

1943

Present : Keuneman and Wijeyewardene JJ.

ABDUL CAFFOOR, Appellant, and MUNICIPAL
COUNCIL, COLOMBO, respondent.

181—D. C. Colombo, 11,761.

*Costs—Action of plaintiff and defendant's counterclaim both dismissed—
Equitable order re costs.*

Where both the plaintiff's action and defendant's counterclaim are dismissed the equitable order as to costs would be that the plaintiff's action and the defendant's counterclaim should be both dismissed with costs or that there should be no order for costs.

A PPEAL from a judgment of the District Judge of Colombo.

C. T. Olegasegaram (with him *A. H. M. Ismail*), for the plaintiff, appellant.

J. E. M. Obeyesekere (with him *H. W. Thambiah*), for the defendant, respondent.

April 16, 1943. KEUNEMAN J.—

The only point of substance that arises in this appeal is whether the District Judge's order with regard to costs is correct. The action was brought by the plaintiff claiming a sum of Rs. 9,339.96 as injury to buildings and Rs. 3,937.50 as consequential damages arising from the fact that the defendant's sewer had crumpled up or cracked and had caused the damage described in the plaint. The defendant denied the allegations of the plaintiff and counterclaimed in the sum of Rs. 21,515.98 for damage caused to the sewer in consequence of the plaintiff's building having been improperly put up in close proximity to the sewer and having caused damage to it. After a lengthy trial the learned District Judge dismissed both the plaintiff's action and the defendant's counterclaim, but for reasons which he had not set out ordered the plaintiff to pay to the defendant one half of the taxed costs of this action.

It is difficult to understand why this order had been made. Each side in this court has tried without success to convince us that the greater part of the evidence was due to the claim of the other side. As

far as I can make out, the length of the trial was due not only to the claim of the plaintiff but also to the counterclaim of the defendant. I think the equitable order would have been either that the plaintiff's action and the defendant's counterclaim should have been both dismissed with costs or that no order for costs should have been made in the court below. In the absence of any reason for the learned District Judge making that order, I now make order that there shall be no order for costs to either side in the Court below. I do not think that there should be any costs of appeal either. Subject to this variation the appeal is dismissed.

WIJEYWARDENE J.—I agree.

Varied.

