

It is difficult to believe that the plaintiff Company were unaware of this, and it affords an additional reason for thinking that there was no such abandonment and fresh acquisition of reputation as this second branch of the plaintiff Company's argument implies. The result then is that the plaintiff Company has, in my opinion failed to establish either of their contentions, and I therefore hold that the decree of Fletcher J. should be confirmed and this appeal be dismissed with costs.

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 BRITISH
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 TOBACCO
 Co., LD.
 v.
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 BUKSH.
 JENKINS
 C.J.

WOODROFFE J. I agree.

J. C.

Appeal dismissed.

Attorneys for the appellants: *Leslie & Hinds.*

Attorneys for the respondents: *Orr, Dignam & Co.*

CIVIL RULE.

Before Mr. Justice Mookerjee and Mr. Justice Sharfuddin.

SAGAR CHANDRA MANDAL.

v.

DIGAMBAR MANDAL *

1910
 July 22.

Decree—Irregularity—Decree, not drawn up—Contents of decree—Costs—Practice

It is the duty of a Court to draw up a decree after a case has been decided, and the decree should show the costs incurred by the parties.

CIVIL RULE obtained by the plaintiff.

This was a rule to show cause why the order of the Court below refusing to draw up a decree, showing costs incurred by the parties in a suit, decided there, should not be set aside.

Babu Prabhaschandra Mitra, for the petitioner.

Babu Haricharan Sarkhel, for the opposite party.

MOOKERJEE AND SHARFUDDIN JJ. This is an application by the appellant in appeal from Original Decree No. 514 of 1907. This appeal was allowed on the 20th August, 1909, by this Court, and we directed that the appellant should recover from the respondent his costs both here and in the Court below.

* Civil Rule, No. 854 of 1910, against the order of G. Gordon, District Judge of 24-Parganas, dated Jan. 29, 1910.

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 MANDAL.

The decree drawn up by this Court showed the costs incurred by the appellant in this Court; and it further declared that the defendant-respondent was to pay to the plaintiff-appellant the costs incurred by him in the lower Court with interest thereon at the rate of six per cent. per annum from the date of the decree of the lower Court until realization. The plaintiff found that no decree had been drawn up by the Court below in which the costs incurred by him were entered. He, thereupon, made an application to the learned District Judge and prayed that a decree might be drawn and the amount of costs incurred by him entered therein. The learned District Judge refused that application and recorded the following order: "I think the High Court decree should show the costs and no decree can be prepared here. The application to amend the decree must be filed in the High Court." This order is wholly erroneous. The High Court decree cannot show the costs incurred by the parties in the Court of first instance; nor can this Court undertake to calculate the amount of costs incurred by the parties in the subordinate Court. The District Judge in the first instance committed an error in not drawing up a decree. His judgment shows that he dismissed the application for probate with costs and assessed the pleader's fee at Rs. 48; a decree ought to have been drawn up in due course showing all the costs incurred by both the parties. When this omission was brought to his notice by the successful appellant, he held that the application must be filed in this Court. We are unable to appreciate upon what conceivable principle such a view can be adopted.

The result, therefore, is that this rule must be made absolute and the order of the Court below dated the 29th January 1910, discharged. The District Judge must now take up the application presented to him on the 5th January, 1910, and draw up a decree showing the costs incurred by the parties in the Court below. There will be no order as to the costs of this rule, as it has not been opposed, and the opposite party does not appear to be responsible in any way for the erroneous order made by the District Judge.

S. M.

Rule absolute.