

1920.

*Present* : Bertram C.J. and De Sampayo J.**WIJESSEKERA v. NAMASIVAYAM.**

390—D. C. Colombo, 52,697.

*Evidence—Question to witness whether he was not disbelieved in a previous case.*

It is not improper to ask a witness whether he had not put forward a claim in a previous case, and whether the claim had not been rejected because his evidence was disbelieved. But his answer to such a question should be accepted, and it is not proper to tender in evidence the terms of the judgment of the Judge in the previous case for the purpose of contradicting the answer of the witness.

**T**HE facts material to this report appear from the following portion of the record :—

Cross-examined by Mr. Bawa, K.C. . . . . I had some cases in this Court. Some are pending. Suppramaniam Chetty sued me in 1903 for Rs. 1,501, and judgment passed by default. Palaniappa for Rs. 6,325, judgment by default. In 1909 another Palaniappa for Rs. 5,001, I contested it and lost.

(Mr. Bawa proposes to ask if he was disbelieved by the Judge. Mr. Elliott objects. The question is allowed to stand by for the present.)

I sued Mendis for Rs. 2,000. My proctor sent me a cheque for the amount as coming from the defendant. I do not know if the action was dismissed.

I sued my mother-in-law for a balance alleged to be due on the promised dowry. At the time of action she was a widow. She denied the promise. I gave evidence, so did she. Action dismissed. Affirmed in appeal.

On the pending question.

Mr. Elliott quotes 20 N. L. R. 334.

Mr. Bawa *contra*.

(I disallow the question.)

P. E. PIERIS, D. J.

In the course of his judgment the Chief Justice made the following observations on this point :—

July 23, 1920. BERTRAM C.J.—

I should like to make one observation on a point of evidence which appears to have arisen at the trial. A question addressed to the plaintiff, as to whether the Judge had disbelieved his evidence in a previous case, was disallowed on the authority of our decision

*in Falalloon v. Cassim.*<sup>1</sup> I should like to explain that when in that case I expressed the opinion, that the opinion of the Judge in a previous trial was irrelevant, I did not mean to say that a witness may not be legitimately asked whether he had not put forward a claim in a previous case, and whether that claim had not been rejected because his evidence was disbelieved. What I desired to make clear was that the question being a question asked for the purpose of testing his credit, his answer to such a question must be accepted, and that it was not proper to tender in evidence the terms of the judgment of the Judge in the previous case for the purpose of contradicting the answer of the witness or enhancing the impression which his admission may have made.

DE SAMPAYO J.—I agree.

1920.

BERTRAM  
C.J.

*Wijesekera*  
*v.*  
*Namasivayam*

