

[IN THE PRIVY COUNCIL]

1953 *Present* : Lord Normand, Lord Cohen, Sir Lionel Leach
and Mr. L. M. D. de Silva

S. D. M. DEAN, Appellant, *and* E. A. ANTHONISZ,
et al., Respondents

PRIVY COUNCIL APPEAL NO. 48 OF 1951

S. C. 492—D. C. Colombo, 1,580

Divorce—Adultery of wife—Assessment of quantum of damages.

In an action for divorce instituted by a husband against his wife on the ground of adultery, the two main considerations governing the award of damages as against the co-respondent are (a) the actual value of the wife to the husband, (b) compensation to the husband for injury to his feelings, the blow to his marital honour and the loss to his matrimonial and family life. In assessing the damages the Court may take into account the fact that the plaintiff was indiscreet in allowing the close association of the co-respondent with his family too long and only took action when matters had gone too far.

APPPEAL from a judgment of the Supreme Court.

Stephen Chapman, for the second defendant appellant.

No appearance for the respondents.

Cur. adv. vult.

June 29, 1953. [Delivered by SIR LIONEL LEACH]—

This is an appeal from a judgment and decree of the Supreme Court of Ceylon, dated the 1st September, 1950, affirming a judgment and decree of the District Court of Ceylon, dated the 21st December, 1948, in matrimonial proceedings instituted by the first respondent against his wife, the second respondent, in which the appellant was cited as a co-defendant. The first respondent claimed against his wife a decree of divorce *a vinculo matrimonii* on the grounds of malicious desertion and adultery with the appellant and against the appellant an order for the payment of Rs. 25,000 as damages. The second respondent denied that she had maliciously deserted her husband, but admitted adultery with the appellant. The appellant admitted the averments in the plaint in so far as they concerned him, but resisted the claim for damages. He contended that having regard to the first respondent's conduct and to all the circumstances of the case the Court should not award damages.

The District Judge negatived suggestions of connivance and condonation on the part of the first respondent and found that the second respondent had maliciously deserted her husband, that she had been living in adultery with the appellant since the month of October, 1946, and that the first respondent was entitled to recover from the appellant Rs. 10,000 as damages. Accordingly he granted the first respondent a decree nisi dissolving his marriage with the second respondent and ordered the appellant to pay to the first respondent Rs. 10,000 and his costs of the action. He also directed that the first respondent should have the custody of the two children of the marriage. The appellant appealed to the Supreme Court against the finding of the District Judge on the issue as to damages, but his appeal was dismissed with costs. In his appeal to Her Majesty in Council the appellant asks that the award of damages be set aside or modified.

Before the Board Mr. Chapman on behalf of the appellant raised two contentions. In the first place he said that in awarding Rs. 10,000 as damages the District Judge was wrongly influenced by a finding that the appellant had won the affections of the second respondent by his wealth and the giving of expensive presents and submitted that it had not been proved that expensive presents had been given. In the second place he said that the figure of Rs. 10,000 was so large that it was out of all proportion when taken into consideration with the class of people concerned.

The first and second respondents were married on the 28th December, 1933. The first respondent was then employed by a commercial firm in Colombo, apparently as a stenographer, at a salary of Rs. 175 a month. At the time of the hearing his salary was Rs. 250 a month "plus allowance". The second respondent supplemented the family income by dressmaking and supplying meals to pupils and teachers at a school in the neighbourhood in which they were then living.

The appellant is the proprietor of a paint shop and is of a different community from that of the respondents. He is himself a married man with seven children. He made the acquaintance of the respondents in 1944 and became a visitor at their house. Later he took his meals there

and in June, 1945, he began to sleep there. In the course of his evidence the first respondent said that he found that his wife and children were going too often with the appellant to cinemas. He objected to this and in September, 1945, he spoke to the appellant about the matter. The appellant took offence at this and kept away from the house. The second respondent then commenced staying away from home at night. When her absences became more frequent and for longer periods he discovered that the appellant had bought a house in the name of the second respondent in another district and was living with her there. In order to see her children she used to go back to the family house during the day time when the first respondent was away and would leave before he returned in the evening. That continued throughout 1946. The first respondent also stated that he asked his wife to return to him for the sake of the children. On the 20th December, 1946, he met her and she confessed that she was pregnant. She said that if she got over her trouble she would come back, but on the 31st December, 1946, she informed him that she had changed her mind. He instituted the proceedings in March, 1947, when he found there was no hope of her ever returning to him.

It is not necessary for their Lordships to discuss the evidence on which the District Judge came to the conclusion that it was the wealth of the appellant and the giving of expensive presents that won the second respondent's affections and resulted in the breaking up of the first respondent's home, because it is clear that the District Judge was not influenced by this finding when he came to assess the damages. The appellant did break up the home and the only question is whether the District Judge assessed them on a proper basis. In dealing with this question the District Judge said :

“ I am of opinion that the plaintiff is entitled to some substantial damages. As pointed out by the Supreme Court in the case of *Alles v. Alles* the two main considerations governing the award of damages are (a) the actual value of the wife to the husband, (b) compensation to the husband for injury to his feelings, the blow to his marital honour and the loss to his matrimonial and family life. The first defendant in this case was of some value to plaintiff as she ran his house well and helped to supplement the family income. Taking into account the fact that plaintiff was rather indiscreet in allowing the close association of the 2nd defendant with his family to continue so long and only took action when matters had gone too far, I assess the damages under heads (a) and (b) already referred to at Rs. 10,000.”

There is here stated in precise terms the basis on which the District Judge proceeded to make the assessment and their Lordships consider that it was the correct basis.

The judgment of the Supreme Court in *Alles v. Alles* to which the District Judge refers is reported in 46 N. L. R. at page 217. In that case the trial Court awarded the husband Rs. 15,000 as damages, but on appeal the Supreme Court reduced the amount to Rs. 10,000. The Supreme Court's judgment was the subject of an appeal to Her Majesty in Council

and the award of Rs. 10,000 damages was upheld by the Board (51 N. L. R. 416). In delivering the judgment of the Board in that case Lord Radcliffe observed :—

“ It is avowedly based partly on the scale of damages usually awarded in the Courts of Ceylon : moreover the assessment of the quantum of damages, as indeed the assessment of what is prudent and of what is careless in social relations, depends essentially upon a familiarity with local conditions which is possessed by the Supreme Court to a much greater extent than it can be by the members of this Board.”

Those observations have full force here and there is the additional factor that in the present case the Supreme Court accepted the figure arrived at by the trial Court. In these circumstances there is really no room left for argument.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. As the respondents were not represented at the hearing there will be no order as to costs.

Appeal dismissed.

