

Present; Bertram C.J. and Schneider J.

1922.

DINGIRI MAHATMAYA *v.* MUDIYANSE *et al.*

98—*D. C. Ratnapura, 3,598*

Administration of justice should be free from suspicion—Proctor advising one party hearing case as District Judge.

It is important that the administration of justice should be free from even the suggestion of suspicion. A person acting as District Judge who has advised one of the parties should not proceed to try a case without getting the express consent of both parties.

Though no objection was taken at the hearing or in the petition of appeal, the Supreme Court sent the case back for re-hearing before another Judge.

THE facts appear from the judgment.

E. W. Jayawardene (with him *Canakeratne*), for appellants.

R. L. Pereira (with him *W. C. de Silva*), for respondent.

September 15, 1922. BERTRAM C.J.—

It appears in this case that the learned District Judge, who is permanently Additional District Judge, as well as Crown Proctor, had himself at one stage of the proceedings been proctor for the plaintiff, and in this capacity addressed a letter on behalf of the

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plaintiff to the defendants warning them not to build the house on the land in dispute. In his judgment he says: "The defendants were warned not to build the house" (see P 12, : *i.e.*, the letter referred to). "They elected to build notwithstanding that warning," and observes a little further down; "The defendants are *malâ fide* possessors, and cannot, therefore, compel the plaintiff to pay them compensation for the house."

It had apparently escaped the notice of the learned District Judge that he himself was the person who wrote the letter on behalf of plaintiff. No objection was taken by the defendant at the hearing or in the petition of appeal, but we think it right, on the matter being brought to our notice, to send the case back for a re-hearing before another Judge.

The arrangement under which a gentleman practising as proctor also from time to time acts as District Judge, when the District Judge is absent on leave, is no doubt a very common thing, and it is one to which objection cannot be taken, but where a gentleman practising at the bar regularly acts from time to time during absences of the District Judge at other places, it is particularly important that the arrangement should be very carefully watched. In such cases the District Judge is liable to stumble into a case in which he has himself advised one of the parties, and, when that happens, I do not think that he should proceed with the case without getting the express consent of both parties. No doubt in this case what I have referred to was accidental, and the proctors engaged would thoroughly understand the position, but this would not necessarily be so in the case of their clients. It is important that the administration of justice should be free from even the suggestion of suspicion, and, without casting any reflection on the learned District Judge who tried the case, I think it should be well that it should go back for a re-trial.

I would, therefore, set aside the decree *pro formâ*, and remit the case.

Costs of this appeal to be costs in the cause.

SCHNEIDER J.—I agree.

Sent back.