

1963

Present : Herat, J.

SINNA VELOO, Appellant, and MESSRS LIPTON LTD.,
Respondent

S. C. 218/61—C. R. Badulla, 16085

*Compromise of action—Notification to Court—“ In the presence of parties ”—
Incapacity of a party to resile from the settlement—Civil Procedure Code, s. 408.*

When parties to an action enter into a settlement and are represented by their Proctors, they need not be personally present when the settlement is notified to the Court in terms of section 408 of the Civil Procedure Code.

Once the terms of settlement as agreed upon are presented to Court and notified thereto and recorded by Court, a party cannot resile from the settlement even though the decree has not yet been entered.

APPPEAL from a judgment of the Court of Requests, Badulla.

G. F. Sethukavalar, for Defendant-Appellant.

S. J. Kadirgamar, with *K. N. Choksy*, for Plaintiff-Respondent.

Cur. adv. vult.

September 11, 1963. HERAT, J.—

The Plaintiff-Respondent sued the Defendant-Appellant for ejection and damages from a boutique on Dambatenne Estate at Haputale on the 19th May, 1961. Terms of settlement were filed in Court and the case was directed to be called on the 3rd July, 1961.

The terms of settlement provided that the case was to be called on the 3rd July in order to find out whether one of the parties had carried out one of the terms of the settlement, and for the decree to be entered on that date. But in fact, decree was entered on the 19th May, 1961, namely the date the terms of settlement were tendered. On the 28th of June, 1961, the Defendant-Appellant, having revoked the proxy given to his proctor Mr. K. V. Nadarajah, filed a fresh proxy in favour of Mr. Sebastian together with a Petition and moved to set aside the decree entered on the ground inter alia that the settlement had been entered into without his consent and notified to Court in his absence. As regards the point relating to the absence of parties, both parties were represented by their Proctors who were present, and, in my opinion, Section 408 of the Civil Procedure Code, when it speaks of the settlement being filed in the presence of parties, does not mean the presence of parties personally, for the Code provides that the parties are represented by their Proctors unless the Code expressly requires personal appearance. That the Defendant-Appellant was fully aware of the terms of settlement and consented to it appears from the evidence in the case and from the finding of the Commissioner on the point. Once the terms of settlement are presented to Court as an agreed upon settlement, the Court can enter a decree thereon. Once such a settlement so agreed upon is presented to Court and notified thereto and recorded by Court, a party cannot resile from the settlement even though the decree has not yet been entered. See the judgment of Mr. Justice Driberg, with whom Chief Justice Fisher agreed in *Meis Singho v. Josie Perera*¹. The appeal is dismissed with costs.

Appeal dismissed.

