

[IN THE PRIVY COUNCIL]

1957 *Present* : Lord Merriman, Lord Reid, Lord Somervell of Harrow,
Lord Denning and Mr. L. M. D. de Silva

E. C. PERERA, Appellant, and J. HALWATURA and
another, Respondents

Privy Council Appeal No. 11 of 1957

S. C. 577—D. C. Kandy, 751

Divorce—Adultery—Quantum of damages.

Where a husband sued his wife for divorce on the ground of her adultery, adultery was clearly established, and the co-respondent was ordered by the trial Judge to pay a sum of Rs. 20,000 as damages. On the question of damages the trial Judge stated, and kept in view, the observations made by the Privy Council in *Alles v. Alles*¹ and repeated in *Dean v. Anthonisz*².

Held, that there was no reason for reducing the amount of the damages awarded.

¹ (1950) 51 N. L. R. 416.

² (1953) 54 N. L. R. 538.

APPPEAL from a judgment of the Supreme Court.

M. P. Spencer, for the 2nd defendant appellant.

Sirimevan Amerasinghe, with *Vernon Dissanayake*, for the plaintiff respondent.

Cur. adv. vult.

October 9, 1957. [Delivered by MR. L. M. D. DE SILVA]—

In this action the 1st respondent sued his wife the 2nd respondent in the District Court of Kandy for divorce on the ground of her adultery with the appellant. He further claimed a sum of Rs. 20,000 as damages from the appellant. He asked that the custody of the children of the marriage be given to him. In the answers filed by them the 2nd respondent and the appellant denied the adultery. The District Court entered decree in the terms prayed for by the 1st respondent and, on appeal, the Supreme Court affirmed the decree of the District Court. This is an appeal from the decree of the Supreme Court. The 2nd respondent, the wife, did not appear at the hearing of the appeal.

On the material in the record adultery was clearly established. Counsel for the appellant consequently did not find it possible to urge that the finding of the Courts below on the question of adultery should be disturbed.

He argued however that a plea of collusion between the 1st and 2nd respondents, which the appellant had raised and had been rejected in the Courts below, should have been upheld. In support of this argument he pointed out that the 2nd respondent had filed answer denying adultery but had given evidence admitting it. He also pointed out that certain letters written by the appellant to the 2nd respondent had been produced by the 1st respondent. Their Lordships have examined the circumstances in which these incidents took place and, viewed in the light of those circumstances, these incidents afford no reason for finding that there was collusion.

It was urged also that the damages were excessive. It was said that the learned trial Judge had regarded the 2nd respondent as having been of greater value to the 1st respondent than she actually was or had been. The learned District Judge gave very full reasons for awarding the amount which he did and also pointed out that no mitigating circumstances existed. Observations on the question of damages were made by the Board in the case of *Alles v. Alles*¹. These were repeated by the Board in *Dean v. Anthonisz*². The learned trial Judge stated, and kept in view, those observations. Their Lordships can find no reason for altering the amount of the damages awarded. They have humbly advised Her Majesty that the appeal be dismissed. The appellant will pay the 1st respondent the costs of this appeal.

Appeal dismissed.