LETTERS PATENT SIDE

Before Kapur & Bishan Narain, JJ.

DALMIA JAIN AIRWAYS,—*Appellant.*

versus

THE REGISTRAR, JOINT STOCK Cos., ETC.,—*Respondents.*

Letters Patent Appeal No. 1-D of 1954

1955

January, 13th

Letters Patent (Lahore High Court) clause 10—Judgment—Order granting application to be made a party to proceedings, whether judgment within the meaning of clause 10 of the Letters Patent—Code of Civil Procedure (V of 1908) Order 41 rule 20—Addition of Registrar as party—Whether falls under Order 41 rule 20.

Company D went into voluntary liquidation in June, 1952. Scheme under section 153 and 153-A of the Indian Companies Act proposed and approved by the shareholders. Scheme sanctioned by the District Judge, Delhi, with certain modifications on the 10th February, 1953. Four appeals filed against the order sanctioning the scheme on the 3rd December, 1953. Registrar Joint Stock Companies, Delhi, applied to be added a party to the appeals. The Company Judge granted the application and allowed the Registrar to make certain evidence available to the Court.

Company D appealed under clause 10 of the Letters Patent against the order impleading the Registrar Joint Stock Companies as party to the appeals. Respondents raised the objection that no appeal lay as the order of the Company Judge did not amount to a "judgment" under clause 10 of the Letters Patent.

Held, that the order is not a judgment as contemplated in clause 10 of the Letters Patent, its effect being to allow the appeals to go on for determination on merits, and not to put an end to them. The line dividing judgments from orders *must* be drawn somewhere. Having regard to the fact that no substantial rights have been adversely affected by the order under appeal it does not fall on the judgment side of the line.

Held also, the order allowing the Registrar to make certain evidence available to the Court does not amount to a judgment.

Held further, that the addition as a party of the Registrar does not fall under Order 41 rule 20, Civil Procedure Code.

Tuljaram Row v. *Alagappa Chettiar* (1), followed. *Ramaswami Chettiar* v. *Roya Kanniappa Mudaliar* (2), *Asrumati Debi* v. *Kumar Rupendra Deb Raikot and others* (3), *Ruldu Singh*, etc., v. *Sanwal Singh* (4), *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company* (5), *Pehlad Rai* v. *Shiv Ram* (6), *Krishna Reddy* v. *Thanikachala Mudali* (7), *Khatizan* v. *Sonairam Daulatram* (8), *Shaw Hari Dial & Sons*, v. *Sohna Mal Beli Ram* (9), *Hadjee Ismail* v. *Hadjee Mohamed* (10), *Secretary of State* v. *Jahangir* (11), *Hurrish Chunder Chowdry* v. *Kali Sundari Debi* (12), *Vaghoji Kuverji* v. *Camaji Bamanji* (13), *Secretary of State* v. *Mansey Lakhamsey and others* (14), *Jivanlal Narsi* v *Pirojshaw* (15), *P. V. Rao* v. *Ahmed*

(1) I.L.R. 35 Mad. 1
(2) I.L.R. 54 Mad. 491
(3) 1953 S.C.R. 1159, 1166
(4) I.L.R. 3 Lah. 195
(5) 8 Beng. L.R. 483
(6) I.L.R. 8 Lah. 681
(7) I.L.R. 47 Mad. 146
(8) I.L.R. 47 Cal. 1104
(9) I.L.R. 1942 Lah. 391
(10) 13 Beng. L.R. 91
(11) 4 B.L.R. 342
(12) 10 I.A. 4
(13) I.L.R. 29 Bom. 249
(14) A.I.R. 1930 Bom. 262
(15) I.L.R. 57 Bom. 364

Jaji Noormahomad Latif (1), *The Official Assignee of Madras* v. *Ramalingappa* (2), *C. E. Dooply* v. *M. E. Moola* (3), *The Commercial Bank of India* v. *Sabju Sahib* (4), and *Chokalingam Chetty v. Seethai Achi* (5), discussed.

Appeal under Clause 10 of the Letters Patent from the order of Hon'ble Mr. Justice Falshaw, dated the 14th December, 1953, reversing that of Shri S. S. Dulat, District Judge, Delhi, dated the 10th February, 1953, and accepting the applications and permitting the Registrar, Joint Stock Companies of Delhi State to be joined as a party in these appeals and to place before the Court such evidence as is available of the alleged frauds by the management of the Company.

Petition of the Voluntary Liquidator, Shree C. P. Lal, under sections 153 and 153-A of the Indian Companies Act.

VED VYAS, S. K. KAPUR, and N. H. HINGORANI, *for Appellant.*

C. K. DAPHTARY, Solicitor-General, PORUS D. MEHTA, K. S. CHAWLA, A. A. G. and BISHAMBAR DAYAL, *for Respondents.*

JUDGMENT

KAPUR, J.—This judgment will dispose of four appeals— Letters Patent Appeals Nos. 1-D, 2-D, 3-D, and 4-D of 1954—which are directed against four decisions of Falshaw, J. given in four different First Appeals from Order but in which the question for decision is the same. Kapur, J.

Briefly stated the facts are that Dalmia Jain Airways, Limited, went into voluntary liquidation in June, 1952. A scheme under sections 153 and 153-A of the Indian Companies Act was proposed and was approved of by the shareholders of the Company at meetings arranged for the purpose and we are told that the shareholders were the only creditors. The essential part of the scheme was that the shareholders were to get, and

(1) A.I.R. 1949 Bom. 125
(2) I.L.R. 49 Mad. 539
(3) I.L.R. 5 Rang. 263
(4) I.L.R. 24 Mad. 252
(5) I.L.R. 6 Rang. 29 (P.C.)

Dalmia Jain Airways
v.
The Registrar, Joint Stock Cos., etc.

Kapur, J.

they could choose one of the following three alternatives, Rs. 5 per share of the face value of Rs. 10 immediately, Rs. 6 per share of Rs. 10 within five years or Rs. 10-4-0 per Rs 10 share within twelve years. The following from the judgment of the learned Judge will show what the position of the Company was:—

> "The underlying basis of the scheme was that Dalmia Jain Airways, Limited, which does not seem to have carried on any serious aviation business, had entered into a partnership with another company belonging to the so-called Dalmia Jain Group called Messrs. Allen Berry and Company, Limited, for the purpose of buying motor vehicles and spare parts from the Disposal Department of Government. This partnership was later dissolved and the stock of spare parts was transferred entirely to Allen Berry and Company, Limited, which became liable to pay Dalmia Jain Airways a sum of over three crores. This liability has since been transferred to another company in the group called the Dalmia Cement and Paper Marketing Company, which is liable to pay Dalmia Jain Airways Limited a sum of Rs. 3,40,00,000 over a period of sixteen years."

The scheme was placed before the learned District Judge of Delhi as Liquidation Judge, a number of objections were raised by various shareholders, but eventually the scheme was sanctioned with certain modifications which were that instead of Rs. 5-0-0 Rs. 5-4-0 were to be paid, instead of Rs. 6 Rs. 7 were to be paid and the period in

the third case was reduced from 12 years to 10 years. This scheme was sanctioned by the learned District Judge on the 10th February 1953 Against this four appeals were filed, one by Moti Lal Gupta, Advocate, another by D. K. Jadhav and three other shareholders, the third by Kamla Devi and Arun and the fourth by four shareholders including His Highness the Raj Pramukh of Madhya Bharat.

On the 3rd December 1953, the Registrar, Joint Stock Companies, Mr. B. R. Seth, filed applications to be added as a party to the proceedings in appeals and prayed that the scheme be not sanctioned and he be granted time to be able to place all the facts relating to the Company before the Court and he alleged that the whole scheme was a complete fraud on the shareholders and in the interest of justice it was necessary to place before the Court the material in support of his allegations.

Objection was taken before the learned Judge that the Registrar could not be made a party, but he repelled this contention and acting under section 151 of the Code of Civil Procedure ordered the addition of the Registrar as a party to the proceedings. I quote the following from his judgment:—

> "In this matter I do not think there can be any doubt that only right and proper course in the circumstances will be to allow the Registrar to appear in these appeals and make available to the Court material which will be highly relevant in determining the question in issue, and which was not previously available."

Dalmia Jain Airways
v.
The Registrar, Joint Stock Cos., etc.

Kapur, J.

And finally the learned Judge said:—

> "I accordingly accept the application and permit the Registrar, Joint Stock Companies of Delhi State to be joind as a party in these appeals and to place before the Court such evidence as is available of the alleged frauds by the management of the Company."

The Dalmia Jain Airways Limited has come up in appeal under clause 10 of the Letters Patent, and a preliminary objection was raised that no appeal lies as the decision of the learned Judge does not amount to a "judgment" within the meaning of the word as used in clause 10.

The learned Solicitor-General relies on *Ramaswami Chettiar* v. *Roya Kanniappa Mudaliar* (1), where it was held that an order under Order I, rule 10(2) of the Code of Civil Procedure adding a party to a suit is not a 'judgment' within the meaning of clause 15 of the Letters Patent, and no appeal therefore lies against such an order. The learned Judges there relied on a Full Bench judgment of Sir Arnold White, C.J. in *Tuljaram Row* v. *Alagappa Chettiar* (2), where the learned Chief Justice laid down the following test—

> "The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on 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

(1) I.L.R. 54 Mad. 491
(2) I.L.R. 35 Mad. 1

it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an aplication which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent."

This test has been approved of by the Supreme Court in *Asrumati Devi* v. *Kumar Rupendra Deb Raikot and others* (1). Referring to the judgment of White C.J., Mukherjea J. said—

"According to White C.J. to find out whether an order is a 'judgment' or not, we have to look to its effect upon the particular suit or proceeding in which it is made. If its effect is to terminate the suit or proceeding the decision would be a 'judgment' but not otherwise. As this definition covers not only decisions in suits or actions but 'orders' in other proceedings as well which start with applications, it may be said that any final order passed on an application in the course of a suit, e.g., granting or refusing a party's prayer for adjournment of a suit or for examination of a witness, would also come within the definition. This seems to be the reason why the learned Chief Justice qualifies the general proposition laid down above by stating that 'an adjudication on an application, which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of the Letters Patent'."

(1) 1953 S.C.R. 1159, 1166

Dalmia Jain Airways
v.
The Registrar, Joint Stock. Cos., etc.

Kapur, J.

This definition in the Madras case as stated by Sir Shadi Lal, C.J. in *Ruldu Singh etc.* v. *Sanwal Singh* (1), furnishes a better and a surer test for deciding the question whether an adjudication is or is not a judgment than that given by Sir Richard Couch, C.J., in the case of *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company* (2), where Sir Richard Couch, C.J., said—

> "We think 'judgment' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary, or interlocutory, the difference between them being that final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

At another place Sir Richard Couch observed:—

> "For example, there is an obvious difference between an order for the admission of a plaint and an order for its rejection. The former determines nothing, but is merely the first step towards putting the case in a shape for determination. The latter determines finally so far as the Court which makes the order is concerned that the suit, as brought, will not lie. The decision, therefore, is a judgment in the proper sense of the term."

Commenting on this Mukherjea J. said at page 1165—

> "It cannot be said, therefore, that according to Sir Richard Couch every judicial

(1) I.L.R. 3 Lah. 188, 195
(2) 8 Ben. L.R. 433

> pronouncement on a right or liability between the parties is to be regarded as a 'judgment', for in that case there would be any number of judgments in the course of a suit or proceeding, each one of which could be challenged by way of appeal. The judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned."

In the case before the Supreme Court the question to be decided was whether an order for transfer of a suit under clause 13 of the Letters Patent of the Calcutta High Court is a judgment and it was held that it is not, because it neither affects the merits of the controversy between the parties in the suit itself, nor terminates or disposes of the suit on any ground.

The track of decision in the Indian Courts is generally the one which follows the view taken by the Calcutta and Madras High Courts, but it is in the matter of application of this test that there is a wide divergence of judicial opinion.

In the Lahore case *Ruldu Singh etc.* v. *Sanwal Singh* (1), an order of remand under Order XLI rule 23 of the Code of Civil Procedure was held to be a judgment, and Sir Shadi Lal, C. J. observed at page 195—

> "If an adjudication puts an end to the suit or appeal, or if its effect, if it is not complied with, is to put an end to the suit or the appeal, then it is clearly a judgment. The difficulty, however, arises when an adjudication has no such

(1) I.L.R. 3 Lah. 188

Dalmia Jain Airways
v.
The Registrar, Joint Stock Cos., etc.

Kapur, J.

effect upon a suit or appeal, but disposes of only an application made in a suit or appeal. Now there can be no doubt that it is not every application which results in an adjudication which can be held to be a judgment."

In a subsequent Lahore case, *Pehald Rai* v. *Shiv Ram* (1), an order refusing to transfer a pending case from one Court to another was held not to be a judgment as it does not put an end to a case so far as the Court dealing with it is concerned, and reference was made to *Krishna Reddy* v. *Thanikachala Mudali* (2), and to the contrary view taken in *Khatizan* v. *Sonairam Daulatram* (3), which two cases give the rival opinions.

As to what the test should be again came up for decision in the Lahore High Court before a Full Bench in *Shaw Hari Dial and Sons* v. *Sohna Mal-Beli Ram* (4), where the Court had decided that it had no jurisdiction to hear the suit and returned the plaint for presentation to proper Court. On appeal the High Court held that the Court had jurisdiction and the order was held to be a judgment within the meaning of clause 10 and it was held that each case must be considered on its own facts and circumstances. The judgment of the Court was given by Dalip Singh, J., who after discussing the cases decided by the various Courts including the two Calcutta and Madras cases and *The Justices of the Peace for Calcutta* v. *The*

(1) I.L.R. 8 Lah. 681
(2) I.L.R. 47 Mad. 136
(3) I.L.R. 47 Cal. 1104
(4) I.L.R. 1942 Lah. 491

Oriental Gas Company (1), and *Tuljaram Row's case* (2), said at page 509—

> "It is really unnecessary to say any more except that I would agree entirely with the remark in *Ruldu Singh* v. *Sanwal Singh* (3), that the best test propounded so far is the test laid down in *Tuljaram Row* v. *Alagappa Chettiar*, (2)."

Counsel for the appellant relying on certain judgments of the Bombay and Madras High Courts submits that the decision of Falshaw J. amounts to a judgment, because if he had decided the matter as to whether the appeal was competent or not, the matter which has not been decided by the learned Judge, then it would have decided one way or the other the controversy between the parties and in adding the Registrar as a party he has exercised a jurisdiction which he did not possess on the ground that there is no provision in the Code of Civil Procedure or in any other law by which the Registrar could be made a party at the appellate stage.

Reliance for the first submission was placed on *Hadjee Ismail* v. *Hadjee Mohammed* (4), where leave given under clause 12 was held to be a judgment.

In *Secretary of State* v. *Jahangir* (5), the question was in regard to affidavit of documents. and it was held that it was the duty of a Judge to decide the question in regard to privilege.

(1) 8 Ben.L.R. 433
(2) I.L.R. 35 Mad. 1 (F.B.)
(3) I.L.R. 3 Lah. 186
(4) 13 Beng.L.R. 91
(5) 4 B.L.R. 342

Dalmia Jain Airways
v.
The Registrar, Joint Stock Cos., etc.

Kapur, J.

Reliance was next placed on *Hurrish Chander Chowdry* v. *Kali Sundari Debi* (1), and the Privy Council observed—

> "These learned Judges held (and their Lordships think rightly) that whether the transmission of an order under section 610 would or would not be a merely ministerial proceeding, Mr. Justice Pontifex had in fact exercised a judicial discretion and had come to a decision of great importance, which if it remained, would entirely conclude any rights of Kali Soondari to an execution in this suit. They held, therefore, that it was a judgment within the meaning of section 15".

In this case Kali Sundari applied to the High Court for execution of the decree of the Privy Council with regard to a moiety. An objection was taken that the decree could be executed as a whole and not partly. This objection was allowed and the application was refused. An appeal was taken under section 15 of the Charter of 1865 and an objection was taken under section 610 of Act X of 1877 that the order was not a judgment and therefore it was not appealable. Two of the Judges were of the opinion that the Judge had dealt with the question judicially and not purely ministerially and the decision was appealable as judgment and they were of the opinion that the judgment on the objection was erroneous and should be set aside and the decree should be transmitted to the Court of the Subordinate Judge for execution. The Chief Justice was of the opinion that the Judge in dealing judicially with the

(5) 10 I.A. 4

execution had usurped jurisdiction in that respect which he did not possess and that his duties were purely ministerial and therefore, no appeal was competent, and, as I have said, the Privy Council held that whether the order is ministerial or not, if judicial discretion is exercised, it may amount to a judgment, but they did not define the word 'judgment'.

All these cases show that in the circumstances of these cases the decision was a judgment and appeal was competent, but Mr. Ved Vyasa strongly relies on the judgment of the Privy Council where it was held that there would be a valid ground of appeal if a Judge of a High Court makes an order under a misapprehension as to the extent of his jurisdiction, and in that case the High Court would have power by appeal or otherwise in setting right such a miscarriage of justice, This Privy Council judgment does not help the appellant because the present case is not one of usurpation of jurisdiction, and, as I have said, the Privy Council did not define what a 'judgment' is.

It cannot be said in the present case that Falshaw J. had no jurisdiction. The appeal was before him from the order of the District Judge in his company jurisdiction and the appeal was properly placed before the learned Judge of this Court and in that appeal any application which does lie to a Judge had to be decided by the learned Judge and I cannot hold that he had no jurisdiction—whether the decision is right or wrong may be another matter.

The case next referred to is *Vaghoji Kuverji* v. *Camaji Bomanji* (1). The plaintiffs in that case asked for declaration that they were entitled to

(1) I.L.R. 29 Bom. 249

Dalmia Jain Airways v. The Registrar, Joint Stock Cos., etc.

Kapur, J.

the exclusive possession and enjoyment of a *talao* which was situated outside the jurisdiction of the Court. They also sought an injunction to give effect to the declaration. The plaintiffs obtained leave under cause 12 of the Letters Patent to file a suit in the High Court and the defendants obtained a Judge's summons calling upon the plaintiffs to show cause why the leave granted should not be rescinded and the plaint taken off the file. Russell J. dismissed the summons and an appeal was taken from this order and the Court held that it was apparent that on the question whether the suit was one for land or not Russel J. had decided adversely to the defendants, so that dismissal of the summons had become decisive against the defendants and an appeal therefore, lay, and *Haji Ismail's case* (1) was followed. The ground on which the Appellate Court proceeded was that if the suit was one for land, then leave would be of no avail, and Russell J. erroneously thought that the granting of leave would make a difference one way or the other, but it really had nothing whatever to do with the case because the suit was one for land. Referring to this judgment White C.J. said in *Tuljaram Row's case* (2).

> "Here the adjudication asked for, if made, would have disposed of the suit."

But this observation which has been strongly relied upon by counsel for the appellant does not help him. The matter which was to be decided there was whether the suit related to land which was outside the jurisdiction of the Court and according to the Appellate Court the giving of leave would have been of no avail.

(1) 13 Beng. L.R. 91
(2) I.L.R. 35 Mad. 1

The next Bombay case which was relied upon was *Secretary of State* v. *Mansey Lakhamsey and others* (1), where it was held that a finding on an issue which does not merely regulate the procedure in a suit but goes further so as to decide some right affecting the merits of the question between the parties, amounts to a judgment.

Jivanlal Narsi v. *Pirojshaw* (2), was next relied upon, and there it was held that a decision under section 10 of the Code of Civil Procedure determines the right of a plaintiff to sue in the Bombay High Court and such a decision is not a mere order regulating procedure in the suit but is a 'judgment'.

The next case is *P. V. Rao* v. *Ahmed Haji Noormahomad Latif* (3), where it was held that an order purporting to be by the Provincial Government duly authenticated under section 59 of the Government of India Act, 1935, cannot be challenged in a Court of law, and where in such a case a petition is filed for the issue of a writ of *certiorari* against the officer who has signed the order and it is alleged that the order is not by the Provincial Government but by the officer who has signed it and the Court issues an order for the personal attendance of the officer in Court for cross-examination, the order amounts to a judgment, and the word 'judgment' was defined to be one which affects the merits of the question between the parties by determining some rights and liabilities. If the production of an order under section 59 is conclusive, then calling upon the officer to appear would affect the rights of the parties and be a judgment within the meaning of the word as given in *Tuljaram Row's case* (4), and other cases which have been given above.

(1) A.I.R. 1930 Bom. 262
(2) I.L.R. 57 Bom. 364
(3) A.I.R. 1949 Bom. 125
(4) I.L.R. 35 Mad. 1

Dalmia Jain Airways
v.
The Registrar, Joint Stock Cos., etc.

Kapur, J.

The other cases which have been relied upon do not really help the matter one way or the other. As was pointed out by Dalip Singh, J. in *Shaw Hari Dial's case* (1), each case must be considered on its own facts and circumstances, and, in my opinion, the matter should then be decided in accordance with the test laid down in *Tuljaram Row's case* (2), which has been accepted in this Court and in the Lahore High Court. The only case which deals with the question of adding a party is the Madras case *Ramaswami Chettiar* v. *Roya Kanniappa Mudaliar* (3), where a Division Bench of the Madras High Court applied the test laid down by Sir Arnold White, C.J., in *Tuljaram Row's case* (2), and held that an order adding a party to suit is not a judgment; it does not put an end to a suit but is only a step towards final adjudication and it settles no rights other than the right to be heard in the cause.

In an earlier Madras case *The Official Assignee of Madras* v. *Ramalingappa* (4), an order of a Judge transposing certain defendants as plaintiffs and allowing the suit to proceed was held not to be a 'judgment'. Referring to *Tuljaram Row's case* (2), Coutts Trotter, C.J., at page 541, said—

> "Applying that and endeavouring as best as I can to see what is its true application, I think it is this, that a determination, call it what you will, which has the effect, whether on a technical ground or on the merits, of putting an end to the proceedings as regards the particular people or *in toto* is a judg-

(1) I.L.R. 1942 Lah. 491
(2) I.L.R. 35 Mad. 1
(3) I.L.R. 54 Mad. 491
(4) I.L.R. 49 Mad. 539

ment and is appealable; but, if the pronouncement leaves the suit free to go on, then it is not a judgment within the meaning of the clause."

Looking at the order of Falshaw, J., its effect is to allow the appeal to go on for determination on the merits and I am unable to say that an order adding a party is a decision the effect of which is to put an end to the appeal and the decision of the learned Judge is not a judgment. Ramesam, J., in *The Official Assignee of Madras* v. *A. Ramalingappa*, (1) said—

> "The line dividing judgments from orders must be drawn somewhere short of this. Having regard to the fact that in the case before us no substantial right of the defendants has been adversely affected by the order under appeal, I would say that it does not fall on the judgment side of the line. Beyond this I make no further attempt."

I respectfully agree with this. Two cases, *C. E. Dooply* v. *M.E. Moolla* (2). and *The Commercial Bank of India* v. *Sabju Sahib* (3), were cited before us which show that if a party is not added the decision becomes a judgment and is appealable, but in each one of these cases the effect of the order as far as the party who wanted to be added was that it put an end to the suit or the appeal as the case may be and therefore, it would come within the test laid down by Arnold White C.J. in *Tuljaram Row's case* (4).

What the argument of counsel for the appellant amounts to on this point of the case is this

(1) I.L.R. 49 Mad. 539
(2) I.L.R. 5 Rang.. 263
(3) I.L.R. 24 Mad. 252
(4) I.L.R. 35 Mad. 1

Dalmia Jain Airways v. The Registrar, Joint Stock Cos., etc.

Kapur, J.

that at first it may be decided whether an appeal lies or not and then the question of adding a party will be decided. I am unable to accept that this is a correct approach to the question.

It was then contended that the Registrar cannot be added because the case would not fall within Order XLI rule 20 of the Code of Civil Procedure, but that is a provision which applies to persons who are parties to the original suit and are added in appeal. In *Chokalingam Chetty* v. *Seethai Achi* (1), it was held that a person who was a party to the suit and is not made party to the appeal is no longer interested in the result of the appeal and therefore, he cannot be added, but that is not what can be said about the Registrar in the present case.

Objection was then taken that the order of the learned Judge allowing the Registrar to make available to the Court certain evidence amounts to a judgment. I do not see how that will amount to a 'judgment', nor does it come within the test laid down in *Tuljaram Row's case* (2).

I would therefore dismiss these appeals with costs. There will be only one set of costs.

Bishan Narain, J.

BISHAN NARAIN, J. I agree.

APPELLATE CIVIL.

Before Bishan Narain, J.

Mr. N. M. KEWALRAMANI AND ANOTHER,—*Plaintiffs-Appellants.*

versus

MR. J. D. TYTLER,—*Defendant-Respondent.*

Regular Second Appeal No. 824 of 1951

1955

February, 7th

Indian Limitation Act (IX of 1908)—Sections 5 and 12 (2)—Rule 13-A-9 of Rules for supply of copies—Judgment announced on last working day—Court closed for long vacation—Application for copies made on the reopening of

(1) I.L.R. 6 Rang. 29 (P.C.)
(2) I.L.R. 35 Mad. 1