1922.

*Present :* Bertram C.J. and Schneider J.

DIONIS APPU *v.* ARLIS *et al.*

*425—D. C. Galle, 18,318.*

*Power of District Judge to vary judgment after delivering same in open Court—Civil Procedure Code, s. 189.*

It is not competent to a Judge to reconsider or vary his judgment after delivering it in open Court, except as provided by section 189 of the Civil Procedure Code.

THE facts appear from the judgment.

*J. S. Jayawardene*, for the appellants.

*H. V. Perera*, for the respondent.

March 30, 1922. BERTRAM C.J.—

In this case the learned Judge, either having delivered a considered judgment and pronounced it in open Court, saw reason before the decree was drawn up to come to a different conclusion. He thereupon, after the appealable time had elapsed, delivered a fresh judgment, in a sense contrary to the original judgment and purported to cancel the original judgment. The justification for his doing so was that the decree had not yet been drawn up, and he appears to have held that until that takes place it is competent for a Judge to vary any judgment he may have pronounced even to the extent of entirely reversing it. I do not think that this is a tenable proposition. The delivery of the judgment is a formal step prescribed by the Code, and a judgment is itself a most formal document. Although it is defined in the definition section of the Code, section 5, as being the statement given by the Judge of the grounds for the decree or order, it must be borne in mind that that definition only applies, unless there is something in the subject or context repugnant thereto ; and if the whole of the provisions in chapter XX. are read, it will be observed that by section 187 the judgment must contain a decision, and by section 188 the Judge must make an order. There is no such provision in the Code authorizing an amendment of the decision and order as exists in the case of a decree under section 189. The action, therefore, taken by the learned Judge is entirely unjustified by any provision of the Code. Our Code is intended to be formal and complete, and unless it can be shown that the action was made in pursuance of some inherent power of the Court not referred to in the Code, it appears to me that the proceeding must be considered

erroneous. I do not know on what authority the learned Judge impliedly propounds the proposition that, until a judgment is embodied in a decree, it may be varied. It is possible that he may have been thinking of certain English authorities which have been referred to in our own reports, where it is said that after a judgment has been passed and entered no amendment can be made in it except in the case of a clerical error, or in a case where a judgment is drawn up which does not represent the intention of the Court in pronouncing it. That seems to imply that before a judgment is passed and entered, according to the phraseology used in English procedure, it may be varied. I do not think, however, that there is any general English principle which goes to that length. On the contrary, it appears from the case of *Charles Bright & Co., Ltd., v. Sellar*,[1] that it is not competent for a Judge of first instance to correct an error in law apparent on the face of the order he has made, even before that order has been formally enrolled. There is an interesting account of the history of the subject given in the judgment of Cozens-Hardy L.J. in that case. In any case, even though there were such a general principle in English procedure, it would not necessarily apply to our Courts where we are governed by what is intended to be a complete and precise Code. The decision we are now pronouncing is in accordance with a previous decision of this Court, namely, the case of *Ponnachchy v. Eliatamby*.[2] I would also draw attention to the decision of this Court in *Sinno Appu v. Andris*,[3] where Hutchinson C.J. points out that, whereas there is power given to correct a decree with regard to a clerical error, there is no similar power in regard to a judgment. It appears to me, therefore, that the revised judgment of the learned Judge cannot stand, and that the appeal in this case should be allowed; and as the respondent supported that judgment the appeal should be allowed with costs, but the costs in the Court below should abide the event.

At the same time as we are free to deal with the matter in the exercise of our powers in revision, I think that, in view of the circumstances of the case, the judgment appealed against, as well as the previous judgment, should both be set aside, and the matter remitted to the District Court for re-trial before another Judge.

SCHNEIDER J.—I agree.

*Sent back.*

[1] *(1904) 1 K. B. D. 6.*

[2] *Leader, L. R. 53.*

[3] *(1910) 13 N. L. R. 297.*