

## APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Kumaraswami Sastri, Mr. Justice Cargenven and Mr. Justice Pakenham Walsh.*

1929,  
October 22.

MAHARAJA OF VENKATAGIRI (APPELLANT IN APPEALS  
NOS. 109 TO 134 OF 1927, ETC., ON THE FILE OF THE  
DISTRICT COURT OF GUNTUR), PETITIONER.\*

*Consolidation of second appeals—Payment of one aggregate court-fee and filing one vakalatnama for all appeals by the appellant—Sec. 151, Civil Procedure Code—Sec. 4, Art. 10, Sch. II, Court-fees Act (VII of 1870).*

Where a landholder who filed several suits for rent against different sets of tenants failed in both the lower Courts and filed several second appeals in the High Court, held by the Full Bench that he could not be allowed under section 151, Civil Procedure Code to consolidate the second appeals, so as to enable him to pay one single Court-fee on the aggregate value of all the second appeals, or to prosecute them all on a single vakalatnama, as such a course would contravene Rules 1 and 3 of Order XLI, Civil Procedure Code, section 4 and Article 10 of Schedule II of the Court-fees Act and Rule 31 of the Appellate Side Rules of the High Court; *In re Perumal Nadar* (1927) 54 M.L.J., 595, overruled.

PETITION praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to consolidate the second appeals preferred to the High Court against the decrees of the District Court, Guntur, in Appeals Nos. 109 to 134, etc., of 1927 (Rent Suits Nos. 102, etc. of 1926, respectively on the file of the Court of the Deputy Collector of Ongole), for the purpose of filing a single vakalat and payment of Court-fees.

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\* Civil Miscellaneous Petition No. 2016 of 1929.

Rule 31 of the Appellate Side Rules of the High Court is as follows:—

“Where a person is a party in two or more connected suits he shall execute a separate vakalatnama in each case notwithstanding that he may retain the same pleader in all.”

This petition coming on for orders, the Court (PAKENHAM WALSH, J.) made the following—

### ORDER :—

1. The plaintiff filed 118 suits against 118 sets of tenants for recovery of arrears of rent under section 77 of the Estates Land Act. The suits were dismissed and he filed 118 appeals from these decrees. The appeals were also dismissed. He now seeks to prefer second appeals to the High Court from the decrees of the lower appellate Court and has put in this application under section 151, Code of Civil Procedure, to consolidate them so that he may file

- (1) a single memorandum of appeal,
- (2) a single vakalatnama,
- (3) only one Court-fee on the aggregate value of the 118 second appeals.

2. The questions that arise are, should he be allowed to consolidate the appeals and if so how many memoranda of appeal, how many vakalatnamas and what sum as Court-fees must he pay.

3. The power of consolidation is an inherent power of the Court and there is no special section or rule relating to it, but it must of course be exercised in accordance with the provisions of law.

4. In the present case the petitioner did not file any application in the Court of First Instance or in the appellate Court to consolidate the suits or appeals. Obviously, he could not do so in the trial Court. The defendants were all different and the causes of action entirely distinct. I may perhaps mention that in paragraph 2 of the lower appellate Court's judgment the word “consolidate” is clearly not used in the sense in which we are now considering it. It appears that the appellant himself raised as an objection before the lower appellate Court that he was prejudiced in the trial Court by the “consolidation” of the suits. What was clearly meant

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was "the joint trial of the suits" which is a different thing. The suits obviously could not be and were not consolidated in the Court of First Instance. Still it is to be noted that he made even their joint trial a grievance, while he now asks to consolidate the second appeals.

5. I am unable to see how in a case like the present, the appeals can be consolidated without offending against Order I, Rule 3 of the Civil Procedure Code. The matter involves a considerable question of revenue, but unfortunately as the learned Advocate-General appears for the appellant, he cannot be called to represent the Government. However, in several of the cases cited the objections raised by Government have been considered. They are materially the same in all the cases and as I do not think the petitioner has made out a case for consolidation of the appeals, I do not consider it necessary to call on some one other than the Advocate-General to represent the Government. The petitioner quotes *Kashi Prosad Singh v. Secretary of State for India*(1) and *Vengu Naidu v. Deputy Collector of Madura Division*(2), but his chief reliance is on a recent case, *In re Perumal Nadar*(3), in which consolidation was allowed by DEVADOSS, J. The latter is the only case which I think is really on all fours with the present. 29 Calc., 140 was concerned with a land acquisition and the parties were the same in all cases. The plots of land were contiguous to each other. There were different tenants but they were not parties to the appeal. The appeals were allowed to be consolidated. 34 M.L.J., 279 was also a case of land acquisition. Though several plots of land were acquired from the appellants, only one notice was served on them under section 12 (2) and they made only one reference to the Collector to refer their objection to award. There was, therefore, in the words of the learned Judge "only one award, the correctness of which had to be determined by the District Court." Here there was clearly one cause of action between the same parties. That case bears no resemblance to the present.

Turning now to 54 M.L.J., 595 I have no doubt that it is on all fours with the present case, for it was also a request to consolidate appeals arising out of rent suits against different tenants.

(1) (1901) I.L.R., 29 Calc., 140.

(2) (1916) 34 M.L.J., 279.

(3) (1927) 54 M.L.J., 595.

The learned Judge quotes *In the matter of the Falls of Ettrick*(1). This case was also referred to in 34 M.L.J., 279. It was a case of one steamer being salvaged by two tugs but not simultaneously. Three separate salvage claims were brought. What was held there was that the claims should not be consolidated against the will of the promovents and they were in fact not consolidated. There is a note at the end of the case that the Court of Admiralty has reverted to the old practice of allowing appeals to be consolidated when it may appear convenient to do so without regard to the consent of the parties.

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This case has little bearing on the matter before me. The learned Judge then quotes 34 M.L.J., 279, in which as I have pointed out there was only one cause of action and the parties were the same. He devotes most of the judgment to discussing whether if consolidation is allowed one vakalatnama is sufficient, but the only discussion that I can find as to the ground on which the consolidation is allowed is in the following sentences:—  
“ In these two batches the trials were only two and there were only two judgments. The appeals arise out of rent suits and the questions at issue are common to all the tenants. The landlord is only one person.”

With due respect I find myself unable to agree with my learned brother that these facts enable the appeals to be consolidated. The causes of action and the parties are entirely different. If the appeals can be consolidated, why could not the original suits have been? Yet that would have clearly contravened Order I, Rule 3 of the Civil Procedure Code.

I find that the same learned Judge, PHILLIPS, J., who allowed the consolidation in 34 M.L.J., 279 refused it in Stamp Register Nos. 24378, 24380 of 1927 and 828 of 1928. These were two partition suits and in my opinion much stronger cases for allowing consolidation than the present.

DEVADOSS, J., quotes C.M.P. No. 1336 of 1925 in which WALLACE, J., ordered consolidation of appeals. I have sent for that Civil Miscellaneous Petition. The appeals appear to have been concerned with the bringing of the holdings of a number of ryots to sale, and as far as I can gather, the appeals were preferred by the tenants. They pleaded that the sums for which the sales were held were very small, such as Re. 1, Rs. 1½, etc., and that separate second appeals would involve enormous expense. No

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notice was sent to the Government though the Revenue involved was considerable and no reason for allowing consolidation is given in the order.

With great respect to my learned brother WALLACE, J., if the considerations urged by the tenants are applicable to the consolidation of appeals, I fail to see why they are not applicable to the consolidation of suits for petty sums of rent in the first instance.

It is quite clear to my mind that no Court could allow a landlord to bring a consolidated rent suit against a number of tenants holding separately merely because the rent demanded from each was small and because a common question was involved in all the suits, nor can I see how such tenants can bring a consolidated appeal if the suits go against them. After all, they can always file a test appeal. If it succeeds they will get their costs when they win the other appeals. I have only been able to find one other order of consolidation passed by JACKSON, J., in C.M.P. No. 905 of 1929. This was a land acquisition case and so far as I can gather the parties were the same and the only question involved was the apportionment of the compensation awarded. It is probable that this case resembled one or other of the two other land acquisition cases referred to above. The order was passed without notice to Government and no reasons for it are assigned but *prima facie* it is not a parallel case to the present. I am much influenced by the fact that though the filing of large batches of suits against tenants and the disposal of them by a common judgment and by a common first and second appellate judgment are very common, I have been able to find no case except *In re Perumal Nadar*(1), where consolidation of appeals in such cases was allowed by the High Court. C.M.P. No. 905 of 1929 referred to above may be a parallel instance but there consolidation was allowed without notice to the Government and no reasons for the order are given.

The following cases in other Courts where consolidation was allowed appear to me to bear out that the parties and causes of action must be the same if consolidation is to be allowed. *Lakshman Sahu v. Sheikh Abdul Karim*(2). A common declaration was asked in a single suit against a number of tenants. Even there, it was held that a Court-fee should have been paid in respect of each of the sets of tenants. *Bhagwan Singh v.*

(1) (1927) 54 M.L.J., 595.

(2) (1919) 4 Pat. L.J., 299.

*Bharani Das Bhagwan Das*(1).• This dealt with an appeal to the King in Council (Order XLV). The parties were the same and the question at issue the same but there were two judgments. Held that though the valuation in one suit was below Rs. 10,000, the appeals might be consolidated under Order XLV (4) so as to get a judgment covering the decrees in both suits. *Moosa Soleman Saleji v. Secretary of State*(2). Held that where the matter for consideration was the same and the parties the same, the appeals might be consolidated but even then, Court-fees must be paid separately for each.

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I am unable therefore to accede to the request to consolidate the appeals, and that being so, the question of a single vakalatnama and a single Court-fee on the aggregate value of all the suits does not arise, though on the latter point see *Moosa Soleman Saleji v. Secretary of State*(2), just quoted. Having regard to the importance of this matter and that I differ from my learned brother DEVADOSS, J., I would refer the matter to a bench of two Judges.

This petition coming on for orders in pursuance of the above order, the Court (KUMARASWAMI SASTRI and PAKENHAM WALSH, JJ.) made the following

#### ORDER OF REFERENCE TO A FULL BENCH :—

This petition raises the important question as to the consolidation of second appeals so as to enable one Court-fee on the consolidated value being paid and also one vakalat being filed. The matter first came before one of us (PAKENHAM WALSH, J.) and his order referring the matter to a Bench refers to all the authorities on the subject and the difficulty which my learned brother finds in consolidation. We think the question is one of considerable importance and arises frequently and in view of the conflict of authority and the fact that it is necessary to have an authoritative decision of a Full Bench on the question, we refer the following question for decision :—

“Whether the Court has inherent jurisdiction to consolidate appeals in cases disposed of by a single judgment of the lower Court so as to enable the appellant to pay Court-fee on the value of the consolidated appeals and file only one vakalat.”

(1) (1920) I.L.R., 43 All., 223.

(2) (1929) A.I.R., (Calc.), 185.

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ON THIS REFERENCE—

*M. Venkatasubbayya* for petitioner.—The Court has inherent power to consolidate under section 151, Civil Procedure Code, whenever there is a common question of law or fact and there is one trial and one judgment: see Order I, Rules 1 and 3, Civil Procedure Code, and section 17 of the Court-fees Act; *Kashi Prasad Singh v. Secretary of State for India*(1), *Fink v. Secretary of State for India*(2), *Vengu Naidu v. Deputy Collector of Madura Division*(3), *In re Perumal Nadar*(4), *Enayetoollah v. Radhu Churn Roy*(5), *Hukum Chand Boid v. Kumalanand Singh*(6), *Narayan Fithal v. Jankibai*(7), *Govindaraja Mudaliar v. Alagappa Thambiram*(8), and *Ramendra Nath Roy v. Brajendra Nath Dass*(9).

*Advocate-General (A. Krishnaswami Ayyar)* followed. The power of consolidation is for avoiding waste of time and money; see Order XLIX, Rule 8 of the Judicature Act and Supreme Court Rules, *Martin v. Martin & Co.*(10), *Stone v. Press Association, Ltd.*(11), *The Creta Forest*(12), *Nanda Kishore Singh v. Ram Golam Sahu*(13). After consolidation, the hearing is one; so one vakalat will do for all. Rule 31 of the Appellate Side Rules is consistent with this. If consolidation is allowed it relates back to date of filing; the appellant can file all the appeals and the petition for consolidation at the same time; see also Stamp Register No. 1336 of 1925.

*Government Pleader (P. Venkataramana Rao)*.—Most of the cases relied on are cases under the Land Acquisition Act concerning only one award. There is no power of consolidation inherent in a Court, except for the purpose of hearing and there is no power to consolidate for reducing the Court-fees, whether for memoranda of appeals or vakalats. According to Order XLI, Rules 1 and 3, there must be a separate memorandum of appeal in each appeal and each should be signed and presented either by the appellant or his pleader duly authorized; see also Rule 31 of the Appellate Side Rules of the High Court. Section 4 of the Court-fees Act requires separate

(1) (1901) I.L.R., 29 Cal., 149.

(3) (1916) 34 M.L.J., 279.

(5) (1871) 15 W.R., 395.

(8) (1926) I.L.R., 49 Mad., 836.

(10) [1897] 1 Q.B., 429.

(12) [1920] P. 111

(2) (1907) I.L.R., 34 Cal., 599.

(4) (1927) 54 M.L.J., 595.

(6) (1905) I.L.R., 33 Cal., 927.

(7) (1915) I.L.R., 39 Bom., 604 (F.B.).

(9) (1917) I.L.R., 45 Cal., 111.

(11) [1897] 2 Q.B., 159.

(13) (1912) I.L.R., 40 Cal., 955.

Court-fees for each appeal; only if all these are complied with, there will be proper presentation of the appeal; otherwise the Court cannot take cognizance of it, *Lakhi Narain v. Kirthibas Das*(1), *Shib Dayal v. Meharban*(2), *Rakhai Chandra Tewari v. Manmotho Nath Mitter*(3), *Mossa Soleman Saleji v. Secretary of State for India in Council*(4).

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### OPINION.

KUMARASWAMI SASTRI, J.—The Maharaja of Venkataragi who is the petitioner filed separate suits against his tenants for rent on the ground that they raised a second crop. The tenants defended the suits on the ground that they did not raise a second crop and that the suit was barred by limitation. The suits were tried together and the witnesses examined were treated as witnesses in all the suits. There was one judgment but separate decrees were passed. Separate appeals have been filed in the High Court. The present application is to consolidate the appeals so filed for the purpose of (1) treating the Court-fee payable as the Court-fee on the entire value of the suits and (2) filing only one vakalat in all the suits, and the question is whether such consolidation is permissible.

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As to the inherent power of the Court to consolidate suits or appeals, there can be no question. *Vengu Naidu v. Deputy Collector of Madura Division*(5), *Narayan Vithal v. Jankibai*(6), *Kalichand Dutt v. Surya Kumar Mondal*(7), *Dharamdas v. Dharamdas*(8), *Kasi Prosad Singh v. Secretary of State for India*(9). But the point which we have to determine is whether a consolidation can be effected which will conflict with the specific provisions of the Court-fees Act and

(1) (1913) 18 C.L.J., 133.

(2) (1920) I.L.R., 43 All., 56.

(3) (1910) 15 C.W.N., 994.

(4) (1929) A.I.R. (Cal.), 135.

(5) (1916) 34 M.L.J., 279.

(6) (1915) I.L.R., 30 Bom., 601.

(7) (1912) 17 Cal. W.N., 526.

(8) (1917) 40 I.C., 132.

(9) (1901) I.L.R., 29 Cal., 140.



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the Civil Procedure Code, as to the filing of appeals against the decrees of the lower Courts.

Consolidation of suits or appeals may be for various purposes and the main object of consolidation is to prevent unnecessary delay in the disposal of suits or appeals and also to prevent unnecessary costs being incurred, *Martin v. Martin & Co.*(1) and *The Orcto Forest*(2). The costs saved are costs as between party and party and cannot mean stamp duty payable to the Crown under specific enactments.

Section 4 of the Court-fees Act enacts that no document of any kind specified in the first or second schedule to the Act as chargeable with fees shall be filed, exhibited or recorded in, or shall be received by, any of the High Courts in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence or in the exercise of its jurisdiction as a Court of reference or revision, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the above schedules as the proper fee for such document.

Section 6 contains a similar provision as regards Court-fee payable in respect of suits or appeals in the Subordinate Courts.

Where therefore there is nothing either in the Code or in any other enactment to prevent this course from being adopted, Courts have power to consolidate, but I do not think that such power can be extended in a manner to conflict with the provisions of any enactment like the Court-fees Act or the express provisions of the Civil Procedure Code as regards the filing of appeals.

It seems to me that consolidation can only be asked when there are suits or appeals properly instituted and on

(1) [1897] 1.Q.B., 429.

(2) [1920] P. 111.

the file. Where the legislature lays down certain requirements necessary to be satisfied before the Court can be seized of the suit or appeal, e.g., a plaint or memorandum of appeal on a proper stamp, it is difficult to see how an order can be passed consolidating suits or appeals for the purpose of getting over the stamp duty payable.

There are two classes of cases in which consolidation can be ordered. One relates to cases where although one suit could have been filed against several defendants in the lower Court, the party has not chosen to do so but has filed separate suits, and the other relates to cases where although one suit could not have been filed, the questions for determination are the same, and it will save costs and expenses to consolidate the suits, either in the lower Court or in appeal. In the former case, the provisions of section 17 of the Court-fees Act are imperative because in the case of a suit embracing two or more distinct subjects, the plaint or memorandum of appeal should be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing each of such subjects would be liable under the Act. In cases where one suit could not have been filed, it is difficult to see how the aggregate value of the subject-matter in all the suits can be treated as the amount on which Court-fee has to be paid. In cases which do not fall under section 17, there is no question of treating the aggregate value of the various suits or appeals as one for the purpose of Court-fee, as the provisions of the Court-fees Act are specific and state that each of such suits should bear the Court-fee prescribed by the schedules to the Act.

Reference has been made to *Kashi Prosad Singh v. Secretary of State for India*(1). It was a case under

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(1) (1901) I.L.B., 29 Calc., 140.

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the Land Acquisition Act and it was held that as the parties were the same in all the cases and the plots of land were contiguous to one another and formed part of an estate, although in the occupation of different tenants who were not parties to the appeals, the appeals should be consolidated and the Court-fee paid upon the value of the consolidated appeals under section 17 of the Court-fees Act subject to the maximum of Rs. 3,000. The maximum of Rs. 3,000 has, however, now been omitted and Court-fee has to be paid *ad valorem* without any maximum so that consolidation cannot in any view affect the Court-fee.

In *Vengu Naidu v. Deputy Collector of Madura Division*(1), there was an application to consolidate several appeals filed from the awards passed by the District Judge of Madura on reference made to him by the Land Acquisition Officer. The District Judge treated all the references as forty-seven separate petitions and passed a separate award on each of them although they were all tried together and disposed of in one judgment. PHILLIPS, J., held that the power of consolidation was inherent in the Court although no express power was conferred by the Code and followed *Emayetoollah v. Radha Churn Roy*(2), *Kashi Prosad Singh v. Secretary of State for India*(3), *Pink v. The Secretary of State for India*(4), *In re Doratji Cursetji*(5), and *In the matter of the Falls of Ettrick*(6). The learned Judge considered the objection that consolidation would affect the revenue and says the fact that only one notice was sent under section 12 and one objection filed under section 18 *prima facie* indicated that there was only one award the correctness of which had to be determined by the

(1) (1916) 34 M.L.J., 279,  
(3) (1901) I.L.R., 29 Cal., 140.  
(5) (1907) 10 Bom., L.R., 675.

(2) (1871) 15 W.R., 395.  
(4) (1907) I.L.R., 34 Cal., 599  
(6) (1894) I.L.R., 22 Cal., 511.

District Court. He was of opinion that the fact that the award contained several items did not make any difference.

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I do not think that Land Acquisition cases afford any safe guide as the considerations which exist in such cases and which the learned Judge points out are absent in ordinary suits and it is doubtful whether having regard to the amendment of the Land Acquisition Act in 1921 (section 26, clause (2) of the Act) the same considerations can now exist.

I may also point out that the same learned Judge refused consolidation in S.R. No. 828 of 1928 (Civil Miscellaneous Petition). There were two suits filed for partition in the District Munsif's Court and second appeals were filed. An application was put in that the second appeals should be consolidated on the ground that the two suits must be deemed to be one suit and consolidated for purposes of appeal. The learned Judge refused consolidation on the ground that the suits did not relate to the same subject matter.

I now come to the question of consolidation for the purpose of filing one vakalat in all the appeals.

Order XLI, Rule 1, of the Civil Procedure Code provides that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader.

Rule 3 provides that if the memorandum is not drawn up in the manner prescribed it may be rejected or be returned for the purpose of being amended.

So, before there could be a valid presentation of an appeal, the memorandum must be signed by the appellant or his pleader. If a pleader is employed, article 10 of Schedule II to the Court-fees Act prescribes the fee to be paid on the vakalat.

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Having regard to the provisions of the Civil Procedure Code and the Court-fees Act, there can be little doubt that every appeal presented if not signed by the party should be signed by a pleader who has authority to act and such authority has to be stamped under the provisions of the Court-fees Act.

Rule 31 of the Appellate Side Rules also provides that where a person is a party to two or more connected suits he shall execute a separate vakalatnama in each, notwithstanding he may retain the same pleader in all the suits.

In *In re Perumal Nadar*(1) the question as to consolidation arose as regards vakalats. There were several second appeals filed. An application was made to consolidate thirty-eight second appeals into one batch and fifty-two into another batch for the purpose of filing one vakalatnama in each of the batches. The Government Pleader contended that separate vakalatnamas ought to be filed. DEVADOSS, J., held that only one vakalatnama in each batch need be filed. The learned Judge was of opinion that the very object of consolidation was to save the party unnecessary expense and the Court unnecessary trouble, that where the Court allows consolidation it allows the parties to the appeals to treat the consolidated appeals as one and that article 10 of Schedule II to the Court-fees Act does not stand in the way of consolidation.

Dealing with the argument based on Order XLI, Rule 1, which requires a separate memorandum of appeal, the learned Judge was of opinion that it does not follow that because a separate memorandum ought to be filed in each case the engagement of the pleader should be separate. He, however, held that the production of one

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(1) (1927) 54 M.L.J., 535.

vakalatnama in different cases does not at all obviate the necessity of producing the decree in each case though the Court may dispense with the production of copies of judgments in each case.

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With all respect, I am unable to agree with the conclusion. It is difficult to see how the requisites of the Civil Procedure Code and the Court-fees Act, the compliance with which is a condition precedent to the Court being seized of the appeals, can be got over by an order of consolidation. Again, Rule 31 of the Appellate Side Rules which are framed under statutory powers expressly requires separate vakalatnamas.

I would answer the reference in the negative.

CURGENVEN, J.—I agree.

PAKENHAM WALSH, J.—This matter came in the first instance before me and in my referring order I considered the cases quoted in support of consolidation and specially the judgment of DAVADOSS, J., reported in *In re Perumal Nadar*(1). It was because I doubted the correctness of that decision that I made the reference which has finally come before a Bench of three Judges. I have given in my Order of Reference my reasons for doubting that decision and for distinguishing it from the salvage case and the Land Acquisition cases quoted in support of it. I entirely agree with the reasons given by my learned brother Sir KUMARASWAMI SASTRI and have nothing to add.

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Deficient Court-fee should be paid in one month. Separate vakalats will be filed in one month.

N.R.