

1946

*Present : de Silva J.*

**ANCHAPULLE *et al.*, Appellants, and MUDIYANSE, Respondent.**

*310—C. R. Teldeniya, 721.*

*Decisory oath—Duty of Court to give sufficient directions.*

Where parties agree to settle their case by the taking of an oath, the Court should, in fixing the date for taking the oath, give directions with regard to the person by whom the oath is to be administered and the time and place where it should be administered.

**A** PPEAL from a decree of the Court of Requests, Teldeniya.

<sup>1</sup> (1911) 14 N. L. R. 193.

*S. R. Wijayatilake*, for the defendants, appellants.

*S. A. Marikar*, for the plaintiff, respondent.

March 4, 1946. DE SILVA J.—

The plaintiff in this case sued the defendants for damages incurred by him owing to the action of the defendants in taking possession of a field which had been given to the plaintiff for cultivation on *ande* basis. The defendants denied the claim of the plaintiff. On September 5, five issues were framed and at that stage the plaintiff challenged the defendants to take an oath that the field was given to the plaintiff only for one year on *ande* and the plaintiff did not repair the field and manure for the maha season of 1944. The defendants accepted the challenge to take the oath in the Maligawa. It was moreover agreed between the parties that if the oath was taken, the plaintiff's action was to be dismissed with costs and if the oath was not taken, plaintiff was to have judgment with costs. After this was agreed to an order was made that the oath fees should be deposited by the plaintiff on September 12. It was also provided that if the fees were not deposited, the plaintiff's action was to be dismissed with costs. On September 12, the oath fees were paid and the Commissioner ordered the oath to be taken on September 17. The oath was not taken on the 17th and on the 26th, Mr. Mudannayake stated that he was ill on the 12th and was not present in Court and that the defendants were unaware of the date for taking the oath and asked for a further date to have the oath taken. The learned Commissioner refused this application and entered judgment for the plaintiff as prayed for with costs. The defendants appeal from this order and urge that the order of the Commissioner that the oath should be taken on September 17 did not give sufficient details and did not appoint a Commissioner for the purpose of administering the oath. They urge that if a Commissioner had been appointed he would have probably communicated with them and they would have been in a position to arrange the time on which the oath was to be taken. There seems to be some substance in this contention. The Commissioner should have in fixing the date for taking the oath given directions with regard to the person by whom the oath was to be administered and the time and place where it should be administered. In the circumstances, I set aside the decree of the Court of Requests and send the case back for trial in due course. If the parties are still willing to abide by their agreement to take the oath, the Commissioner should fix a date for the purpose and give proper directions for the administering of the oath. The appellant is entitled to the costs of appeal, all other costs would be costs in the cause.

*Appeal allowed.*