

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice,  
and Mr. Justice Wendt.

1909.  
April 5.

**ABEYAGOONESEKERE v. ABEYAGOONESEKERE.**

*D. C., Colombo, 26,426.*

*Divorce—Liability of husband to provide wife's costs—English practice—  
Courts Ordinance, No. 1 of 1889, s. 64.*

The rule of English practice that in a divorce case the husband is, as a general rule, liable to pay into Court, or give security for, an amount sufficient to cover the wife's costs in connection with the case should be followed in Ceylon.

*Silva v. Silva*<sup>1</sup> followed.

**A** PPEAL by the defendant from an order of the Acting District Judge (H. A. Loos, Esq.) directing him to pay Rs. 200 for the wife's costs in the action, and also a sum of Rs. 50 monthly for alimony pending the action. The facts material to the report appear in the judgments.

*Van Langenberg*, for the defendant, appellant.

*H. A. Jayewardene* (with him *Batuwantudawe*), for the plaintiff, respondent.

*Cur. adv. vult.*

April 5, 1909. HUTCHINSON C.J.—

The appellant, who is the defendant in an action brought against him by his wife for divorce, appeals from an interim order made in the action directing him to pay Rs. 200 for the costs which the plaintiff has incurred and may incur in prosecuting the action, and to pay her Rs. 50 a month for alimony pending the action.

The defendant objects that the amount allowed for alimony is excessive. I do not think so, and I would dismiss that part of the appeal. With regard to the order for costs, the plaintiff has sworn that the money to which she was entitled under her father's will was given to the defendant at the time of their marriage, and that she has now no other property, and no expectation of getting any; and this evidence is not contradicted. Under the circumstances it would be in accordance with the practice of the English Courts to make such an order as was made in this case—a practice established at a time when, as a rule, all the wife's property belonged to her husband, or was under his control. But the appellant objects that the Courts of Ceylon have no power to adopt that practice. By section 64 of the Courts Ordinance every District Court has jurisdiction in

<sup>1</sup> (1905) 3 N. L. R. 280.

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matrimonial matters. By section 596 of the Civil Procedure Code the procedure generally in matrimonial cases is (subject to the provisions contained in that chapter) to follow the procedure thereinbefore set out with respect to ordinary civil actions. Then follow some special provisions as to procedure in such cases, including power (section 614) to the Court to order the husband to pay alimony to the wife pending the action, but there is no provision for an order upon him to pay in advance or give security for a sum to provide for the costs which his wife may incur in prosecuting or defending the action. The appellant contends that our Code was intended to provide in detail the whole of the procedure in these actions, and that there is no power to adopt anything from the English procedure. We must, however, follow the decision of this Court on the point which was given in 1905 by Pereira J. and Layard C.J. in *Silva v. Silva*.<sup>2</sup> There it was laid down that the English rule should be followed, that the husband is, as a general rule, liable to pay into Court or give security for an amount fixed by the Registrar as sufficient in his judgment to cover the wife's costs in connection with the hearing of the case.

I think, therefore, that the appeal should be dismissed with costs.

WENDT J.—

The difficulty in the way of making an order on the husband to secure the wife's costs arises from the absence of any express provisions in Chapter XLII. of the Civil Procedure Code empowering the Court to make such an order. That chapter, while providing for incidence of costs of particular proceedings in matrimonial actions (see sections 604, 612), gives no direction as to the general costs between husband and wife. I presume section 596 would make the provisions of Chapter XXI. applicable as part of the "procedure hereinbefore set out with respect to ordinary civil actions." We have no enactment similar to the Indian Divorce Act (No. IV. of 1869) which enacts that in matrimonial actions between parties to whom the Act applies the Court shall "act and give relief on principles and rules as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief." So there is no direct legislative authority for applying the English rule. That rule, however, if not originally founded on public policy, but on the wife's entire lack of means, has been maintained, in later times, at least partly on grounds of public policy. (See the case of *Mayhew v. Mayhew*.<sup>2</sup>) This Court, in *Silva v. Silva*,<sup>1</sup> thought that the English rule should be followed here, and I am content to acquiesce in that ruling. If the rule is applicable, the present is a proper case for applying it. I therefore concur in dismissing the appeal with costs.

*Appeal dismissed.*

<sup>1</sup> (1894) I. L. R. 19 Bom. 293.

<sup>2</sup> (1905) 8 N. L. R. 280.