

1900.
Sept. 10.

WETTACHI v. ALWIS.

C. R., Balapitiya, 3,184.

Court of Requests—Order of Commissioner declining to hear evidence—Right to appeal—Ordinance No. 12 of 1895, s. 13 (1).

When a Commissioner, after hearing two witnesses for the defendant, declines to hear further evidence and enters judgment for plaintiff, the proper remedy of the defendant is not to apply for leave to appeal from the judgment, but to appeal on the ground of improper rejection of evidence.

THIS was an application by the defendant for leave to appeal against a judgment of the Court of Requests of Balapitiya. The action was upon a bond. The defendant pleaded payment. The burden of proof of this issue lay upon the defendant. The first defendant swore that he had paid the amount due on the bond, and called the plaintiff as a witness to corroborate his evidence. He was prepared to call other witnesses, but it was alleged that the Commissioner declined to hear any further evidence and decided in favour of the plaintiff.

E. Jayawardene, for applicant.—Leave to appeal from the Commissioner's decision is sought on the ground that the Commissioner wrongly rejected the evidence of the further witnesses tendered by the defendants—

BONSER, C. J.—

If that be the only ground, you have a right to appeal without any leave. The right to appeal on the ground of admission or rejection of evidence is expressly reserved by the Court of Requests Ordinance (No. 12 of 1895), and therefore no leave to appeal is needed.

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No order.

