

1895.  
June 22.

SILVA v. ARNOLIS.

C. R., Galle, 3,265.

*Civil Procedure Code, s. 84—Kind of decree to be entered on default of plaintiff's appearance—Appealable order—Courts Ordinance, s. 80.*

The proper order that should be entered, in the event of plaintiff's absence on day of trial, is not one for the dismissal of his action, but a decree *nisi* only, which should be made absolute if the plaintiff within a fortnight does not show good cause for his non-appearance.

An order made by a Commissioner of Requests setting aside an *ex parte* decree dismissing a plaintiff's action is not an appealable order, inasmuch as it is not a final judgment or order having the effect of a final judgment.

THE facts material to this report appear in the following judgment.

Canakarātna, for appellant.

22nd July, 1895. BONSER, C.J.—

This is an appeal from an order by Mr. Moor, who was acting as Commissioner of Requests at Galle, whereby he set aside an *ex parte* decree which he had made dismissing the plaintiff's action.

The plaintiff did not appear at the trial, and the Commissioner dismissed the action with costs.

In this, I think, he was wrong, for section 84 of the Civil Procedure Code provides that in such a case the dismissal was not to be absolute, but that a decree *nisi* dismissing the plaintiff's action is to be made, which, unless the plaintiff within a fortnight should show good cause for his non-appearance, should become absolute.

But although the decree was on a wrong form, the Commissioner treated it as if it had been made in proper form.

Within the fourteen days the plaintiff applied to be allowed to prosecute his action and to have the decree set aside.

His application was supported by evidence that his absence was caused by illness. Upon that the Commissioner made order setting aside the decree and allowing the plaintiff to prosecute the action.

Against that order the defendant appeals; but I think that the order was quite correct.

There is also a further objection, and that is that the order is not an appealable one. It is not every order made in the course of an action in the Court of Requests that is appealable. Section

80 of the Courts Ordinance gives the right of appeal from Courts of Requests, and limits that right to final judgments or orders having the effect of final judgments.

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BONSER, C.J.

The order in question was not a final judgment, nor had it the effect of a final judgment. Therefore no appeal lies from it. The appeal will be dismissed.

