1939 *Present :* **Keuneman and Nihill JJ.**

EBERT *v.* EBERT.

121—D. C. (Inty.) Colombo, 204.

Alimony—Decree for dissolution of marriage—Obtained by husband—Civil Procedure Code, s. 615.

A Court has no power, in a decree absolute for the dissolution of marriage entered at the suit of the husband, to award permanent alimony to the wife.

THE plaintiff-respondent instituted an action for divorce against her husband on the ground of malicious desertion, and claimed alimony of Rs. 200 per month; the defendant denied the allegations, and in reconvention claimed a decree for divorce, on the ground of malicious desertion by the plaintiff. The learned District Judge dismissed the plaintiff's action, and granted to the defendant, the decree for divorce, on his claim in reconvention. Decree *nisi* was entered with no provision for alimony to the plaintiff. The plaintiff already had in her favour an order for the payment of Rs. 55 per month, for maintenance, passed against the defendant in case No. 15,791 of the Additional Police Court of Colombo. The plaintiff, once decree absolute was entered, applied to the learned District Judge to give effect to the order for maintenance, in her favour in the decree absolute. After hearing argument, the learned Judge allowed the plaintiff's application from which the defendant appealed.

Colvin R. de Silva, for defendant, appellant.—Court is empowered to order permanent alimony in a decree for divorce, only under section 615 of the Civil Procedure Code. In this case the decree was obtained at the instance of the husband. Section 615 contemplates two circumstances under which a wife may obtain alimony, viz., on a decree for separation, on a decree for divorce, in both cases, the decree has to be obtained at the instance of the wife. She having failed, section 615 cannot help her. The interpretation placed on section 615 by the learned District Judge is not correct, viz., "that obtained by the wife" refers only to an order for separation, the comma placed after dissolved does not preclude a wife, at whose instance the marriage is dissolved from obtaining permanent alimony. For instance, in section 606 where the Court is empowered to order the payment of costs by an intervenient, the position is made clear. It comtemplates two sets of circumstances under which an order may be made under this section: (1) the applicant had no grounds for intervening; (2) had no sufficient grounds for intervening. Here the comma is placed after "grounds", so that if we adopt the same line of interpretation given by the learned Judge to this section we are reduced to the position that the Court is empowered to grant costs, only in cases where the intervenient had no grounds for intervening, and not if it is satisfied that the applicant had no sufficient grounds. Such a construction is clearly unreasonable and the Legislature could not have meant to draw a distinction.

If the Legislature intended to confer upon a wife the power to claim permanent alimony even when the decree for dissolution was obtained at the instance of the husband it would have made itself quite clear, for instance, under section 614, alimony *pendente lite* can be obtained by the wife, whether the action be instituted by the husband or wife. If the words "instituted by the husband or wife" could be inserted in section 614, somewhat similar words could have been employed in section 615.

R. L. Pereira, K.C. (with him *B. C. Ahlip* and *Mackenzie Pereira*), for respondent.—The draftsman had before him the Roman-Dutch law principle which always contemplated the hope of a reconciliation at some stage during the separation of the spouses, and therefore gave the wife the right to claim alimony when the decree for separation was obtained by her, but left to the discretion of the Court the power to order alimony to a wife who has been divorced at the instance of the husband, so that the wife may not be left destitute.

Counsel cited *Robertson v. Robertson*[1].

January 27, 1939. KEUNEMAN J.—

In this action the plaintiff prayed for a decree of divorce against her husband, the defendant, on the ground of malicious desertion, and claimed alimony of Rs. 200 a month. The defendant denied the allegations in the plaint and claimed in reconvention a decree of divorce against the plaintiff on the ground that the plaintiff had maliciously deserted him. After trial the learned District Judge dismissed the plaintiff's action, and granted to the defendant a decree *nisi* for divorce.

[1] *48 L. T. 590.*

At the stage when the defendant's decree was made absolute, the plaintiff moved for an order in that decree that, in the event of the defendant refusing to pay the plaintiff monthly Rs. 55 being the maintenance ordered in case No. 15,791 of the Additional Police Court, the plaintiff should be entitled to recover the said sum of Rs. 55 monthly from the defendant as alimony. She also moved for an order in the decree absolute for the payment of the sum of Rs. 5 a month for visiting her children at Ratnapura.

After inquiry, the learned District Judge allowed the application of the plaintiff, and the defendant appeals.

As regards the order for the payment of Rs. 5 a month, Counsel for the appellant did not contest this matter, and the order of the learned District Judge on this point must be affirmed.

Counsel for the appellant contended that the Court had no power to order alimony in this case in view of the terms of section 615 of the Civil Procedure Code. That section runs as follows:—

> "The Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of separation obtained by the wife, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of her husband, and to the conduct of the parties it thinks reasonable.".

Counsel for the appellant argued that the words "obtained by the wife" qualified not only the words "any decree of separation", but also the words "any decree absolute declaring a marriage to be dissolved".

This apparently is the first application made in Ceylon by a wife for alimony, where the decree for divorce has been obtained by the husband, at any rate we have been informed that no authority on the point is available. The learned District Judge has laid great stress on the punctuation of the section. He points out that the "comma" after the word "dissolved" seems clearly to indicate that the words "obtained by the wife" must be taken to refer only to the "decree of separation" and not to the "decree of dissolution" in the earlier phrase. Now if the punctuation must be regarded as of essential importance, I think it is necessary for us to try and understand the manner in which the draftsman of the Ordinance employed his punctuation. Counsel for the appellant has directed our attention to section 613 of the Code which runs as folows:—

> "Whenever any application is made under section 606, the Court if it thinks that the applicant had no grounds, or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application."

This is an apt illustration. It is clear that the words "for intervening" qualify not only the words "no sufficient grounds" but also the words "no grounds", and the employment of the 'comma' after the words "no grounds" does not prevent that interpretation.

I do not think that the use of the "comma" in the position which it occupies in section 615 can be conclusive in the interpretation of the section.

Counsel for the appellant also emphasized section 614 of the Code, which deals with alimony *pendente lite*. The section commences as follows:—"In any action under this chapter, *whether it be instituted by a husband or a wife* . . . . " Counsel argued that when the draftsman intended to refer to any action whether by the husband or the wife, he employed language which made his meaning manifest, and that we should not presume that he would have left his meaning in doubt in section 615. I think this argument is of importance. The learned District Judge has not dealt with this argument.

The District Judge has purported to follow a decision in England, viz., *Ashcroft v. Ashcroft and Roberts*[1], where it was held that under the Matrimonial Causes Act of 1857 (20 & 21 Vict. c. 85, s. 32) the Court had an absolute discretion to grant alimony to a guilty wife. In this case the wife had no means of sustenance and could not support herself or earn her own living owing to ill-health. In an earlier case in 1883 (*Robertson v. Robertson and Favagrossa*[2]) Jessel M.R. in the course of the argument without giving a final opinion suggested that it was not intended that a guilty wife should be turned out into the streets to starve, and in *Gooden v. Gooden*[3] it was held that the Court had jurisdiction to grant permanent alimony to a wife against whom a decree for judicial separation has been pronounced on the ground of her cruelty.

Section 32 of the Act of 1857 stated that "the Court may, if it shall think fit, on any such decree secure to the wife" permanent alimony. The words "any such decree" referred back to section 31, which related to a decree of divorce without any qualification as to whether the decree was obtained by the husband or the wife. The learned District Judge said that section 615 of our Code is "almost identical with section 32 of the English Act of 1857. But I think there is a material difference caused by the insertion in our section 615 of the words "or on any decree of separation obtained by the wife". These words have to be given an interpretation.

Counsel for the appellant argued that it would be unreasonable to restrict the words "obtained by the wife" merely to the "decree of separation". The result of doing so would be that in the case where the marriage still subsisted, and a decree of separation only was entered against the wife, she was prevented from claiming permanent alimony. It was pointed out that it was open to a husband on the same set of facts *e.g.*, malicious desertion, to claim either divorce or separation, and that it was unreasonable to hold that in the first case permanent alimony was in certain circumstances available to the wife, but that it was absolutely denied to her in the second case.

I have to take into consideration the fact that in section 614 the draftsman used the words "whether it be instituted by a husband or a wife" to make clear his meaning that in every action the wife was

[1] *L. R. (1902) at p. 370; 87 L. T. 229.*
[2] *48 L. T. 590.*
[3] *65 L. T. 542.*

entitled to claim alimony *pendente lite*. It is important that these words are not reproduced in section 615. Further, I think it would be an unreasonable interpretation to restrict the words "obtained by the wife" only to a decree of separation, and not to a decree for the dissolution of the marriage.

It is with reluctance that I have arrived at this conclusion, and I should have preferred to follow the more humage principle of the English law. That, however, is a matter which the Legislature alone can put right.

I set aside the order of the learned District Judge directing the payment of Rs. 55 a month to the wife as permanent alimony, but I affirm his order directing the payment to the wife of Rs. 5 a month to enable her to visit her children at Ratnapura.

I make no order as to the costs of appeal.

NIHILL J.—I agree.

Appeal allowed.