can be awarded. The omission of similar words in the section in question is significant.

In the result, the judgment of WADSWORTH J. s confirmed and the Letters Patent Appeal is dismissed with costs.

A.S.V.

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## APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and Mr. Justice Abdur Rahman.*

1937, December 6.

IN RE VEERASWAMI PADAYACHI (PETITIONER), APPELLANT.*

*Letters Patent (Madras), Cl. 15—Second appeal—Judgment of single Judge of High Court in—Review of—Order of that Judge refusing—Appeal from—Competent without leave of that Judge, if.*

An appeal from an order of a Judge of the High Court refusing to grant a review of his judgment in a second appeal is not competent unless that Judge certifies under Clause 15 of the Letters Patent that the case is a fit one for appeal.

Clause 15 of the Letters Patent, properly construed, means that no judgment of a Judge of the High Court in the exercise of second appellate jurisdiction is appealable without leave. An order refusing to grant review of the judgment in a second appeal is made in the exercise of such second appellate jurisdiction.

APPEAL sought to be preferred under Clause 15 of the Letters Patent against the order of PANDRANG ROW J. dated 16th April 1937 and made in Civil Miscellaneous Petition No. 708 of 1937 for review of the judgment in Second Appeal No. 1188 of 1932 preferred to the High Court against the

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* Serial Register No. 19677 of 1937

VEERASWAMI, *In re.*

decree of the Court of the Subordinate Judge of Mayavaram in Appeal Suit No. 3 of 1932 (Appeal Suit No. 7 of 1932, District Court, East Tanjore) (Original Suit No. 227 of 1930, District Munsif's Court, Shiyali).

*K. P. Ramakrishna Ayyar* for appellant.

The ORDER of the Court was delivered by

VENKATA-SUBBA RAO J.

VENKATASUBBA RAO J.—The point raised is a novel one. PANDRANG ROW J. decided a second appeal against the petitioner, who thereupon applied for a review of the learned Judge's judgment. Review was refused and the present appeal is from the order of refusal. The learned Judge was not asked to certify under Clause 15 of the Letters Patent that the case was a fit one for appeal, and the question is, whether the present appeal without leave is competent.

The argument turns on the following words Clause 15:

> Not being a 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 said High Court".

The contention is put thus: what these words contemplate is a judgment in respect of an appellate decree or order made by a subordinate Court; PANDRANG ROW J.'s judgment refusing to review (for the present purpose his order may be assumed to be a judgment) is not in respect of such decree or order; what the learned Judge refused to review was his own order. From this it follows, it is contended, that the order in question is not covered by the express wording of the exception. The argument, though plausible, is without substance. The clause

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properly construed, means that no judgment of a Judge of the High Court in the exercise of second appellate jurisdiction is appealable without leave. Here, the order refusing to grant review was made in the exercise of such second appellate jurisdiction; that is the short answer to the objection.

To test the matter, let us suppose that instead of refusing a review, the learned Judge made an order granting it. Mr. Ramakrishna Ayyar, to be logical, has had to contend that from such an order an appeal will lie; but when after granting the review, the Judge proceeds to dispose of the second appeal, no appeal will without leave lie from the final decision—which of course is the undoubted effect of the clause. The position that results is most anomalous.

Apart from that, the absurdity of the contention is apparent. All that a defeated party in a second appeal need do is, to apply for a review and, on his request being refused, to come to the appellate Court and contend that an appeal lies from the refusal as a matter of right. No Court can accept a construction which involves such a startling result.

We hold that the Letters Patent Appeal is incompetent and accordingly reject it.

A.S.V.