

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Broadway.*

PAHLAD RAI (PETITIONER) Appellant
versus

SHIV RAM AND OTHERS (DEFENDANTS) Respondents.

Letters Patent Appeal No. 8 of 1927.

Letters Patent Appeal—Order of Single Judge rejecting application for transfer—whether a “ judgment ”—and open to appeal.

Held, that as the *refusal* to transfer a pending case from one Court to another does not put an end to the case so far as the Court dealing with it is concerned, an order of a Judge of the High Court rejecting an application for transfer cannot be treated as a “ judgment ” within the meaning of clause 10 of the Letters Patent, and no appeal lies thereunder.

Raldu Singh v. Sanwal Singh (1), followed.

Khatizan v. Sonairam Daulatram (2), and *Krishna Reddy v. Thanikachala Mudali* (3), distinguished.

Appeal under clause 10 of the Letters Patent from the order of Mr. Justice Jai Lal, dated the 14th December 1926, dismissing the application for transfer of the suit.

C. BEVAN-PETMAN, for Appellant.

FAKIR CHAND, for Respondents.

JUDGMENT.

SIR SHADI LAL C. J.—This is an appeal under SHADI LAL C.J. clause 10 of the Letters Patent from an order of Mr. Justice Jai Lal refusing an application for the transfer of a case pending in the Court of the Senior Subordinate Judge at Ludhiana; and the question for determination is whether the order amounts to a “judg-

(1) (1922) I. L. R. 3 Lah. 188. (2) (1920) I. L. R. 47 Cal. 1104.

(3) (1923) I. L. R. 47 Mad. 136.

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ment'' within the meaning of that clause. There has been a considerable diversity of judicial opinion as to the definition of the expression "judgment", but it is unnecessary to discuss the matter at length. This Court has held in *Ruldu Singh v. Sanwal Singh* (1), that "in order to decide whether an adjudication should be treated as a 'judgment' within the meaning of clause 10 of the Letters Patent, regard should be had not to the form of the adjudication but to its effect upon the suit or the civil proceeding in which it was made. If its effect, whatever its form may be and whatever be the nature of the civil proceeding in which it is made, is to put an end to the suit or proceeding, so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment within the meaning of the clause."

It is clear that the order in question does not put an end to the case so far as the Court dealing with it is concerned. The learned Judge has declined to transfer the suit, and it cannot therefore be said that his order has put an end to it. The Ludhiana Court has still to decide the suit, and its jurisdiction has not been interfered with by the order appealed against.

Our attention has been invited to the decision in *Krishna Reddy v. Thanikachala Mudali* (2), in which an order of a single Judge transferring a suit was held to be a judgment. A contrary view has, however, been taken by a Division Bench of the Calcutta High Court in *Khatizan v. Sonairam Daulatram* (3). It is

(1) (1922) I. L. R. 3 Lah. 188. (2) 1923) I. L. R. 47 Mad. 136.

(3) (1920) I. L. R. 47 Cal. 1104.

unnecessary to choose between the two rival views, because neither of the cases deals with an order refusing to transfer a case. It is true that an order directing a transfer puts an end to the case so far as the Court dealing with it is concerned, but the same thing cannot be said with respect to an order declining to transfer a case. Such an order does not disturb the *status quo ante* and does not, in any way, affect the jurisdiction of the Court, before which it was pending, to determine it in accordance with law.

I accordingly hold that no appeal lies from the order made by the Single Judge, and I would therefore dismiss the appeal with costs.

BROADWAY J.—I concur.

N. F. E.

BROADWAY J.

Appeal dismissed.

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