

[419] APPELLATE CIVIL—FULL BENCH.

The 13th December 1881, and 6th March, 1882.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, MR. JUSTICE INNES,
MR. JUSTICE KERNAN, MR. JUSTICE KINDERSLEY, AND
MR. JUSTICE MUTTUSAMI AYYAR.

{Pirathi Sing.....(Sixth Defendant) Appellant
and
Vencatramanayyan(Plaintiff) Respondent.*

Civil Procedure Code Sections 541, 587.

The Code of Civil Procedure, Act X of 1877, does not require the appellant in second appeal to file a copy of the decree of the Original Court with the memorandum of appeal.

UPON the presentation of a second appeal for admission objection was taken by the Registrar that the decree of the District Munsif had not been put in according to the long-established usage of the Court. The Counsel for the petitioner contended that the Civil Procedure Code did not require the decree of the Original Court to be filed, and that if, there was any rule of practice to the contrary, it was *ultra vires*.

The Court (KINDERSLEY, J.) referred the question for the decision of a Full Bench.

Mr. *Wedderburn* for the Petitioner.

In special appeals under Act VIII of 1859 it was necessary to file copies of the judgments and decrees of the Court of First Instance. The corresponding sections of Act X of 1877 are Section 541 and Section 587. The law is clearly altered. If an appellant in second appeal is bound to file copies of the original decree he may lose his right of appeal by the delay of the Court which grants the copy, as Section 12 of the Limitation Act only saves the time requisite for obtaining a copy of the decree appealed against.

The utility in practice of filing in all second appeals a copy of the Munsif's decree is not obvious. There may be cases in which it is necessary. In this case a copy of the decree is not necessary [420] in any way for the purpose of deciding whether the appeal should be admitted.

If an appellant relies on the original judgment and decree in support of a second appeal, he may reasonably be called on by the Court to produce copies when applying to this Court to admit his second appeal. In other cases it is vexatious to insist on parties incurring useless expense and trouble.

The decision of the Court (TURNER J., INNES, KERNAN, KINDERSLEY, and MUTTUSAMI AYYAR, JJ.) was delivered by

Turner, C. J.—We are of opinion that the contention of the learned Counsel must be allowed that the provisions of Section 541, Civil Procedure Code, extended to second appeals by Section 587, do not require that any other documents should be presented with the appeal than a copy of the decree against which the appeal is presented and the judgment on which it is founded.

With this expression of our opinion we refer the application back to the Admission Court to be dealt with.

* Second Appeal No. 933 of 1881.