1903.
August 14.

SUBERAT MENIKA *v.* BARON.

D. C., Ratnapura, 1,004.

Appeal—Right of respondent, at hearing of the appeal, to object to part of the decree—Notice of objection to appellant—Civil Procedure Code, ss. 758, 772.

Neither the provisions of section 772 nor clause (*e*) of section 778 of the Civil Procedure Code requires the respondent, who objects at the hearing of the appeal to a part of the decree of the Court below, to furnish to the Supreme Court a statement of the grounds of objection in duly numbered paragraphs.

Neyna v. Neyna, 2 C. L. R. 181, overruled.

WHEN the appeal filed by the plaintiff in this case came on for hearing before Layard, C.J., and Wendt, J., the defendant's counsel objected to that part of the decree which related to costs. No appeal had been taken by the respondent on the question of costs, but in terms of section 772 of the Civil Procedure Code he gave to the appellant seven days' notice in writing of his objection. The appellant's counsel, relying on *Neyna v. Neyna, 2 C. L. R. 181*, contended that, in addition to

1903.
August 14.

the notice required by section 772, it was the duty of the respondent to furnish to the Supreme Court a statement of the grounds of objection in duly numbered paragraphs.

Their lordships directed the case to be set down for a Full Bench, and it came before Layard, C.J., Wendt, J., and Middleton, J., on 14th August, 1903.

Bawa, for first defendant, respondent.—The question raised here for the decision of the Full Court is whether in a case in which the respondent has not appealed he is entitled to object to the decree without furnishing the Supreme Court with a statement of the grounds of objections in duly numbered paragraphs. We have given notice to the appellant as required by sections 772 and 758. It was argued on the last occasion that we should have furnished the Supreme Court with a full statement of our objections as held in *Neyna v. Neyna, 2 C. L. R. 181.* We have complied strictly with those sections of the Code. The decision in *2 C. L. R. 181* does not go as far as the headnote of the reporter. Besides, the judgment, so far as it goes, is clearly wrong.

H. A. Jayawardene, for plaintiff, appellant.—That decision is in force now. The case stands on the same footing as a petition of appeal under the Indian Code, and it must be stamped.

14th August, 1903. LAYARD, C.J.—

The only question reserved for us to decide, sitting collectively, is whether in a case in which the respondent has not appealed against any part of the decree, he is entitled, on the hearing of the appeal, not only to support the decree on any of the grounds decided against him in the Court below, but to take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or to his proctor seven days' notice in writing of his objection, such objection being in the form prescribed under clause (*e*) of section 758 of the Civil Procedure Code, and containing a plain and concise statement of the grounds of objection to the judgment and decree which has been appealed against. The respondent in this case has duly fulfilled all the requirements of sections 772 and 758, but the appellant's counsel contends that, besides those requirements the respondent must, before the hearing of the appeal in this Court, furnish to us a plain and concise statement of the grounds of objection to the judgment or decree appealed against, and appellant's counsel supports this contention by a judgment of Justice Lawrie, when acting as Chief Justice of this Court, and Justice Withers reported in *2 C. L. R. 181.*

1903.
August 14.
LAYARD C.J.

That judgment being a judgment of two Judges was binding on myself and my brother Wendt when this appeal came before us on the last occasion. We therefore reserved this question to be decided by the Full Court. It is clear that neither the provisions of section 772 nor clause (*e*) of section 758 of the Civil Procedure Code requires the respondent to furnish this Court with any such statement, as the judgment above referred to held the respondent was bound to do. There being no provision in the Civil Procedure Code requiring such a statement to be furnished to this Court, we consider that the notice given to the appellant's proctor was sufficient, and that this Court has no power to impose the additional condition for a petition to be furnished to this Court in the manner laid down in the judgment above referred to.

In the result we see no reason to interfere with the judgment of the District Judge in favour of the respondent, but we consider the objection raised by the respondent as to costs should prevail, and the respondent is declared entitled to his costs in both Courts.

WENDT, J.—

I am of the same opinion. I was counsel in the case reported in *2 C. L. R. 181*, and I must say that I always considered that this Court had gone beyond the law in deciding as it did. It is possible that the judgment proceeded on the assumed analogy of section 772 with section 561 of the Indian Code, but in the latter enactment there are express words requiring the objection to be "filed in the Appellate Court." I think that the respondent in the present appeal has fully complied with the requirements of section 772, and is entitled to be heard on his objection.

On the merits I agree with the Chief Justice that the plaintiff's appeal should be dismissed, and that the respondent should have his costs in the Court below as well as in this Court.

MIDDLETON, J.—

I agree with that part of the judgment of the Court which involves the overruling of the decision in the case reported in *2 C. L. R. 181*, for the reasons given by my lord the Chief Justice and my brother Wendt. So far as the decision on the merits of the appeal is concerned, I take no part in it.