

1948

*Present:* Keuneman S.P.J. and Rose J.

ALLES, Petitioner, and ALLES *et al.*, Respondents.

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE PRIVY  
COUNCIL IN 118—119, D. C. COLOMBO, 586.

*Privy Council Appeal—Application for leave to appeal—Action for divorce—  
Valuation of matter in dispute—Right of wife to costs to fight appeal—  
Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rule 1.*

Where the husband, in an action for divorce, sought leave to appeal to the Privy Council not only on the quantum of damages which the co-respondent was ordered to pay but also on the question of the legitimacy of a child born during the marriage—

*Held*, that the real question which the Court had to determine, for granting leave to appeal, was the total detriment to the appellant himself, and that it was not open to Court to distinguish between the cases of the wife and the co-respondent.

*Held, further*, that no sum could be awarded to the wife to enable her to fight the appeal.

<sup>1</sup> (1942) 29 *All India Reporter (Federal Court)* 27.

**T**HIS was an application for conditional leave to appeal to the Privy Council.

*H. V. Perera, K.C.* (with him *D. W. Fernando* and *C. J. Ranatunge*), for the petitioner.

*N. Nadarajah, K.C.* (with him *H. W. Jayewardene* and *G. T. Samarawickreme*), for the plaintiff, respondent.

August 3, 1945. KEUNEMAN S.P.J.—

In this case in the District Court the petitioner succeeded in obtaining a decree for divorce against his wife, the first respondent, and obtained an order for damages of Rs. 15,000 against the second respondent. The District Judge further made order that the second child Joseph Richard was not the legitimate child of the petitioner. In appeal the Supreme Court reversed the finding with regard to legitimacy and held that Joseph Richard was the legitimate child of the petitioner or at any rate that it had not been proved that he was not the legitimate child. The decree for divorce was upheld in appeal but the damages against the second respondent was reduced to the sum of Rs. 10,000. The petitioner now appeals in connection with the reduction of damages as well as on the question of paternity to the Privy Council.

It has been argued for the first respondent that this question of legitimacy is one which cannot be pecuniarily assessed, but I think the real question we have to determine is what is the total detriment to the appellant himself. He certainly claims the additional sum of Rs. 5,000 from the second respondent and he also appeals on this question of legitimacy. The total detriment to him is therefore at least Rs. 5,000 and probably some other unspecified amount as well. I do not think it is open to us to distinguish between the cases of the two respondents but merely to consider the cumulative effect of the judgment against which the petitioner appeals.

One further point is raised on behalf of the first respondent. She applies that a sum of Rs. 3,000 should be paid to her in order to enable her to fight this appeal. There does not appear to be any power reserved to us to make an order of this nature and the application must accordingly be refused.

Conditional leave is allowed under the usual conditions.

ROSE J.—I agree.

*Application allowed.*