

Present: Porter J.

1922.

PODINONA v. RODRIGO.

309—C. R. Gampola, 4,115/F.

*Lis pendens—Action for declaration of title and damages, pendente lite—
Judgment as prayed for—Payment of taxed costs—How long
is action pending ?*

Plaintiff instituted an action for declaration of title to a share of land, and prayed for damages, Rs. 5 per mensem, *pendente lite*. Plaintiff obtained judgment as prayed for. Judgment was affirmed in appeal. Defendant paid plaintiff's taxed costs in full. Plaintiff took no steps to obtain possession thereafter for a considerable time, and issued writ for damages.

Held, in the circumstances, further damages were not payable after final decree in appeal and full payment of the plaintiffs taxed costs.

THE facts appear from the judgment.

Hayley, for defendant, appellant.

H. H. Bartholomeusz (with him R. C. Fonseka), for respondent.

Cur adv. vult.

December 13, 1922. PORTER J.—

The plaintiff instituted this action for a declaration of title to an undivided 18th share of a land called Awanpelahena, and prayed for damages, *pendente lite*. After trial the learned Commissioner gave judgment for the plaintiff, as prayed for, with costs. From this judgment the defendant appealed to this Court, which affirmed the judgment. The defendant-appellant has paid the plaintiff's taxed costs in full. It is contended by the plaintiff that as the decree awarded damages, *pendente lite*, it is open to the plaintiff to take no steps to obtain possession of the land, and to issue writ for the damages at Rs. 5 per month for an indefinite period. The defendant-appellant raised objection to this contention, and the objection was heard on October 31, 1922, and the learned Commissioner refused to uphold the objection. From this order the defendant appeals, and contends that after the final decree was pronounced and affirmed in appeal that there was no longer any *lis pendens*.

The only question I have to decide is whether there is or is not any *lis pendens*? In my opinion there is no longer any *lis pendens* between the parties during which further damages can accrue to the

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plaintiff. The learned Commissioner has arrived at the conclusion that the case of *Silva v. Fernando*¹ is decisive on this point. This case did, in fact, decide that an action can be said to be pending, even after judgment, until judgment is satisfied by execution (*per* Bertram C.J.).

The question to decide is whether, in fact, there is a continuance of *litis contestatio*, or whether all the questions in dispute have been decided. For instance, a decree for an account would not necessarily determine a *lis pendens*.

In the present case, however, all disputes between the parties had been finally settled, and the plaintiff's taxed costs paid in full.

The case of *Silva v. Fernando* (*supra*), already referred to, was an action on a mortgage bond, and I think a distinction can clearly be drawn between such actions and the present one. I think the learned Commissioner was in error, in holding that further damages was payable after final decree, appeal, and full payment of the plaintiff's taxed costs.

I would therefore allow this appeal, and set aside the order appealed from, with costs.

Appeal allowed.

¹ (1922) 23 N. L. R. 39.