1903.
September 10.

CARPEN CHETTY *v.* MAJIDU.

D. C., Galle, 4,913.

Decree—Amendment of, in terms of judgment—Power of Courts to amend—Civil Procedure Code, s. 189.

Where the judgment of a Court declared the title of the plaintiff to be superior to that of the defendant and directed a declaration of title to be entered in plaintiff's favour, and the decree following thereon merely declared the plaintiff's title, but did not direct the placing of the plaintiff in possession,—

Held, it was open to the Court to amend the decree by inserting an order for the ejectment of the defendant and for the placing of the plaintiff in possession of the property decreed.

THE plaintiff and the third defendant held mutually exclusive transfers of a land from the same source.

1903. *September 10.*

The District Judge (Mr. F. J. de Livera) found in favour of the plaintiff in a judgment running as follows:—

" I consider the plaintiff's title superior to that of the third defendant because plaintiff's transfer was registered before the transfer in favour of the third defendant. Let a declaration of title be entered in plaintiff's favour for the 13th perches extent of land and house conveyed to them by Fiscal's transfer No. 7,270, dated 8th March, 1895; third defendant will pay plaintiff's costs. "

The decree founded thereon contained no order directing the ejectment of the third defendant or the placing of the plaintiffs in possession.

The third defendant took advantage of the omission to resist the plaintiffs when they tried to take possession. After various other unsuccessful steps, the plaintiff applied to the District Court on 9th April, 1903, for amendment of the decree by adding an order for the ejectment of the third defendant and the placing of the plaintiff in possession.

The third defendant resisted the application on the ground that the decree was not at variance with the judgment (section 189, Civil Procedure Code) and that it came under the head (*g*) of section 217, and that the Court had no power to vary the judgment.

The District Judge (Mr. G. A. Baumgartner) over-ruled the objection and allowed the amendment on the ground that the right of possession was consequential on the exclusive title being in plaintiffs, and that section 207, Civil Procedure Code, would debar the plaintiff from obtaining any remedy by separate action, so that the relief they were obviously entitled to must of necessity be granted to them on the present application (*Voet 42, 1, 27*).

The third defendant appealed.

Bawa, for appellant.

Van Langenberg, for respondent.

The Supreme Court dismissed the appeal on the 10th September, 1903.

10th September, 1903. WENDT, J.—

.....Then, there is a more substantial objection, that the District Court has under the circumstances no power to amend its decree, because its powers in that respect are strictly limited by section 189 of the Civil Procedure Code. It is said that this decree is not " at variance with the judgment, " and that the alleged error is not a " clerical or arithmetical error. " I, however, regard the judgment of the District Judge as not intended to define, and not defining, all the relief which the plaintiffs were to receive as a

consequence of the decision of the Court: as the District Judge who made the order now under appeal has pointed out, the judgment merely directed judgment to be entered for the plaintiffs and apportioned the costs of the action. 1903. *September 10.* WENDT, J.

I think, in the ordinary course, it would have been proper for the officer of the Court drawing up the decree to have included in it the further relief prayed for by the plaintiffs, viz., a restoration to possession, without which the judgment was absolutely valueless; and had he done so, I think it would have been difficult for the third defendant to persuade the Appellate Court that the decree was at variance with the judgment. If this view be correct, the decree as drawn up was at variance with the judgment in omitting to include something which the judgment intended to grant, and therefore the present application would come within the strict reading of section 189.

MIDDLETON, J.—Agreed.