

1930

Present : Dalton S.P.J. and Akbar J.

PERERA v. FERNANDO.

415—*D. C. Colombo, 28,705.*

Decree—Application to amend—Variance of judgment from decree.

The plaintiff sued the defendant for damages for breach of contract with legal interest from the date of action. The Supreme Court entered judgment for plaintiff in appeal for “Rs. 1,110.25 and costs in this Court and the Court below”.

When the decree of the Supreme Court was drawn the words “with interest from July, 1928, at nine per cent. until date of payment” were added.

Held (on an application to revise the decree of the Supreme Court), that the plaintiff was not entitled to interest.

APPPLICATION to amend the decree of the Supreme Court and to bring it into conformity with the judgment.

Choksy, for defendant, petitioner.

Hayley, K.C. (with him *Canjemanandan*), for plaintiff, respondent,

October 16, 1930. DALTON S.P.J.—

This is an application by the defendant in the action to amend the decree of this Court dated April 15, 1930, and to bring it in conformity with the judgment.

The plaintiff sued the defendant in the District Court for damages for breach of a building contract. In the plaint he also asked for legal interest as from July 4, 1928, the date the action was brought. The case came before this Court on appeal, the plaintiff being the appellant. The order of this Court was that the judgment and decree of the District Judge be set aside, and judgment was given "for the plaintiff for Rs. 1,110.25 and costs in this Court and the Court below". When the decree of this Court was drawn up the

words "with interest from July 4, 1928, at nine per cent. until date of payment" were added. The defendant (respondent to the appeal) now asks that these latter words be struck out of the decree since the Court made no order for the payment of interest. The plaintiff opposes the application. In my opinion it must be granted; the Court in its judgment made no order for the payment of interest. Even if judgment had been ordered as prayed for without special mention of interest, there might have been some support for the decree as it was drawn up, but there is no such order here.

There has been a counter-application on behalf of the plaintiff-appellant which is in effect nothing more than a request that the judgment be varied to conform to the decree, but that cannot be done.

The application before us must therefore be allowed, with costs of this proceeding.

AKBAR J.—I agree.

Application allowed.