

Present: De Sampayo J.

CASSIM v. ABDEEN.

418—C. R. Hambantota, 3,314.

Court of Requests—Answer not filed on due date—Defendant present in Court and not stating his answer vivâ voce—Power of Court to enter judgment without calling upon plaintiff to lead evidence.

Where in an action in the Court of Requests to recover money the defendant did not on the due date file answer, or though present in Court did not state his answer *vivâ voce* when called upon by the Court to do so,—

Held, that the Commissioner had power to enter judgment for plaintiff without calling upon plaintiff to lead evidence to support his case. The provisions of section 85 of the Civil Procedure Code (as to *ex parte* trial and decree *nisi*) do not apply to Courts of Requests.

THE facts are set out in the judgment.

Bartholomeusz, for defendant, appellant.—Default in filing answer is not the same as default in appearance. The special rules applicable to Court of Requests trials do not make provision for a default in filing answer. The Commissioner should have taken evidence in support of plaintiff's case and entered decree *nisi* under section 85 of the Civil Procedure Code.

P. M. Jayawardene, for plaintiff, respondent.—Section 85 of the Civil Procedure Code does not apply to trials in the Court of Requests. Evidence should be called only if the case is one concerning title to land, or if such evidence is necessary in the opinion of the Court. The action was one to recover money.

December 19, 1916. DE SAMPAYO J.—

This appeal raises an important point of practice in the Court of Requests. The plaintiff sued the defendant to recover a sum of money. The defendant appeared to the summons and obtained time to file answer till October 23, 1916. On this day the defendant applied for further time, as he had retained a proctor of Matara, and wanted to file answer through the proctor. The plaintiff objected to further time being granted. Thereupon the Commissioner disallowed the application, and called upon the defendant to file a written answer that day or to state his answer *vivâ voce* to

1916. the Court. But the defendant refused to adopt either course, and
 DE SAMPAYO the Commissioner had no alternative but to enter judgment for the
 J. plaintiff as prayed.

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It is objected that the Commissioner had no right to enter judgment without evidence in proof of plaintiff's claim. Mr. Bartholomeusz, for the defendant-appellant, went further, and contended that, even if such evidence were taken *ex parte*, the Court could only enter a decree *nisi* as provided by section 85 of the Civil Procedure Code. But the Ordinance No. 12 of 1895 expressly declares that section 85 of the Civil Procedure Code shall not apply to Courts of Requests. In my opinion this can only mean that the requirements of section 85 with regard to *ex parte* trial as well as decree *nisi* need not and should not be allowed. The Code, as amended by Ordinance No. 12 of 1895, appears to me to provide for summary and speedy disposal of actions in the Court of Requests, and, in case of default of defendant in appearing or filing answer, to dispense with any evidence in verification of the plaintiff's claim, except where title to land is concerned, or where, in the discretion of the Court, such verification is considered necessary. In this case the Commissioner did not advise himself that the plaintiff should be called upon to establish a *primâ facie* case, and I think it was within his power to enter judgment forthwith. This opinion is somewhat in conflict with the decision in *Mohandirima v. Ukku Menika*, 329—C.R. Kandy, 24,318,¹ where Ennis J. in a similar case thought that, as there was no special rule applicable to default in filing answer as distinguished from default in appearance, the defendant should be deemed to have denied the claim, and the plaintiff required to establish a *primâ facie* case. With great respect, I am unable to assent to this proposition, but in any event that case is distinguishable, inasmuch as in the present case the Commissioner offered to take down from the defendant's mouth his defence, whatever it might be, and as the defendant refused to state anything, I cannot see that he can reasonably be deemed to have denied the plaintiff's claim.

The appeal is dismissed, with costs.

Appeal dismissed.

¹ S. C. Min., Oct. 13, 1916.