

1931

Present : Macdonell C.J. and Garvin S.P.J.

VAITALINGAM *et al.* v. MURUGESU.

434—D. C. Jaffna, 26,302.

Foreign judgment—Decree for costs—Variance between decree and allocatur—Action in Ceylon.

Where in a foreign judgment the plaintiff was ordered to pay the costs of the successful defendant but in the allocatur the costs were ordered to be paid to the defendant's solicitors,—

Held (in an action instituted in Ceylon on the foreign judgment), that the costs were payable according to the terms of the decree.

A PPEAL from an order of the District Judge of Jaffna.

Nadarajah, for the plaintiffs, appellants.

Subramaniam, for the defendant, respondent.

November 3, 1931. MACDONELL C.J.—

In this case the plaintiffs sue on a foreign judgment wherein they were the successful defendants and wherein the plaintiff was ordered to pay them the costs of suit as taxed by the officer of the Court from which the decree issued. The costs were taxed but in the allocatur they were ordered to be paid by the unsuccessful plaintiff "to the defendants' solicitors". In so far as this allocatur varies from the words of the decree it clearly is of no effect and the words of the decree will have to be followed. The present appellants now sue the plaintiff on the foreign judgment for the costs due by him under that judgment. At the trial below the learned Judge laid stress on the wording of the allocatur, but it has been pointed out that the document where it differs from the word of the decree cannot stand, and the words of the decree are clear that the payment must be made to the defendants. The respondent on this appeal did not in the Court below plead payment either to the appellants or to their solicitors. An issue was agreed upon, "Is the sum of money taxed on this bill payable by the defendant to the plaintiffs as costs of the suit under the foreign judgment" and the learned Judge relying on the fact that the allocatur said that the sum must be paid to the "defendants' solicitors" dismissed the action. On this statement of facts it is perfectly clear that the dismissal was wrong and that the money is owed by the present respondent to the appellants in this action.

The appeal must be allowed with costs here and in the Court below.

GARVIN S.P.J.—I agree.

Appeal allowed.