

Letters Patent does not avail to take the case out of the general rule laid down by the Judicial Committee.

On these grounds, I am of opinion, that the Rule should be discharged with costs.

At the Advocate General's suggestion we note that he applied for leave to put in an affidavit in reply to an affidavit recently filed by the respondent.

HEATON, J. :—I am of the same opinion.

Rule discharged.

R. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Chandavarkar.

NURSEY VIRJI (PLAINTIFF AND APPELLANT) *v.* ALFRED H. HARRISON AND ANOTHER (DEFENDANTS AND RESPONDENTS) AND YACOOB J. SAYANI (RESPONDENT AND THIRD PARTY).^{*}

1913.

February 6.

Civil Procedure Code (Act V of 1908), Order XLI, Rule 22—Cross-objections, who may file and against whom—Co-respondent, cross-objections not ordinarily allowed as against.

The ordinary rule is that the cross-objections provided for by Order XLI, Rule 22 of the Code of Civil Procedure are cross-objections which are aimed against an appellant from a decree of a lower Court and are not cross-objections against a co-respondent.

In any case such cross-objections will not be allowed as against a co-respondent where the respondent could have preferred them by way of appeal.

THE second defendant moved that the appeal in this case should be dismissed for want of prosecution. The material facts appear from the judgment.

Kaikes, for the second defendant and respondent, in support of the notice of motion.

Mirza, for the appellant and plaintiff.

The third party and respondent appeared in person.

^{*} Appeal No. 69 of 1912; Suit No. 364 of 1911.

1913.

NURSEY
 VIRJI
 v.
 ALFRED H.
 HARRISON.

SCOTT, C. J.:—This is an application by certain respondents to have the appeal, filed by the appellant, dismissed for want of prosecution on the ground that he has not complied with Rule 739 in filing two copies of the paper-book in the Prothonotary's office two days before the day fixed for the hearing. There is no doubt that the appellant is in default in this matter, but the book is now ready and the only omissions in it are said to be of certain documents, which are on the records of the Court, of the nature of written statement, orders and decrees, which can be referred to without any difficulty in the Court if necessary. We, therefore, think that it would be too harsh an order to make to dismiss the appeal, and that the justice of the case will be satisfied by ordering the appellant to pay the costs of the motion.

The other question relates to the position of the cross-objecting respondent. It appears that the cross-objection is not directed against the appellant at all but against the co-respondent and involves a question of fraud. The ordinary rule, which has been laid down both in Calcutta and Allahabad, is that cross-objections provided for by section 561 of the Code of 1882 and by Order XXI, Rule 22 of the present Code are cross-objections which are aimed against an appellant from a decree of the lower Court and are not cross-objections against a co-respondent. There are, no doubt, exceptional cases in which the rule might be relaxed so as to allow a cross-objection by a respondent against a co-respondent; but we do not think that this is such a case. There is no reason shown, upon the facts stated before us, why the respondent, who has filed cross-objections, should not have preferred them by way of appeal. He has not filed any appeal and consequently no paper-book, and he has not, even under an arrangement which was made with the appellant's attorneys that he should file a

separate paper-book embodying the materials upon which his cross-objections depended, filed any such book in time. We do not think that he is entitled to any indulgence in the matter, and the appeal must proceed on the paper-book already filed.

Attorneys for the appellant : *Messrs. Dubash & Co.*

Attorneys for the second respondent : *Messrs. Patell and Ezekiel.*

H. S. C.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Chandavarkar.

SHRINIVAS SARJERAV (ORIGINAL PLAINTIFF), APPELLANT, v. BALWANT VENKATESH AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1913.

February 23.

Limitation Act (IX of 1908), Schedule I, Article 118—Hindu Law—Adoption—Suit questioning the validity of adoption—Limitation—Adoption of an orphan—Entries in Revenue register.

A suit questioning the validity of an adoption would be time-barred if not brought within six years under Article 118, Schedule I of the Limitation Act (IX of 1908).

Shrinivas v. Hanman⁽¹⁾, followed.

Thakur Tirbhuwan Bahadur Singh v. Raja Rameshar Bakhsh Singh⁽²⁾ and *Umar Khan v. Niaz-ud-din Khan*⁽³⁾, explained and distinguished.

The adoption of an orphan is not valid in law.

The Collector's Register is purely for the purposes of Government Revenue and its entries are not evidence of title.

FIRST appeal against the decision of V. V. Phadke, First Class Subordinate Judge of Belgaum, in original suit No. 16 of 1908.

* First Appeal No. 138 of 1910.

(1) (1899) 24 Bom. 260.

(2) (1906) L. R. 33 I. A. 156.

(3) (1911) L. R. 39 I. A. 19.