

*Present: Pereira J.*

1914.

SILVA v. KATTANDIYA.

230—C. R. Pasyala 5,095.

*Evidence — Inability of plaintiff to understand English — Refusal of witness to give evidence in his own language—Court may pass decree against him—Civil Procedure Code, s. 140.*

The refusal by a plaintiff to give evidence in a Court of justice except in a language in which the Court having heard him has ruled he is not sufficiently well versed to express himself correctly and intelligently is tantamount to refusal to give evidence at all, and in a case to which section 140 of the Civil Procedure Code applies, the Court may, when the refusal is persisted in, pass a decree against him.

In the case of the examination of a party to a case under section 146 or section 809 A of the Civil Procedure Code, he should be sworn as a witness.

*A. St. V. Jayewardene, for plaintiff, appellant.*

*J. S. Jayewardene, for respondent.*

*Cur. adv. vult.*

August 8, 1914. PEREIRA J.—

In this case on the day of trial the Commissioner made order as follows: "The plaintiff will give evidence before the issues are framed to enable the Court to frame issues"; and then the plaintiff was sworn, and he gave evidence in English. In the course of the

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evidence it appeared to the Commissioner that the plaintiff was not able either to understand questions put to him in English, nor was he able to express his ideas intelligently in that language; and the Commissioner thereupon required the plaintiff to give evidence in Sinhalese, that being his own native tongue. The plaintiff refused to do so, and the Commissioner thereupon dismissed his claim with costs. I presume that the Commissioner acted under section 140 of the Civil Procedure Code. Now, there can be no doubt that the refusal by a person to give evidence in a court of justice except in a language in which the Court has ruled, after hearing the person refusing, that he is not sufficiently well versed to express himself correctly and intelligently, is tantamount to refusal to give evidence at all, and in a case to which section 140 applied an order like that made by the Commissioner would be appropriate. The question is whether that section applied to the present case. At the argument of the appeal I was very strongly of opinion that neither section 809 A nor section 146 of the Civil Procedure Code contemplated the examination of parties on oath. The provisions in these two sections for examination of parties were in all probability repetitions in substance respectively of section 13 of the repealed Ordinance No. 9 of 1859 and section 1, paragraph 8 (see page 63), of the old Rules and Orders; and those provisions of the law were not certainly supposed to require that the examination of parties provided for should be on oath. I find, however, that comparatively recent legislation has altered the situation. Under section 5 of Ordinance No. 9 of 1895 all "witnesses" are required to make oaths, and the word "witnesses" has been defined in the Ordinance to mean, *inter alia*, "all persons who may be lawfully examined or give or required to give evidence by or before any Court." That being so, the order of the Commissioner appears to me to be right.

The appellant's counsel, after communication with his proctor, undertakes that his client will now, in obedience to the Commissioner's ruling, give evidence in his native language, and, as an indulgence, craves that his client be allowed an opportunity to do so. I see no objection to this application being allowed, and I remit the case to the Court below to enable the appellant to act in terms of his counsel's undertaking.

If the appellant submit to the Court's ruling and give evidence in Sinhalese, the order appealed from will be deemed to be vacated, and the case will be proceeded with. Otherwise, the order appealed from will be deemed to be hereby affirmed.

In either case the respondent will have his costs of appeal. The costs in the Court below will abide the event.

*Sent back.*