

1896.
November 6.

FERNANDO v. THE SYNDICATE BOAT COMPANY,
LIMITED.

D. C., Colombo, 6,958.

Judgment in a civil suit—Delivery of judgment by District Judge on his re-appointment after his tenure of office during which he had heard evidence had terminated—The Courts Ordinance, 1889, s. 89—Decree—By whom it may be drawn up and signed.

Where an Acting District Judge heard the evidence in a case, but before delivering judgment his appointment terminated, and he was subsequently appointed Additional District Judge for one day, and he then delivered his judgment in the case, *held*, that the case was covered by section 89 of the Courts Ordinance, 1889, and the proceedings were in order.

The decree in a case is merely the formal expression of the results arrived at by the judgment, and it is not necessary that it should be drawn up and signed by the Judge who pronounced the judgment. That may be done by any Judge of the Court.

THE facts of the case appear in the judgment of BONSER, C.J.

Van Langenberg, for appellant.

Dornhorst, Sampayo, and Chitty, for respondent.

6th November, 1896. BONSER, C.J.

The first objection taken in this case was that there was no decree at all to appeal from. It appears that the action was heard by Mr. Grenier when he was acting as District Judge of Colombo. After a time he ceased to act as District Judge, and he had not then delivered the judgment in this action. He was appointed Additional District Judge for one day, viz., the 22nd of July, apparently for the express purpose of giving judgment in this case. It was argued he had become *functus officio*, and had not power to deliver this judgment. In my opinion the case is covered by section 89 of Ordinance No. 1 of 1889, which provides that in case of the removal from office of any Judge before whom any action is pending, such action may be continued before the successor of such Judge, who shall have power to act on the evidence already recorded by such first-named Judge, or to re-summon the witnesses and commence afresh. It seems to me that Mr. Grenier when appointed Additional District Judge on the 22nd of July was his own successor. It was open to the defendants to apply to have the evidence reheard; but they did not do so.

Another objection was that the decree was not drawn up and signed by him at a subsequent date. That is a technical defect.

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It is not necessary that it should be signed by the Judge who pronounced the judgment. This formal defect can be met by the case being sent back to the District Court for the purpose of the decree being signed by the District Judge.

Counsel then attacked the decree on the merits, but after listening to Mr. Van Langenberg's arguments I am of opinion that the judgment is correct, save as to one particular. The defendants paid some money into Court. The plaintiff was not satisfied with that, but still went on with the action. The decree does not take that sum into account.

The decree should be amended by deducting the amount already paid into Court.

WITHERS, J.—

I am quite of the same opinion, both on the points of law and on the merits.
