

1903.
July 3 and
16.

MENIKA v. DISANAYAKA.

C. R., Kandy, 1840.

Husband and wife—Claim for alimony—Period for which alimony may be claimed.

Where a wife, deserted by her husband and maintained by her father for several months, claimed alimony from the date of her husband's desertion to the institution of the action and for further alimony till the decision of the action,—

Held, that she could claim alimony only from the date of the institution of the suit, and that, as her husband was willing, after action brought, to live with her but she refused to do so, she could not recover alimony beyond the date of such refusal.

THIS was an action brought by a wife (who was living with her father) against her husband to recover alimony. The parties were married on the 3rd June, 1901. On the very day of the marriage the defendant deserted her, without consummating the marriage. The wife's action was instituted about six months afterwards—on the 24th February, 1902. She prayed for maintenance at the rate of Rs. 20 per month from the date of her marriage to the institution of the action, and for a further sum of Rs. 20 for every month thereafter.

The defendant pleaded that he married the plaintiff on the condition that her father should pay him Rs. 1,500 in cash and give him lands to the value of Rs. 3,000, and that as her father neglected to carry out his promise he was not liable to maintain the plaintiff.

The Commissioner (Mr. J. H. de Saram) found that the matters pleaded in avoidance did not free the defendant from liability to maintain his wife; that when the case came on before him on the 19th November, 1902, he suggested an amicable settlement, and the defendant then expressed his readiness to live with the plaintiff as her husband, but that she refused his society; that in these circumstances the defendant was bound to maintain the plaintiff only up to the date of his willingness to live with her, viz., 19th November, 1902; that the amount of maintenance should be at the rate of Rs. 10 per month; and that the plaintiff should have judgment for seventeen and a half months, viz., Rs. 175.

The defendant appealed. The case was argued on 3rd July, 1903.

Bawa, for the appellant.—The Commissioner has given judgment from the date of desertion to the date of the plaintiff's refusal

to live with the defendant. But it has been held in *Yadulgodā v. Herat* (2 S. C. C. 33) that where the father has maintained his daughter, the deserting husband cannot be sued by her for alimony for the months during which she has been so maintained. The Commissioner's judgment should be modified by reducing her claim from the date of the institution of the suit to the time of her refusal to live with him.

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Van Langenberg, for the plaintiff, respondent.—There is nothing to prevent the father from recovering from his daughter the costs of her maintenance. The *dictum* of Clarence, J., referred to by the appellant's counsel was really not the point decided in the case, as the head-note shows. All that was decided there was that the wife had the right to ask the Court to assess and award her maintenance pending desertion. The Supreme Court does not lay down in the case cited that a wife cannot recover as alimony any sum of money which had not been actually spent. That case does not apply here.

Cur. adv. vult.

16th July, 1903. GRENIER, A.J.—

This was an action for alimony. The defendant appears to have deserted his wife on the very day that he married her, and never went back to live with her. The desertion took place on the 3rd June, 1901, and since that time she has been living with her father. She claims maintenance at the rate of Rs. 20 a month, but I accept the amount fixed by the Commissioner, viz., Rs. 10 a month. In a similar case decided by a Full Bench of this Court, and reported in 2 S. C. C. 33, it was held that the wife was entitled to maintenance as from the date of the institution of the suit.

I would therefore vary the judgment of the Commissioner and order judgment to be entered for the plaintiff, decreeing that the defendant do pay to the plaintiff the sum of Rs. 10 a month as and from the 24th February, 1902, up to the 19th November, 1902, being the date of her refusal to live with him. No costs.
