

1920.  
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*Present* : Shaw J. and Schneider A.J.

PALANIAPPA CHETTY *v.* ARNOLISHAMY.

137—*D. C. Galle, 17,550.*

*Substituted service of summons—Civil Procedure Code, s. 60.*

Objection was taken to an order for substituted service of summons on three grounds, that it was made without a report that the Fiscal was unable to effect personal service, and without proof that the defendant was in the Colony, and without directing at what spot the summons was to be served as substituted service,—

*Held*, that all the grounds of objection were good, and that the order for substituted service was bad.

**T**HE facts appear from the judgment.

*F. de Zoysa* (with him *Croos-Dabrera*), for the appellant.

*J. S. Jayawardene*, for the respondent.

November 5, 1920. SHAW J.—

This is an appeal from an order of the District Judge refusing to vacate a decree *nisi* which was obtained against the defendant in default of appearance. It appears that a summons was issued for service on the defendant on two occasions, and the Fiscal returned his report to the precept, stating that the defendant was not to be found in the village. Thereupon, an application was made for substituted service by affixing the summons on the last known

place of abode of the defendant. Whereupon the Judge made an order to re-issue the summons for substituted service. The Fiscal reported to that precept that he had affixed a copy of the summons to the front door of his last known place of abode at Gammeddegoda. Appearance was not entered, and decree *nisi* was obtained. The decree *nisi* was served on the defendant, and he came in and filed an affidavit and moved to vacate the decree *nisi* on the ground that the service had not been properly effected upon him. The Judge decided against him, and from that decision the present appeal is brought.

Several objections are taken to the order for substituted service. First, that the Fiscal has not reported to the Court that he was unable to effect personal service; secondly, that the Court received no evidence that the defendant was in the Colony; and thirdly, that the Court did not direct at what spot the summons was to be served as substituted service. These objections all appear to me to be good. In the case of *Fernando v. Fernando*<sup>1</sup> the facts were almost precisely the same as in the present case. There the Fiscal merely reported that he was unable to effect service. There the Judge took no evidence to satisfy himself that the defendant was in the Colony, and there the Judge also left it to the Fiscal to decide at what spot he should serve the substituted summons as being the last known place of abode of the defendant. All these are rendered necessary by section 60 of the Civil Procedure Code, and the non-observance of all those particulars was held to be fatal to the service in the case I have referred to. I would allow the appeal with costs, and remit the case to the District Court for the defendant to file answer, and for the action to proceed in the usual way. The appellant is entitled to the costs of the application in the District Court.

SCHNEIDER A.J.—I agree.

*Appeal allowed.*

1920.

SHAW J.

*Palaniappa  
Chetty v.  
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<sup>1</sup>(1903) 9 N. L. B. 325.