

Present : Loos A.J.

1919.

SILVA v. FERNANDO.

327—C. R. Negombo, 25,337.

Husband and wife—Implied authority to pledge husband's credit—Waiver of debt.

A presumption of authority from the mere fact of cohabitation would not extend beyond the pledging by the wife of her husband's credit for necessaries ; there is no presumption of authority to borrow money in his name ; and, similarly, there would be no presumption of authority to waive a claim for money due to her husband.

THE facts appear from the judgment.

A. St. V. Jayawardene, for defendant, respondent.

Canakeratne, for plaintiff, appellant.

March 26, 1919. Loos A.J.—

The plaintiff became entitled to a share of certain premises of which defendant was the tenant in January, 1916, and in June, 1917, he sued the defendant for the rent due in respect thereof. Defendant filed answer alleging the payment of a sum of Rs. 505 to plaintiff's predecessor in title between March, 1912, and October, 1915, on the understanding that that sum was to be set off against the rent due by him, and that, after setting it off against the rent due to September, 1917, there was still a balance due to him. The defendant was not present at the trial and judgment was obtained by plaintiff as prayed for by him.

1919.

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*Silva v.
Fernando*

On the plaintiff applying for writ of execution, the defendant filed an affidavit alleging that after decree had been entered an adjustment thereof had been made. His contention was that the plaintiff had agreed to make the set-off referred to in the answer after decree had been ordered, and in support thereof he relied on a letter (D 1) written by the plaintiff's wife on September 28, 1918, in which she admits that the payments referred to by the defendant had been received by her and her mother, and states that the balance due by the defendant as rent to September, 1917, might be taken by him as interest. She further states that rent will be recovered at Rs. 15 per mensem by the "gentleman," referring to her husband apparently.

The learned Commissioner holds that it is incredible that such a letter would have been written by the plaintiff's wife without his knowledge; that there is nothing to show that she would have taken upon herself the responsibility of waiving what had been decreed in favour of her husband without his acquiescence; and he argues that the reference to the recovery of rent at Rs. 15 implies that the letter was written with the authority of her husband, the plaintiff; and he holds that there was an adjustment of the decree.

The plaintiff's wife was called as a witness by the defendant at the inquiry, and she stated that the letter D 1 had been written at the request of her mother. It was contended by the respondent's counsel that the plaintiff's wife must be regarded as having been expressly or impliedly authorized by her husband to write the letter, and he relied on section 18 of the Ceylon Evidence Ordinance, 1895. The applicability of that section would depend on the question of the extent to which a man's wife is his agent. A presumption of authority from the mere fact of cohabitation would not extend beyond the pledging by the wife of her husband's credit for necessities; there is no presumption of authority to borrow money in his name; and, similarly, I think there would be no presumption of authority to waive a claim for money due to her husband.

There can be little doubt that the plaintiff's wife was not expressly authorized to make any adjustment of the decree. The plaintiff states that he was not aware of the existence of the letter D 1, and that he did not enter into any such arrangement as defendant relies on.

It appears to me that the evidence does not establish an express or implied authority to plaintiff's wife to write the letter D I, and that no adjustment of the decree was in fact made. The order appealed from must be set aside, with costs.

Set aside.