

SILVA v. BABAHAMY.

1895.
August 2.

D. C., Galle, 2,980.

Civil Procedure Code, s. 74—Answer—Time for filing.

Section 74 of the Civil Procedure Code does not contemplate only one extension of time for filing answer, the words "at any subsequent time" of that section being intended to meet a case of more than one extension.

THE facts of the case are fully stated in the judgment of the Chief Justice.

Alwis, for appellant.

2nd August, 1895. BONSER, C.J.—

In this case the appellant was not ready with her answer on the day fixed for her answer, and she got leave to file answer on a subsequent day. On that day, however, she was not ready; but the Court did not proceed to hear the case *ex parte* and make a *decree nisi* as it might have done, but fixed the trial of the action for a date two months later. Long before the date of trial the defendant appeared and applied for leave to file answer, and stated in an affidavit the reasons—on the face of them satisfactory—why she had not filed her answer on the day fixed for that purpose by the Court. The District Judge, however, held that he had no power to receive the answer or to extend the time for filing answer, being of opinion that section 74 of the Civil

1896. Procedure Code allowed only of one extension of time for filing
BONSER, C.J. answer.

I am of opinion that the District Judge has construed the Code too literally, and that it admits of a more elastic interpretation. I think the words "at any subsequent time" are intended to meet a case of more than one extension, and, therefore, that the appellant ought to be allowed to file her answer.

The District Judge suggests that she should wait until the case has been heard and decided, and then, when she has been served with notice of the decree, move to have it set aside. That would be a most inconvenient procedure. I think every reason of justice and convenience favours her being allowed to file answer.

The appeal is allowed.

WITHERS, J., concurred.
