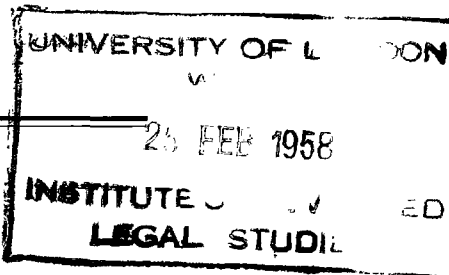


22, 1957

No. 11 of 1957.

In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON.



49881

BETWEEN

ERNEST CHRISTOPHER PERERA  
(2nd Defendant) *Appellant*

AND

- 10 1. JINADASA HALWATURA  
(Plaintiff)
2. VALIN KARUNAWATHIE HALWATURA  
(1st Defendant) *Respondents.*

## Case

FOR THE FIRST RESPONDENT.

RECORD.

1. This is an appeal from a judgment and decree of the Supreme Court of Ceylon (Gunasekara, J., and Pulle, J.) dated the 13th March, 1956, dismissing with costs an appeal from the judgment and decree dated the 18th March, 1954, of the District Judge, Kandy, granting the First Respondent a divorce a vinculo matrimonii from his wife and also awarding him damages in the sum of Rs. 20,000/- against the Appellant on the ground of his (the Appellant's) adultery with his (the First Respondent's) wife.

p. 45.

p. 31.

2. The First Respondent (the Plaintiff in the original proceedings) by his plaint dated the 11th December, 1952, prayed inter alia—

p. 8.

(1) for a divorce a vinculo matrimonii from his wife (the First Defendant in the original action) on the ground of her adultery with the Appellant (the Second Defendant in the original action) and her desertion of the Respondent ;

(2) for damages against the Appellant in the sum of Rs. 20,000/-.

3. The Appellant while denying the allegation of adultery put the First Respondent to the proof of it.

p. 12.

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4. The case went to trial on the following issues, raised by the Appellant :—

p. 14.

(1) Did the Second Defendant commit adultery with the First Defendant on the dates and places specified in paras. 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 First Defendant on the ground of adultery with the Second Defendant ?

(3) What damages is Plaintiff entitled to recover from the Second Defendant ? 10

(4) Is the Plaintiff entitled to the custody of his 5 children ? Neither of the counsel for the First or Second Defendants raised any issues.

p. 40, l. 42.

5. After trial the learned District Judge of Kandy answered all the issues in favour of the First Respondent and awarded him Rs. 20,000/- as prayed for.

6. Dealing with the question of collusion, which was raised by the Appellant during the course of the trial, the learned District Judge stated :—

p. 39, l. 25.

“ There is no evidence for me in the case to hold that there is any collusion or connivance on the part of the Plaintiff either before the First Defendant left her or in the prosecution of this case by the Plaintiff.” 20

The learned District Judge went on to say :—

p. 39, l. 43.

“ The part played in this matter by First Defendant’s brother Pitigala is that of a dutiful brother who had given shelter to his sister the First Defendant and whose opinion of the First Defendant is that she had been more sinned against than sinning. It was contended by the defence that it should be inferred from Pitigala’s evidence that the First Defendant’s father and brother were assisting First Defendant to act in collusion with Plaintiff, but I am unable to see how that inference can be drawn from the evidence given by Pitigala and the First Defendant. In my view there is no substance at all in the contention of the defence that there has been connivance or collusion.” 30

7. The Appellant appealed to the Supreme Court of Ceylon on the following main grounds :—

p. 43.

(A) that the First Respondent had presented and prosecuted his case in collusion with the First Defendant ;

(B) the damages awarded were in any event excessive and unwarranted by the evidence led in this case ; 40

(C) that the learned District Judge should have dismissed the plaint of the First Respondent in terms of section 601 of the Civil Procedure Code on a correct finding of collusion and for condonation.

8. The appeal in the Supreme Court was heard by Gunasekara and P. 45.  
Pulle, JJ., who gave judgment dismissing the appeal with costs.

9. The Appellant thereupon took steps to appeal to Her Majesty p. 51.  
in Privy Council and Final Leave was granted on the 20th June, 1956.

10. The First Respondent submits that the appeal of the Appellant  
should be dismissed with costs for the following among other

### REASONS

- 10
- (1) BECAUSE there are concurrent findings of fact against the Appellant on matters that were in issue between him and the First Respondent and the circumstances of this particular case do not warrant the interference of the Judicial Committee of the Privy Council.
  - (2) BECAUSE the judgment of the District Court of Kandy and that of the Supreme Court of Ceylon are right and should be affirmed.

SIRIMEVAN AMERASINGHE.

In the Privy Council.

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ON APPEAL  
*from the Supreme Court of Ceylon*

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BETWEEN

ERNEST CHRISTOPHER  
PERERA (2nd Defendant) *Appellant*

AND

1. JINADASA HALWA-  
TURA (Plaintiff)
  2. VALIN KARUNAWA-  
THIE HALWATURA  
(1st Defendant) . . . *Respondents*
- 
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Case

FOR THE FIRST RESPONDENT

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*Solicitors the First Respondent.*