

LETTERS PATENT.*Before Courtney Terrell, C. J., and Agarwala, J.*

1934.

ASARFI MANDER

July, 10.

v.

KARU MANDER.*

*Letters Patent of the Patna High Court—clause 10—
“leave to appeal”, when should be granted.*

A certificate under clause 10 of the Letters Patent should not be granted merely on the ground that a point of law arises in the case as might be the case in dealing with admissions of second appeals.

It is only when a case presents some difficulty and in which the Judge really feels that the matter before him requires further consideration by a larger court that “leave” should be granted. If a Judge decides the case with confidence that should be an indication that it is not a fit case for appeal, and if he accepts the responsibility which is cast upon him by the Letters Patent his decision will be final.

Appeal by the defendants 1st party.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C. J.

A. B. Mukharji and K. P. Sukul, for the appellants.

D. N. Das, for the respondents.

COURTNEY TERRELL, C. J.—The facts of the case are very unimportant and the law is clear. The learned Judge who heard the appeal has stated them with the utmost clarity and simplicity, and I can see no reason for adding to those statements and content myself with saying that I agree entirely with his views of the matter.

It may be convenient here to refer to circumstances in which cases have come before us under what is

* Letters Patent Appeal no. 37 of 1933, from a decision of the Hon'ble Mr. Justice Khuja Mohamad Noor, dated the 20th February, 1933.

1934.

ASAFI
MANDERKARU
MANDER.COURTNEY
TERRELL,
C. J.

called Letters Patent Appeal. The Letters Patent provides that cases of a certain magnitude shall be finally determined by a single Judge of this Court. The Letters Patent allow for appeals to two or more Judges of this Court in certain limited class of cases, that is to say, to quote the words of clause 10, "where the Judge who passed the judgment declares that the case is a fit one for appeal". I venture to think that "leave to appeal" is given somewhat too lightly and without reference to the precise phrase of the Letters Patent that the Judge must certify that the case is a fit one for appeal. A certificate should not be granted merely on the ground that a point of law arises as might be the case in dealing with admissions of second appeals.

The judgment in this case gives no indication of any apprehension by the learned Judge that his view might be mistaken or that it was arrived at after some difficulty, or an indication that he felt that his view of the law might possibly require confirmation by a larger tribunal. I venture to suggest that learned Judges, in exercising the responsibility given to them by the Letters Patent of hearing appeals singly, might remember that it is only when a case presents some difficulty in which the Judge really feels that the matter before him requires further consideration by a larger Court that "leave" should be granted. If a Judge decides the case with confidence that should be an indication that it is not a fit case for appeal, and if he accepts the responsibility which is cast upon him by the Letters Patent his decision will be final.

I would dismiss this appeal with costs.

AGARWALA, J.—I agree.

Appeal dismissed.