

## APPELLATE JURISDICTION (a)

*Regular Appeal No. 30 of 1861.*KUPPUSVÁMIAYAN.....*Appellant.*NÁRNUVAYYAN.....*Respondent.*

Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by section 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the appellate court.

1862.  
November 22.  
R. A. No. 39  
of 1861.

THIS was an appeal from the decree of R. G. Clarke, the Civil Judge of Negapatam, in Original Suit No. 3 of 1860, which was brought for the recovery of the plaintiff's son, a child of nine years of age, which the second defendant was alleged to have decoyed to his house under pretence of shewing it to its maternal grandfather, the first defendant. The Civil Judge decided in favour of the plaintiff, but refused to award him costs. No reason was assigned for such refusal.

*Sloan* for the appellant, the plaintiff, contended that costs should have been awarded to the successful party.

*Branson* for the respondents, the defendants, referred to Act VIII of 1859, sec. 187.

The Court delivered a written judgment, from which the following is an extract:

We are of opinion that where no appeal is made against the judgment given on the subject-matter of the suit, the discretion allowed to the courts by section 187 of the Code of Civil Procedure in assessing costs should not be interfered with by the appellate court, unless in a very exceptional case, where the exercise of this discretion has been manifestly in violence of usage and has inflicted marked injustice. No such exceptional case has been made out in the present instance. We therefore dismiss the appeal with costs.

*Appeal dismissed.*

(a) Present Strange and Frere, J. J.