering the finality of the decision, in cases where the Legislature has thrown the duty of deciding whether the litigation should be continued further on the Judge who decided the second appeal.

If the question raised be one of frequent occurrence in which there is no authoritative decision, that would be a circumstance in favour of granting leave.

Cases where the appeal was remanded to the lower Appellate Court for fresh disposal, on the ground that the existing judgment of the Appellate Court was not satisfactory, either because it did not satisfy the requirements of Order XLI, rule 31, Civil Procedure Code, or because it omitted to consider important items of evidence, or because the judgment proceeded under some misapprehension of fact,—are ordinarily not cases for grant of leave. So also are cases where a similar procedure is adopted on the ground that parties had not a proper opportunity to put forward their cases before the lower Appellate Court, and the judgment accordingly

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proceeded in the absence of one of the parties or in the absence of evidence on the side of one of the parties. Similarly, when it is found in second appeal that an important question arising in the case was not properly dealt with by the lower Courts, and the Judge is of opinion that the attention of the parties had not been properly directed to it in the absence of specific issue on the point, and the appeal is accordingly remanded for fresh disposal, after the framing of a proper issue, and after giving the parties an opportunity to adduce evidence on the same, leave to appeal should not ordinarily be given.

If, in any of the above cases, a question of principle, either of pleading or of practice of frequent occurrence, be raised, on which there is no authoritative ruling, then that would *prima facie* be a ground for granting leave.

In cases arising under new statutes, where "ambiguous expressions" are construed by the Court for the first time, leave to appeal may be given, having regard to the importance of the question, till the construction put on the words of the statute has become so well known and have been followed in transactions of every day occurrence that in public interest it may be considered not proper to have these matters unsettled.

In *Ex parte Wolverhampton Banking, In re Campbell*(1), STEPHEN, J., held "We cannot give leave. The case is not one of any magnitude or of any general importance." CAVE, J., said: "I agree. There is not a large sum at stake, and the principle involved is one about which I do not entertain any doubt".

Some of these are probably considerations which should weigh with the final appellate authorities: but

(1) (1884) 14 Q.B.D., 32 at 37.

it seems to me that they would also be relevant, though by no means conclusive, in considering the question of grant of leave.

It may be possible to give a few more instances of cases where ordinarily leave to appeal should or should not be given.

In cases where the question relates only to the exercise of a discretion (not to a point of law), leave should generally be refused. See *Ex parte East and West India Dock Company, In re Clarke*(1).

Leave to appeal should be asked for under rule 95 of the Appellate Side Rules, orally and immediately after the judgment has been delivered. This is also the English practice (Halsbury's Laws of England, Vol. II, page 303, section 504). No elaborate arguments on the point are contemplated as the facts and the circumstances of the case would be present to the mind of the Judge at the time.

It follows that where a single Judge only followed a ruling of an authority binding upon him, or applied it to cases clearly within the purview of the principles so laid down, no leave should be granted except in cases already mentioned where he himself felt a doubt about the correctness of such ruling or thought that a reconsideration of the same was necessary.

In cases relating to construction of ordinary documents, the Judge has got a greater discretion in declining to grant leave to appeal, for it very rarely happens that two private documents are generally exactly similar in terms. The circumstance that the decision of the lower Appellate Court was reversed is not conclusive for grant of leave, any more than the circumstance that the decision of the lower Appellate

(1) (1881) 17 Ch.D., 759 at 766.

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Court was confirmed conclusive for its refusal; the circumstance that the second appeal is allowed or dismissed is by itself not a circumstance conclusive either way.

Provisions of the Civil Procedure Code relating to appeals to the Privy Council, impose a stricter test for granting leave to appeal than under section 15 of the Letters Patent. I am inclined to think that the Judge should not insist on such a strict test. Leave to appeal against the decisions of County Court Judges is granted, if it is reasonable and proper that such appeal should be allowed. The circumstance that leave to appeal to the Privy Council would not be granted in a case is not conclusive that leave to appeal should not be granted under section 15 of the Letters Patent.

Three decisions of Indian Courts were brought to my notice which contain some indications of the principles which should guide me in deciding the question under section 15 of the Letters Patent of 1927; a similar provision already existed in the Letters Patent of the Rangoon High Court, as seen from clause 13 of the Letters Patent issued to the Rangoon High Court in 1922.

In *Madhava Aiyar* v. *Muthia Chettiar*(1), AYLING and SESHAGIRI AYYAR, JJ., remarked that under the provisions of the Provincial Insolvency Act, "no leave to appeal could be claimed against an order which did not decide any substantial question of law or which did not directly or indirectly enunciate any proposition on which a pronouncement of a Court of Appeal is desirable". In *Radha Mohan* v. *M. C. White*(2), leave was given under the Provincial Insolvency Act, "as the case was argued on principle and appeared to require a

(1) (1916) 5 L.W., 168 at 170. (2) (1923) I.L.R., 45 All., 364 at 365.

careful consideration in view of certain existing decisions". In *Panachand* v. *Dobson*(1) it was held that in cases arising under the Presidency Towns Insolvency Act, an Appellate Court can grant leave to appeal, if a question of principle be involved.

It is not possible to lay down definite rules applicable to all cases. As has been remarked with reference to the exercise of the power of revision by the High Court, it is not advisable to crystalize into definite propositions the principles that should govern the Court in the exercise of its revisional jurisdiction. Similar remarks would apply to the exercise of the jurisdiction vested in a single Judge under section 15 of the Letters Patent. The jurisdiction should not be exercised capriciously or arbitrarily, but in a judicial manner and in the exercise of sound discretion, having regard to all the circumstances of the case.

The Legislature has entrusted the duty of declaring whether he considers the case a fit one for further appeal to the Judge himself. Before the amendment of the Letters Patent in 1927, there was a right of further appeal to two Judges as a matter of course in such cases. It is clear that the object was to restrict such an unlimited right of appeal which existed before. Right of appeal does not exist apart from statute. The statute has substituted a limited right of appeal in the place of an unlimited right of appeal which existed before. Obviously, the Judge should be satisfied from all the circumstances that a further right of appeal should be sanctioned. He is the sole authority charged with the duty of deciding the same, and in him full discretion has been vested in that respect. What I have stated above covers only certain aspects of the matter which

(1) (1922) 25 Bom. L.R., 161.

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have come before Courts and which would be useful in coming to a conclusion whether leave should be granted or not.

From the very nature of the case, no hard and fast rule could be laid down. It has also been said that "leave to appeal may be limited to certain points". (See Halsbury's Laws of England, Vol. VIII, page 604, paragraph 1452.) In *Jones* v. *Beirnstein*(1) A. L. SMITH, L.J., addressing the appellant's counsel, Mr. SCHWABE, said, "You have obtained leave to appeal on one point and only one, and you are confined to that point." COLLINS, L.J., in his judgment at page 102, stated: "We have no jurisdiction in this case except as to the point on which leave to appeal has been given by the Divisional Court." VAUGHAN WILLIAMS, L.J., agreed. See also *Sanderson* v. *Blyth Theatre Company*(2), per ROMER, L.J.

In the cases before me (Second Appeals Nos. 1315 and 1316 of 1927), I had to construe a deed of adoption executed in 1920, which contained certain peculiar provisions. I do not think, I should be justified in declaring that these cases are fit for further appeal.

K.R.

(1) [1900] 1 Q.B., 100 at 101. (2) [1903] 2 K.B., 533 at 540.