

Present : De Sampayo J. and Schneider A.J.

1921.

In re the Application of JOSEPHINE RATNAYAKE.

173—D. C. Colombo, 853.

*Husband not heard of for over ten years—Application by wife for declaration that husband was dead—Evidence Ordinance, s. 108.*

The husband of the appellant left the Island in 1908, and wrote a letter to her in 1909. Nothing more was heard of him. The wife applied to Court for a declaration that her husband was dead.

*Held*, that the Court had no power to grant such a declaration.

THE facts appear from the judgment.

*B. F. de Silva*, for the appellant.

May 25, 1921. DE SAMPAYO J.—

This is a very extraordinary case. The appellant is a married woman, and she applied by petition to the Court for a declaration that her husband is dead. It appears that she married her husband in 1907, and the husband left the Island in October, 1908, and went to Singapore. She says in the petition that he deserted her, but probably all that he did was to leave the Island in search of some employment. Anyhow, the only communication he made to his wife after he left Ceylon appears to have been early in 1909, when he wrote to her a letter from Singapore. This application is entirely misconceived. It is supposed to have been in pursuance of section 108 of the Evidence Ordinance, which is merely laying down a rule of evidence that, if a husband is absent for a certain period without any information as to his whereabouts, for certain purposes his death may be presumed. But nowhere is there any provision laying down the procedure for obtaining a declaration of Court. The only way that the section of the Evidence Ordinance can be availed of is by repelling any charge of bigamy that may be made against her if she marries again. But beyond that that section does not help the appellant. I think the learned Judge is quite right in saying that he had no jurisdiction to grant the application.

The appeal is dismissed.

SCHNEIDER A.J.—I agree.

*Appeal dismissed.*