two decisions of the Allahabad High Court relied on by the appellant is one I am unable to accept, as the provisions of paragraphs 17, 18 and 19 of the second Schedule have to be strictly complied with.

For these reasons, I agree with my learned brother in dismissing the civil miscellaneous appeal and the civil revision petition. As to costs, I agree with the order made by him.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Curgenven and Mr. Justice Bhashyam Ayyangar.

1930, August 6.

RAMASWAMI CHETTIAR, MINOR BY NEXT FRIEND, S. R. M. S. A. ANNAMALAI CHETTIAR (PLAINTIFF), APPELLANT,

v.

ROYA KANNIAPPA MUDALIAR AND TWO OTHERS (APPLICANTS), RESPONDENTS.*

Letters Patent (Madras), cl. 15—Code of Civil Procedure (Act V of 1908), O. I, r. 10 (2)—Order under, adding party to a suit—Whether "judgment" within meaning of clause—Appealability of.

An order under Order I, rule 10 (2) of the Code of Civil Procedure (Act V of 1908) adding a party to a suit is not a "judgment" within the meaning of clause 15 of the Letters Patent (Madras), and therefore no appeal lies against such an order.

Tuljaram Row v. *Alagappa Chettiar*, (1910) I.L.R. 35 Mad. (F.B.), followed.

APPEAL from the judgment of EDDY J., dated 17th January 1930, and made in Application No. 104 of 1930

* Original Side Appeal No. 35 of 1930.

RAMASWAMI CHETTIAR v. KANNIAPPA MUDALIAR.

in Civil Suit No. 762 of 1926 in the exercise of the Ordinary Original Civil Jurisdiction.

S. Duraiswami Ayyar (*K. S. Rajagopala Ayyangar* with him) for appellant.

K. V. Ramachandra Ayyar for respondents.

JUDGMENT.

CURGENVEN J.

CURGENVEN J.—This is an appeal from an order passed by EDDY J., in Application No. 104 of 1930 in Civil Suit No. 762 of 1926, adding the three applicants as party defendants to the suit. The plaintiff, a member of a Nattukottai trading family, had sued the other members of his family for partition and an account of the assets and liabilities; and this application was made after a preliminary decree had been passed, the applicants, in their capacity as managers and worshippers respectively of a certain temple, applying to be added as parties to the suit upon the allegation that a sum of Rs. 1,38,000 of the alleged family assets was money to be held in trust for the benefit of the temple. Against the order of EDDY J. granting the application the plaintiff appeals.

The question is raised whether an appeal from an order of this kind lies, i.e., whether the order amounts to a "judgment" within the meaning of clause 15 of the Letters Patent. An attempt has been made by the appellant to derive from the specific consequences of this order grounds in support of its appealability, but I think it is clear that we must look only to the general nature and effect of the order, and not to the results to which it may eventually lead. An order adding a party is either appealable as a judgment or it is not; and it cannot surely affect the question whether or not it results in the raising of new issues in the suit or indeed whether or not the Court had jurisdiction to pass it.

There is no dispute that the order under reference is both in substance and in form an order under Order I, rule 10 (2) of the Code of Civil Procedure, and the point for decision is whether an order passed under this rule is appealable as a "judgment".

It is common ground before us that the construction placed upon the word "judgment" by Sir ARNOLD WHITE C.J. in the Full Bench case, *Tuljaram Row* v. *Alagappa Chettiar*(1), should be adopted here, as indeed it has been adopted in all cases decided in this Court subsequent to that pronouncement. The passage embodying that construction has been often quoted, and it is unnecessary to set it forth again. We have to look to the effect, rather than to the form, of the adjudication. If its effect is to put an end to the suit or proceeding, it is a judgment. If it is in effect nothing more than a step towards a final adjudication, it is not a "judgment" within the meaning of the Letters Patent.

Judged by this test, I feel no difficulty in deciding that an order adding a party to a suit is not a judgment. It does not put an end to the suit, but is clearly a step towards a final adjudication. It settles no rights, other than the right to be heard in the cause. Such an order answers, I think, to the tests proposed by COUTTS TROTTER C.J. in *The Official Assignee of Madras* v. *Ramalingappa*(2), a case which related to an order virtually identical in type, viz., transposing certain defendants as plaintiffs. The effect of the order was no doubt to confer upon the newly transposed parties facilities for the prosecution of the suit, and to put them on the road to an adjudication which they could not have secured as defendants, but it did

(1) (1910) I.L.R. 35 Mad. 1 (F.B.). (2) (1925) I.L.R. 49 Mad. 539.

RAMASWAMI CHETTIAR v. KANNIAPPA MUDALIAR.

CURGENVEN J.

not settle any substantive rights. The order in the present case is equally initiatory in character. I do not think that any useful purpose will be served by referring to other cases relating to orders less closely similar. They all endeavour to apply the criterion proposed by ARNOLD WHITE C.J. Our attention has been specially drawn to a case decided by COUTTS TROTTER C.J. and WALLACE J., *Maharajah of Pithapuram* v. *Rama Rao* (1), where it was held that an order granting leave to sue is a judgment, if the effect of the order was that it finally shut out the defendant from pleading that the suit should have been dismissed on the point of jurisdiction. I do not deem it necessary to express either agreement with or dissent from this view, because, while admittedly the conclusion is a specific deduction from the accepted principles of construction, it relates to an order of a class not now before us. I do not think that it was intended to lay down the broad proposition that all decisions involving an assumption of jurisdiction by the Court, after contest, must necessarily be "judgments", though it may be that, conversely, the denial of jurisdiction, resulting as it must in the termination of the proceedings, does amount to a judgment.

I am of opinion that no appeal lies against the learned Judge's order. The appeal is accordingly dismissed with costs. Advocate's fee allowed is Rs. 250.

BHASHYAM AYYANGAR J.—I agree.

B.C.S.

(1) (1927) I.L.R. 50 Mad. 770.