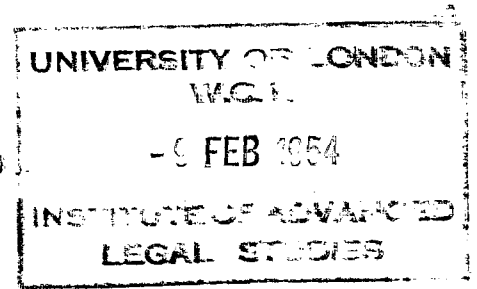


~~C.L.L.G. 2~~

18, 1953

33513

No. 48



Supreme Court of Ceylon.  
No. 492 (Final) of 1949.

District Court, Colombo  
No. 1580.

IN THE PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON

BETWEEN

S. D. M. DEAN of 4/1, Longden Terrace, Colombo.. .....*2nd Defendant-Appellant.*

VERSUS

1. ERIC ALLEN ANTHONISZ of Nelson Lane,  
Kollupitiya, Colombo .....*Plaintiff-Respondent*

AND

2. MAUD MAGDALENE ANTHONISZ *nee* TRADIGO  
of 4/1, Longden Terrace, Colombo.....*1st Defendant-Respondent.*

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RECORD  
OF PROCEEDINGS

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No.....

Supreme Court of Ceylon  
No. 492 (Final) of 1949

District Court, Colombo  
No. 1580

IN THE PRIVY COUNCIL  
ON AN APPEAL FROM  
THE SUPREME COURT OF CEYLON

BETWEEN

S. D. M. DEAN of 4/1, Longden Terrace Colombo.....*2nd Defendant-Appellant*

VERSUS

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Kollupitiya, Colombo.....*Plaintiff-Respondent*

AND

2. MAUD MAGDALENE ANTHONISZ *nee* TRADIGO  
of 4/1, Longden Terrace, Colombo.....*1st Defendant-Respondent.*

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RECORD OF PROCEEDINGS

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PART I.

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**PART I.**

**No. 1.**

**Journal Entries.**

**IN THE DISTRICT COURT OF COLOMBO.**

No. 1  
Journal  
Entries  
20-3-47 to  
15-12-50

No. 1580.

Amount : Rs. 25,000.

Nature : Divorce.

Procedure : Regular.

E. A. ANTHONISZ.....*Plaintiff*

*vs.*

M. M. ANTHONISZ *nee* TRADIGO and Another.....*Defendants.*

10

**JOURNAL.**

The 20th day of March, 1947.

Mr. D. F. de Silva files appointment and plaint together with marriage certificate.

Plaint accepted and summons ordered for 30-5-47.

(Sgd.) S. C. SWAN,  
*District Judge.*

31-3-47. Summons issued on 1st and 2nd defendants with precept.

30-5-47. Mr. D. F. de Silva for plaintiff.

20

1. Summons served on the 2nd defendant. Proxy filed.  
Answer 4-7.

2. Summons not served on the 1st defendant. Re-issue for  
4-7-47.

Intd. S. C. S.,  
*D. J.*

13-6-47. Summons re-issued on 1st defendant.

4-7-47. Mr. A. M. Markar for 2nd defendant.

1. Answer of 2nd defendant. S. O. 1-8.

2. Summons not served on 1st defendant. Re-issue for 1-8-47

30

Intd. S. C. S.,  
*D. J.*

No. 1  
Journal  
Entries  
20-8-47 to  
15-12-50  
—continued.

- 14-7-47. Summons re-issued on 1st defendant.
- 1-8-47. Mr. A. M. Markar for 2nd defendant.  
1. Answer of 2nd defendant filed.  
2. Summons not served on 1st defendant. Re-issue for  
10-10-47.  
Intd. S. C. S.,  
D. J.
- 8-8-47. Summons re-issued on 1st defendant.
- 10-10-47. Summons not served on 1st defendant. Re-issue for 14-11-47.  
Intd. S. C. S., 10  
D. J.
- 23-10-47. Proctor for plaintiff files affidavit, from plaintiff and moves  
that Court do allow substituted service of summons  
on 1st defendant by affixing the same to the 1st defendant's  
present place of abode, viz., 4/1, Longden Terrace, Colombo,  
the 1st defendant to appear within 7 days of such service.  
Make another attempt as personal service.  
Intd. S. C. S.
- 7-11-47. Summons re-issued on 1st defendant. 20
- 14-11-47. Summons not served on 1st defendant. Re-issue for 19-12-47.  
Sgd. V. E. RAJAKARIER,  
D. J.
- 20-11-47. In the circumstances explained in motion Proctor for plaintiff  
moves that Court do allow his motion dated 21-10-47 for  
substituted service of summons. Affidavit from plaintiff  
was annexed to his motion dated 21-10-47.  
Allowed also by registered post.  
Sgd. V. E. RAJAKARIER,  
D. J. 30
- 10-12-47. Summons re-issued on 1st defendant.
- 19-12-47. Mr. D. F. de Silva for plaintiff.  
Summons served on the 1st defendant by way of substituted  
service.  
Her proxy filed. Answer 23-1.  
Intd. ....
- Proof of posting not filed.
- 23-1-48. Mr. A. M. Markar for 1st defendant. Answer filed.  
Trial 27-8-48.

- 19-8-48. Proctor for defendant with notice to Proctor for plaintiff files list of witnesses and moves for summons.  
Allowed.  
Intd. ....  
A. D. J.
- 20-9-48. Summons issued on two witnesses by defendant.
- 23-8-48. Summons issued on six witnesses by defendant.
- 27-8-48. Trial.  
Mr. D. F. de Silva for plaintiff.  
Mr. A. M. Markar for 1st defendant.  
Plaintiff's list of documents filed. Further hearing on 15-9-48.  
Intd. ....  
D. J.
- 4-9-48. Proctor for 2nd defendant files affidavit and for the reasons stated therein moves to issue summons on Mrs. Brohier of 16, Mount Mary, Colombo, by way of substituted service and by sending her a copy of the summons by registered post, directing her to appear on 15-9.  
Let this application be supported.  
Intd. ....
- 15-9-48. Mr. D. F. de Silva for plaintiff.  
Mr. A. M. Markar for 1st defendant.  
Vide proceedings. Further hearing on 5-10-48.  
Intd. ....  
D. J.
- 5-10-48. Trial. Appearance as on 15-9-48.  
Vide proceedings. Judgment—C. A. V. Intd. ....  
D. J.
- 12-10-48. Proctor for plaintiff files documents marked P1—P6.  
Intd. . . . .  
D. J.
- 20-12-48. Inform Proctors that judgment will be delivered tomorrow.  
Intd. ....  
D. J.
- 20-12-48. Proctors noticed.
- 21-12-48. Judgment filed.  
Enter decree nisi dissolving the marriage between plaintiff and 1st defendant on the ground of 1st defendant's malicious desertion and her adultery with the 2nd defendant giving the plaintiff the custody of the two children with the right

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20

30

No. 1  
Journal  
Entries  
20-3-47 to  
15-12-50  
—continued.

of the 1st defendant to have access. The 2nd defendant do pay Rs. 10,000 as damages and costs to plaintiff. Decree nisi not to be made absolute until 25-3-49.

Intd... ..  
D. J.

Decree nisi entered.

21-12-48. 1st defendant moves to revoke the proxy granted to Mr. A. M. Markar, Proctor. Mr. Markar consents.

Allowed.

Intd... .. 10  
D. J.

21-12-48. Mr. Abdulla Markar, Proctor, files proxy for the 1st defendant together with revocation of proxy. File.

Intd.....  
D. J.

21-12-48. Mr. A. M. Markar, Proctor, files petition of appeal from the 2nd defendant-appellant against the judgment of this Court dated 21-12-48 and tenders stamps to the value of Rs. 16.50 for certificate and Rs. 33 for S. C. decree.

Stamps affixed to certificate and S. C. decree and cancelled. 20  
Accept.

Intd. ....  
D. J.

21-12-48. Proctor for 2nd defendant-appellant moves that, as the petition of appeal filed by him having been accepted, he will deposit on or before 6-1-49 a sum of Rs. 250 being security for the plaintiff-respondent's costs of appeal and will on the same day deposit a sufficient sum of money to cover the expenses of serving notice on the plaintiff-respondent.

Proctor for plaintiff-respondent received notice together with 30 a copy of the petition of appeal.

1. Issue paying-in voucher for Rs. 250.
2. Call on 6-1-49.

Intd.....  
D. J.

21-12-48. Proctor for 2nd defendant-appellant moves that, as the petition of appeal filed by him having been accepted, he will deposit on or before 6-1-49 a sum of Rs. 250 being security for 1st defendant-respondent's costs of appeal and will deposit on the same day sufficient sum of money to cover the expenses 40 of serving notice.



Proctor for 1st defendant-respondent received notice and dis-  
penses with security being given for the 1st defendant-  
respondent's costs of appeal.

File.

Intd.....

*D. J.*

21-12-48. Proctor for appellant files application for typewritten copies  
and moves for a paying-in voucher for Rs. 25.

Issue.

10

Intd.....

*D. J.*

21-12-48. Paying-in vouchers for Rs. 250 and Rs. 25 issued.

22-12-48. Proctor for 2nd defendant-appellant files bond and notice of  
appeal.

1. File.

2. Issue notice of appeal for 18-2.

Intd.....

*D. J.*

21-12-48. KR. V/7 88630 for Rs. 250 filed.  
20 KR. V/7 88630 for Rs. 25 filed.

1-3-49. Notice of appeal issued for 18-3.

18-3-49. Notice of appeal served.  
Forward record to S. C.

Intd.....

*D. J.*

25-3-49. Mr. D. F. de Silva for plaintiff.  
Mr. A. M. Markar for defendant.  
Case called. No appearance. No order.

Intd.....

*D. J.*

30

4-6-49. 1st defendant moves to revoke the proxy granted to Mr. A. M.  
Markar.  
Noticed Proctor for 17-6.

Intd.....

*D. J.*

6-6-49. 2nd defendant moves to revoke the proxy granted to Mr. A. M.  
Markar, Proctor.  
Notice Proctor for 17-6.

Intd.....

*D. J.*

40

8-6-49. Notices issued on Proctor.

No. 1  
Journal  
Entries  
20-3-47 to  
15-12-50  
—continued.

- 17-6-49. Mr. D. F. de Silva for defendant.  
Mr. A. Markar for 1st defendant.  
Mr. A. M. Markar for 2nd defendant.  
Notice to revoke proxies served on Proctors for 1st and 2nd  
defendants.  
Revocation of proxies granted by 1st and 2nd defendants to  
Mr. A. Markar and Mr. A. M. Markar is filed.  
Their proxies are revoked.  
Intd.....  
D. J. 10
- 18-6-49. 1st defendant moves that the decree nisi be made absolute.  
Await result of appeal.  
Intd.....  
D. J.
- 21-6-49. Mr. K. Rasanathan, Proctor, files proxy for the 2nd defendant  
together with revocation of proxy and moves to accept same.  
File.  
Intd.....  
D. J.
- 23-6-49. Mr. K. Rasanathan, Proctor, files proxy for the 1st defendant  
together with revocation of proxy.  
File.  
Intd.....  
D. J.
- 24-6-49. *Vide* order at J. E. dated 18-6-49, Proctor for 1st defendant  
submits that the appeal has been preferred only by the 2nd  
defendant on the question of damages and therefore he moves  
to enter decree absolute.  
*Vide* proceedings.  
Intd..... 30  
D. J.
- 29-6-49. Proctor for 1st defendant tenders notice that was served on  
Proctors for plaintiff and 2nd defendant.
- 1-7-49. Mr. D. F. de Silva for plaintiff.  
Mr. K. Rasanathan for 1st defendant, *vide* 29-6-49.  
Proctor for plaintiff is present and takes notice.  
Proctor for 2nd defendant is present and takes notice.  
*Vide* proceedings.  
Intd.....  
D. J. 40
- Decree absolute entered  
Intd.....

22-10-49. *Vide* memo. from appeal brief branch typists' branch, additional fees are required.  
Call for it.

No. 1  
Journal  
Entries  
20-3-47 to  
15-12-50  
—continued.

Intd.....  
*D. J.*

24-10-49. Voucher for Rs. 5 forwarded to Proctor for appellant with letter.  
Voucher for Rs. 30 forwarded to Proctor for respondent with letter.

10

Intd.....

9-11-49. K.R. 9/8 226/57147 of 26-10-49 for Rs. 5 filed.

15-11-49. Record forwarded to Registrar, Supreme Court, together with two briefs.

Intd.....

15-9-50. Registrar, Supreme Court, returns record together with S. C. judgment dismissing the appeal with costs  
Proctors to be noticed.

Intd. ....  
*D. J.*

2015-12-50. Registrar, Supreme Court, by letter No. APN. of 14-12-50 calls for the record of this case.  
Forward.

Intd.....  
*D. J.*

---

No. 2.

**Plaint of the Plaintiff.**

No. 2  
Plaint of the  
Plaintiff  
20-3-47

**IN THE DISTRICT COURT OF COLOMBO**

No. 1580/D.

30 **ERIC ALLEN ANTHONISZ** of Nelson Lane, Kollupitiya,  
Colombo .....*Plaintiff*

*Vs.*

1. **MAUD MAGDALENE ANTHONISZ** (*nee* Tradigo) of 4/1, Longden Terrace in Colombo
2. **S. D. M. DEAN** of 4/1, Longden Terrace, Colombo..... *Defendants.*

No. 2  
Plaint of the  
Plaintiff  
20-3-47  
—continued.

On this 20th day of March, 1947.

The plaint of the plaintiff abovenamed appearing by D. F. de Silva, his Proctor, states as follows :—

1. The parties to this action reside at the respective places mentioned above within the jurisdiction of this Court and the cause of action hereinafter set out arose in Colombo within the jurisdiction of this Court.

2. The plaintiff was married to the 1st defendant on the 28th of December, 1933, at Christ Church, Galle Face in Colombo. A copy of the marriage certificate is herewith annexed marked " A ".

3. There are two children of the said marriage, viz., a boy named Allan Eric born on the 28th December, 1934, and a girl named Ninette Hazel born on the 7th January, 1936, both of whom are at present living with the plaintiff.

4. In or about the month of November, 1945, the 1st defendant maliciously deserted the plaintiff and though repeated appeals were made to her has refused to return to the plaintiff's home.

5. The 2nd defendant has committed adultery with the 1st defendant on various occasions in Colombo and since October, 1946, is living in adultery with the 1st defendant at the 2nd defendant's residence at 4/1, Longden Terrace, Colombo.

6. A cause of action has accrued to the plaintiff to sue the 1st defendant for a divorce on the grounds of adultery with the 2nd defendant and desertion and to sue the 2nd defendant for damages which the plaintiff assesses at Rs. 25,000.

7. The 1st defendant is not a fit and proper person to be entrusted with the custody of the said children.

Wherefore the plaintiff prays :

- (a) that the Court be pleased to enter a decree of divorce a *vinculo matrimonii* dissolving the marriage between the plaintiff and the 1st defendant ;
- (b) for damages against the 2nd defendant in a sum of Rs. 25,000 ;
- (c) for a declaration that the plaintiff is entitled to the custody of the two children of the marriage ;
- (d) for costs of suit and for such other and further relief as to this Court shall seem meet.

(Sgd.) D. F. DE SILVA,  
Proctor for Plaintiff.

#### Documents Filed with the Plaint

- 1. Marriage certificate marked " A " Documents relied on.
- 2. Correspondence.

(Sgd.) D. F. DE SILVA,  
Proctor for Plaintiff.

## CEYLON

## Certificate of Marriage

Register of a Marriage in the Colombo District, Western Province.

	Male Party	Female Party
Name of parties in full :	Eric Allen Anthonisz	Maud Magdalene Tradigo
Age :	Thirty-five	Nineteen
Civil condition :	Bachelor	Spinster
10 Rank or Profession and Nationality :	Stenographer Burgher	Britisher
Residence :	Mount Lavinia	50th Lane, Dickman's Rd., Bambalapitiya
Father's Name in full :	Thomas Hamilton Anthonisz, (dec'd.)	Valentine Tradigo
Rank or profession of Father :	Steward, Government Hospital	Proprietor, National Motor Engineering Co.
20 Name and Division of Registrar who issued certificate :	R. M. Rodrigo, Palle Pattu, Salpiti Korale	C. M. Agalawatta, Colombo Town
Place of Solemnization of Marriage :	Christ Church, Galle Face, Colombo	

Solemnized by me (in my presence) this twenty-eight day of December, 1933.

(Sgd.) CHAS. W. REEVES,  
*Minister.*

This marriage was solemnized between (Sgd.) ERIC A. ANTHONISZ  
30 us in the presence of : (Sgd.) MAUD MAGDALENE  
TRADIGO

Signature of witness : (Sgd.) NOEL W. ANTHONISZ (This is the signature of Noel Wilfred Anthonisz)

Name in full, Rank or profession and residence of Witness : Noel Wilfred Anthonisz, Government Clerk, 420, Pavilion Road, Mount Lavinia

Signature of Witness : (Sgd.) V. TRADIGO

Name in full, Rank or profession and residence of Witness :  
40 Valentine Tradigo, Proprietor, National Motor Engineering Works, Union Place, Colombo

Signed before me :

(Sgd.) CHAS. W. REEVES,  
*Minister.*

No. 2  
Plaint of the  
Plaintiff  
20-8-47  
—continued.

I certify that the above is a true copy of the Statement No. 24 furnished to me under section 33 of the Marriage Registration Ordinance 1907 of a marriage solemnized by Rev. Chas. W. Reeves, Minister.

Date of entry in the Provincial Registrar's  
or Assistant Provincial Registrar's  
Register :

Twenty-fifth January, 1934

I, D. Walton, Assistant Registrar-General of Marriages in the Island of Ceylon do hereby certify that the foregoing is a true extract from the 10 Duplicate Register of Marriages of the Additional Assistant Provincial Registrar of Colombo filed in this office and the same is granted on the application of Mr. D. F. de Silva.

Registrar-General's Office,  
Colombo, 8th March, 1947.

(Sgd.) Illegible,  
*Assistant Registrar-General.*

---

No. 3.

Answer of the 2nd Defendant.

No. 3  
Answer of  
the 2nd  
Defendant  
1-8-47

IN THE DISTRICT COURT OF COLOMBO

No. 1580/D.

ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya,  
Colombo.....*Plaintiff* 20

*Vs.*

1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of 4/1,  
Longden Terrace, Colombo
2. S. D. M. DEAN of 4/1, Longden Terrace, Colombo.....*Defendants.*

On this 1st day of August, 1947.

The Answer of the 2nd defendant abovenamed appearing by A. M. Markar his Proctor, states as follows :—

1. This defendant admits all and singular the averments contained in the plaint in so far as they affect him save and except the averment 30 that the plaintiff is entitled to claim a sum of Rs. 25,000 or any sum whatsoever from this defendant as damages.

2. Further answering this defendant pleads that having regard to the plaintiff's conduct and to all the circumstances of this case no damages whatsoever should be awarded to the plaintiff against this defendant.

Wherefore this defendant prays :

- (a) That the plaintiff's action in so far as a decree for damages is prayed for against this defendant be dismissed with costs ;
- (b) For such other and further relief as to this Court shall seem meet.

No. 3  
Answer of  
the 2nd  
Defendant  
1-8-47  
—continued.

(Sgd.) A. M. MARKAR,  
*Proctor for 2nd Defendant.*

**No. 4.**

**Answer of the 1st Defendant.**

No. 4  
Answer of  
the 1st  
Defendant  
23-1-48

**IN THE DISTRICT COURT OF COLOMBO**

10No. 1580/D.

ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya,  
Colombo .....*Plaintiff*

*Vs.*

- 1. MAUD MAGDALENE ANTHONISZ (*nee* Tradigo) of 4/1, Longden Terrace, Colombo
- 2. S. D. M. DEAN of 4/1, Longden Terrace, Colombo.....*Defendants.*

On this 23rd day of January, 1948.

The Answer of the 1st defendant abovenamed appearing by A. M. Markar his Proctor, states as follows :—

- 20 1. This defendant admits the averments contained in paragraphs 2, 3 and 5 of the plaint.
- 2. This defendant denies the averments contained in paragraph 4 of the plaint.
- 3. Answering paragraph 7 of the plaint this defendant agrees to an Order of Court declaring the plaintiff entitled to the custody of the children subject :
  - (A) To this defendant being granted reasonable access to the children ;
  - (B) To this defendant's right to ask for a variation of the said order regarding custody should circumstances require such variation in the interests of the said children.
- 30

Wherefore the defendant prays :

- (a) for a suitable order regarding the custody of the said children including the defendant's right of access to them ;
- (b) and for such other and further relief as to this Court shall seem meet.

(Sgd.) A. M. MARKAR,  
*Proctor for 1st Defendant.*

No. 5  
Issues  
Framed  
27-8-48

No. 5.

Issues Framed.

27-8-48.

ADV. WALDO SANSONI, for the plaintiff.

ADV. HAYLEY, K.C., with ADV. JAYAWICKREME, for the 1st and 2nd defendants.

Mr. Sansoni states his case and suggests the following issues :—

1. Did the 1st defendant about the month of November, 1945, maliciously desert the plaintiff ?
2. Has the 1st defendant committed adultery with the 2nd defendant and have they both since October, 1946, been living in adultery ?
3. What damages, if any, is plaintiff entitled to against the 2nd defendant ?
4. Is the plaintiff entitled to the custody of the two children ?

Mr. Hayley says that with regard to the 4th issue the 1st defendant has no objection to the plaintiff having the custody of the two children provided she is allowed access to them at all reasonable times.

Mr. Sansoni says that the plaintiff is quite willing to allow the 1st defendant access to the children.

Mr. Hayley has no objection to the issues and does not suggest any further issues.

I frame the issues as suggested by Counsel for the plaintiff.

---

No. 6.

Plaintiff's Evidence.

No. 6  
Plaintiff's  
Evidence  
E. A. Anthonisz  
Examination

MR. SANSONI calls :

ERIC ALLEN ANTHONISZ, Sworn.

I am the plaintiff. I am 50 years old. I am employed at the Colombo Commercial Co. At the time of my marriage I was employed here. I married 1st defendant on 28-12-33 at Christ Church, Galle Face. (Marriage certificate already filed of record marked P1). I have two children by that marriage, a boy Allan Eric born on 28-12-34 and Ninette Hazel born 7-1-36. They are both at present living with me. They have always been with me.

After marriage I first lived at Mt. Lavinia with my brother. At that time my salary was about Rs. 175 a month. The first child was born at a nursing home when I was living at Mount Lavinia. After about 8 months of the birth of the child we shifted to a separate house at Colpetty.



Thereafter we went to Pepiliyana. I came to the present house at Nelson Place, Colpetty, about 9 years ago.

Today my salary is Rs. 250 a month plus allowance. I have been earning this amount for the last 2 years. Apart from my salary I got assistance from my wife. She was a dressmaker. That helped to run the house.

The 2nd child was born at St. Michael's Road before I came to Nelson Place.

At Nelson Place we fed some school children and teachers from St. Thomas' Prep. School.

I first made the acquaintance of the 2nd defendant Dean about the latter part of 1944. I made his acquaintance through my wife. My wife came to know him through my sister-in-law. Until the latter part of 1944 neither of us knew him. I first knew of him as a shopkeeper in the Pettah. He is the proprietor of a paint store—the British Paint Store I think. 2nd defendant first came to my house about a month after my wife made his acquaintance and I met him there for the first time.

2nd defendant had meals in my house. He came and told us about the unpleasantness at his house with his wife and he told us that he hardly got anything for the money he spent in the Pettah and asked us whether we could assist him with his meals. He came from his shop in the Pettah to my house for his midday meal. Then he began to take meals at night also. He wanted to take some riding practice and he came home in the evening and did his change there. After the riding practice he delayed and of course he asked for dinner and we supplied him with dinner. The riding practice was at Hussein's stables which were just by my house. At that time my children lived with me. 2nd defendant was very kind to my children. He took them to the pictures. The taking of meals continued at my house for I do not think more than 5 to 6 months or 4 to 5 months at the most. It stopped owing to a little unpleasantness. My wife was going out too often to the pictures with the 2nd defendant and the children and I objected to it. But she continued to go until I had to speak to the 2nd defendant and said that this must stop. Then of course he got huffed over it and I think he stopped coming home even for the midday meal. Since then he never came. That was about September, 1945. Before the year 1945 my wife did dressmaking, she also did dressmaking for the 2nd defendant's children. 2nd defendant has about 8 children. I do not know 2nd defendant's wife, I have not seen her. 2nd defendant is a Muslim. His wife is not a Muslim woman. I do not know who she is and what nationality she is. She is a kind of Burgher.

Up to the time of the 2nd defendant's coming on the scene I was living a very happy life with my wife.

My wife first spent a night out of home I think about the 28th October, 1945. Before that she never spent the night out without me. I waited up the whole night for her. She returned the next day. I asked her

No. 6  
Plaintiff's  
Evidence  
E. A. Antho-  
nisz  
Examination  
—continued.

where she had been and she made the excuse that she had been to see her mother and that she was too late to return alone. She made me understand that her mother lived at Wellawatte. There was a small break of about 4 days from the 28th October. After that she started staying out again on the 3rd November. I questioned her and she made the same sort of excuse. Thereafter she kept away very often I was trying to find out where she spent the night but I could not until I heard that they had bought a property at Pannipitiya and that she was living with him there. When I next met her I protested. She was silent she did not talk. I threatened her and said that if she was going to keep out of home she need not come back as it was a disgrace. Then she avoided me and left before I came after work. She came to see the children when I was at work, and left the house before I returned. The property at Pannipitiya was given by deed of gift to my wife by 2nd defendant. Since she lived at Pannipitiya I had nothing to do with my wife. We did not live as husband and wife.

A piano was once brought to my house. My wife wanted a piano to teach my daughter music, and she said that it was going to be bought with a little savings in the post office and the balance to be settled monthly. In the meantime 2nd defendant I think tempted her saying that he will pay the whole amount as it was more satisfactory that way and he paid for the piano and the piano was brought home. The piano was at home for about 6 months. My daughter was not taught music. When my wife was going out at nights and keeping away and not making an attempt to pay for the piano I asked her to take it out or otherwise that I was going to put it out in the garden. It was removed in my absence.

My wife had a sewing machine of her own. Another one was not brought into my house but I learned that she had bought another machine. That was after she left me. I never wanted a refrigerator. A refrigerator was at one time brought into my house. This was the property of an Indian officer with whom 2nd defendant was friendly. He was leaving the Island and he asked 2nd defendant to remove it. 2nd defendant came to my wife and said that there was a refrigerator going and that he did not want to take it home as they had no use for it there. We did not want it. It was of no use to us. He was going to put it in a store when my wife jumped at the idea of keeping it and it was brought home. It was at home for less than 4 months when it was removed.

From Pannipitiya the two defendants shifted to Longden Place where 2nd defendant bought a house. They have been living there ever since. Summons was served on the 2nd defendant in his shop and on my wife at Longden Place. When my wife was away the children pined for her and pleaded with me to get her back. I wrote to her asking her to come back that in spite of everything I would forgive her for the sake of the children. She did not reply to either of the two letters that I wrote to her. The children also wrote to her.

In about December, 1946, I knew of 1st defendant's condition. She confessed to me that she was pregnant. She made the confession to me

on the 20th December. That was the only practical reply I got to my letters and my children's prayers. She came home and told me that she had got over her trouble and that she was coming back to us and that we can go to church together and receive Holy Communion together. By getting over her trouble she meant that she had had an abortion.

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Plaintiff's  
Evidence  
E. A. Antho-  
nisz  
Examination  
—continued.

At that time she complained of how she was treated by the 2nd defendant. She said that she was assaulted within closed doors. She told me that he closed the doors and assaulted her. She showed me marks. When she made this confession to me I told her that she deserved all this. 10 I told her that if she returned I would have her back. She spoke to the children that day. She put her two hands on the children and swore that she was coming back. She came on the 31st December—11 days after—and when questioned by the children why she did not come she said that she had changed her mind.

My son will be 14 years in December. He won a scholarship at St. Thomas' College. He went to school on the 15th January, 1947. That child was very unhappy. He did not sleep the whole night. I had to go and bring him back because he could not concentrate on his work. He threatened to commit suicide unless I brought him back. My wife has 20 changed her costume. This is the first time I have seen her in this costume. My children told me that she visited them on one occasion dressed in a sari. After my wife left me finally I found some letters which had been written to her by the children.

(Mr. Sansoni moves to produce in evidence certain letters said to have been written by the children to the 1st defendant.

Mr. Hayley objects to the letters being marked unless the writers are called. He said that evidence of what the children wrote is not relevant and he also says that the children are not on the list of witnesses and neither are the letters listed.

30 Mr. Sansoni says that these letters were put on a list notice of which was given to defendant's Proctor today but that he objected to it. He says that the matter is purely technical and that it is one within the discretion of the Court. He moves that the Court should give permission to the plaintiff to call the children who are present outside Court even though they are not on the list.

### ORDER

I am not prepared to allow the letters to be marked in evidence at this stage. If the plaintiff desires later to call his children to give evidence in support of his case I shall then consider the application to call them as 40 witnesses even though their names are not on the list of witnesses.)

I produce a letter dated 20th December, 1946, written by the 1st defendant to the children marked P2.

(Mr. Hayley objects to the letter being marked as it is not addressed to this witness.)

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Plaintiff's  
Evidence  
E. A. Antho-  
nisz  
Examination  
—continued.

I know that the children received this letter. I know this as a fact because they bring all their letters and show them to me. This letter was sent by her by messenger to the children. I can identify my wife's writing. The date on the letter is the day on which she made her confession to me.

(Order—I allow the letter to be marked.)

I produce marked P3 letter dated 2-1-47 also written by the 1st defendant to my son, Rs. 50 was sent with this letter. She wanted me to spend it on my son when he was going to Gurutalawa. I used the money on my son.

10

E. A. Antho-  
nisz  
Cross-  
examination

XXD. :

1st defendant is younger than I. When we married she was 18 and I was 35 years. Her parents might have been averse to the marriage. They had no objection where I was concerned. They considered her too young to be married at the time, too young to know her own mind. Her father did not give her any property.

I first lived with my brother at Mount Lavinia. After the child came my brother objected to the noise. I do not know whether my wife did not have a nice life there with my brother and sister-in-law. She was happy there. The child upset the house, pulled things about and caused 20 trouble. My brother got angry about it. That is why I left. From there we went to St. Michael's Road, Colpetty, where we were for about 3 years. Then we went to Pepiliyana and afterwards to Nelson Place I think in 1939. I am still there. From 1940 onwards that was my main house. My wife did dressmaking for about 2 or 3 years or more. She did not take up dressmaking immediately we went to Nelson Place. May be 2 or 3 years after we went there. This takes us to about 1942. She started dressmaking to help me as wife to run the house.

The giving of meals to people began about 1943. This carried on till the middle of 1945. She gave lunches to school children and teachers. 30 We had our servants. My wife supervised their work. There were about 2 or 3 teachers; the rest were children about 4 or 5. This was by arrangement with the school I think. They came for lunch during the interval and went back to school. I could not give her a hand in this. I had my work in office.

My present house is one-storied with two bedrooms and one sitting room. The sitting room is a central room. The people were fed in the dining room. Besides the bedrooms there were dining room, drawing room, back and front verandahs. There was a corridor on the side. About 7 people were given only lunch. There were two servants. This 40 went on right up to the middle of 1945. 2nd defendant came with my wife in the latter part of 1944. August or September. I am sure it was in the latter part of the year. I do not think it was June. I think it was the latter part of the year. My wife went to his house first. I first met him in my house. He came alone one evening by car to my house. I think

she made some arrangement with him to take us out to Wattala, if my recollection is correct. He promised us a lift to see a friend. He did not call for my wife in the car. I think she made some arrangement with him to give us—both of us—a lift to Wattala. I met him at the gate. He did not come into the house. She told me that she had met him and asked him to give us a lift. This must have been in the evening. We both went out in the car. I cannot say that I took a fancy to Dean. I did not take a fancy to Dean. I cannot say that I did not like him. It was not a matter of liking or not. I hadn't time to gauge him at the time. 10 At the back of my mind I was doubtful. He took us on this trip to visit another friend. He did not stay for meals. He left. My wife told me how she came to meet this man. Until she told me I did not know that she knew him. My brother's wife introduced Dean to my wife. I did not talk to her about Dean. I had no occasion.

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Plaintiff's  
Evidence  
E. A. Antho-  
nisz  
Cross-  
examination  
—continued.

Dean came again about a week or a fortnight later. It was not arranged that he should pay a second visit. He came on the 2nd visit on his own. I did not know that he was coming. I do not know whether my wife knew that he was coming. I think she did not know that he 20 was coming. He just turned up. He did not say that he had taken a fancy to me. I do not know to whom he had taken a fancy. He told us that he was having unpleasantness with his family. He came home. He saw our place, it was kept so nicely. He used to say that our kitchen and lavatory were better kept than his drawing room and he said that he would like to come here.

On the first visit I cannot remember whether when he left he said that he will come again. His next visit was perhaps by arrangement with my wife. I did not speak to him. He arrived in the evening after work. I do not think I went out for another drive with him. I do not 30 think he stayed for a meal on the 2nd occasion. After that he started to come for lunch. That was about 1945, a long time later. In the meantime I had seen him often. It was a long time before he made arrangements to come for lunch. During this time he did not come for evening meals.

About November, 1944, he used to drop in very often. At that time I did not know that he was a rich man. I know that he owns a shop.

In 1944 I did not borrow Rs. 300 from Dean. Neither did I ask my wife to borrow this money from him.

There is a Provident Fund Scheme in the Commercial Company. 40 They allow us to draw monies and pay it back. In 1944 I had taken some money from the Provident Fund. I did not get any money from Dean and repay the loan. That amount is repaid by monthly instalments from the salary. We are only allowed to draw a month's salary which is deducted in ten instalments. They do not lend us money and ask us to refund it. Towards the end of 1944 Dean did not lend me Rs. 300. He might have lent it to my wife. I think I knew that she had taken this

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Evidence  
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examination  
—continued.

loan. I asked her why she took this loan. I got very angry about it. I remember my getting angry. I do not know the amount she took. I was doubtful about the amount. I was well aware that she had borrowed money and I got angry about it. I did not speak to Dean about it. I spoke only to her. I got angry because I did not know how she was going to pay it. It may be that I got angry because a strange man lent money to my wife. She had asked for this money without my knowing about it. She did not tell me about it beforehand. I told her that I did not approve of her getting money without my knowledge. I thought it improper for her to borrow money from him. I might have put my foot 10 down and asked that it should never happen again.

Dean slept in my house.

I am not too sure that he paid for her cycle. This must have been in the early part of 1945. It was a good cycle, a Hercules, a new one.

It is not that I could not have given her a cycle. I would not have given her a cycle. I disapproved of her riding, I knew that Dean had given the cycle to her.

Dean slept in my house about the latter part of 1945 after he started taking his meals. My wife left me in November, 1945. Dean slept in the house about June. 20

Mr. Hussein's stables were near my place and Dean took riding lessons there. He slept in my house, but not very often. He did not sleep two or three times a week. It may be that he slept once a week. There were two bedrooms and there were my wife, Dean, myself and the two children. Dean slept in the drawing room always. I do not think my pyjamas would fit him. I did not lend him my pyjamas. Dean did not keep a bag in my house so that he could sleep whenever he wanted to. He kept a bag because of his riding lessons. I do not know whether the bag contained clothes. The bag may have contained a change of clothes. He changed in my house. I do not know where he changed. He must 30 have changed in the bedroom. He changed in the bedroom. He did not always stay over the night.

*Q.* Did it occur to you to wonder why this man did all this in your house instead of going to his home?

*A.* The reason for his staying the nights I think was because his garage was broken into, he had no place to keep his car.

When he was with me he kept his car at a garage close by at Hudson Road which adjoins Nelson Place. He kept his car there when he slept at my place. Sometimes he took the car to Walker's garage at Colpetty.

The refrigerator turned up in the house about the same time that 40 he was having his meals; may be later than March, 1945. I had no refrigerator before. This was an electric refrigerator. My wife did not ask me to buy her a refrigerator. I suddenly found the refrigerator in my house. I did not expect it.

I got angry about the cycle. I did not talk anything to him about it. The cycle came in the latter part of 1945. He started having meals

in 1945. Perhaps he was more friendly in 1945. I inquired from my wife as to where the refrigerator came from. She said that Dean had no need for it, Dean had lent it to an Indian Army officer who was leaving the Island and that as the officer was leaving Dean was asked to remove it. Dean was lending the refrigerator to my house. The refrigerator belonged to Dean. He had lent it to an Army officer. I did not know how Dean came to own this refrigerator. Dean asked to keep the refrigerator at our house. My wife had got it there. Dean told my wife that he had no place to keep it, that he did not want to take it to his house. 10 I did not ask Dean why he did not sell the refrigerator.

I went to Nuwara Eliya and stayed with Mr. & Mrs. Britton. Dean gave us a lift in his car. He went with us to stay with the Brittons who live at Daisy Bank View, Nuwara Eliya. Only our party stayed with the Brittons. There were Mr. & Mrs. Britton, my wife and I and the two children, and Dean. The house was not very big. Dean, my wife and the two children and I occupied the same room. We were there for 9 or 10 days. Then we returned to Nelson Place. Dean went with us to Nuwara Eliya because he was invited there by them. He met these people at my place. Mrs. Britton is quite young. Mr. Britton is older. I think when 20 the Brittons were at our place spending a holiday Dean was having his meals with us and I think he helped them by driving them about to see people and in return they invited him for a change. I did not introduce Dean as our rich friend. I never thought of Dean as a man whom I could get things from. Dean went with us because he was invited and we went together. We could not help but sleep in one room. We returned to Nelson Place from Nuwara Eliya. It may be that we went to Nuwara Eliya in April, 1945.

Further hearing on 15-9-48.

(Sgd.) S. J. C. SCHOKMAN,  
D. J.

30  
15-9-48.

Same appearance.

ERIC ALLEN ANTHONISZ recalled, sworn, XXD contd.

2nd defendant came home regularly for some time. May be from April, 1945 I think, for about 5 months or so, Dean dropped in as the other people for whom I provided lunch. Defendant had two meals. He must have paid about Rs. 50 a month. Defendant paid this money to my wife. I saw him pay on one occasion. Defendant came in his car from the Pettah 6 days in the week for lunch. He paid about Rs. 2 a 40 meal. Defendant travelled about 3 miles for his lunch. Nelson Place is near St. Michael's Church. There was restriction of petrol at that time. If defendant bought petrol in the black market he had to pay a high rate. I did not go home for lunch. I preferred to have it in office. I sent a cooly home for my lunch. He is not my servant. He is an office cooly. Dean went home for 6 days in the week for lunch with my wife and I was

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Plaintiff's  
Evidence  
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—continued.

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Plaintiff's  
Evidence  
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niz  
Cross-  
examination  
—continued.

not there. The other people lunching were school children and mistresses. They returned to school after lunch. I did not know how long Dean stayed. Defendant used to get his lunch in the Pettah. He complained to us that he did not get his money's worth. Defendant paid Rs. 2 a day for lunch and used petrol in travelling. I thought defendant came because of the meal. There was a suggestion to send his meal to the Pettah. He said he could not get a man. This suggestion was made by my wife. Dean gave up having meals owing to their going to the pictures and out too often and I objected. She also went out in the afternoon. Defendant took the children to the pictures. I objected. I did not like to see my wife too often in public with Dean and I objected. This was late in 1945. I did not mind his coming home because there were other people present.

I never met Dean's wife. I never suggested that my wife and I should call on his wife. It was not necessary for me to meet his wife. He and his wife were not getting on together.

I knew this from the beginning. From the earliest time I knew that I was entertaining in my house a man who did not get on with his wife. He appealed to us and told us how he was treated at home. I knew from the beginning that he was not a normally married man who was fond of his home.

The piano came in June, 1945. It cost Rs. 1,000, I could have paid for the piano. I had money. I borrowed money for a special purpose, an emergency like sickness. In 1945 I was not continually in debt. I was not continually borrowing from the Commercial Co. I borrowed some money in 1944. That was when I first met Dean. I borrowed but not continually. Not even fairly continually. I did not borrow every month. In January, 1944, I borrowed Rs. 200 from the Pension Fund. This was deducted in monthly instalments, I did not take another loan as soon as one was paid off. At that time Rs. 200 was the most I borrowed. I took another loan when I needed it. I could not have paid Rs. 1,000 for the piano. The piano was bought from a cousin of mine in June, 1945. I did not take it as a gift. The original arrangement was that she was to pay for it with the savings in the Post Office and the balance by her dressmaking. This was her arrangement. She arranged to repay Dean in about 6 instalments. I had money in the Savings Bank. Even though I had money in the Savings Bank I borrowed from the firm. The money was in the Post Office in her name. There was about Rs. 400. She was to pay for the piano out of that and the balance in 6 instalments of perhaps Rs. 100. I do not know whether she paid anything. I asked her ; nothing was paid. The piano did not remain in the house as a gift. I got it taken away. When it was not being paid for I ordered it out of the house. After she stopped coming home and did not also teach music I told her that the piano must leave the house. All these years she never had a piano. The piano came with Dean's coming. Dean did not give my wife a piano. I did not take it as a loan. I would have minded if



she took a loan of Rs. 1,000 from Dean. She never took a loan. If she took a loan I would have minded it. Dean's paying for the piano I would call an arrangement. Until the piano came home I did not know that he had advanced the money. I thought it was merely a temptation in her way. It was kind in a way. Dean did a lot of shady things to get on the good side of my wife. Defendant could not have loved me. I would not say that he did it for love of my wife. Dean tried to display his riches.

No. 6  
Plaintiff's  
Evidence,  
E. A. Anthony  
Cross-  
examination  
—continued.

The refrigerator came in 1945, about the same time as the piano.  
10 I was not asked to pay for it. Dean produced it with a story of its having been returned. I did not trouble to investigate that story.

Q. She was awfully pleased with the refrigerator?

A. I cannot say.

We did not make much use of the refrigerator. I cannot say whether my wife was pleased with it. I said on the last date that she jumped at the idea of keeping it. She was pleased. A refrigerator is a luxury. It was in the house also for about 3 months. When Dean stopped coming for meals he removed it. Dean did not bring it to please me. I had no use for it. I had nothing to keep in it.

20 Dean gave my wife a cycle also in 1945. This was about the same time in the same six months. It was a cheap new cycle. It would have cost about Rs. 100 odd. She was very pleased with the cycle. I did not offer her a cycle because I was against her riding because of accidents. My wife is a strong healthy woman, but nervous. When Dean offered the cycle I did not withdraw my objections to her riding. She insisted on keeping it. I got angry about the cycle to her. I did not get angry with him, because the transaction was between them. All these years we both had been happy. She was a dutiful wife, a good mother and obedient to me in the ordinary way. I did not want her to have the  
30 cycle but I did not tell him because she got it from him. I think I told him that I did not want her to cycle. I had welcomed Dean in the house for some months.

Q. Any reason to suppose that either he or your wife would not carry out your wishes if you said that you did not want her to have the cycle?

A. She was determined on having the cycle.

I told him that she must not have the cycle but she was determined on having it. I did not tell him that she must not have the cycle; I told her. Even if I had told Dean she would have had the cycle.

40 Q. Did you realise at that time that whatever your wishes were Dean could do whatever he liked?

A. He could not possibly do against my wishes, but she could have. Dean gave her the cycle against my wish.

Q. Did you suggest as a result of the cycle that he should not come to meals to your house any more?

A. No.

No. 6  
Plaintiff's  
Evidence.  
E. A. Antho-  
nisz  
Cross-  
examination  
—continued.

Dean brought a typewriter. He did not give her a typewriter. He kept one temporarily at home. I say that he did not give it to her because then I would have known it. She wanted to practise and a typewriter came home. It was not a new typewriter; it had been used. I do not know whether it was as good as new. I do not know whether she asked him for a typewriter or whether he volunteered. I told her how to manipulate the typewriter. I did not give her lessons. I showed her how to manipulate it. It takes a little time to learn to manipulate a typewriter. It takes time to learn the fingering.

Q. Was the Rs. 300 a gift or a loan? 10

A. I do not know anything about it.

This was before the piano and the typewriter. It was a loan.

Q. What was it for?

A. I really do not know.

I did not inquire why she wanted Rs. 300 from this outsider.

Q. Did you make her pay it back.

A. She undertook to pay it back.

I did not make her pay it back. I do not know whether it was ever paid back. I got very anxious about the Rs. 300. I got angry with her. This was before any of the other gifts. I did not speak to him on this 20 subject because she borrowed it on her own. It was not for me to tell him that I did not like her borrowing money from him.

Q. Did you think then that it was a very dangerous state of affairs to have a man who quarrelled with his own wife coming to your house and lending your wife money?

A. No, so long as she repaid it.

Q. You thought it quite ordinary? A. Yes.

Q. You come of a decent respectable family accustomed to a good reputation, etc.? A. Yes.

Q. Did it occur to you that if any outsider knew that a strange 30 man was lending your wife money it would be looked upon as curious?

A. As long as it was repaid I do not think so.

She could have easily repaid it out of her dressmaking. I cannot say why it was borrowed. I do not know why it was borrowed. She did not tell me why it was borrowed. I did not ask her why it was borrowed. I thought it was my duty to see that she did not get into trouble. At this time I borrowed money from the Commercial Company.

Q. Why did you borrow money from the Commercial Company and your wife money from Dean?

A. My borrowing might have been for some illness. Or I may have 40 wanted to go for a change up-country and I took a loan. I cannot remember whether I went for a change in 1944. We went together for a change. As far as I know this Rs. 300 was not borrowed from Dean for

the purpose of going for a change. I did not have debts. I borrowed the money from the Company for my expenses.

Q. I suggest that Rs. 300 was borrowed from Dean at your request? You asked your wife to borrow it?

A. No, I am sure that it is not so.

Dean stayed the night in my house but not frequently. About once a week. He changed in the children's bedroom. There was no other person in the house. I would allow any good friend to change in my bedroom. I had so many friends who came and stayed with me. Mr. P. W. P. Kalpage was one of my good friends. He lived at Wattala. Whenever he stayed at home he changed at home. He came home about once a year. There were other friends also who stayed. Dean slept in the drawing room. He never slept in the same room as my wife and I. I am quite sure he did not sleep in the same room as my wife and I. At Nuwara Eliya we could not help but sleep together in one room.

We went to Hatton with Dean on another occasion. That was just before the trip to Nuwara Eliya. Dean took us in his car to Hatton. We stayed there 3 days. This was in 1945.

At Nuwara Eliya we all stayed in one room. The house belonged to my wife's relations. Before leaving Colombo I did not know that we all would have to live in one room. I knew the house but I did not know what arrangements they were making. There were only two bedrooms in the house. It was not obvious that we all would have had to sleep in one room. Dean could have been put in the dining room. My wife made these arrangements. It is cold at Nuwara Eliya at night. One cannot lie on the floor. One has to change in the evening. My wife, my two children, Dean and I slept in one room. There were two single beds and a double bed. My child was on one, my wife and I on the second and Dean on the other. It was not necessary that all of us should change together. My wife could have gone to the Brittons' room to change. When we retired to bed my wife changed in the other room. After we have changed and got into bed she comes in.

Q. Did you think this was quite a normal arrangement?

A. No. We could not help it. We went up in a party and had to make the best of it.

I was not accustomed to sleeping like this in one room. I would have put up with anybody else in the circumstances. At home I have put up with the same circumstances after marriage when I had friends at home. Other people had slept in my room in my house.

Q. Here is this gentleman with the car who lends your wife money and produced the fairy gifts, who came to meals everyday when you were out; he slept in your house more or less whenever he wanted to. Did you think it was your business to interfere and prevent this?

A. He came and told us his troubles at home.

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Evidence.  
E. A. Antho-  
niz  
Cross-  
examination  
—continued.

Q. Was it not obvious to you at that stage with this sort of relationship going on that there was a strong probability of trouble.?

A. I trusted him as I trusted others. I did not expect him to turn out mean.

None of my other friends behaved in the same way. None of the others gave her pianos and typewriters.

Q. I suggest that you threw these two people together in order to get what you could out of Dean?

A. Certainly not.

Q. Is it true that you told her that she could treat him exactly as<sup>10</sup> she treated you? A. No, never.

I do not know who bought the house at Pannipitiya. I came to know about this long afterwards. After I heard about it I got the deed into my hands. She was to come back to us and to make us believe that she was coming back she brought the deeds and gave them to me. That was somewhere in 1946. I read the deed. The property was bought for Rs. 5,000 with a house. The deed was executed in her name. It was a deed of gift. The property was bought from somebody else. The deed was dated somewhere in 1945, about the 22nd October, 1945. It was executed by a well known firm of lawyers. On 28th October, 1945, she<sup>20</sup> stayed out for the first time. I know the date because I had a diary. I have not brought the diary with me to Court. It is at home. I did not think it would be necessary to bring it. I looked up the diary before coming to Court. I entered there that she stayed out that night. I think she went out in the evening of the 20th. I wasn't at home when she went out. She had gone out before I returned from office. She left no message for me with the servants. Sometimes she went out without leaving a message for me. I did not worry. I had no idea where she had gone. When she went out like that she usually returned home early before dinner. The latest she had been was 6 o'clock. She sometimes<sup>30</sup> stayed out later. I expected her back before dark. I go to bed fairly early. This night she did not turn up. I asked the servants whether they knew where she had gone. I do not know whether she had gone on the cycle. I did not think of looking to see whether the cycle was there or not. As it got late I became anxious. She might have been with her mother who was the only person worthwhile inquiring from. I do not know where the mother lived. My wife's mother had no place of permanent abode. I did not bother to keep in touch with her to know where she was. The next morning I wanted to go to the Police; not that night. She turned up the next morning about 7. She told me that she stayed<sup>40</sup> the night with her mother. I asked her why and she said that she got too late to return. I do not think I asked her where the mother was. I took it calmly. At that time I believed it. It did not occur to me that she had been out with Dean. He did not stay the night before in my house. He stopped coming home in early October. I did not see him on the 20th. I really thought she had been to see the mother, I did not find out where.

This occurred again on the 3rd November. I got this date also from the diary. Anything important I inserted in the diary—my wife's keeping away from home. Since I met Dean anything that occurred to me might have been put down in the diary if it was worth putting down. On the 3rd November she left before I returned from office. I generally get home from office at about 5 or 5-30. I walk back home. I tried to find out where she had gone. I have tea when I come in. She is usually there. On the 3rd November she was not there. I asked the servants where she had gone and they told me that she had gone out, but not where. The same thing occurred again; she did not return. On this occasion I stayed up for her until about midnight. It would have been extraordinary if she stayed out twice in the week. I did not send word to the mother because I expected her back. When it became midnight I knew that she would not return. I did not send word to her mother to find out where she was.

No. 6  
Plaintiff's  
Evidence.  
E. A. Antho-  
nisz  
Cross-  
examination  
—continued.

Q. Why did you not take steps to find out where she was?

A. It was not necessary.

I expected her the next morning. I thought that if she went to her mother's and stayed out I would not worry. I still did not know where the mother was. I asked her the next morning. I cannot be sure when she returned. I cannot remember whether I met her in the morning or on my return from office. I did not inform the police. I cannot remember whether she returned before I left for office or not. It was important whether my wife returned home or not. It may be that I went to office without finding out whether she had come home. I might have sent a message with my tiffin-carrier to find out whether my wife had returned home. I cannot remember. This was a very unusual thing.

Q. To send a message by the messenger to find out whether your wife who had run away had come back would be a very unusual thing?

A. I do make inquiries about home.

I cannot remember when I saw her again. I cannot say whether it was one day after or two. She returned after the night of the 3rd November. I remember her coming back after staying away on the night of the 3rd November. It might have been the next morning. She stayed out on the 3rd November. I sat up until midnight. She might have come back on the 4th morning, but I cannot say. She might have come back on the 4th evening. I cannot remember. She perhaps came back on the 5th November morning which I cannot remember. She never kept away so long as a week. She must have come back the next day I think. I remember she ultimately came back. By then I was angry about it.

Q. You were very much in a rage? A. Yes.

Q. Before she gave her excuse or not?

A. I told her what I had to say, that if she was keeping out at night I did not want her to come back.

My wife had her own house to get ill. There was no need for her to stay at the mother's. By the time she had returned I had made my own

No. 6  
Plaintiff's  
Evidence.  
E. A. Antho-  
niz  
Cross-  
examination  
—continued.

assumption of what she had been doing; I knew that she was staying away from home. Meeting Dean outside perhaps. At that time I did not think she had been with Dean. When she kept away at night her excuses were that she was with her mother. I did not trouble to find out whether she was at the mother's or not. I found out from her when she came back. I was indifferent so long as she came back the next morning. I cannot remember whether she came back the next morning. At any time I did not try to find out where she was. She has other relations besides the mother. They would be able to tell me where the mother was. I did not send a message or ring any one up telling them that my 10 wife had disappeared and ask where her mother was. I remember that I was angry when she returned. I cannot remember the time of day when I got angry. It was in the house. I usually speak to her inside the house. I asked her where she had been and it was as usual with her mother. That was her usual excuse. She said that she was with her mother. I had to believe her. I did not believe her. I did not cross examine her to find out where she had been. She gave no reason for staying away.

Q. I suggest that you knew quite well then that she had gone off with Dean? A. No. 20

Q. It was what you expected? A. No.

I did not expect her to go off with Dean.

After 3rd November she went away again; I cannot remember when. It is not in my diary. After that her keeping away was frequent. I have a note in my diary when she returned after the 3rd November. I have the 3rd November in my diary as the day my wife did not turn up. I also have a note of her return. I might have looked up the diary to find out when she returned. I think I have entered in my diary when she returned. After that she went again a couple of days afterwards. This time I did not stay up for her. I had my meals and went to bed. 30 After I told her that she wasn't to come back if she kept away at night I did not worry to find out where she stayed on the third occasion. On the 3rd November when she told me again that she was with her mother and that she could not get away in time, I did not ask her where her mother lived. It did not interest me. I still did not think that she stayed with Dean. Then I might have believed her excuse. Now I know it was false. As it was improper for her to stay out I told her that if she stayed out again she need not come back.

Q. Your attitude then is that even if she had gone to her mother's on these occasions you did not want her back if she did it a third time. 40

A. Yes.

Q. She went a third time and did not come home to sleep for a long time? A. Yes.

Then I did not know where she had gone. I did not ask the police to find out. I knew that she was not run over by a bus or train because she saw the children daily. She came practically every day to see the

children. From that time onwards she lived at Dean's at night and at my house in the daytime. One occasion she met me in the house. I stopped giving her money for the children's meals. At this time I did not pay her the usual allowance for looking after the house. I am certain that I took it away from her. I kept accounts. I am sure.

No. 6  
Plaintiff's  
Evidence.  
E. A. Antho-  
niz  
Cross-  
examination  
—continued.

Q. All that time that she was living out with Dean where was she living?

A. At Dean's Pannipitiya property.

This is what I found out later. At that time I did not know this. I did not ask her. Even if I asked her she would not have told me. I have been asking her and she did not disclose where. I tried many times to find out but could not. I made inquiries from various people living that side. There was no necessity for me to ask Dean. There was no necessity for me to ask Dean where he took my wife. She came home and saw the children. She did not look after the children. She came home in the daytime and met the children. She may have done things for them. She did not prepare my meals. Sometimes she may have prepared the meals. Once she left home I did not worry where she was.

I married on 28th December. I remember the 28th December, 1945, after she went away. We had a small party for my wedding anniversary. She stayed the night in the house. The next morning she might have gone off or stayed another day. This state of things went on during the whole of 1946. In April, 1946, both children were confirmed at the same time. She did not come home and go with me to church. She was in the church. We were in church but not together. I deny that we sat side by side. I do not know what part of the church she occupied. She was far away from me. I saw her in church. Right through in 1946 she stayed the night with Dean, in the daytime she came home to see the children; sometimes she had tea with me if I happened to be there and then she returned to Dean.

Q. Why did you not bring an action for Divorce then?

A. I wanted to do it at that time. I wanted to take action against her but we waited to see whether the pleadings of the children would get her back.

Q. The quarrel when she ran away in 1945, had you been asking her to get money from Dean? A. No. Never.

Q. It wasn't that you were pressing her to get more loans out of Dean and she wouldn't do it, is that the basis. A. No.

Dean did not give her sums other than the Rs. 300 amounting to 40 Rs. 600.

In December, 1946, on the 20th, she also told me at home whilst on her knees that she had made up her mind to come back. I had this date also in my diary. I met her casually in the afternoon on this date at home. She was still coming to the house. She was in the house when I came home. Generally she would go away. She said that she was in

No. 6  
 Plaintiff's  
 Evidence.  
 E. A. Antho-  
 nisz  
 Cross-  
 examination  
 —continued.

some sort of trouble. She began the conversation. She said that she was in trouble and she wanted to make her confession to me; she said that she wished to come back. She did not tell me that she had a quarrel with Dean. Some time before she told me that she had a quarrel with Dean and showed me marks; this was not on the 20th December. She told me about the quarrel in December but not on the 20th. She told me about the quarrel earlier than the 20th December. I used to meet her. If I am not mistaken she told me about the quarrel when she gave me the deed. She confessed that she was pregnant on the 20th. On the 20th she said that if she got over her trouble she would come back. 10

On the last date of trial I said that on the 20th December she said that if she got over her trouble, if she got over her pregnancy, she was coming back to us. If it is recorded that I said that she told me that she had got over her trouble and was coming back that is not correct. (Mr. Hayley says that Adv. Jayawickreme who made a note of what the witness stated on the last date has got down the evidence in the form in which the witness now states). On the 20th December she told me this. I said that if she came I would take her back. I thought I would take her back for the sake of the children. But she did not come back. She came on the 31st December and I met her. I came across her in my 20 house. I cannot remember how we met. She said that she had changed her mind. She came in January, 1947, to see the children. She stayed the night when my son was going to Gurutalawa the next morning.

That might be about the 14th January, 1947.

I filed action on the 20th March because I saw no signs, no hopes of her coming back.

Q. Why not let her stay with Dean as she had been there for 15 months? A. What about damages.

When I first married there were no quarrels. I remember her father died in hospital. It is false that I was callous and did not give her any 30 help to go and see about things. I went to the hospital to see the father. The father died at midnight. I did not go to the hospital. She did not implore me to come and help. She did not have to get others to assist her. She had her mother and sister. After the father's death the mother and sister came to live with me for some time. They were left badly off. My wife took to dressmaking to try and help them.

I remember the trip to Nuwara Eliya in 1942. This was to escape the raids. A Mr. & Mrs. Weerakoon stayed there at the same time. There was some unpleasantness between Mrs. Weerakoon and my wife and her mother and my wife asked to be removed. My wife went to 40 Nuwara Eliya of her own accord. I asked her to wait until the troubles in Colombo were over. She did not wait. She returned home. I remember her brother's death in 1943 in the military hospital. She did not complain that I left her to look after him and not assist her. I went



with her to the hospital to see the brother. I did not go on the day he died. I was there the whole evening.

Q. On 20th December, 1946, when there was a discussion about her coming back did you tell her "if you come back I do not mind Dean taking up his old position in the house"? A. No.

No. 6  
Plaintiff's  
Evidence.  
E. A. Antho-  
nisz  
Cross-  
examination  
—continued.

Re-examined.

It is not the normal thing for people in my community to be given dowries. My father-in-law had nothing to give as a dowry.

E. A. Antho-  
nisz  
re-  
examination

I have never borrowed money from Chetties, Afghans and money-  
10 lenders. I only borrowed from the office Provident Fund and paid it  
back monthly. They only lent one month's salary. That is what the  
Provident Fund is meant for. I was never sued for debt. I am not a  
rich man. I live within my means.

The first time Dean slept in my house or wanted to sleep the reason  
he gave—that was the time that his garage had been burgled and the car  
wheels stolen—was that he had no place to garage his car and he left his  
car either at the garage adjoining my house or at Walker's. That is  
the excuse he gave for wanting to sleep. I sympathized with him because  
of his troubles at home. He slept in the drawing room on a mat on the  
20 floor.

The Nuwara Eliya season is in April. We went on this trip in one  
party. We were in the Brittons' house. We had to accept the arrange-  
ments they made for us. The room in which we were, there was a double  
bed on which my wife, my daughter and I slept; my son slept on a single  
bed and Dean on the other single bed. Our bed was on one side of the  
room against the wall, another bed on the opposite side against the wall  
and the third bed on a side; there was a dressing table. The room was  
small and crowded. My daughter slept on my bed against the wall, my  
wife in the middle and I on the outside.

30 Several of my friends come to see me. I treated Dean in the same  
way as I treated my friend. My other friends did not misbehave or try  
to take advantage of my goodness and hospitality. I thought Dean was  
the same type of gentleman.

My wife was a dutiful wife and she kept my house beautifully. She  
did dressmaking, she fed school children and helped to run the house.

I was asked why I did not consent to Dean's going on living with her  
and yet take my wife back. By "what about damages", I meant what  
about what I and the children have suffered. I have suffered in every  
way. I have been disgraced.

40 After my wife stayed out at nights I was not keen on getting her back.  
But later on after she made her confession I said that I would not mind  
taking her back for the sake of the children. At the time I asked her  
to come back no question of damages arose. I told her I did not want  
anything.

No. 6  
Plaintiff's  
Evidence.  
E. A. Anthonisz  
Re-examination  
—continued.

(To Court : My wife came to know Dean through my sister-in-law. I know this as a fact. She came to know him at his paint shop. My wife had gone with my sister-in-law to make a purchase. They went to Dean's shop and my sister-in-law introduced Dean to my wife there. My sister-in-law was a teacher at St. Thomas' College and she used to teach Dean's children. At this time Dean lived at Dehiwala.)

(Sgd.) S. J. C. SCHOKMAN,  
D. J.

Mr. Sansoni closes his case reading in evidence P1 to P4.

No. 7  
1st Defendant's  
Evidence.  
Magdalene  
Anthonisz  
Examination.

No. 7.

10

1st Defendant's Evidence.

MR. HAYLEY calls.

MAGDALENE ANTHONISZ sworn.

I am the 1st defendant. I was 18 years old when I married plaintiff. My people objected to my marriage. Those days my people lived in Colombo. My father was Valentine Tradigo. They objected to the marriage but I ran away from home to a friend's place to get married. Plaintiff is a lot older than I.

After marriage we first boarded with plaintiff's brother at Ratmalana. His brother and wife and two children and Anthonisz and I lived there. That was not a happy arrangement because his brother was always drunk. His brother's wife did not interfere with me. We got on fairly well. I told my husband that I was not happy there. For a long time no further arrangement was made. We stayed on until my next baby was coming. We were there for about 18 months. I did not find my marriage as amusing as I thought it would be. He never took my side in any family quarrel. He supported the other party. I had to carry on because I dared not complain to my people. From Ratmalana I went to St. Michael's Road, Colpetty. Here too it was always a struggle in life. I had to run the home by doing dressmaking and everything and even in spite of that he never treated me nicely although I had to do everything. I knew when I married that I would not be well off. We kept only one servant. I did all the marketing.

My son was born in 1934 December at the Allan Rutnam Nursing Home.

In August, 1937, I lost my father. Although I had not his willing consent to the marriage I still kept on affectionate terms with my people because he brought me back after I ran away and consented to the marriage.

My father was in hospital. I went to see him there. I wanted to go to my father who was dying on 31st August and I asked him to come along with me and he refused. He never bothered to go out with me.

He always wanted me to go on my own. He was just unsympathetic. I had to call a next door neighbour who took me in a friend's car.

After my father's death my mother and sister came to live with me at St. Michael's Road. From this house we went to Bellantota, Nikape, about 10 miles from Colombo. The arrival of my mother and sister on the household—my husband never gave me anything towards expenses after my mother and sister came and I had to do the best I could. I got a job at Mr. Chowla's as a dressmaker. At the time my father died business had gone down and he had nothing.

10 My husband was very friendly with one of my sisters, Olga who is now dead. Generally the atmosphere was not good. My husband always tried to pick up quarrels and my mother and sister left leaving the other girl with him. My mother and sister stayed for 2 months and then they found a boarding and left. After that we went to Bellantota where after about 6 months I had to enter hospital. I wanted to take my sister to my mother but my husband objected and asked me not to be silly. As there was no lady there I wanted to take her away. I trusted him and I left the home. I was only 22 then. I was in hospital. In the mean-  
20 time he had told my sister that I will die and that he will marry her and misdirected my sister. My mother and the other sister left before I entered hospital. After that my mother took a home of her own at Wellawatte where she stayed for some time.

I remember the trip to Nuwara Eliya in 1942. My husband and I and the children went and stayed with an aunt of mine. He came back to Colombo. He came up for the week-ends. We had evacuated to Nuwara Eliya. My husband did not bring me back. The day the unpleasantness occurred he had gone to the club. Every Saturday he came and left on Sunday night for his work. On that Sunday he had gone to the club with my uncle and had not turned up for lunch at 3. My aunt called  
30 me to go and see what they were doing, I refused. Mrs. Weerakoon and my aunt went to the club. They too stuck there. They sent a message asking me also to come. As they did not turn up and my husband had to return that night I went to the club. I told my husband that it was late and that he had to rest before he left. He told me that my aunt was drunk and I told him that it was no concern of mine. Then Mrs. Weerakoon slapped me and my husband did not bother to interfere. I decided to leave. I asked my husband to take me back but he refused. I came alone 3rd class by train. I hadn't the money.

(To Court: Plaintiff came on the Sunday and I followed the next day.)

40 The children and I came back. When I got home my husband was not at home. He had gone out with a friend. I had to wait on the door step. It was late and there was a black-out. He returned at night at about 7-30.

Adjourned for lunch.

(Sgd.) S. J. C. SCHOKMAN,  
D. J.

No. 7  
1st Defendant's  
Evidence.  
Magdalene  
Anthonisz  
Examination  
—continued.

After lunch.

MAGDALENE ANTHONISZ sworn.

Examination in chief continued.

During 1942/43 I and my husband were continually having unpleasantness. He exhibited any affection for me only when he is pleased. I recollect the occasion in 1943 when my brother was in the military hospital. My husband and I went early part to see him at about 5 o'clock. We came back by 6 o'clock and I wanted to go again because I knew he was dying. My husband refused to go with me. At about 10 p.m. that night I spoke to the next door neighbour and got a taxi and just then I met my sister 10 who had come to take me as my brother had expired. This sort of terms on which we were living continued up to 1944—it was only an outward show of happiness and whenever there was nobody about he used to quarrel with me.

I met Mr. Dean in January, 1944. I met him at his shop in Main Street. My sister-in-law goes there to get various things and on that occasion I happened to go with her. Dean did not on that occasion give me a lift home. About two weeks after that my sister-in-law was in mourning and she had gone out shopping and I went with her. We went to Dean's shop again and she asked Dean to drop us at Cooper's Hill where 20 she stayed and he did so. That is not the occasion on which my husband met him. There was an occasion when Dean took me out of Colombo to engage a servant. That was in April. We had gone on a holiday to Nuwara Eliya and on our return we had no servants. When I go on a holiday I send the servants to their village and when we came back the servant girl had not returned and I could not get her back. Then the girl's mother turned up one day and said if I could go to the village I could bring the servant girl. I 'phoned up Dean and asked him if he could take me there. He said he could not come till after 2 p.m. as it was Saturday. My husband comes home at 1 o'clock, when he came on 30 this day I told him about it and he said it was O. K. He did not know with whom I was going except that I think he knew the person by name. Dean came to the bungalow and took me. My husband did not come with me, he stayed at home. I do not know why he stayed behind. I asked him to come along with us but he said he did not want to go. Dean did not get down from the car when he came to fetch me that day as he did not know my husband. My husband asked me why he did not come in and I said it was because he did not go and meet him. Some time after that my husband met him at our house. After he once met my husband Dean used to turn up from time to time. He used to come and 40 take us out in the car. My husband got very friendly with him and used to ask him home for dinner. After about his fourth visit my husband invited him to stay for dinner. When he stayed for dinner on some occasions he stayed the night. The first occasion he stayed the night over was when we had gone to see a friend of ours and after we came back we went to the late show at the pictures and then Dean said it was too late to go

home and wanted to stay the night over and he stayed. These visits on which he stayed the night over became fairly frequent after that. At the start when he stayed the night over like that it was casually and accidentally. On those occasions he used to sleep in my husband's room and I used to sleep in the children's room. In the morning he used to have a shave and a wash and come for tea and go away. He used to go and come as it pleased him. So far as I know he used to go to his shop and come back. After some time his visits became more frequent. There was a period when he used to sleep in the house regularly. That would  
 10 be about six months after I met him in 1944. Later he used to keep a bag of clothes in the house. He kept those clothes there because he used to go for riding and come back. He used to come back after riding and have a bath and get into a clean suit and have dinner with us and stay the night over also. I used to look after his clothes and things during that period. On those occasions I used to sleep in my room and he used to sleep in the children's room. Dean used to also come and have lunch with me. As we were at the time supplying lunch to others my husband told him if he liked he could have his lunch too at our place. My husband did not raise any objections, in fact my husband did not raise any objection  
 20 to anything he did in the house. At that time he used to be giving practically about Rs. 600 a month for the house. I do not know for what it was but he used to give about that amount. He used to be always giving money towards the house. My husband knew that because I used to show him the accounts. My husband did not object to Dean giving the money. In June, 1944, he gave me Rs. 300. That was because my husband told me that he was in arrears and had not paid the Provident Fund for four or five months and that if he did not pay it he would be struck off the Fund and asked me to get him a loan. It was with the greatest reluctance that I did it. He did not ask Dean himself for the  
 30 money. When I got the money from Dean I brought it and gave it to my husband. So far as I know that money was never paid back. My husband did not get angry over that matter. It is not true that he got angry over it because I had borrowed the money from Dean.

After that Dean continued to come and have his lunch there and also have his dinner and sleep there. Q. What was the general attitude during this time of your husband towards you and Mr. Dean, did he do anything to keep you two apart? A. No. He used to be very friendly with Dean and he never objected to anything that I did with Mr. Dean.

I remember the trip we made to Nuwara Eliya with Mr. Dean. My  
 40 auntie had come and was staying with us in January or February and when they left they invited us for a short holiday to Nuwara Eliya and I asked Mr. Dean to take us up. Before we went I knew what the accommodation was in the house at Nuwara Eliya. My aunt had prepared a room outside the house for Mr. Dean when we went there and my husband said it was alright we can all sleep in one room and we all occupied one room. We stayed there for about two weeks. So far as Mr. Dean was concerned there was nothing particular done to make it private for

No. 7  
1st Defend-  
ant's  
Evidence.  
Magdalene  
Anthonisz  
Examination  
—continued.

me, there was no screen or anything like that. It was an open room. The three of us and the children went up and we were occupying the same room. Mr. Dean and my husband did not behave in any different way one from the other so far as the arrangements in the room were concerned and when we were returning Mr. Dean brought us back.

My husband and myself and Mr. Dean went to my husband's cousin's place at Mount Mary and I played the piano there and then his cousin's wife said she was going to sell the piano and I asked her how much she wanted for it. She said she would let me know. We came home that night and on the next day his cousin came and told me that they would 10 give it to me for Rs. 1,000 if I wanted to buy it. I told my husband about it and he said from where will you get the money and things like that. In fact we did not have any money in the Post Office book, we had only Rs. 165 and that money also was the proceeds of the sale of a gramophone—that is how I happened to open that Post Office pass book. We did not have any money to buy the piano and in the evening Mr. Dean and I were there and in the presence of my husband who was also seated in a chair Mr. Dean gave me a thousand-rupee note to buy the piano and my husband was well aware of it. In fact both of us went cycling on two bicycles and paid for the piano that night. That is Mr. 20 Dean and myself went and paid for it and came back. That money was not repaid. My husband never said it should be repaid, he knew it could never be paid.

I remember the occasion when Mr. Dean gave me a bicycle. It is not true that my husband got angry about it—on the contrary he was nervous about my riding a bicycle. The bicycle did not have to be repaired after a while it was a new cycle. My husband did not object to my taking these gifts. He never told me not to take gifts from Dean. When Dean came to the house he just walked in as if the house belonged to him—whatever the time he just walked in. For a long time he had 30 been coming for lunch and he used to walk in whenever he liked, and so on, but that came to an end at a certain point of time that is because I got more affectionate towards Mr. Dean than my husband and my husband used to say why can't you treat us both alike. My husband started quarrelling with me about it because he wanted me to treat both alike and I told Dean about it, and Dean stopped coming as I had to leave home—I mean it was about that time that I left home and Dean stopped coming. That would be about September or October.

After the Rs. 300 was given by Dean whenever money was wanted in the house I used to get money from him. Apart from that I cannot 40 remember whether I asked him for any other loans. My husband did not ask him for any other loans, he used to always ask me to ask. Before Dean stopped coming my husband did not ask me to ask for any further loans, it was not necessary because Dean gave money every time. I heard the evidence of the plaintiff that I went out one night on the 28th October and did not return till next morning. That did happen in fact.

I went and stayed at my mother's, that is at Wellawatte. I went there because Mr. Anthonisz was quarrelling with me. I came back in the morning and told him where I had been. He knew where my mother was living. I stayed for about two weeks at my mother's but I used to come home in the daytime and attend to the household work in the house. I did not go back to live with my husband after that. After I had been staying with my mother for some time Mr. Dean took me to a house in Pannipitiya and I stayed there after that. When I was I used to come home practically everyday and I used to sometimes meet my husband. 10 I do not know whether my husband made any effort to find out where I was living.

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—continued.

Did you tell your husband where you were living? I cannot remember.

As a matter of fact did he know? I think he knew.

Did he make any attempt to find out? He did not mind my staying out so long as I came in the daytime and attended to the things in the house and to the children. That state of things continued for about three months.

While you were staying away like that did you come and stay the 20 night in the house? Yes.

I remember on the 28th December, 1945, I stayed the night. I stayed because he asked me to stay. My husband was having a function that day and we had to keep up appearances. That was our wedding anniversary. He wanted me to be there so that his relations would not know anything.

Apart from keeping up appearances like that he did not show any regret to the fact that you were sleeping out with Mr. Dean every night? No.

Towards the end of 1946 there was no discussion with my husband 30 about my going back to him. There is no truth in the suggestion that I was going back to him afterwards. Between January, 1946, and March, 1947, that is about 15 months prior to this action nothing occurred to make me alter the position of things as they existed at the time. The position remained the same from the time I went away until he started this action.

XXD. by Mr. Sansoni.

My father objected to my marriage—he objected owing to many things. One was because I was too young to get married. I then ran away from home and because I ran away my father consented to my 40 marrying.

You were stubborn? Yes in a way.

My father went to the wedding and consented and signed the register and also gave me away. Since my marriage my mother and father and sisters were not very fond of my husband. There was a strangeness

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between my husband and them. When I married I knew what my husband was earning. In 1933 before the war and controls and things like that my husband was getting a salary on which we could have lived comfortably, but there was hardly anything left to buy dress materials. I was a very good housewife and I thriftily spend the money he brought and managed things carefully. I used to keep my house very well and I used to sometimes even get on the floor and polish the floors. I always took pleasure in keeping the house well and comfortable. My husband never got into the hands of Afghans and Chetties or others. When the war came on things became difficult. It was a period when everyone had to queue up to buy things. My husband did not do that. He had to go to work and leaves home at 8 and comes back at about 5-30 in the evening. In order to help him in running the house with his salary I took to dress-making. I used to make a certain amount of money by doing dress-making, about Rs. 150 a month. During all that time I would not say that my husband and I got on well or happily. There were quarrels. In my instructions to my Proctor and Counsel I mentioned to them that there were quarrels during that period also. There was outward show and unhappiness always. He used to try to show out that he was very nice and kind to me while it was just the reverse. I did not make a show of either happiness or unhappiness. When there was no one about he used to quarrel with me. He used to quarrel with me over every little thing. He would come home from work and say look at that cobweb there, and so on, and start a quarrel. He did that in spite of the fact that I kept the house so beautiful.

I used to go about shopping with my sister-in-law often and in the course of shopping we used to go to Dean's shop and I was there introduced to him. That was about January, 1944. My husband first met Dean about April, 1944. Between that date and my first meeting Dean that is about four months I met Dean once and again. I met him with my sister-in-law and after that he came to the house. Before he met my husband he came to the house and took me out one day, that was the trip I referred to, to Pallawela. On that day Mr. Dean did not come into the house, I knew that Dean was a married man with several children. I used to do the dress-making for his children sometimes and he paid me for that. I charged him the same rate I charged others. That was about a month or so after he was introduced to me. I first started supplying meals to teachers and school children after the raid. That is from 1942 I was supplying meals to children and others and I was still doing that in 1944. At that time Dean did not say it was difficult to get meals and ask me to supply his meals. I cannot remember his asking me to supply him with meals. He never told me he found it difficult to get a decent meal. He did not say that he got no meals at all.

How did it happen then that he came and asked you to supply his midday meal? I think in conversation with my husband he may have asked my husband about coming for lunch and I think my husband consented to it. I was inside the house at the time they were talking about



it and when I came out it was suggested that it can be done and since then he came for his lunch. I did not ask Dean what he was going to pay. I started giving him his lunch about October, 1944. Before he had lunch with us he stayed one or two nights for dinner. After he started taking lunch he used to come regularly for dinner. He used to come and we used to go out in his car and come back and he used to stay for dinner when we invited him. Dean never asked me to meet his wife at any time. I did not say that I liked to meet his wife.

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Is there any reason why you did not ask him? It did not strike me to ask him.

I have not seen his children. I made their dresses without having seen them. He used to bring a sample of the dress to be stitched.

When I came out from inside the house after Dean left my husband spoke to me about supplying him with lunch. I did not ask him how much he would pay because I knew he would pay. I was going to charge Dean the same I charged others. I charged the teachers and school children Rs. 1-50 for lunch. Dean used to pay the same at the end of the month, that is about Rs. 45. This went on for only a month or two because after that my husband used to treat him like a friend and we did not give him a bill or anything like that. I knew that Dean's house was burgled and the wheels of his car were stolen. That was not the reason why he wanted to stay the night over whenever he got late. He did not give that as a reason because he was staying the night over even long before that. He started staying the night over from about November, 1944. He used to take riding lessons at Hussein's stables and for that purpose he kept a bag of clothes at our place and he used to come and change there. He started taking dinner there long before that. He used to take dinner at home because Mr. Anthonisz used to ask him. Whenever he stayed late in the evening Mr. Anthonisz used to invite him to have dinner. I did not invite him. At one time Dean used to pay about Rs. 600 a month. That started from about March or April, 1945. He used to give me that money. He used to give about Rs. 200 at a time. That was the time he was taking dinner and lunch with us.

I love Mr. Dean. I began to love him I cannot say exactly when, but gradually my affections changed to Mr. Dean.

Can you say whether it was from the time he gave you the piano or the bicycle? Not either.

Or the Rs. 600 a month? No.

Can you say when you first had an affection for him and on what occasion? My husband made the remark why can't you be as affectionate to me as to Mr. Dean. That was about September, 1945. I was not mad in love with Dean then.

At that time did you love him? I had a little affection for him.

It must have been a marked affection for your husband to have noted it? I did not love him then. I loved him about the end of

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examination  
—continued.

September between the end of September and early October, 1945. Before I left my husband's house I had never been out with Mr. Dean to his house at Pannipitiya. The Pannipitiya house was taken about two weeks after I left home. I left home and went to my mother's house.

You knew you would go to Dean ultimately? Yes.

By that time you had become very intimate with him? Yes.

Unknown to your husband were you carrying on with him an undue intimacy? My husband used to see me always talking to him and laughing with him in the room.

Unknown to your husband were you unduly intimate with Dean? 10  
No.

Did he make love to you? Yes.

How long before you left home that he began making love to you?  
A few months.

And here was your husband treating him as a guest in his house? Because my husband knew most of the things that were happening.

Did he know your making love to him? Yes he did. I say so because he came into the bedroom one day and he found me with Dean and Dean was holding my hand and we had a friend outside and my husband said what if that fellow comes and see this, and went out. He 20 did not ask Dean to get out or anything like that. He never protested. Except that he did protest when he wanted me to treat Dean and him alike.

The loan of Rs. 300 was the first transaction I had with Dean. Dean did not offer it gladly, he said he would see about it, and I had to ask him again. My husband had asked me not to accept cheques and he gave it in cash. He did not take a promissory note from me or my husband. I did not ask my husband to return the money to Dean. Dean did not ask me to get him the money back. In 1945 Dean was not lavish with his money so far as I was concerned. He spent on the house he 30 used to take us out to the pictures, he gave me a piano and a bicycle.

I left home and went to my mother's and stayed there for about two months. That is because my husband asked me to treat them both alike. During the two weeks I was at my mother's Dean did not come and see me there. I told Dean I had left home. I do not know whether he was glad about it. He did not say anything. He did not ask me to go back. He did not say come and stay with me. He did not say he will buy me a house and ask me to come and stay with him. Afterwards he said he had a place and he would take me there. At that time I did not know that that house had already been bought in my name. 40

There was a house ready made for you after you left your mother's house? Yes there was a house.

I went to the Pannipitiya house from my mother's house. During the time I stayed the nights out every day I used to go to my husband's house. I told my husband that I was at my mother's and I was at my

mother's then. When I was at Dean's house at Pannipitiya I have met my husband. My husband knew I was with Dean.

Did you tell him? He asked me and I said yes.

Did he protest? No.

Brittons came to our place earlier to stay with us for some time and they invited us to go and spend the April season in Nuwara Eliya. I cannot remember whether Dean was there when they invited us to Nuwara Eliya.

Did the Brittons invite Dean also? I think they said come along with Dean also. Mrs. Britton said so. I cannot say whether Dean was then there when she said that. She may have asked him also. When we made arrangements to go to Nuwara Eliya it was suggested that we go in Dean's car. We asked Dean to take us and he agreed. Before that I had been to Brittons' house and I knew there were two rooms and a room outside. When we went there arrangements had been made by Mrs. Britton to give Dean the room outside. That was the room I occupied when I had gone there before. I have no idea whether that was the store-room. As soon as we went to the house we put our things in the room and we were talking. In the evening Mrs. Britton said that she had a room outside for Dean and then my husband said he can sleep with us in the same room. I did not say anything.

Why did you not tell your husband don't be a fool, Dean cannot stay with us, there is a room for him outside? I did not say that.

You did not think there was anything wrong because it was more or less a picnic party? As my husband had made the suggestion I do not think of anything.

You did not think at all of the impropriety of it for instance? No answer.

At that time had you fallen in love with Dean? No.

So here was a perfect stranger being sent into your room, did you not object to it? I never thought anything about it.

Where did you change? I used to go to the bathroom and change. My husband and I slept on one bed and the boy slept in the same bed with Dean.

At no time did you find it uncomfortable or anything like that to be in the same room with Dean? I used to but I said nothing about it.

After I went and stayed with Dean at Pannipitiya I remained there about 11 months.

Did you ask him during that time what are you doing leaving your wife and living with me like this? No.

I did not find out where his wife and children were living. They were not neglected because he used to take everything for his children. I do not know whether he neglected his wife. I know that his wife is not a Mohammedan and that his marriage was not a Mohammedan marriage.

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Did you ask him to divorce his wife? No, I did not speak about it.

His wife was not abandoned, he had bought her a house and seen to her welfare. He told me that. I cannot remember asking him whether he was going to get a divorce or what he was going to do with me. He did not say he was going to divorce his wife. My children are fairly grown up. I love my children a lot and they love me. I know that my son won a scholarship and left for Gurutalawa. My son is old enough to know that I had left my husband and that I had left them. He did not write to me about it. I wrote letters to him and the other children. 10 That was not in reply to letters I received from them. I did not know that my son who won the scholarship and went to Gurutalawa went off his head, even now I do not know that. Whenever I met him he did not show signs of anything like that.

Shown P2. This is one of the letters I wrote and it is dated 20-12-46. I have written here "If my life is saved I shall come back to you all and go to church and enjoy Christmas." I have gone and taken them to church. That is what I meant by that.

Is that all you meant by that? Yes.

Did you enjoy Christmas with them? No answer. 20

You want the Court to believe that you meant by that letter that you will go and see them and come back? And take them to church? I was not well, I was with high fever and that is why I wrote saying if my life is saved.

Shown P3. I say here "I spent a most unhappy Christmas and New Year, what is to be done, it is my fate to suffer in this world". This is dated 2-1-47. I am happy now.

In spite of that letter? I say in the letter I was never so unhappy in my life because I missed my children.

Did you think of your children when you took this step? At that 30 time I did not.

Do you feel you have brought disgrace on them? Yes.

One of the things you complained about your husband is that he was un-sympathetic? Yes.

Was your treatment of your children sympathetic? I had no option. He was unsympathetic towards my mother and sisters. He housed them it is true but only for a month, but so long as they were there from the very first day he quarrelled with me.

When things were very difficult he housed them? At that time 40 things were not difficult.

He was sympathetic then? I do not know that he was sympathetic. The house was given over after my father's death and they came there till they found a place. He did not turn them out.

You have suggested that plaintiff was on terms of undue intimacy with Olga without your knowing it? Yes.

That he had adulterous intercourse? I did not say that, I said he had promised to marry her, I do not know whether I mentioned about this to my lawyers.

Mr. Dean is now living in Longden Terrace and he has bought a house there. He has bought a Packard car. If Mr. Dean was a poor man would you have given him meals and given him dinner and still loved him? If he was kind to me.

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10 REXD.

Mr. Dean was kind to me and to my children. My husband was quite indifferent to me. Regarding the letter P3 I stated that I did not consider the children when I left that is because I was simply driven out of the house.

(To Court : I do not mean he actually drove me out of the house, it was his being nasty to me and continually nagging that made me leave.)

When I wrote to my daughter not to make the same mistake I made, I referred to her parents' wishes, that she should not go against her parents' wishes.

20

(Sgd.) S. J. C. SCHOKMAN,  
D. J.

Magdalene  
Anthonisz  
Re-  
examination

At this stage on the application of Counsel for the defendant the evidence of H. Warnasuriya is taken.

H. Warnasuriya  
Examination

H. WARNASURIYA sworn.

I am from the Colombo Commercial Co., I have before me the ledger containing the accounts of the Clerks' Benefit Association. Mr. Anthonisz took an advance from the fund in 1943. He had a previous loan which he settled in 1943. He paid it by monthly instalments. It was a loan of Rs. 200. He repaid it in ten monthly instalments. The next loan was in 1944, 1st January. That was liquidated by the end of October, 1944. No loan has been taken in 1945.

30

(Sgd.) S. J. C. SCHOKMAN,  
D. J.

Further hearing on 5th October.

5-10-48.

Same appearance as on previous day.

MAGDALENE ANTHONISZ recalled, sworn.

Magdalene  
Anthonisz  
Further  
Examination

Mr. Hayley moves for leave to put a question which he says he thought the witness had answered in examination in chief which he finds is not recorded. I grant leave.

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No. 7  
Magdalene  
Anthonisz  
Further  
Examination  
—continued.

That in December, 1946, I confessed to plaintiff that I had become pregnant is not true and that I would come back to him after I got over my trouble is also untrue. That I had had an abortion is not true. It is not true that I had become pregnant and that I had an abortion.

Magdalene  
Anthonisz  
Further  
Cross-  
examination

XXD.—On this point by Mr. Sansoni.

I did not write to my child that I would come back if I got over my trouble. I said that I was ill and when I get well I would come and take the children to church. In my letter I used the word trouble. I got no letters from my husband. I cannot remember getting a letter from his Proctor. (Shown a copy of a letter written by plaintiff's Proctor to the witness), I cannot remember receiving this letter. I do not deny receiving this letter, but I cannot remember. (The letter is read out to the witness) I cannot remember receiving this letter. (Mr. Sansoni marks the copy of the letter P4 and the registered letter receipt P5). (Copy of the same letter that was addressed to the witness c/o Dean the 2nd defendant to the British Paint Co., Main Street, Colombo, marked P6.)

Magdalene  
Anthonisz  
Further Re-  
examination

REXN.—I did not live at Talagama estate. I lived in Pannipitiya. That was not the name of the place at which I lived. Kalalgoda is the name of the estate on which I lived.

(Sgd.) S. J. C. SCHOKMAN, 20  
D. J.

Mr. Hayley closes his case.

Mr. Sansoni reads further in evidence P4 to P6.

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## No. 8

No. 8  
Addresses of  
Counsel

### Addresses of Counsel.

Mr. Hayley addresses me. He cites the case of *Gibbs vs. Gibbs*, 1864, 11 House of Lords cases p. 1, also reported in Law Journal Probate Matrimonial p. 161 at p. 164. He also cites *Keys vs. Keys*, 1886 11 Probate Div. p. 100 also in 55 Law Journal Probate and Matrimonial at p. 54; on damages he refers to Maarsdorp at p. 92. Vol. 1 2nd Ed. He cites 1920 89 Law Journal Probate Divorce Matrimonial at p. 151 and at p. 163 on the question of luring with gifts. He cites the case of *Silva vs. Silva* in 27 N. L. R. p. 289. (Mr. Sansoni says that his client is not asking for punitive damages). He refers to Marsdorp at p. 87 on Connivance. He cites the case of *Garden vs. Garden* 1901 17 Times Law Reports p. 331 referred to by Laity on Divorce 13th Ed. 1945 at p. 246. He also refers to the case of *Winter vs. Henn* 4 Carrington & Penn at p. 494.

Mr. Sansoni replies. He cites Rayden on Divorce at p. 339, and *Alles vs. Alles & Samahim*, 46 N. L. R. p. 217 at p. 231 on the question of damages.

(Sgd.) S. J. C. SCHOKMAN, 40  
D. J.

C. A. V.

## Judgment of the District Court.

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The plaintiff sues the 1st defendant his wife for a divorce on the ground that she maliciously deserted him in the month of November, 1945, and also on the ground that the 1st defendant has committed adultery with the 2nd defendant and he claims a sum of Rs. 25,000 as damages from the 2nd defendant. In paragraph 4 of the plaint, the plaintiff avers that the 1st defendant maliciously deserted him in or about November, 1945, and though repeated appeals were made to her she  
10 refused to return to his home. In her answer the 1st defendant denies this averment. In paragraph 5 of the plaint plaintiff avers that the 1st defendant has committed adultery with the 2nd defendant on various occasions in Colombo and since October, 1946, is living in adultery with the 1st defendant at Longden Terrace, Colombo. The 1st defendant in her answer admits the averments in this paragraph and the 2nd defendant in his answer admits all the averments in the plaint in so far as they affect him except the averment that the plaintiff is entitled to damages. In paragraph 2 of 2nd defendant's answer he pleades that " Having regard to the plaintiff's conduct and all the circumstances of this case no damages  
20 whatsoever should be awarded to the plaintiff against this defendant ". No issue was raised as to what the conduct of the plaintiff was which deprived him of the right to damages even though the adultery between the two defendants was admitted, but learned Counsel for the defendant argued in his address that the evidence disclosed that there was condonation and connivance on the part of the plaintiff and that he was therefore not entitled to damages, but if any damages are to be awarded they should be only nominal damages.

Plaintiff and 1st defendant were married in December, 1933 (*vide* marriage certificate P1). There are two children of the marriage born in  
30 December, 1934, and January, 1936, respectively. In 1944 they were living in a house at Nelson Place, Colpetty. The plaintiff says that he first made the acquaintance of the 2nd defendant in the latter part of 1944 and that he was introduced to him at his (the plaintiff's) house by his wife the latter having come to know him through his sister-in-law. The 2nd defendant is the owner of a paint shop in the Pettah and is of a different community from the plaintiff and his wife. He is himself a married man with 7 children. After making the acquaintance of the plaintiff the 2nd defendant began to visit plaintiff's house and according to the plaintiff he complained about unpleasantness in his own home and  
40 asked to be allowed to come to plaintiff's house for his lunch as he hardly got anything for the money he spent in the Pettah. His wife used to supply luncheons to school children and teachers who attended a school not far away and 2nd defendant was also allowed to come for his lunch to the plaintiff's house. Some time later the 2nd defendant used to go to one Hussein's stables not far from plaintiff's house for riding practice and

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used to come to plaintiff's house to change his clothes and plaintiff says he began to ask to be supplied with dinner also which was done. Then the 2nd defendant began to sleep in plaintiff's house also. According to the plaintiff when he did so he slept on a mat in the drawing room. He began to do this about June, 1945. Plaintiff says that he found that his wife and children were going about too often with the 2nd defendant to the pictures and elsewhere and he told his wife that he objected to it. However, she did not pay any heed to what he said. He spoke to the 2nd defendant himself about September, 1945, and told him that this must stop. Thereupon he says the 2nd defendant got huffed and stopped coming to his house even for his midday meal. Nothing further happened till the 28th October, 1945, when the 1st defendant who had gone out of the house that day kept away the whole night and did not return till the following morning. The excuse she gave the plaintiff was that she had gone to her mother's house at Wellawatte and did not come home that night as it got late. Plaintiff says that she next kept away for a night about the 3rd November and thereafter her absences from home became more frequent and were for longer periods. The plaintiff then discovered that the 2nd defendant had bought a property in the name of the 1st defendant at Pannipitiya and that she was living with him there. She used to come home during the day to see the children when the plaintiff was at work and leave before he returned. That continued right throughout the whole of 1946. From Pannipitiya the two defendants moved to Longden Place in Colombo where the 2nd defendant bought a house. Plaintiff says that he wrote to the 1st defendant asking her to come back and that he would forgive her in spite of everything that she had done for the sake of the children. He further says that the children had also written to her. On the 20th of December, 1946, according to the plaintiff the 1st defendant met him and confessed to him that she was pregnant and also said that "if she got over her trouble she would come back". By getting over her trouble he understood her to refer to an abortion. He says that his wife came to his house again on the 31st December and she then informed him that she had changed her mind. He filed this action in March, 1947, as he found that there were no hopes of her ever coming back.

Plaintiff has also given evidence of gifts of a bicycle and a piano which the 2nd defendant had given his wife and also of his having sent to their house a refrigerator belonging to him which he said had been returned by an Army officer. He also referred to a loan of Rs. 300 which he says his wife obtained from the 2nd defendant without his knowledge shortly after the latter began visiting his house. He says he informed his wife that he did not approve of her obtaining loans from a strange man without his knowledge and also had the refrigerator and the piano removed from the house. With regard to the piano he says that 2nd defendant advanced Rs. 1,000 for it and that his wife had undertaken to repay the money in instalments. When he found that nothing was being repaid and also that their daughter was not being taught to play the piano by the 1st



defendant as was expected he insisted that the piano should be removed. He has also referred to a typewriter which was left in his house by the 2nd defendant as his wife was anxious to learn to type.

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—continued.

The 1st defendant gave evidence but not the 2nd. She gives the date that they came to know the 2nd defendant as January, 1944. With regard to the loan of Rs. 300 she says that she obtained it from the 2nd defendant as her husband wanted her to do so saying that he was in arrears in the payment of the money borrowed by him from the Provident Fund for several months and that he would be struck off the Fund if he did not clear the arrears. With regard to the loans taken by the plaintiff from the Provident Fund the defendants called H. Warnasuriya from the Colombo Commercial Company where the plaintiff is employed. According to him plaintiff had taken a loan of Rs. 200 from the Clerks' Benefit Association in 1943 which was repaid in ten monthly instalments. He took a further loan in January, 1944, which was liquidated by the end of October, 1944. According to the plaintiff the members of this Association could obtain a loan only up to the amount of a month's salary and such loans are repaid by deductions being made from their salaries every month. According to his evidence there was no necessity to borrow money from an outsider to repay the loan. The clerk Warnasuriya did not say that the plaintiff was in arrears in the payment of any monthly instalments due on his loan in 1944. If these instalments were deducted from the monthly salary they could not get into arrears and I am not prepared to accept the mere statement of the 1st defendant that she borrowed this sum of money from the 2nd defendant at the request of her husband to pay up the arrears on his loan. 1st defendant has also in her evidence referred to the indifference on the part of the plaintiff towards her and also lack of sympathy particularly when her father and her brother died. She has also made allegations against her husband of undue familiarity with one of her sisters who is now dead. She says that on a certain occasion when she got ill and had to be removed to the hospital she allowed her sister to remain at home and that the plaintiff had then promised to marry her sister saying that he was sure that the 1st defendant would die. Not a single question was put to the plaintiff in cross-examination about this supposed familiarity between him and 1st defendant's sister. As the defendants were represented by eminent King's Counsel it is obvious that the 1st defendant had made no mention whatever of any such conduct on the part of her husband to her lawyers for if she had done so they would undoubtedly not have failed to question the plaintiff about these allegations. It was obvious that the 1st defendant had made this allegation in the course of her evidence in order to make an attempt to blacken plaintiff's character with a view to excusing her own conduct. 1st defendant has also stated that the plaintiff used to be nasty to her and found fault unnecessarily and it was such conduct on his part that drove her out of the house. I do not think that any credence can be attached to a general allegation of this nature. The fact remains that the plaintiff and 1st defendant continued to live together from 1933

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 —continued .

and that it was in November, 1945, that the 1st defendant left the house after the 2nd defendant stopped coming there and on the 1st defendant's own admission she had by then become very intimate with the 2nd defendant. Learned Counsel for the defendants urged that the evidence disclosed that the plaintiff's idea was to sponge on Dean, the 2nd defendant, whom he says he did not like and that he threw his wife at him with complete indifference. He referred to the fact that plaintiff had allowed Dean to meet his wife for six days a week at lunch time and also to the fact that they had occupied one room during the period of their visit to Nuwara Eliya in April, 1945. With regard to the lunch the evidence is 10 that some children and teachers who were attending a school in the neighbourhood also used to come for lunch. The plaintiff has explained how Dean started coming for lunch and I do not think the fact that the plaintiff allowed him to do so in any way indicates that he was out to sponge on him. The supplying of lunch to persons was one of the means by which the 1st defendant used to supplement the family budget. With regard to the stay at Nuwara Eliya plaintiff and his wife and the two children went up to Nuwara Eliya in 2nd defendant's car and it was arranged that they should stay at the house of a Mr. & Mrs. Briton who are related to the 1st defendant. Plaintiff says that the Britons had met 20 Dean at his house in Colombo and had taken them about in his car and had been invited by them to spend a holiday with them at Nuwara Eliya. He further says that his wife had made the arrangements for their stay there in April and as Dean had been invited by the Britons they all went together. After they arrived at the Britons he discovered that the arrangement was that Dean should occupy the same room as the plaintiff and his family and that therefore they could not help but sleep in one room. In his evidence he has described their sleeping arrangements in that room. The 1st defendant in her evidence stated that Mrs. Briton her aunt had prepared a room outside the house for Dean but after they 30 arrived there the plaintiff said it was all right for them all to occupy one room and that is how Dean shared the same room as themselves. I am not prepared to accept the mere statement of the 1st defendant on this point, as I have already indicated that the impression I formed of her evidence was that she was attempting to blacken plaintiff's character in or to excuse her own conduct. If her evidence is true that although the Britons had prepared a room outside the house for Dean her own husband invited this stranger to share their own room, 1st defendant's evidence on the point could easily have been corroborated by calling either Mr. or Mrs. Briton who are her own relations. I accept the evidence of 40 the plaintiff that the arrangements made without his consent was that Dean should share their room. It was open to the plaintiff of course to have refused to accept such an arrangement and either to have gone elsewhere or returned to Colombo rather than allow a stranger to share their room. He may have been weak in falling in with this arrangement made by his wife's relations but I am unable to find that he was out to sponge on Dean or connived at his wife's conduct with Dean as the latter was well to do and was useful to them in the way of money and presents.

Learned Counsel argued that the presents which were given by Dean except the bicycle and typewriter were useful to plaintiff's home. The plaintiff says he did not need a refrigerator for his house and it was brought there without his knowledge. The piano too was an article which mainly benefited his wife. If the plaintiff was out to get as much as he could from Dean there was no reason for him to have got the refrigerator and piano removed from his house. Connivance is defined by Maarsdorp as "the acquiescence by the plaintiff either expressly or by conduct in the adultery of the defendant". He further states "Mere knowledge, mere negligence, mere inaction is not sufficient; all this may be present" and yet the mind of the injured spouse not have been willing that the adultery should be committed. It is this willingness, this mental assent, which lies at the root of the doctrine of connivance"—Vol. 1 5th Ed. at p. 93. In the present case there is no evidence of any adultery committed in the plaintiff's house nor is there any evidence that adultery was in fact committed before the 1st defendant left the house. 1st defendant says that when the plaintiff found that she had got more affectionate towards Dean than her husband, he used to ask her why she could not treat both of them alike and then started quarrelling as she did not do so. She says she informed 2nd defendant about it and he then stopped coming and she also left the home about the same time. This is a story which it is impossible to believe. It is much more probable that the 2nd defendant stopped coming when the plaintiff objected to his going about so frequently with his wife and that 1st defendant left the house for that reason as stated in the plaintiff's evidence. If the plaintiff was merely out to get money from Dean it is hardly likely that he would have asked his wife to come back to him for the sake of the children even although she had been unfaithful to him.—See the letter addressed to the 1st defendant by plaintiff's Proctor dated 4th May, 1946, sent to two different addresses, marked P4 and P6 the receipt of which 1st defendant did not deny. The fact that the plaintiff and his children were making attempts to get the 1st defendant to come back and live with them is supported by 1st defendant's own letter written to the children of 20th December, 1946, in which she says "If my life is saved I shall come back to you all and we will all go to church and enjoy Christmas" 1st defendant's explanation that this only refers to her coming to the house in order to take the children to church cannot be accepted. This passage in her letter supports the plaintiff's evidence that 1st defendant had informed him that she was pregnant and promised to come back to him if she succeeded in getting rid of her pregnancy by means of an abortion.

Learned Counsel for the defendants also stated that there had been condonation on the part of the plaintiff and referred to the fact that she had come back and stayed in his house for two nights on the occasion of their wedding anniversary in December, 1945. With regard to condonation Maarsdorp says at page 91 "By condonation is meant where the plaintiff with the full knowledge of the adultery agrees to forgive the defendant and to be reconciled to him or her.....mere delay however in bringing an action will not amount to condonation nor will forgiveness

No. 9  
Judgment of  
the District  
Court  
21-12-48  
—continued.

or reconciliation be presumed from the fact of subsequent cohabitation for two or three days unless actual sexual intercourse is proved, the burden of proving such intercourse and the condonation generally being on the defendant". There is no evidence of any sexual intercourse between the plaintiff and 1st defendant during the two days she stayed in his house in December, 1945. Even if there was, 1st defendant went away again and it is not disputed that she has thereafter been living in adultery with the 2nd defendant. I find no evidence of any condonation on the part of the plaintiff. The fact that he delayed to file this action was with a view to getting his wife back if possible for the sake of his children and does not indicate any condonation on his part. On the 1st issue I find therefore that the 1st defendant did maliciously desert the plaintiff in November, 1945, and I also answer 2nd issue which relates to the charge of adultery in the affirmative. There then remains the question of damages. As has been pointed out in the authorities to which I was referred, the damages to be awarded against a co-respondent are compensatory and not punitive. Learned Counsel for the defendants relied on the case of *Silva vs. Silva* (27 N. L. R. 289) where the Supreme Court fixed the damages at Rs. 2,500. The facts in that case, however, are quite different from those in the present case. Although the plaintiff in the present case was about 16 years older than the 1st defendant according to the ages stated in the marriage certificate they got on well together from 1933 till 1945 when the 2nd defendant had come on the scene. The plaintiff never had much to do with his wife's relations, but in spite of that he had given shelter to her mother and sisters for some time after the death of her father. Plaintiff was not drawing a big salary but they did manage to live within their means, 1st defendant helping to supplement the income by taking in dressmaking and supplying lunches. I am unable to accept the evidence of the 1st defendant that plaintiff's attitude towards her right throughout had been one of indifference. I find that it was the wealth of the 2nd defendant and the giving of expensive presents by him to the 1st defendant that won her affections and resulted in the breaking up of the plaintiff's home. The plaintiff has stated that the property at Pannipitiya where the 1st defendant began to live with the 2nd defendant after she left the plaintiff's house had been gifted to her by a deed of gift executed somewhere in October, 1945, which information he obtained from the deed which was shown to him apparently by his wife. This evidence has not been contradicted as it would have been by the deed being produced if the facts as stated by the plaintiff are incorrect. This shows that the 2nd defendant, when he kept away from plaintiff's house as a result of objections taken by the plaintiff, had taken steps to purchase a property and gift it to the 1st defendant with a view to inducing her to leave the plaintiff and come and live with him. In the case of *Alles vs. Alles* (46 N. L. R. 217) the Supreme Court fixed the amount of damages against the co-respondent at Rs. 10,000 even though it was found that the husband had encouraged the 2nd defendant to be on terms of close friendship with his wife, had placed himself and his wife under obligation to the co-respondent and had asked the latter to call at his

wife's residence in Colombo during his absence at Jaffna although he had by then been informed of ugly rumours about his wife and the co-respondent. In the present case the plaintiff appears to have been very unsuspecting. He was inclined to give in unduly to his wife's wishes. She appears to have been rather a head strong person and the 2nd defendant took full advantage of the situation. 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 vs 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 1st 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. On issue 4 I hold that the plaintiff is entitled to the custody of the two children but the 1st defendant will be allowed to have access to them at all reasonable times.

Enter Decree Nisi dissolving the marriage between the plaintiff and 1st defendant on the ground of her malicious desertion and of her adultery committed with the 2nd defendant, giving the plaintiff the custody of the two children with the right of the 1st defendant to have access to them at all reasonable times. The 2nd defendant will pay the plaintiff Rs. 10,000 as damages and his costs of action. Decree Nisi will not be made absolute till 25th March, 1949.

21-12-1948. (Sgd.) S. J. C. SCHOKMAN,  
*District Judge.*

30 Pronounced in open Court in the presence of Mr. D. F. de Silva for plaintiff and Mr. Markar for the 1st and 2nd defendants.

21-12-1948. (Sgd.) S. J. C. SCHOKMAN,  
*District Judge.*

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No. 10

No. 10  
Decree Nisi  
21-12-48

DECREE NISI.

Decree Nisi for Divorce " a vinculo matrimonii "

IN THE DISTRICT COURT OF COLOMBO

No. 1580/D.

ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya.....*Plaintiff*

No. 10  
Decree Nisi  
21-12-48  
—continued.

*Against*

- 1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
4/1, Longden Terrace in Colombo
- 2. S. D. M. DEAN of 4/1, Longden Terrace Colombo.....*Defendants.*

This action coming on for disposal before S. J. C. Schokman, Esquire, District Judge, Colombo, on the 21st day of December, 1948, in the presence of Proctor on the part of the plaintiff, and of Proctor on the part of the 1st and 2nd defenfants :

And it appearing to this Court that the 1st defendant is guilty of malicious desertion and is guilty of adultery with the 2nd defendant. 10 It is ordered and decreed that the marriage between the plaintiff and the 1st defendant be set aside dissolved and annulled by reason of the 1st defendant's act of malicious desertion and her adultery with the 2nd defendant unless sufficient cause be shown to the Court why this Decree should not be made absolute on 25-3-49.

It is further ordered that the said 1st defendant may henceforth resume and be known by her name of Maud Magdalene Tradigo and have and enjoy all the rights and privileges to which unmarried women are by law entitled.

And it is further decreed that the plaintiff according to the prayer of 20 the plaint be entitled to and charged with the custody and care and education of the two children namely Allen Eric and Ninette Hazel but the 1st defendant do have access to the said children at all reasonable times provided always that this order for the custody care and education of the said children may at any time hereafter be modified varied or annulled upon sufficient cause shown.

And it is further decreed that the 2nd defendant do pay to the plaintiff a sum of Rs. 10,000 as damages and his costs of action.

(Sgd.) S. J. C. SCHOKMAN,

The 21st day of December, 1948.

*D. J.* 30

No. 11  
Petition of  
Appeal of  
2nd Defend-  
ant to the  
Supreme  
Court  
21-12-48

**No. 11**

**Petition of Appeal of 2nd Defendant to the Supreme Court.**

D. C. Colombo Case No. 1580/D.

ERIC ALLEN ANTHONISZ of Nelson Place, Kollupitiya  
in Colombo ..... *Plaintiff*

*Vs.*

- 1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
4/1, Longden Terrace, Colombo
- 2. S. D. M. DEAN of 4/1, Longden Terrace, Colombo.....*Defendants.*

S. D. M. DEAN of 4/1, Longden Terrace, Colombo .....2nd Defendant-Appellant.

And

- 1. ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya in Colombo ..... Plaintiff-Respondent.
- 2. MAUD MAGDALENE ANTHONISZ ne Tradigo of 4/1, Longden Terrace, Colombo.....1st Defendant-Respondent.

No. 11  
Petition of  
Appeal of  
2nd Defend-  
ant to the  
Supreme  
Court  
21-12-48  
—continued.

On this 21st day of December, 1948.

To

10 HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Petition of Appeal of the 2nd defendant-appellant abovenamed appearing by A. M. Markar his Proctor, states as follows :—

1. The plaintiff was married to the 1st defendant on the 28th day of December, 1933, and there are two children by the said marriage, viz. a boy named Allen Eric born on the 28th December, 1934, and a girl named Ninette Hazel born on the 7th June, 1936.

2. In this case the plaintiff sued the 1st and 2nd defendants claiming a divorce a *vincula matrimonii* dissolving the marriage between the plaintiff and the 1st defendant on the grounds of adultery with the 2nd defendant and desertion and the 2nd defendant for damages, which the plaintiff assessed at Rs. 25,000.

The 2nd defendant filed answer admitting the adultery but denying that the plaintiff was entitled to claim a sum of Rs. 25,000 or any sum whatsoever from this defendant as damages.

The 2nd defendant further pleaded that having regard to the plaintiff's conduct and to all the circumstances of this case no damages whatsoever should be awarded to the plaintiff against this defendant.

4. The case went to trial on the following issues :—

- 30 (1) Did the 1st defendant about the month of November, 1945, maliciously desert the plaintiff?
- (2) Has the 1st defendant committed adultery with the 2nd defendant and have they both since October, 1946, been living in adultery?
- (3) What damages, if any, is plaintiff entitled to against the 2nd defendant?
- (4) Is the plaintiff entitled to the custody of the two children?

5. With regard to the 4th issue the 1st defendant had no objection to the plaintiff having the custody of the two children provided she is 40 allowed access to them at all reasonable times.

No. 11  
Petition of  
Appeal of  
2nd Defend-  
ant to the  
Supreme  
Court  
21-12-48  
—continued.

6. After hearing evidence the learned District Judge delivered judgment in favour of the plaintiff granting the divorce and ordering this defendant to pay a sum of Rs. 10,000 as damages to plaintiff.

7. Being aggrieved with such judgment and order the 2nd defendant appellant begs to appeal therefrom to Your Lordships' Court on the following among other grounds which will be urged at the hearing of this appeal.

(1) The said judgment is contrary to law and the weight of evidence.

(2) Upon the evidence of the plaintiff himself, supported as it was by the evidence of the 1st defendant it is submitted that the plaintiff was the cause of the familiarity between 1st and 2nd defendants which ultimately led to sexual intimacy, and that in the circumstances the plaintiff was entitled, if at all only to nominal damages.

(3) The plaintiff's conduct in this case amounts at least to gross and culpable neglect, if not connivance, disentitling him to substantial damages.

(4) The learned District Judge has adopted the wrong standard in awarding damages and has granted damages which are not merely compensatory.

(5) The learned Judge has not correctly assessed the effect of the plaintiff's inaction over a considerable period of time, notwithstanding the fact that he was well aware of the relationship between the 1st and 2nd respondents.

(6) The evidence of the 1st defendant regarding the conduct of the plaintiff and the relationship between her and the plaintiff should have been accepted in all the circumstances of the case.

Wherefore the 2nd defendant-appellant prays that your Lordships' Court be pleased to dismiss the plaintiff's action or to vary order of the District Judge, and to grant such other and further relief as to Your Lordships' Court may seem meet and for costs.

(Sgd.) A. M. MARKAR, 30  
*Proctor for 2nd defendant-appellant.*

No. 12  
Proceedings  
re Decree  
Absolute

No. 12

**Proceedings re Decree Absolute**

24-6-49.

MR. ADV. NAVARATNARAJAH instructed by MR. RASANATHAN,  
for 1st defendant.

Mr. Navaratnarajah addresses :

Plaintiff sued the 1st defendant for a divorce on the ground of 1st defendant's adultery with 2nd defendant. Judgment was entered for



plaintiff. 1st defendant has not filed a petition of appeal. 2nd defendant has filed a petition of appeal. Mr. Navaratnarajah asks that the decree nisi entered in this case be made absolute in favour of the plaintiff, in spite of the petition of appeal filed by 2nd defendant. He cites 29 N. L. R. 378. No. 12  
Proceedings  
re Decree  
Absolute  
—continued.

### ORDER

Let notice of application be given to plaintiff and 2nd defendant also. Issue notice on plaintiff and 2nd defendant for 1-7-49.

(Sgd.) H. A. DE SILVA,  
D. J.

10

1-7-49.

ADV. NAVARATNARAJAH instructed by MR. RASANATHAN for 1st defendant.

ADV. FERNANDOPULLE instructed by MR. D. F. DE SILVA for plaintiff.

MR. RASANATHAN for 2nd defendant.

Mr. Fernandopulle states that he has no objection to the application made by the 1st defendant to have decree nisi made absolute.

2nd defendant also has no objection.

20 Mr. Navaratnarajah cites 29 N. L. R. 378.

### ORDER

Application is made by 1st defendant to have the decree nisi entered in this case made absolute notwithstanding the appeal taken against the judgment by the 2nd defendant who is the co-respondent. It is argued by Counsel for 1st defendant that the appeal taken by 2nd defendant is merely on the question of damages. Plaintiff who obtained decree nisi in his favour is represented by counsel and has consented to the decree nisi being made absolute notwithstanding the appeal. 2nd defendant who has filed the appeal is represented by Proctor and has consented to the decree nisi being made absolute. 29 N. L. R. 378 has been cited to me. There Lyall Grant, J. has stated :

“ The Civil Procedure Code appears to contemplate a decree nisi being made absolute, even though an appeal may be pending against it ”

I am bound by this judgment. Let decree nisi entered in this case be made absolute.

(Sgd.) H. A. DE SILVA,  
D. J.

1-7-49.

No. 18  
Decree  
Absolute  
1-7-49

No. 13

Decree Absolute.

DECREE ABSOLUTE

The above decree nisi coming on for final disposal before H. A. de Silva, Esquire, District Judge of Colombo on the 1st day of July, 1949, and three months having elapsed since the entering of the decree nisi and no cause having been shown to the contrary it is ordered and decreed that the decree nisi be and the same is hereby made absolute.

The 1st day of July, 1949. (Sgd.) H. A. DE SILVA,  
D. J. 10

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No. 14

No. 14  
Decree of the  
Supreme  
Court  
1-9-50

Decree of the Supreme Court.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
DEFENDER OF THE FAITH.

D. C. (F) 492/1949.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

S. D. M. DEAN of 4/1, Longden Terrace, Colombo.....*2nd Defendant-Appellant*

*Vs.* 20

ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya.....*Plaintiff Respondent.*

MAUD MAGDALENE ANTHONISZ *nee* Tradigo of 4/1,  
Longden Terrace, Colombo ..... *1st Defendant-Respondent.*

Action No. 1580/D.

District Court of Colombo.

This cause coming on for hearing and determination on the 1st day of September, 1950, and on this day, upon an appeal preferred by the 2nd defendant-appellant before the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, and the Hon. Mr. R. F. Dias, L.L.D., Senior Puisne Justice of this Court, in the presence of Counsel for the appellant and respondents. 30

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 7th day of September, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

No. 14  
Decree of the  
Supreme  
Court  
1-9-50  
—continued.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, S. C.*

**No. 15**

**Application for Conditional Leave to Appeal to the  
Privy Council.**

No. 15  
Application  
for Condi-  
tional Leave  
to Appeal  
to the Privy  
Council  
20-9-50

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON.**

10 ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya  
in Colombo..... *Plaintiff*

D. C. No. 1580/Divorce.                      *Vs.*  
S. C. No. 492.

1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
No. 4/1, Longden Terrace, Colombo
2. S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo...*Defendants.*

*And*

S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo...*2nd Defendant-Appellant*

20 *Vs.*

1. ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya  
in Colombo ..... *Plaintiff-Respondent.*
2. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
No. 4/1, Longden Terrace, Colombo.....*1st Defendant-Respondent.*

*To*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUSTICES OF  
THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 20th day of September, 1950.

The humble petition of the 2nd defendant-appellant abovenamed  
30 appearing by his Proctor K. Rasanathan, states as follows :—

(1) That feeling aggrieved by the judgment and decree of Your  
Lordships' Court dated the 1st day of September, 1950, the petitioner is  
desirous of appealing therefrom to His Majesty the King in Council.

No. 15  
Application  
for Condi-  
tional Leave  
to Appeal  
to the Privy  
Council  
20-9-50  
—continued.

(2) That the said judgment is a final judgment and the matter in dispute on the appeal is above the value of Rs. 5,000 (Rupees Five Thousand).

Wherefore the petitioner-appellant prays that Your Lordships' Court be pleased to grant Conditional Leave to appeal to His Majesty in Council from the said judgment of Your Lordships' Court dated 1st day of September, 1950, for costs and for such other and further relief as to this Court shall seem meet.

(Sgd.) K. RASANATHAN,  
*Proctor for 2nd Defendant-Appellant.* 10

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No. 16

No. 16  
Decree  
Granting  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
26-9-50

**Decree Granting Conditional Leave to Appeal to the  
Privy Council.**

**GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITIAN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING  
DEFENDER OF THE FAITH.**

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON.**

**ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya,  
Colombo ..... Plaintiff**

*Vs.* 20

- 1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
No. 4/1, Longden Terrace, Colombo
- 2. S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo *Defendants.*

*And*

S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo...*2nd Defendant-Appellant.*

*Vs.*

- 1. ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya,  
Colombo ..... *Plaintiff-Respondent.*
- 2. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
No. 4/1, Longden Terrace, Colombo.....*1st Defendant-Respondent.* 30

Action No. 1580/Divorce (S. C. No. 492) District Court of Colombo.

In the matter of an application by the 2nd defendant-appellant abovenamed dated 20th September, 1950, for Conditional Leave to appeal to His Majesty the King in Council against the decree of this Court dated 1st September, 1950.

No. 16  
Decree  
Granting  
Conditional  
Leave to  
Appeal to  
the Privy  
Council  
26-9-50

—continued.

This matter coming on for hearing and determination on the 26th day of September, 1950, before the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, and the Honourable Mr. V. L. St. C. Swan, Puisne Justice of this Court, in the presence of Counsel for the appellant and there being no appearance for the respondents.

10 It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by Bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in 20 respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 2nd day of October, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, S. C.*

30

**No. 17**

**Application for Final Leave to Appeal to the Privy Council**

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya  
in Colombo ..... *Plaintiff*

No. S. C. 492  
D. C. Col. 1580/D. *Vs.*

1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
4/1, Longden Terrace, Colombo  
402. S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo.. *Defendants*  
*And*

No. 17  
Application  
for Final  
Leave to  
Appeal to  
the Privy  
Council  
20-10-50

No. 17  
Application  
for Final  
Leave to  
Appeal to  
the Privy  
Council  
20-10-50  
—continued.

S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo....*2nd Defendant-Appellant.*

*Vs.*

1. ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya in Colombo .....*Plaintiff-Respondent.*

2. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of No. 4/1, Longden Terrace, Colombo.....*1st Defendant-Respondent.*

*To*

THE HONOURABLE THE CHIEF JUSTICE AND OTHER JUSTICES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 20th day of October, 1950.

10

The Petition of the 2nd defendant-appellant abovenamed appearing by his Proctor K. Rasanathan, states as follows :—

1. The petitioner abovenamed obtained Conditional Leave on the 26th day of September, 1950, to appeal to His Majesty the King in Council from the judgment and decree of this Court dated 1st day of September, 1950.

2. The petitioner has in compliance with the conditions on which leave was granted deposited a sum of Rupees Three Thousand (Rs. 3,000) with the Registrar of this Court being security for costs of the respondent on the 19th day of October, 1950, and mortgaged and hypothecated the 20 said sum of Rs. 3,000 with the Registrar on the 20th day of October, 1950.

3. The petitioner has further deposited with the Registrar of this Court a further sum of Rupees Three Hundred (Rs. 300) in respect of the amounts and fees mentioned in section 4 (b) and (c) of the Privy Council Ordinance, Cap. 85, on the 19th day of October, 1950.

4. The petitioner has given due notice of this application to the respondent and produces herewith proof thereof : (a) Certificate of posting (ordinary post).

Wherefore the petitioner prays that he be allowed Final Leave to appeal to the Privy Council from the judgment and decree of this Court 30 dated the 1st day of September, 1950, for costs, and for such other and further relief as to your Lordships' Court shall seem meet.

(Sgd.) K. RASANATHAN,  
*Proctor for 2nd Defendant-Appellant.*

**Decree Granting Final Leave to Appeal to the Privy Council.**

**GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,  
DEFENDER OF THE FAITH.**

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON.**

**ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya  
in Colombo ..... *Plaintiff***

*Vs.*

- 10 1. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
No. 4/1, Longden Terrace, Colombo
- 2. S. D. M. DEAN of 4/1, Longden Terrace, Colombo.. . . .*Defendants*

*And*

S. D. M. DEAN of No. 4/1, Longden Terrace, Colombo...*2nd Defendant-Appellant*

*Vs.*

- 1. ERIC ALLEN ANTHONISZ of Nelson Lane, Kollupitiya  
in Colombo .....*Plaintiff-Respondent.*
- 2. MAUD MAGDALENE ANTHONISZ *nee* Tradigo of  
No. 4/1, Longden Terrace, Colombo.....*1st Defendant-Respondent*

20 Action No. 1580/Divorce (S. C. No. 492). District Court of Colombo. .

In the matter of an application by the 2nd defendant-appellant abovenamed dated 20th October, 1950, for Final Leave to appeal to His Majesty the King in Council against the decree dated 1st September, 1950.

This matter coming on for hearing and determination on the 24th day of October, 1950, before the Hon. Mr. C. Nagalingam, K.C., and the Hon. Mr. M. F. S. Pulle, K.C., Puisne Justices of this Court, in the presence of Counsel for the appellant.

The applicant having complied with the conditions imposed on him by the Order of this Court dated 26th September, 1950, granting Con-  
30 ditional Leave to appeal.

It is considered and adjudged that the applicant's application for Final Leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 27th day of October, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, S. C.*

## PART II EXHIBITS

### No. P4. Letter.

Exhibits  
No. P 4  
Letter  
4-5-46

**P4.**  
Mrs. E. A. Anthonisz,  
C/o S. D. M. Dean, Esq.,  
Kalagala Estate, Pannipitiya.

4th May, 1946. 105, Hultsdorp,  
By registered post.

Dear Madam,

I have been consulted by your husband Mr. E. A. Anthonisz with regard to your conduct in having left your home and continuing to stay 10 away from it.

My client states that on several occasions he asked you to return home but that you have persistently refused to do so. I am writing this on his instructions to give you a final opportunity of returning to the home you have deserted. Should you do so, my client is quite willing for the sake of his home and the children to take you back in spite of everything that has recently occurred and in spite of the fact that you have been unfaithful to him.

If however you fail to return to your home forthwith I have instructions to take the necessary action against you for a dissolution of the 20 marriage and for the recovery of damages from the person concerned.

Yours faithfully,  
(Sgd.) D. F. DE SILVA.

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### No. P5. Registered Letter Receipt.

No: P 5  
Registered  
Letter  
Receipt  
6-5-46

**P5.**  
Registered Postal Article. Receipt No. 68.

Received from Mr. D. F. de Silva an article addressed to E. A. Anthonisz, Pannipitiya, upon which postage and registration fee of 21 cents has been paid.

Seal of the Colombo Courts.  
6th May, 1946.

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(Sgd.) Illegible.  
*Postmaster's signature.*

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### No. P6. Letter.

No. P 6  
Letter  
4-5-46

**P6.**  
Mrs. E. A. Anthonisz,  
C/o S. D. M. Dean, Esq.,  
British Paint Co., 272, Main Street, Colombo.

105, Hultsdorp,  
4th May, 1946.

Dear Madam,

I have been consulted by your husband Mr. E. A. Anthonisz with regard to your conduct in having left your home and continuing to stay away from it.

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My client states that on several occasions he asked you to return home but that you have persistently refused to do so. I am writing this on his instructions to give you a final opportunity of returning to the home you have deserted. Should you do so, my client is quite willing, for the sake of his home and the children, to take you back in spite of everything that has recently occurred and in spite of the fact that you have been unfaithful to him.

If however you fail to return to your home forthwith I have instructions to take the necessary action against you for the dissolution of the marriage and for the recovery of damages from the person concerned.

Yours faithfully,  
(Sgd.) D. F. DE SILVA.

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**No. P2. Letter**

**P2.**

20-12-46

Exhibits  
No. P6  
Letter  
4-5-46  
—continued.

My darling children,

Thanks very much for the Christmas card you both most loving sent me which I shall always remember. Darling if my life is saved I shall come back to you all and we will all go to church and enjoy Christmas but if anything does happen to me I want you both to be brave. Nina dear don't even make the mistake I have made in life. Allan dear you are brave and a good boy look after Ninette and Daddy. Cheerio darlings may God bless you both. Give Daddy the four cakes with love and best wishes.

Your ever loving,  
MUMMY

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**No. P3. Letter.**

**P3.**

2-1-47.

No. P3  
Letter  
2-1-47

My darling son,

I am sending you Rs. 50 which I want you to give Daddy, I shall come over in the evening or tomorrow.

I spent a most unhappy Christmas and New Year. What's to be done it is my fate to suffer in this world.

I shall never be happy in this world again. I wish to God that I was dead. Take care of yourselves until I come my children. Wishing you both and daddy all the best for the new year.

Yours,  
MUMMY.

Please let me know if you received the money safe.

No.....

Supreme Court of Ceylon  
No. 492, (Final) of 1949.

District Court, Colombo.  
No. 1580.

*In The Privy Council  
on an Appeal from  
The Supreme Court of Ceylon*

BETWEEN

S. D. M. DEAN of 4/1, Longden  
Terrace, Colombo.....*2nd Defendant-Appellant*

VERSUS

1. ERIC ALLEN ANTHONISZ of  
Nelson Lane, Kollupitiya, Colombo,.....*Plaintiff-Respondent*

AND

2. MAUD MAGDALENE ANTHO-  
NISZ *nee* TRADIGO of 4/1, Longden  
Terrace, Colombo.....*1st Defendant-Respondent*

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RECORD  
OF PROCEEDINGS

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