

translation of the Persian list given to him by the accused. A comparison of the two documents makes it obvious that the appellant misrepresented the contents of the Persian list, because in Mr. Augustin's list there was a large excess in the alleged prices. The case is overwhelming, and I must dismiss the appeal.

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*Conviction affirmed.*

## FULL BENCH.

*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

1886  
February 13.

JIWAN ALI BEG (APPLICANT) v. BASA MAL AND OTHERS (OPPOSITE PARTIES). \*

*Civil Procedure Code, s. 549—Practice—Appeal—Security for costs—Poverty of appellant.*

*Held by the Full Bench (TYRELL, J., dubitante), without laying down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself, and without reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs.*

THIS was an application by the respondent in First Appeal No. 133 of 1885 for security for costs which came on for hearing before Straight, J., who made the following order of reference to the Full Bench:—

“This is an application by the respondent in an appeal to this Court, that the appellant, who was unsuccessful in the Court below, be ordered to give security for the costs incurred, not only in that Court, but in this appeal. The allegation of the respondent in his petition, and vouched by affidavits, is that the appellant is a person without means, and indeed I understand the appellant's counsel to admit that, so far as he is aware, except the property which is the subject-matter of the present suit, and which was hypothecated in the bond sued upon, the appellant possesses no property whatever. Under these circumstances, the respondent urges that the appellant be required to furnish security. It has been ruled on three occasions in this Court—twice by myself (1)

\* Miscellaneous Application in F. A. No. 133 of 1885.

(1) *Dalip Singh v. Azim Ali Khan and Bachman v. Bachman*, Weekly Notes, 1884, pp. 99 and 103 respectively.

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JIWAN ALI  
BEG  
v.  
BASA MAL.

and once by Mr. Justice Mahmood (1)—that mere poverty alone is not a sufficient ground for requiring security for costs from an appellant, and I have certainly been under the impression that that was the recognised rule in the English Courts, which also has been followed by the Bombay High Court in *Maneckji Limji Mancherji v. Goolbai* (2). Mr. Hill has, however, called my attention to two rulings of the Court of Appeal in England, which seem at least to modify the old decisions, and to show that poverty or insolvency is a good ground for requiring security for costs from the appellant. As the question is one of practice, and of considerable importance to those engaged in appeals in this Court, I refer it to the Full Bench for determination”

Mr. C. H. Hill, for the petitioner, referred to *Harlock v. Ashberry* (3) and *Farrer v. Lavy, Hartland & Co.* (4).

Mr. T. Conlan and Pandit *Ajudhia Nath*, for the opposite parties.

STRAIGHT, J.—We are unable to lay down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed; but we may go so far as to say that the mere fact of the poverty of an appellant, standing by itself, and without reference to any of the general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs.

PETHERAM, C. J., and OLDFIELD and BRODHURST, JJ., concurred.

TYRRELL, J.—S. 549 of the Code prescribes no conditions which absolutely entitle a respondent to an order under the terms of that section requiring the appellant to furnish security for the costs of the appeal; and I should hesitate to import into the provisions of the section any rule either way upon the question whether or not the poverty of an appellant by itself justifies an order requiring him to furnish security for costs.

(1) *Lokhmi Chand v. Gatto Bai*, I. L. R., 7 All. 542. (2) I. L. R., 3 Bom. 227.  
(3) I. R., 19 Ch. D. 84.  
(4) I. R., 23 Ch. D. 482.