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consolidating two suits. It is not contended that the learned Subordinate Judge had not jurisdiction under section 151, Code of Civil Procedure, to consolidate the suits; and that he has such jurisdiction has been held not only in this Court but in other High Courts in India, and I may refer particularly to the case of *Kali Charan Dutt* v. *Suraj Kumar Mondal* (1), where this matter was very fully considered. It is contended, however, that the jurisdiction under section 151 cannot be exercised without the consent of parties. No authority has been adduced in support of this contention and I am unable to accept it. It seems clear that if the court has jurisdiction to consolidate under section 151 it must have that jurisdiction without the consent of parties. If this were not so it would not have inherent jurisdiction to consolidate at all, for consent of parties cannot confer a jurisdiction that does not exist.

It is not for us in revision to consider whether in this particular case consolidation should have been allowed or not, but I may remark that, in my opinion, the court has exercised its jurisdiction wisely. I would accordingly dismiss this application with costs.

DAS, J.—I agree.

*Appeal dismissed.*

## LETTERS PATENT.

*Before Dawson Miller, C. J. and Coutts, J.*

1922.

*May, 19.*

RIJAN THAKUR

*v.*

CHARITAR THAKUR.*

*Appeal—copy of judgment, necessity of filing.*

Where separate appeals are preferred in the High Court by several appellants from one decision each memorandum of

* Civil Review No. 3 of 1922.

(1) (1912-13) 17 Cal. W. N. 526.

appeal must be accompanied by a copy of the judgment unless the court dispenses with a copy of the judgment in any of the appeals.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

*Nirsu Narayan Sinha*, for the applicant.

DAWSON MILLER, C. J.—This is an application asking us to review an order made on the 1st December last rejecting the petitioner's memorandum of appeal. It appears that there were four appeals presented to this Court from the same decision. The appellants in each case were different. The memoranda of appeal were presented in each case on the same day, *viz.*, the 26th October, 1921, but in one case only was a copy of the judgment appealed against filed together with the memorandum of appeal. At the same time in the other three cases a petition was presented asking that the copy of the judgment might be dispensed with in those three cases. Under the rules of the Civil Procedure Code it is provided by Order XL, rule 1, that the memorandum of appeal shall be accompanied by a copy of the decree appealed from and, unless the appellate court dispenses therewith, of the judgment on which it is founded. It is therefore quite clear that before the memorandum can be properly presented it must be accompanied by a copy of the decree in any event and a copy of the judgment appealed against unless for some reason or other the appellate court dispenses with the necessity of filing the judgment. So far as this court is concerned it has always been the practice that where there are several appeals from the same judgment by the same appellant he should be permitted to file one copy only of the judgment with the memorandum in one of his appeals and that there need be no further copy accompanying the memorandum in the other cases, but where there are different appellants we have always insisted upon the rules being complied with in their entirety, there being no obvious reason why the court should dispense with the necessity of filing a copy of the judgment with the memorandum of appeal in each

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case. By the rules of this Court it is provided in Chapter VII, rule 4, that when the same appellant wishes to prefer more than one appeal against a judgment governing more than one case the Registrar may dispense with the production of more than one copy of the judgment, and it has been the practice of the Registrar in such cases to pass an order dispensing with a copy of the judgment except in one of the appeals, where there are more than one, presented by the same appellant. That rule, I cannot help thinking, is well known to practitioners in this Court. On the 27th June, 1921, an application was made and came before a Bench asking the Courts to dispense with a copy of the judgment in one or more of several appeals arising out of the same judgment where the appellants were different and on that occasion we distinctly said, in reply to an argument on behalf of the applicant, that even in cases where there were more than one appellant appealing from the same judgment it was not necessary for more than one copy of the judgment to be presented in respect of all the appeals, that there is not and never has been any practice to this effect in this Court. The learned Vakil applying on behalf of the petitioner to-day states that in certain cases in this Court he has been granted the indulgence even where the appellants were not the same. No cases however have been brought to our notice in which that has been done and even assuming that he may on one or possibly more than one occasion have obtained that indulgence which clearly he was not entitled to, unless there were some special circumstances of which we know nothing, that does not mean that there ever has been any such practice in this Court. The practice is clearly indicated in our own rules and it arises out of the rules laid down in the Civil Procedure Code and so far as my experience goes it has been invariably followed.

What happened in the present case is this: in one of the appeals as already stated the decree and judgment accompanied the memorandum of appeal. In the other three cases no judgment was attached to

the memorandum of appeal. The memorandum of appeal in each of the other cases was dated the 26th October, 1921, the last day of the limitation period, and no steps were taken before the 29th November, 1921, to file a copy of the judgment. When the matter came before the Registrar, on application made to him, he referred to the practice and the rulings of this Court and said that separate copies of the judgment ought to have been filed. He considered that the memorandum of appeal was out of time and he referred the matter to the Bench for orders. That was on the 29th November. On the 1st December the matter came before the Bench and even then no steps had been taken to obtain the judgment and to file it with the memorandum. I quite agree that under the Civil Procedure Code the appellate court has power to dispense with the filing of the judgment. But the ground upon which this Court will dispense with the judgment has been clearly laid down and is, I cannot help thinking, fully understood and appreciated by the practitioners of this Court. Accordingly when the matter came before us on the 1st December we rejected the appellant's memorandum of appeal.

We are asked to review that order and to restore the case. It appears to me that, in view of the practice which has continued, the appellant is not entitled to any indulgence merely because at the time of presenting his memorandum of appeal he has also filed a petition asking that he may be allowed to dispense with the filing of a copy of the judgment. He knows, or he ought to know, perfectly well that in a case such as the present that is a request which the Court will not grant, and, although his memorandum of appeal may not necessarily be time barred because the Court has the power subsequently to enable him to attach a copy of the judgment to the memorandum of appeal, nevertheless, if the Court does not make such an order, then he takes the risk and his appeal is not presented in accordance with the rules laid down either in the Civil Procedure Code or by the rules of this Court. It is

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urged before us to-day that the learned Registrar did not on the 29th November consider the application for an extension of time which it is said was put before him verbally. However that may be the learned Registrar referred the matter to the Bench and when the matter came to the Bench it is said that a further verbal application, although there was no written application in the form of a petition, was made to the Bench to give further time to file the copies of the judgments. If that is so, and speaking for myself I have no recollection of what actually took place on that occasion, it is obvious that at that time the Bench considered that the application to file copies of the judgment out of time was not a *bonâ fide* one, or one which, if made, entitled the applicant to have any further time in the circumstances. The circumstances which are put forward to-day show absolutely nothing new which was not before the Court or which may not have been put before the Court on the previous occasion, and on this ground I think we ought not to entertain this application for review, but, however unfortunate it may be for the petitioner, we ought to reject his application. He has only himself to blame if he deliberately refuses to comply with the rules laid down.

COUTTS, J.—I agree.

*Application rejected.*

## LETTERS PATENT.

*Before Dawson Miller, C. J. and Mullick, J.J.*

HILL AND COMPANY

1922.

*v.*

SHEORAJ RAI.*

*May*, 31.

*Fishery—acquisition of by adverse possession—Limitation Act*, 1908 (*Act IX of* 1908), *sections* 2(5), 26, 28 *and Schedule I, Article* 144.

* Letters Patent Appeal No. 7 of 1921.