

22, 1957

11 of 1957.

In the Privy Council.

UNIVERSITY OF LONDON
25 FEB 1958
INSTITUTE OF JANCAL LEGAL STUDIES

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

49882

BETWEEN

ERNEST CHRISTOPHER PERERA, Station
Master, Ceylon Government Railway, Beruwela . *2nd Defendant*
Appellant

AND

10 JINADESA HALWATURA, of the Ceylon
Government Railway, Mirigama . . . *Plaintiff*
Respondent

AND

VALIN KARAWURAWATHIE HALWATURA NEE
PITIGALA, presently of Hantane Estate, Kandy *1st Defendant*
Respondent.

Case for the Appellant.

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon dated the 13th March, 1956, which affirmed a Judgment and Decree of the District Court of Kandy in which the Appellant was the
20 2nd Defendant.

2. The Plaintiff was filed by the Plaintiff on the 11th December, 1952. p. 8.
In paragraph 4 of the plaintiff the Plaintiff alleged that the 2nd Defendant had committed adultery with his wife, the 1st Defendant, and he prayed for a divorce a vinculo matrimonii and for damages in a sum of Rs.20,000/-

3. The 2nd Defendant filed answer on the 7th July, 1953, denying p. 12.
the alleged adultery.

4. The 1st Defendant filed answer on the 25th August, 1953, also p. 12.
denying the alleged adultery and the case was fixed for trial on the 6th October, 1953.

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p. 4.

5. On the 6th October, 1953, the 2nd Defendant filed a report to the effect that he was ill. An application appears to have been made for a postponement on this ground but the Learned District Judge does not appear to have recorded it.

The case then went to trial on the 6th October, 1953, on the following issues :—

(1) Did the 2nd Defendant commit adultery with the 1st Defendant on the dates and at the places specified in paragraphs 4, 5 and 6 of the plaint or any of them ?

(2) If so, is the Plaintiff entitled to a decree for divorce against the 1st Defendant on the ground of adultery with the 2nd Defendant ? 10

(3) What damages is Plaintiff entitled to recover from the 2nd Defendant ?

(4) Is the Plaintiff entitled to the custody of his five children.

p. 21.

6. At the close of the Plaintiff's case the trial was adjourned for the 3rd December, 1953.

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7. On the 3rd December, 1953, the 1st Defendant gave no evidence. The 2nd Defendant called as his witnesses the 1st Defendant (whose evidence was in direct contradiction to her answer) and her brother, Mr. J. Pitigala.

p. 31.

At the close of the addresses the Learned District Judge reserved his Judgment for the 28th January, 1954. 20

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8. By his judgment dated the 18th March, 1954, the Learned District Judge granted the Plaintiff a divorce a vinculo matrimonii and awarded him damages against the 2nd Defendant in a sum of Rs.20,000/—.

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9. Against the said judgment and decree the 2nd Defendant appealed to the Supreme Court of Ceylon. The main grounds of appeal were—

p. 44.

(A) that the Plaint had been presented and prosecuted with the Plaintiff in collusion with the 1st Defendant ;

(B) that the Plaintiff had condoned the adultery of the 1st Defendant. 30

(C) that the damages awarded were excessive.

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10. The appeal was heard on the 13th March, 1956, and dismissed by the Supreme Court.

p. 48.
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11. From the Judgment and Decree of the Supreme Court dated the 13th March, 1956, the Appellant was granted Conditional Leave to appeal to the Privy Council on the 27th April, 1956, the leave being made Final on the 20th June, 1956.

12. The Appellant humbly submits that the Judgment and Decrees of the District Court and Supreme Court ought to be set aside for the following among other

REASONS

- 10 (A) BECAUSE there was evidence on which the Learned District Judge could and should have held that there was collusion between the Plaintiff and the 1st Defendant in the prosecution of the case.
- (B) BECAUSE there was no proper basis on which the Learned District Judge could have assessed the damages suffered by the Plaintiff.
- (C) BECAUSE, in any event, the damages awarded are excessive.

M. P. SPENCER.

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NEE PITIGALA, presently
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Case for the Appellant.

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