1942 *Present* : **Howard C.J. and Hearne J.**

PONNAMPERUM *v.* WICKREMANAYAKE.

76—D. C. Galle, 37,956.

Adjustment of decree—Agreement by the decree-holder to accept a smaller sum —Application to certify adjustment—Civil Procedure Code, s. 349 (1 and 2).

An agreement by the decree-holder to accept a smaller sum than the amount of the decree is an " adjustment of the decree to the satisfaction of the decree-holder " within the meaning of section 349 (1) of the Civil Procedure Code.

JUDGMENT was entered in favour of the plaintiff against the defendant for a sum of Rs. 1,000, costs and legal interest.

The defendant alleging that the plaintiff had agreed to accept Rs. 750 in full settlement of the decree and bringing the money into Court prayed that the adjustment be certified of record and that satisfaction of the decree be entered.

The learned District Judge allowed the application.

H. V. Perera, K.C. (with him *A. H. C. de Silva*), for the plaintiff, appellant.—There was no adjustment within the meaning of section 349 of the Civil Procedure Code (Cap. 86). An adjustment must be to the satisfaction of the decree-holder. It means something *done* by the judgment-debtor which is accepted by the judgment-creditor in satisfaction, in part or in whole, of the decree. A purely executory agreement is not enough. A waiver of a part of the decree where no consideration is given for the waiver is not an adjustment. The provision in Indian Civil Procedure, corresponding to our section 349, is O. 2 R. 2. An agreement without consideration is not an adjustment.

[HEARNE J.—Would not our doctrine of *causa* make any difference ?]

No. The English notion of accord and satisfaction is contemplated in section 349. See *Lachmin Das v. Baba Kali Kamliwala*[1] and *Raja of Kalahasti v. Rao Varu*[2]. *Hunter et al. v. de Silva*[3] has been referred to by the District Judge. The judgment, in that case, of Soertsz J. supports my position.

M. T. de S. Amerasekere, K.C. (with him *H. W. Jayewardene*), for the defendant, respondent.—The word " otherwise " in section 349 contemplates an adjustment otherwise than by payment. An agreement by the decree-holder to waive a portion of the decree is a mode of adjustment. It is not necessary that something should be done by the judgment-debtor. A waiver is good without consideration—*Ramalingam v. James*[4]. In Ceylon no consideration in the English sense is necessary for a waiver, and in this respect our law is different from the law in India. We brought the Rs. 750 to Court. The order of the District Judge is right.

The two Indian cases cited on behalf of appellant are in conflict with *Hotchand Tolaram v. Premchand et al.*[5] and *Abdul Karim et al. v. Hakam Mal-Tani Mal*[6].

[1] *A. I. R. 1922 All. 13.*
[2] *A. I. R. 1927 Mad. 911.*
[3] *(1939) 41 N. L. R. 110.*
[4] *(1939) 40 N. L. R. 486.*
[5] *A. I. R. 1931 Sind. 42.*
[6] *A. I. R. 1933 Lahore 806.*

H. V. Perera, K.C., in reply.—The conflict in the Indian cases is only in respect of the effect of section 92 of the Evidence Act.

Ramalingam v. James (*supra*) is the decision of a single Judge, and is not consistent with the later view taken in *Hunter et al. v. de Silva* (*supra*).

Cur. adv. vult.

January 30, 1942. HEARNE J.—

This is an appeal from an order made by the District Judge of Galle.

A decree was entered in favour of the plaintiff against the defendant for a sum of Rs. 1,000, costs, and legal interest. The defendant, alleging that the plaintiff had agreed to accept Rs. 750 in full settlement of the decree and bringing this money into Court, prayed that the adjustment be certified of record and that satisfaction of decree be entered. The Judge accepted the defendant's allegation as true and allowed his application. The plaintiff has appealed.

The Judge's finding of fact has not been seriously canvassed and the appeal has proceeded mainly on a point of law. The relevant section is section 349 (2) of the Civil Procedure Code and it is argued that, unless the judgment debtor has made a payment or done something which is equivalent to payment to the satisfaction of the decree holder, there has been no adjustment of the decree.

The Indian cases that were cited are not helpful. Some of them decide that oral agreements "in modification of a decree" offend against the terms of section 92 Indian Evidence Act: others, *e.g.*, A. I. R. (1927) Madras 911, that a mere promise on the part of the judgment debtor to pay without an actual payment cannot be regarded as an adjustment under the Civil Procedure Code in India.

In the present case we are not concerned with a promise by the judgment debtor to pay, but a promise by the decree holder to waive payment. Counsel for the plaintiff appellant stressed the words "to the satisfaction of the decree holder". But I think that we would be following a will-o'-the-wisp in trying to ascertain what, psychologically speaking, is satisfaction. An attempt must be made to give a legal meaning to the words "adjustment to the satisfaction of the decree holder". I take those words to mean a transaction to which the decree holder is a consenting party the effect of which in law is to extinguish the decree in whole or in part.

Whatever may be the position in India where the English conception of consideration prevails, in Ceylon under the Roman-Dutch law, the decree holder's promise in this case has the effect when certified of extinguishing the decree to the extent of that promise. This view of the law was apparently taken for granted in *Ramalingam v. James*[1].

In my opinion the appeal should be dismissed with costs.

HOWARD C.J.—I agree.

Appeal dismissed.

[1] *49 N. L. R. 486.*