

Present : Schneider J.

1922.

SILVA v. WATTUHAMY.

260—C. R. Matara, 11,137

Decree that no damages are to be paid if defendant allows a cart track within three months of the date of the decree—Appeal to Supreme Court—Appeal dismissed—Is period of three months to be counted from date of Supreme Court judgment?

The judgment of the Commissioner of Requests ordered the defendant to pay damages at the rate of Rs. 10 a month, but directed no damages was to be paid if the defendant within three months of the decree allowed or provided a cart track. The defendant appealed, and the Supreme Court affirmed the judgment.

Held, that the three months must be reckoned from the date of the decree of the Court of Requests, and not from the date of decree of the Supreme Court.

¹ *Ram. Rep. 1863-68, p. 226.*

THE facts are set out in the judgment.

1922.

*Silva v.
Watuhamy*

M. W. H. de Silva, for appellant.

H. V. Perera, for respondent.

November 1, 1922. SCHNEIDER J.—

On a writ issued in this case a sum of Rs. 300 was included by way of damages. The judgment and decree of the Commissioner, I think, clearly indicates that Rs. 10 damages a month should be paid as from the date of his decree till restoration, but that even this damages was not to be paid if, as directed by him, the defendant would within three months of the date of the decree allow or provide a cart track. There was an appeal to this Court from the decree of the Commissioner and this Court affirmed that decree. It appears to have been contended upon an application for the recall of the writ that the period of three months must be reckoned as from the date of the decree of this Court affirming the decree of that Court. This contention was sought to be supported by reference to the case of *Cassim Lebbe Marikar v. Surayi Lebbe*¹ and the *Attorney-General v. Perera*². None of those are actually in point. There is an expression of opinion by one of the Judges who took part in one of the cases that an appeal, *ipso facto*, suspends decree. This seems to be a startling proposition. For section 761, chapter LIX., of the Civil Procedure Code, expressly enacts:—

“ Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but, if any application be made for stay of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed.”

This view of the law appears to have been accepted as correct in the case of *Arunasalem v. Somasundaram*.³

I would, therefore, hold that the date of the decree in this case is the date of the decree of the lower Court. All that was done in appeal was to affirm that decree. Therefore by virtue of the Supreme Court judgment that decree became final as from its own date. I would therefore dismiss the appeal, with costs.

Appeal dismissed.

¹ 3 C. W. R. 61.

² (1908) 12 N. L. R. 35.

³ (1918) 20 N. L. R. 321.