

1939

Present : Soertsz A.C.J.

RASIAH v. THIEDEMAN.

26—C. R. Colombo, 41,289.

Cross-appeal—Court of Requests—Appeal failing for want of leave to challenge facts—Right of respondent to be heard under Civil Procedure Code, s.772.

Where an appeal from the Court of Requests in a money case failed because the appellant could not argue the point of law taken without challenging the finding of fact, from which he had not obtained leave to appeal, the respondent is not entitled to be heard in a cross-appeal under section 772 of the Civil Procedure Code unless he had himself obtained leave to appeal on the facts.

¹ 11 C. L. W. 142.

² 11 C. L. W. 145.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

M. Tiruchelvam (with him *O. L. de Kretser, Jnr.*), for the defendant, appellant.

E. F. N. Gratiaen (with him *J. R. Jayawardana*), for the plaintiff, respondent.

Cur. adv. vult.

July 11, 1939. SOERTSZ A.C.J.—

In this case, there is no difficulty in regard to what I should do in the matter of the appeal. It purported to be an appeal on a matter of law, but Counsel for the appellant admitted that he could not argue the question of law without challenging findings on facts and he had not obtained leave to appeal. He, therefore, did not press the appeal.

There was, however, a cross-appeal taken under section 772 of the Civil Procedure Code. I heard that appeal and reserved my order on it. I have now come to the conclusion that it should be dismissed on the ground that the plaintiff had no right to prefer such an appeal.

Section 772 says: "any respondent, though he may not have appealed against any part of the decree, may upon the hearing, not only support the decree . . . but take any objection to the decree *which he could have taken* by way of appeal, provided he has given to the appellant . . . seven days' notice" . . . This was a money case and the plaintiff had no right of appeal without leave. He has had no leave given him. The objection is not, therefore, one he could have taken by way of appeal, and he is, consequently, debarred from taking it in this way.

I dismiss the appeal and the cross-objection and make no order for costs.

Appeal dismissed.

