

it will not have any force *in foro conscientie*. . . .”

One may reasonably infer from the passage above quoted that if an acknowledgment of *talak* is made by the husband the divorce will be held to take effect at least from the date upon which the acknowledgment is made.

Learned counsel for the plaintiff was unable to refer us to any authority to the contrary.

We are constrained, in the circumstances, to hold that the evidence upon the record establishes that the plaintiff was divorced by her husband in the year 1915. This finding concludes the case against the plaintiff.

In the result the appeal is allowed, the order of the learned Civil Judge is set aside and the suit is dismissed. Parties will bear their own costs. The cross-objection is dismissed.

Before Sir John Thom, Chief Justice, and Mr. Justice  
Ganga Nath

RAM BIJAI PRASAD (PLAINTIFF) v. RAM BHANJAN SINGH  
(DEFENDANT)\*

*Agra Tenancy Act (Local Act III of 1926), section 264; second schedule, list 2, serial No. 14—Copy of first court judgment must be filed in second appeals—Jurisdiction—High Court can not, by amending order XLII, rule 1, affect the provisions of the Agra Tenancy Act—“Second appeal”, meaning of.*

In accordance with the provisions of section 264, and serial No. 14 of list 2 of the second schedule, of the Agra Tenancy Act every memorandum of second appeal must be accompanied by a copy of the judgment of the first court.

The proviso introduced by the High Court in order XLII, rule 1 of the Civil Procedure Code, to the effect that it shall not be necessary in a second appeal to file a copy of the judgment of the first court, did not form part of the original rule. The High Court has, no doubt, jurisdiction to amend the rules in the first schedule of the Civil Procedure Code; it has no

\*Second Appeal No. 1404 of 1936, from a decree of Radha Kishan, District Judge of Ghazipur, dated the 2nd of March, 1936, confirming a decree of N. B. Ranade, Assistant Collector first class of Ballia, dated the 10th of June, 1935.

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jurisdiction, however, to effect, by way of a rule, an amendment to the provisions of the Agra Tenancy Act.

The expression "second appeal" in serial No. 14 of list 2 of the second schedule of the Agra Tenancy Act has no special meaning in the sense of appeals to the Board of Revenue. The provisions of section 264, and serial No. 14 of list 2 of the second schedule, of the Agra Tenancy Act clearly mean that in all second appeals filed in a suit under the Agra Tenancy Act the memorandum of appeal must be accompanied by a copy of the judgment of the first court.

Mr. *Haribans Sahai*, for the appellant.

Mr. *A. P. Pandey*, for the respondent.

THOM, C. J., and GANGA NATH, J.:—This is a plaintiff's appeal arising out of a suit in which the plaintiff sought to recover from the defendant the sum of Rs.55-14-7 on account of revenue alleged to have been realised from him in respect of the defendant's share of revenue for the year 1928, plus Rs.11-12-0 interest, Rs.67-10-7 in all.

A preliminary objection to the appeal has been taken on behalf of the defendant respondent. It has been urged that the appeal should be dismissed upon the ground that the memorandum of appeal was not accompanied by a copy of the judgment of the first court, in accordance with the provisions of section 264 and serial No. 14 of list 2, of the second schedule of the Agra Tenancy Act.

It is a matter of admission that when the appeal was filed it was not accompanied by a copy of the judgment of the original court, that is, the judgment of the Assistant Collector of the first class. It was maintained, in these circumstances, for the respondent that the appeal fell to be dismissed, and that a copy of the judgment could not now be filed as the appeal was beyond time.

Section 264 of the Agra Tenancy Act directs that the provisions of the Civil Procedure Code shall apply to all suits and other proceedings under the Act, subject to the modifications contained in list 2 of the second schedule.

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Serial No. 14 of list 2 of the second schedule directs that in addition to the copies required by order XLI, rule 1, read with order XLII of the Code of Civil Procedure, every memorandum of second appeal shall be accompanied by a copy of the judgment of the original court. Order XLII, rule 1 enjoins that "the rules of order XLI shall apply, so far as may be, to appeals from appellate decrees", subject to the following provision: "It shall not be necessary for an appellant in a second appeal to produce a copy of the judgment of the court of first instance, or any judgment other than the judgment on which the decree appealed against may be founded, and the record of the case shall be sent for at the expense of the appellant." The proviso did not form part of the original rule. It was introduced as an amendment to the rule by this Court. The Court has jurisdiction to amend the rules in the first schedule of the Code of Civil Procedure. It has no jurisdiction, however, to effect, by way of a rule, an amendment to the provisions of the Agra Tenancy Act. Serial No. 14 of list 2 of the second schedule of the Agra Tenancy Act stands, therefore, unaffected by the proviso introduced into rule 1 of order XLII.

It was contended for the appellant that the expression "second appeal" in serial No. 14 of list 2 of the second schedule had a special meaning and referred to appeals to the Board of Revenue. It was urged in support of this contention that section 246 of the Tenancy Act of 1926 is differently worded from the corresponding section of the earlier Act of 1901. In the latter section the expression used was "second appeal". In section 246 of the 1926 Act the word "second" has been dropped, and under the provisions of the section an appeal shall lie to the High Court from the appellate decree of a District Judge, whether that decree be passed in first or second appeal. In our judgment, the fact of this amendment introduced into the 1926 Act does not support the plaintiff's contention. The amendment was intended

merely to make it plain that an appeal should lie to the High Court on the grounds specified in section 100 of the Code of Civil Procedure, whether against a first appellate decree or second appellate decree. Further-  
 more, we would observe that serial No. 14 of list 2 of the second schedule refers specifically to order XLII. Order XLII is headed "Appeals from appellate decrees", and it is not in doubt that this order covers second appeals.

In our judgment, the provisions of section 264 and serial No. 14 of list 2 of the second schedule of the Agra Tenancy Act are perfectly plain and admit of no doubt whatever. If a party desires to file a second appeal in a suit under the Agra Tenancy Act, then his memorandum of appeal must be accompanied by a copy of the judgment of the original court.

We have been informed that many such appeals have been admitted and disposed of by this Court where the memorandum of appeal has not been accompanied by a copy of the judgment of the original court. In these circumstances learned counsel invited the court to extend to the plaintiff the benefits of the provisions of section 5 of the Limitation Act. We are satisfied that this is not a case in which any such indulgence should be extended to the appellant. It appears that there are no merits in the appeal. The value of the suit is less than Rs.200, and in these circumstances no appeal lay to the District Judge in view of the provisions of section 242 of the Agra Tenancy Act. Learned counsel for the plaintiff contended that the appeal to the District Judge was competent under sub-section (d) of this section. Under sub-section (d), an appeal in any suit under sections 221, 222, 223, 224, 226 and 227 is competent if the amount of revenue annually payable has been in issue in the court of first instance and is in issue in appeal. We have examined the pleadings of the parties, and we are satisfied that neither the liability nor the amount of

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the liability of the parties in respect of land revenue was in issue either in the trial court or before the District Judge. The only question in issue was whether, in fact, the plaintiff had paid a sum in the name of land revenue which the defendant should have paid.

In the result the appeal is accordingly dismissed with costs.

### FULL BENCH

*Before Mr. Justice Iqbal Ahmad, Mr. Justice Allsop and  
 Mr. Justice Ismail*

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MEWA RAM (DEFENDANT) v. MUNICIPAL BOARD,  
 MUTTRA (PLAINTIFF)\*

*Municipalities Act (Local Act II of 1916), sections 293 and 298, list I, heads H(b), J(d)—“Regulation of traffic in the streets”—Bye-law prohibiting the halting of cars and lorries plying for hire in public streets except at the stands fixed thereon for the purpose—Bye-law fixing fees for the use of such stands by cars, lorries and hackney carriages—Bye-laws not ultra vires—Transfer by Municipal Board of the right of collecting such fees—Validity—Municipalities Act, section 6—Hackney Carriage Act (XIV of 1879), section 6(c) and (i)—Motor Vehicles Act (VIII of 1914), section 11, rule 95—Conflict of laws—Bye-law, unreasonableness.*

The Municipal Board of Muttra, acting under sections 293 and 298, list I, heads H(b) and J(d), of the Municipalities Act, framed certain bye-laws for the regulation of stands for motor vehicles and hackney carriages within the Muttra municipality. By bye-law No. 1 seven specified places within municipal limits were fixed as stands for motor cars, lorries and hackney carriages, and bye-law No. 2 enjoined that no motor car or lorry plying for hire shall be allowed to halt or run for the purpose of searching passengers at any public street or place other than the stands fixed for the purpose. Bye-law No. 4 provided that the places fixed as stands by bye-law No. 1

\*Second Appeal No. 1462 of 1935 from a decree of Kali Das Panerji, Civil Judge of Muttra; dated the 4th of March, 1935, modifying a decree of Fareed Alam Chishti, Munsif of Muttra, dated the 26th of October, 1934.