Present: Lascelles C.J. and Middleton J.

1911.

DEONIS *v.* SAMARASINGHE *et al.*

218—D. C. Galle, 7,931.

Costs—Judgment and decree of Supreme Court silent as to costs in the lower Court—Supreme Court has no power to amend decree after it had passed the seal—Civil Procedure Code, s. 189—Inherent power of Court.

Where the Supreme Court set aside the judgment appealed against and awarded costs of appeal to the appellants, and where the judgment and decree of the Supreme Court were silent as to the costs in the lower Court—

Held, that the Supreme Court had no power after the decree had passed the seal to supply the omission.

It is not competent to a Court to amend its decree on grounds other than those stated in section 189 of the Civil Procedure Code.

LASCELLES C.J.—Quite apart from the provisions of the Civil Procedure Code, the Supreme Court has power to amend its decrees so as to bring them in accordance with its intention as expressed in its judgment. But it is another matter, after a decree has passed the seal, to supply an omission which has occurred through inadvertence.

THE facts are fully set out in the judgment of the Chief Justice.

Bawa, for the added defendants, appellants.—As the decree now stands the appellants have to pay the costs of a contention in which they succeeded. It is clear that the omission to make an order as to the costs in the lower Court was due to an oversight. The Supreme Court has the power to supply the omission. See *Sinnappu v. Punchappu;*[1] *Carlill & Co. v. Rawther;*[2] *Pereira's Institutes, vol. I., pp. 150 and 306.*

Where the decree is silent as to costs, the successful appellant is entitled to recover his costs. (*1 Thom. 485.*)

A. St. V. Jayewardene (with him *Jayatileke*), for the respondent.—The judgment was pronounced in open Court, and no objection was taken at the time. It is now too late, as the decree has passed the seal, and as the present application does not come under section 189 of the Civil Procedure Code. It is not possible to recall all the considerations that influenced the Supreme Court to make this order.

[1] *(1892) 1 S. C. R. 121.*

[2] *(1899) 1 Tam. 18.*

1911.

Deonis v. Samarasinghe

The passage in *Thomson* refers to a case where no order at all is made as to costs, which is not the case here. The powers of the Supreme Court are defined by Ordinances. See *In re Local Board of Jaffna.*[1] Counsel also cited *Thomatherar v. Hensan.*[2]

Bawa, in reply.

Cur. adv. vult.

November 15, 1911. LASCELLES C.J.—

This is a motion by the appellants to amend the decree of this Court by ordering the respondent to pay the appellants' costs of contention in the District Court.

In the District Court the appellants had failed in their contention, and were ordered to pay the respondent's costs. On appeal, however, the appellants succeeded in their contention, and were allowed the costs of appeal, but the judgment and decree of this Court are both silent as to the costs in the Court below; with the result that the order of the District Court stands, and the appellants are still liable to pay the respondent's costs in the Court below. There can, I think, be no doubt but that the omission to make order with regard to the costs in the Court below was due to an oversight.

Judgment was pronounced in open Court on August 28, 1911, at the close of the argument, and the present motion, if made on that date, or at any time before the decree was perfected, would almost certainly have been successful. The question for decision is whether the application can be allowed at this stage. Section 189 of the Civil Procedure Code empowers a Court to amend its decree on certain specified grounds, namely, if the decree is at variance with the judgment, or on account of clerical or arithmetical errors, but obviously none of these grounds are available in the present case. The question, in substance, is whether it is competent to a Court to amend its decree on grounds other than those stated in section 189. The correction which is now sought for appears to be one which could have been made under the English Slip Order (O. 28, r. 11), *In re Rudd,*[3] but that order is wider in its scope than section 189 of the Civil Procedure Code, inasmuch as it provides for errors arising from accidental slips or omissions, and is not limited to the correction of variations between the judgment and decree and clerical or arithmetical errors.

The question then arises whether the Supreme Court possesses inherent power to make an amendment of this nature. That this Court, quite apart from the provisions of the Civil Procedure Code, has power to amend its decrees so as to bring them in accordance with its intention as expressed in its judgment can hardly be doubted. But it is another matter, after a decree has passed the seal, to supply an omission which has occurred through inadvertence.

[1] *(1907) 1 A. C. R. 128.* [2] *(1908) 4 Bal. 68.*

[3] *W. N. (1887) 251.*

In India it has been held, under the corresponding section (206) of the Civil Procedure Code of 1882, that a Court should not amend except in accordance with the terms of the section (*Abdul Hayai Khan v. Chunia Kuar*[1]), and in England it has been held that a Court cannot correct a mistake of its own after the judgment has been perfected, even though the error be apparent on the face of the judgment (*Charles Bright & Co., Ltd. v. Sellar* [2]).

In the face of these authorities, and in the absence of any provision in the Courts Ordinance from which it can be implied that the Supreme Court possesses inherent power to make a correction of this nature, I am obliged to hold, with some reluctance, that we are unable, at this stage, to accede to this motion.

The motion is dismissed with costs.

MIDDLETON J.—I agree.

Application refused.