

1925.

*Præsent*: Schneider J. and Jayewardene A.J.JOSEPH *v.* ALEXANDER ELIZABETH.

185—D. C. (Inty.) Chilaw, 7,548.

*Divorce—Wife possessed of property—Claims for costs—Appeal—Security for costs.*

Where, in an action for divorce, the wife is possessed of property and is in a position to find the means to defend the action, the Court should not order the husband to provide for her costs.

Where, in such a case, the wife appeals, she is not bound to give security for the husband's costs.

**A** PPEAL from an order of the District Judge of Chilaw. This was an action brought by the plaintiff against his wife, the defendant, for dissolution of their marriage. The defendant made an application to the District Court that the plaintiff be ordered to deposit a sufficient sum of money for her costs before she was called upon to file answer.

The learned District Judge refused the application on two grounds, viz., (1) that the plaintiff was not in a position to finance his wife, (2) that the defendant was possessed of means to defend the action.

*Balasingham*, for defendant, appellant.

*Croos-Da Brera*, for plaintiff, respondent.

January 27, 1925. SCHNEIDER J.—

A preliminary objection was raised to the hearing of this appeal. It was objected that the appellant had not given security for the respondent's costs. The appellant is the wife of the plaintiff-respondent. She made an application in the lower Court that the plaintiff, her husband, be ordered to deposit a sufficient sum of money for her costs in this case before she was called upon to file answer. This application was considered by the District Judge, who by his Order of October 30, 1924, disallowed the first defendant's application. The District Judge gave two reasons for his order: the first, that the plaintiff is not in a position to finance his wife's defence; secondly, that the first defendant is possessed of property by means of which she might obtain the necessary funds for her defence. As regards the preliminary objection I find myself unable to sustain it, for the simple reason that, as a general rule, in a divorce action a husband must find the means for the wife maintaining the action on her defence. Accordingly, a Court in these

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proceedings could not insist upon the wife giving security for the husband's costs in appeal. It seems to me that the District Judge was right in disallowing the application of the first defendant-appellant. The principle that a husband should find the money for the wife maintaining or defending an action is founded on the assumption that all the property is in the hands of the husband. The evidence in this case discloses that the wife is possessed of property in her own right, and that she is in a position to find the means to defend the action brought against her by her husband. There is also the further fact that the plaintiff, her husband, is not in a position to find the money for his wife's defence.

I would, therefore, dismiss the appeal.

JAYEWARDENE A.J.—I agree.

*Appeal dismissed.*

