

by the Judge is too remote, and was not in our opinion present to the mind of the accused and operating to influence his conduct. The obvious inference from the circumstances is that, considering himself aggrieved by the decision of the point against him, he determined to prevent effect being given to it, and with that intention removed the document and subsequently refused to produce it. He has been guilty of secreting a document he [263] may be lawfully compelled to produce in evidence before a public servant, an offence punishable under Section 204 of the *Indian Penal Code*.

We direct a conviction to be entered for that offence, and looking to the detention he has undergone, we sentence him to pay a fine of 50 rupees, and in default to undergo simple imprisonment for one month.

[3 Mad. 263]

APPELLATE CIVIL.

The 5th September, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Narasimha Rau.....(Defendant) Appellant.

versus

Lakshmipati Rau and others.....(Plaintiffs), Respondents.*

Civil Procedure Code, Section 458—Liability of guardian of minor defendant to be assessed with costs.

The Civil Procedure Code does not authorize a Court to decree costs against the guardian of a defendant except in the case referred to in Section 458.

THE facts and arguments in this case, so far as they are necessary for the purpose of this report, are stated in the judgment of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

Gurumurti Ayyar for the Appellant.

Anundacharlu and *Sundram Sastri* for the Respondents.

Judgment :—The appeal is entirely as to costs.

The defendant, that is, the infant, not the guardian, is made liable for the costs.

In the case of an ordinary defendant there can be no doubt that the defendant should bear the costs where, as in the present suit, the plaintiff has succeeded in almost every point of contention.

Some of the contentions on behalf of the defendant appear to have been put forward without sufficient ground, and if we had power to assess the guardian with the costs, it might be a question whether we ought not to do so, but we do not think that the *Code of Civil Procedure* authorizes the Court to decree costs against the [264] guardian of a defendant, except in the case referred to in Section 458. That section contemplates conduct on the part of the guardian which is not apparent in the present suit and is not applicable. There are certain decisions which have been quoted, to be found in the *Weekly*

* Appeal No. 64 of 1881 against the decree of D. Buick, Acting District Judge of Kistna, dated 19th December 1880.

Reporter, which appear to authorize the Court in decreeing costs against a guardian of a defendant, but these are cases which were decided before the present Code came into operation, and we do not consider them to be authorities upon which we can act. The new Code in Section 440 expressly declares that the guardian of a minor plaintiff may be assessed with costs and its silence as to the liability of the guardian of a defendant to costs, except in the case referred to in Section 458, would seem to imply that it was not intended that a guardian for a minor defendant should be liable to the same extent as the guardian for a minor plaintiff. We think that in this case we should not interfere with the discretion exercised, and must dismiss this appeal with costs.

NOTES.

[See, however, (1884) 8 Bom., 391 where it was held that in certain cases a guardian *ad litem* may be made to pay costs.]

[3 Mad. 264.]

APPELLATE CIVIL.

The 8th September, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE TARRANT.

Anantharama Patter.....(Second Defendant) Appellant
versus
Madhava Paniker.....(Plaintiff's Representative) Respondent. *

Appeal from decree passed ex-parte—Defendant placed ex parte after filing written statement at first hearing—Civil Procedure Code Sections 540, 108.

Under Section 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing and files a written statement, he should not be placed *ex parte*.

THE facts and arguments in this case appear sufficiently for the purpose of this report from the judgment of the Court (INNES and TARRANT, JJ.).

A. Ramachandrayyar for Appellant.

The Respondent was not represented.

[265] Judgment.—The District Judge has dismissed the appeal on the ground that no appeal lies for the reason that the appellant, second defendant, was not present at the final hearing of the suit and was declared *ex parte*. He thought that the only course open to the appellant in this case was to apply to the Court under Section 108, *Civil Procedure Code*. Section 540 allows an appeal from decrees in all cases unless when otherwise expressly provided. The District Judge was of opinion that the provision in Section 108 was an express provision for a particular mode of procedure which precluded an appeal.

The Section in the old Code, corresponding to Section 108 in the Code of 1877, contained an express provision that there should be no appeal from a decree

* Second Appeal No. 264 of 1881 against the decree of F. C. C. Gomm, District Judge of Coimbatore, confirming the decree of T. V. Ponnusami Pillai, Subordinate Judge of South Malabar, dated 17th December 1880.