

1922.

Present : Porter J.

MUDIYANSE v. LOKU BANDA *et al.*

69—C. R. Kandy, 28,330.

*Parties agreeing to Commissioner deciding case after inspection of land without evidence—Appeal—Appeal from an order as to costs from a Court of Requests.*

Where parties agree to the Commissioner deciding a case without hearing any evidence, but simply on an inspection of the land in question, no appeal lies against the finding of the Commissioner.

No appeal lies from an order of the Commissioner as to costs.

*Sunderam*, for appellant.

*H. V. Perera*, for respondent.

July 17, 1922. PORTER J.—

Two preliminary points have been taken by the respondent (1) that no appeal lies in this case. The parties had agreed to the Commissioner deciding this case without hearing any evidence, but simply on an inspection of the land in question. In the case of *De Hoedt v. Jinasena*, decided by Schneider J., reported in *vol. 6, Ceylon Weekly Reporter, page 178*, it was decided that in such a case no appeal lay. I agree entirely with that decision. It seems to me to be impossible on a record which contains no evidence that on appeal the Appeal Court can differ from its finding. The second point taken is that this is an appeal entirely on costs, and an appeal from a Court of Requests merely on the question of costs would not lie. In the case of the Court of Requests, Chilaw, No. 5,620, reported in the *7th vol. of the New Law Reports, page 19*, it was there held that no appeal lay to the Supreme Court from an order of the Commissioner as to costs. Withers J. says in his judgment: "I cannot call to my mind, nor can Mr. Seneviratne help me with a reference to any case in which an appeal for costs only has been taken from an order by a Commissioner of the Court of Requests.

There are two objections, and I think they are rightly raised and must succeed. The only other point remaining, and which I may deal with, is on the merits. I think the judgment is correct, and the reasons given by the learned Commissioner are sound.

I would dismiss the appeal, with costs.

*Appeal dismissed.*