

TIKIRI MENIKA v. DEONIS.

C. R., Galagedara, 1,257.

1903.

July 29.

*Judgment—Irregularity of a Judge writing out his judgment after he became functus officio—Consent of parties.*

A judgment written out by a Commissioner of the Court of Requests after he became *functus officio* and delivered by his successor in office with the consent of the parties is bad, notwithstanding such consent.

A judgment which does not deal with the point in issue and does not pronounce a finding definitely on them is not a judicial pronouncement. Nor must judgment be delayed for two months after the case has been closed.

THE main question for decision in this case was whether certain lots of land constituted the land called Hitinawatte, and whether Dingiri Banda, plaintiff's vendor, was entitled to all

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the said allotments, and whether he, and after him the plaintiff, possessed the same adversely to the defendant for over ten years.

The case was heard by Mr. J. H. Carbery on the 14th July and 13th August, and judgment reserved. His judgment dated the 29th October, 1900, was forwarded from Kurunegala to Galagedara, and was read on the 21st September, 1901. It was delivered by his successor in office, Mr. J. C. Molamure, after due notice had been issued to the parties and their consent to the delivery of the judgment taken.

The judgment was in favour of the plaintiff.

The defendant appealed. The case came on for argument on 27th July, 1903.

*E. W. Jayawardene*, for appellant, urged, *inter alia*, that as Mr. Carbery had ceased, at the time of writing his judgment, to be Commissioner of the Court of Requests of Galagedara, his judgment was not valid. He was *functus officio* when he wrote it. It had been delayed two months after the case was closed, and the finding of the facts is vague.

*Cur. adv. vult.*

29th July, 1903. GRENIER, A.J.—

This case must go back for a new trial. In the first place, I find that Mr. Carbery was *functus officio* at the time he delivered judgment in this case. Had the judgment been written by him during his tenure of office, it would have been competent for his successor to have delivered it; but he seems to have written out his judgment after he had ceased to be Commissioner, and I do not think the consent of the parties served to make the judgment valid.

On another ground also, I think it advisable, although I much regret it, that there should be a new trial. Even if I consider Mr. Carbery's judgment a valid one, he has not dealt with the points in issue between the parties, and has pronounced no finding of a definite character. All he says is that the evidence as to possession on both sides is confusing and contradictory, and that on the paper title plaintiff has made out a good case. This is not a judicial pronouncement upon the issues framed by him. The judgment appears to have been written in a hurry, and nearly two months after the case on both sides had been closed.

There will be no costs of this appeal. The costs hitherto incurred in the Court below will be borne by each party.