

1959 *Present* : Basnayake, C.J. and de Silva, J.

A. K. J. M. EDWIN *et al.*, Appellants, and K. L. D. A. DE SILVA
et al., Respondents

S. C. 386—D. C. Galle, 1157/X

S. C. 296—D. C. Galle, 1568/X

S. C. 288—D. C. Galle, 5512/L

Judgment—Pronouncement of it by Judge's successor—Conditions that must be satisfied
—Civil Procedure Code, ss. 185, 186.

A judgment written and signed by a Judge at a time when he has no jurisdiction to do so and pronounced by his successor does not satisfy the requirements of sections 185 and 186 of the Civil Procedure Code and cannot be regarded as a valid judgment.

¹ (1939) 41 N. L. R. 383.

APPLEALS from three judgments of the District Court, Galle.

In S. C. 386—

H. W. Jayewardene, Q.C., with *F. A. Abeyewardene* and *N. R. M. Daluwatte*, for Plaintiff-Appellant.

N. E. Weerasooria, Q.C., with *W. D. Gunasekera*, for Defendant-Respondent.

In S. C. 296—

S. Nadesan, Q.C., with *I. Mohamed, C. Jayasinghe* and *M. T. M. Sivardeen*, for 2nd Defendant-Appellant.

E. A. G. de Silva, with *N. R. M. Daluwatte*, for Plaintiff-Respondent.

H. W. Jayewardene, Q.C., with *M. L. S. Jayasekera* and *C. P. Fernando*, for 1st Defendant-Respondent.

In S. C. 288—

C. Ranganathan, with *M. T. M. Sivardeen*, for Plaintiffs-Appellants.

M. Rafeek, for Defendants-Respondents.

[The following judgment was delivered in S. C. 386 :—]

December 9, 1959. BASNAYAKE, C.J.—

Learned counsel for the appellant submits that judgment has not been pronounced in the instant case in accordance with the requirements of the Civil Procedure Code. At the termination of the trial before the Additional District Judge he announced in open court that he would pronounce judgment on 28th March 1956. Shortly after he reserved judgment the trial Judge appears to have been transferred to another station. The judgment was not delivered on that day nor on any of the subsequent sixteen dates, extending over a year, for which it was refixed for delivery. It was finally pronounced on 10th July 1957 by the District Judge to whom it had been despatched by post, signed but not dated by the Judge who heard the case but who no longer had jurisdiction to exercise the functions of a Judge in the Additional District Court of Galle. Although the Judge who heard the case appears to have been specially appointed as Additional District Judge of Galle on 10th July 1957 to enable him to deliver judgment in the case he did not do so. It has been repeatedly held by this court that the non-observance of the provisions of sections 185 and 186 of the Civil Procedure Code vitiates a judgment.

Apart from the fact that the judgment was written and signed by the Judge when he was not an Additional District Judge of Galle and had no jurisdiction to do so it was pronounced by the District Judge who was not his successor. The case does not therefore fall within the ambit of section 185.

Learned counsel for the respondent urged that we should adopt the course of sending this case back to the lower court so that the Judge may pronounce and date the judgment in accordance with the requirements of the Civil Procedure Code as the trial had extended over a period of nearly two years and it would cause hardship to the parties if a retrial is ordered at this stage. We are unable to accede to that request, for quite apart from the legal defect there is the very unsatisfactory feature that the judgment was written by the Judge who heard the case more than fifteen months after the termination of the trial. Even if the Judge refreshed his memory of the facts by reading the typescript of the evidence after such a long interval of time he is bound to have lost the advantage of seeing and hearing the witnesses give evidence and the impression created by them could no longer be vivid in his mind. A judgment of a Judge of first instance based on a mere reading of the typescript is not of the same value to this court as a judgment delivered while the recollection of the trial and of the demeanour and attitude of the witnesses and the impression created by them on him are fresh in his mind. In our view the judgment must be set aside and the case should go back for a retrial. We accordingly set aside the judgment and decree and direct that the case should be sent back for a trial *de novo*.

The rule is that the costs should follow the event, but in this case counsel for the respondent does not oppose the course we propose to take. Although the judgment has been set aside, the respondent is in no way responsible for the failure of the Judge to observe the requirements of the law and his counsel does not maintain that there is no defect. In the circumstances we would be justified in departing from the ordinary rule and not allowing the costs of the appeal. There will, therefore, be no costs of the appeal but the costs of the abortive trial will abide the final result of the case.

DE SILVA, J.—I agree.

Case sent back for retrial.

[The following judgment was delivered in S. C. 296 :—]

December 9, 1959. BASNAYAKE, C.J.—

Learned counsel for the respondent raises a preliminary objection to the hearing of this appeal on the ground that the judgment against which the appellant has appealed has not been pronounced in accordance with the relevant provisions of the Civil Procedure Code. It would appear that while this case was partly heard by the Additional District Judge Mr. Conrad Perera, he was transferred from Galle after the hearing on

7th December 1955. He nevertheless concluded the hearing on 21st April 1956 by virtue of an *ad hoc* appointment as Additional District Judge, Galle. He announced at the close of the trial that the judgment would be delivered on 31st July 1956. But the judgment was not pronounced on that date and although ten subsequent dates had been announced for the purpose it was not pronounced till 6th June 1957, when Mr. Perera's successor's successor pronounced in open court a judgment prepared by Mr. Perera between 9th May 1957 and 17th May 1957. Although he had been appointed an Additional District Judge of Galle to enable him to pronounce the judgment on 6th June 1957 he does not appear to have proceeded to Galle for the purpose. The judgment is signed by Mr. Perera but not dated by him. A judgment written and signed by a Judge at a time when he has no jurisdiction to do so and pronounced by his successor does not satisfy the requirements of the Civil Procedure Code and cannot be regarded as a valid judgment of the court. In quite a number of appeals (some of which are reported) which have come up before us recently we have so held. There are also earlier decisions of this court (both reported and unreported) to the same effect. Another disturbing feature of this case is the long delay that has occurred between the conclusion of the hearing and the preparation of the judgment. Such a judgment, even if it had been pronounced by the Judge in accordance with the requirements of the Code, and with jurisdiction to do so, is not of the same value to a court of appeal as a judgment pronounced shortly after the trial when the impression created on the Judge's mind by the evidence and the witnesses is still fresh.

The judgment and decree must therefore be set aside and the case sent back for a retrial. We accordingly set aside the judgment and decree and direct a retrial. We do so with reluctance as this action was commenced so far back as 1953, but in the circumstances there is no other course open to us. There will be no costs of appeal.

DE SILVA, J.—I agree.

Case sent back for retrial.

[The following judgment was delivered in S. C. 288 :—]

December 17, 1959. BASNAYAKE, C.J.—

Objection to the hearing of this appeal is taken by learned counsel for the appellant on the ground that the provisions of the Civil Procedure Code relating to the pronouncement of the judgment have not been observed. The Additional District Judge Mr. G. Thomas who heard the case reserved judgment on the 26th February, 1957 and fixed 18th March, 1957 as the date on which the judgment was to be pronounced. It appears that between those two dates he was transferred from Galle. The judgment signed by him but undated was forwarded more than a

year later with a letter dated 23rd June, 1958 to his successor who pronounced judgment on 27th June, 1958 and dated it in open court. Although Mr. Thomas was appointed as Additional District Judge of that court for the purpose of delivering the judgment he did not proceed to Galle to exercise the functions of Additional District Judge of Galle on that day. The judgment was signed by Mr. Thomas at a time when he was not a District Judge of that court and had no jurisdiction to exercise the functions of a District Judge of Galle. No judgment having been pronounced according to law the proceedings must be quashed. There is a further objection to this judgment which has been prepared more than a year after the conclusion of the hearing. The judgment of a judge of first instance written after the impression created by the witnesses has faded is not of the same value to the appellate court as a judgment written while that impression is fresh. We accordingly quash all the proceedings on and after 19th June 1956 and remit the record with a direction that the case be reheard.

DE SILVA, J.—I agree.

Case sent back for retrial.