

1947

Present : Canekeratne and Dias JJ.

GRAND CENTRAL RUBBER ESTATES, LTD., Appellant,
and ROMPI SINGHO, Respondent.

S. C. 434-435—D. C. Ratnapura, 8,036

Witness—Credibility of —Examination at length by trial Judge—Weight to be attached to his finding.

Where a trial Judge himself examined witnesses at some length after re-examination and then rejected their evidence on the ground of contradictions—

Held, that in the circumstances it was not possible to attach weight to the views of the Judge as to their credibility.

A PPEAL from a judgment of the District Judge of Ratnapura.

H. W. Thambiah, for the defendant, appellant.

Colvin R. de Silva, for the plaintiff, respondent.

September 29, 1947. CANEKERATNE J.—

This is an appeal from a judgment of the District Judge of Ratnapura, pronounced in favour of the plaintiff in an action brought by him for the recovery of a sum of Rs. 275 as damages for wrongful dismissal and Rs. 600 damages sustained by the wrongful transfer of the plaintiff's labourers. The defence was that the plaintiff left the services of the

first defendant of his own free will. The main question was whether the plaintiff was instructed to cease work entirely or to take over the weeding section. The determination of this question depends on the testimony of the plaintiff and of the conductor. The second defendant testified that he instructed the conductor of the estate in writing to send the plaintiff to the weeding field towards the end of January. The Judge appears to accept this part of the evidence. The conductor in his evidence stated that he got instructions in writing from the second defendant and later told the plaintiff that he should stop work in the tapping field and take over the weeding section. What the Judge's finding on this evidence amounts to is this—that the conductor changed the message he received from the superintendent and told the plaintiff something entirely different; this was done apparently for no valid reason. There is evidence to show that it was usual for a kangany to be put into various fields.

The plaintiff was represented at the trial by counsel from Colombo (Mr. K. C. Nadarajah). The first defendant and the second defendant were represented by proctors of that court. The plaintiff gave evidence and called two witnesses. The Judge put no questions to the plaintiff or his witnesses. The second defendant gave evidence and was cross-examined by counsel for the plaintiff and was then re-examined. The Judge then started examining him and his examination covers one page and six lines of the typescript, while the cross-examination took one page and two lines of the typescript. The next witness was the conductor. After the cross-examination and the re-examination the Judge took this witness in hand and his examination covers a little over one and half pages of the typescript. The conductor's cross-examination covers a little over one page of the typescript. The Judge who was the sole judge of facts accepted the evidence of the plaintiff and rejected the evidence of the conductor principally because of the contradictions in his evidence. The contradictory answers were elicited by the Judge himself in the course of a prolonged examination of the witness in which sometimes the same question was asked more than once—answers obtained in one or two places by, as he himself states, "pressing the witness further". It may not be undesirable in dealing with this case to refer to the following passage from the judgment of a Court of Appeal in England. *Yuill v. Yuill*, 1944, reported on page 102 of the 29 C. L. W.

"A judge who observes the demeanour of the witnesses while they are being examined by counsel has from his detached position a much more favourable opportunity of forming a just appreciation than a judge who himself conducts the examination. If he takes the latter course he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of the conflict. Unconsciously he deprives himself of the advantage of calm and dispassionate observation. It is further to be remarked as everyone who had experience of these matters knows that the demeanour of a witness is apt to vary when he is being questioned by the Judge particularly when the judge's examination is, as it was in the present case, prolonged and covers practically the whole of the crucial matters which are in issue."

A judge is entitled to put questions and invariably would do so where it is necessary to clear up anything that is left indefinite, or indistinct, or not well explained.

The trial in this case is a very unsatisfactory one and it is a matter of regret that the Judge should have conceived himself justified in adopting the course he took in this trial. In these circumstances it is not possible to attach weight to the views of the judge as regards the credibility of the witnesses.

One course open to us is to examine the evidence afresh and come to a decision on the facts. The other is to send the case back for a re-trial. It seems fairer to the parties to adopt the latter course.

The result will be that the action will come on for trial anew and in these circumstances it is desirable that the Court should confine its opinion strictly to the requirements of the appeal so as not to prejudice the case of either party, at the trial. The judgment of the trial judge is set aside and the case will go back for trial by another judge. The costs of the proceedings in the Court below and of the appeal will be costs in the cause.

DIAS J.—I agree.

Sent back for re-trial.

