

1944

*Present: Howard C.J. and de Kretser J.*ARUMUGAM, Appellant, and SIVA SAMBŪ, *et al.*,
Respondents.299—*D. C. Jaffna, 16, 007.**Evidence—Questions put by Counsel disallowed by Court—Refused to record questions—Ground for retrial.*

Where a District Judge disallows certain questions put by Counsel and refuses to record the questions when he is requested to do so by Counsel,—

Held, that it was a sufficient ground for ordering a new trial.

APPEAL from a judgment of the District Judge of Jaffna.

N. Nadarajah, K.C. (with him *H. W. Thambiah*), for the defendant, appellant.

L. A. Rajapakse, K.C., (with him *C. Renganathan*), for the plaintiffs respondents.

Cur. adv. vult.

October 23, 1944. HOWARD C.J.—

One of the cardinal principles of our law is that justice should not only be done but be seen to be done and in this case there is no doubt that the defendant considered that he had not been given a fair trial. It would appear that at one stage of the proceedings the defendant's Counsel wanted to put certain question to a witness. These questions were disallowed. After that there appears to have been a somewhat unseemly wrangle between defendant's Counsel and the Judge. Later on, the defendant's Counsel, according to a passage in the record, said that he did not want to appear in the case as some of his questions in re-examination which the Judge considered irrelevant and not arising out of the cross-examination were not recorded by the Judge. The Judge then said that he informs Mr. Ragupathy (that is to say the defendant's Counsel) that he is at liberty to retire from the case. Mr. Ragupathy then said that he did not want to make any statement as to whether he wants the permission of Court to retire from the case. Mr. Ragupathy then proceeded to retire from the case. The defendant then informed the Court that he did not want to proceed with the case that day in view of the position that was taken up by his Counsel. His Proctor was absent. The application for an adjournment was then allowed. The case was resumed on July 5, two days later, when the defendant was present in person and applied that his case should be heard by another Judge. He then gave evidence and said that his reason for requiring the case to be heard by another Judge was that some of his evidence had not been recorded and also because the Court disallowed certain questions regarding the account books. The District Judge then proceeded with the hearing of the case. The defendant apparently took no part in the hearing and did not address the Court nor tender any documents in evidence. Subsequently judgment was given in favour of the plaintiffs.

We think it is obvious from the record of the evidence of the trial that the learned District Judge was asked to record the questions which he had disallowed. The learned District Judge has furnished us with an explanation of various allegations made in the petition of appeal and in that statement he does not deny the allegation that he was asked to record these questions and refused to do so. For this reason alone we think that a new trial should be ordered. It is obvious that if there is no record of the questions which Counsel wished to put to the witness in re-examination, this Court is unable to say on appeal whether or not those questions were relevant.

We, therefore, set aside the judgment in favour of the plaintiffs and order a new trial by another Judge. The costs of the abortive trial and of this appeal will abide the result of the new trial.

DE KRETZER J.—I agree.

Judgment set aside.

New trial ordered.
