1940 *Present :* **Soertsz and Keuneman JJ.**

NELSON *v.* FOENANDER.

150 & 151—D. C., Colombo, 1,120.

Divorce—Intervention to prove collusion between the parties—Proof of collusion after decree nisi—*Civil Procedure Code, ss 604 and 606 (Cap. 86).*

A person who suspects collusion between parties for the purpose of obtaining a divorce and who intervenes under section 606 of the Civil Procedure Code is entitled to rely on collusion that has taken place after the decree *nisi* was entered.

APPEAL from an order of the District Judge of Colombo.

N. Nadarajah (with him *M. Tiruchelvam*), for plaintiff, appellant in 150, and for plaintiff, respondent in 151.

R. L. Pereira, K.C. (with him *C. X. Martyn*), for defendant, appellant in 151, and for defendant, respondent in 150.

Cur. adv. vult.

April 15, 1940. SOERTSZ J.—

In this case, submissions were made to us, both on the law and on the facts. In the first place, Counsel for the appellants sought to construe sections 604 and 606 of the Civil Procedure Code so as to make *both* sections applicable only to cases in which collusion or suppression of material facts has occurred *before* decree *nisi*. But, in my opinion, the plain meaning of the words of section 606 does not, at all, justify such a limitation.

Courts exercising matrimonial jurisdiction have always been gravely concerned to ensure that the marriage state which, according to the earlier law, was permanent and indissoluble, should not, even in the less stringent modern view of that status, be terminable at the option of the parties, and elaborate precautions have been taken to make divorce as collusion-proof as possible. To that end, section 604 of our Code of Civil Procedure enacts that a decree dissolving the marriage bond shall, in the first instance, be entered in the form of decree *nisi*, not to be made absolute till, at least, three months have elapsed. During this interval, opportunity is given for *any person* to show that the decree *nisi* has been obtained by collusion or by suppression of material facts. Necessarily, the collusion or suppression contemplated in this section must have

reference to something done or omitted before the date of that decree. But it is obvious that there may be collusion or suppression of material facts even during the period between the two decrees, and that there may be cases in which collusion becomes apparent or is suspected before the decree *nisi* stage is reached, or in which pre-decree *nisi* collusion or suppression of facts is suspected, or made apparent only after decree *nisi* has been entered.

Section 606 of the Civil Procedure Code is designed to provide for those contingencies. It authorises a person who suspects collusion between the parties for the purpose of obtaining a divorce, to apply to the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make decree in accordance with the justice of the case, and he is permitted to make his application at any stage of the progress of the action on the ground that there is "present" collusion or that there has been collusion at any relevant point of time. "Progress of the action" in the context, clearly covers the period from the institution of the action to the entering of the decree absolute. This view is, I find, supported by some of the observations made in the course of the judgments delivered in the cases of *Hulse v. Hulse* [1]; *Roger v. Roger* [2], and *Fender v. Mildmay* [3].

I am, therefore, of opinion that the petitioner was entitled to intervene in this action as he did, and to rely on the collusion that, he alleges, has taken place after decree *nisi* was entered.

All that remains is the question of fact, whether the plaintiff and the defendant have resumed co-habitation. If they have, it follows that the decree *nisi* that has been entered must be rescinded, for to make it absolute despite that fact, would, in the words of the trial Judge, "be a travesty of judicial proceeding". It would be tantamount to dissolving a marriage on the ground that there has been desertion by one spouse of the other when, as a matter of fact, both of them are living together. Such intriguing situations belong to comic opera.

In regard to this question of fact, the trial Judge has reached a very definite conclusion. He was in ever so much a better position than we are on a question of this kind, for he saw and heard the witnesses whose evidence, he says, he believes, and an appeal Court would interfere with such a finding only in exceptional circumstances. In this case, the direct evidence is strongly supported by the circumstantial evidence, particularly by the fact that this so-called reconciliation appears to have taken place at a time when the plaintiff was confronted with an application for writ made on behalf of the defendant, to enable her to recover a sum of Rs. 260 due to her on account of accumulated alimony, and an application for an order on him to pay her a sum of Rs. 150 to enable her to prosecute her appeal.

The learned trial Judge inclines to the opinion that the reconciliation, so far as the plaintiff is concerned, is pure stratagem to which he has resorted in order to escape from these applications made on behalf of the defendant, and to secure her inactivity till the decree is made absolute.

[1] *24 L. T. 847.* [2] *70 L. T. 699.*

[3] *(1937) 3 A. E. R. 402.*

As for the defendant, she appears to have been floundering in a sea of troubles about this time, and she was only too ready to clutch at any straw in a desperate attempt to save herself.

I cannot help sharing that view.

The appeals fail and must be dismissed. The plaintiff-appellant will pay the petitioner-respondents' costs in both Courts. I make no order for costs in regard to the defendant's appeal.

I wish to add that it will, perhaps, be as well if the District Judge gives directions to the Secretary that this case be brought to his notice in the event of either the plaintiff or the defendant suing for a divorce in the future.

KEUNEMAN J.—I agree.

Appeal Dismissed.