

1926.

*Present* : Garvin and Lyall Grant JJ.DE SILVA *v.* DE SILVA *et al.*

70—D. C. Colombo, 10,899.

*Divorce—Decree nisi—Appeal pending regarding settlement—Making decree absolute.*

A decree *nisi* granting a divorce may be made absolute while an order with respect to a settlement on the aggrieved party is under appeal.

**A** PPEAL from an order of the District Judge of Colombo.

*Drieberg*, K.C. (with *Bartholomeusz*), for appellant.

*Weerasooriya*, for respondent.

May 18, 1926. GARVIN J—

This was an application by the 1st defendant to have a decree *nisi* ordering a dissolution of marriage made absolute. It was refused by the District Judge, and an appeal is entered against that refusal. The application that the appeal be allowed is consented to by the plaintiff, who, in the District Court, opposed the application to have the decree made absolute. The question we have to decide is whether in allowing this application we are in any way affecting the matter of an appeal to the Privy Council. The facts are these : A decree *nisi* was entered by the District Court dissolving the marriage between the plaintiff and the 1st defendant. The Court then proceeded to make two further orders. By the first of these it declared the plaintiff entitled to have a certain settlement of property made upon him by the 1st defendant and ordered her to make the necessary settlement. The next order was against the 2nd defendant, the co-respondent, condemning him to pay a certain sum by way of damages. Appeals were entered to this Court by both defendants. At the hearing of the appeal the 1st defendant abandoned her objections to the decree declaring the marriage dissolved, and limited her appeal to the matter of the settlement which the District Judge had ordered her to make upon the plaintiff. The appeal of the 2nd defendant was in effect an appeal to reduce the damages awarded against him. The question as to whether or not this marriage should be dissolved is no longer in issue. An appeal to the Privy Council has been entered against the decree of this Court by the 2nd defendant.

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That appeal cannot in any way affect the question of the dissolution of the marriage between the parties. The provisions relating to matrimonial actions seem to indicate that in the case of an action for a dissolution of marriage the order directing such marriage to be dissolved should be embodied in a decree *nisi*. At the expiration of three months, in the absence of any objection the Court is required to make the decree so entered absolute. The chapter contemplates the making of subsidiary orders relating to permanent alimony, settlements on the aggrieved party, and investigation into ante-nuptial and post nuptial settlements. These matters are referred to in sections 615, 616, 617, and 618. They are not matters in respect of which there is any need to make a decree *nisi*.

Indeed, the sections seem to my mind to indicate quite clearly that they are orders which can properly be made only after the decree absolute. The decree *nisi* entered in this case is before us. It is in form a decree *nisi* only in so far as it relates to the dissolution of marriage. It proceeds to make further orders in respect of the matters I have already referred to. But those orders are absolute, and on the face of the document they are not entered as part of the decree *nisi*. I can see no reason, therefore, why the decree *nisi* declaring a dissolution of marriage should not be declared absolute. For these reasons I think that the application should be allowed, and I order accordingly.

LYALL GRANT J.—

I agree with the judgment proposed. I should like to add that the Civil Procedure Code appears to contemplate a decree *nisi* being made absolute, even though an appeal may be pending against it.

The reason for making a decree *nisi* is to allow time for the case to receive publicity and to enable anyone who knows of facts which have been suppressed, and which if known to the Court would induce it to alter its judgment, to bring them forward. If these reasons are not brought forward the decree is made absolute as a matter of course, but the grounds of appeal remain the same. The appeal is taken on the ground that the facts before the Court are themselves insufficient to warrant a divorce, and if the Privy Council so decides, the decree whether *nisi* or absolute will be set aside.

A difficult situation might arise if the parties married again on the decree being made absolute while an appeal was pending. Accordingly section 625 of the Civil Procedure Code forbids remarriage pending appeal.

*Appeal allowed.*