

1898.

February 1.

MANUEL VEDARALA v. ANA HAMY *et al.*

C. R., Colombo, 6,986.

Action against husband and wife—Opposing interests—Right of wife to give proxy to proctor independently of her husband.

When a husband and wife have opposing interests as defendants in an action, the wife has a right to defend the action, and for that purpose to give a proxy to a proctor independently of her husband to appear for her.

THE plaintiff, being the son of the second defendant by his deceased wife, sued his father, the second defendant, and his stepmother, the first defendant, for the recovery of a sum of Rs. 50 said to have been lent to the two defendants. The second defendant admitted the plaintiff's claim, but the first defendant

retained a proctor to file her answer denying the loan. The plaintiff's proctor urged that the first defendant could not sign the proxy produced by her proctor without her husband joining in it, upon which the Commissioner gave second defendant time till the following day to decide whether he will join in the proxy or not, and in the meanwhile took his signature to a writing admitting plaintiff's claim. On the following day the second defendant having failed to sign the proxy, the Commissioner rejected the proxy on the ground that first defendant could not defend the action without her husband, second defendant, joining in it.

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The first defendant appealed.

H. J. C. Pereira, for the appellant.

Walter Pereira, for respondent.

1st February, 1898. LAWRIE, J.—

Set aside, and the action is remitted with instructions to receive the proxy tendered for the first defendant, and to allow her to file answer and to proceed according to law.

The plaintiff brought action against a woman and her husband for repayment of a loan alleged to have been made to both.

The husband (second defendant) admitted the loan. The wife (the first defendant) denied she borrowed the money. She has an interest in denying personal liability and in avoiding a decree against her, because she has a separate estate.

The Commissioner refused to accept a proxy signed by the wife alone, requiring it to be signed by the husband also.

It is unreasonable to expect the husband to sign a proxy to defend an action in which he has already confessed judgment.

The wife and the husband have opposing interests. She certainly has a right to defend the action, and for that purpose she has a right to give a proxy to a proctor to appear for her.

The appellant is entitled to the costs of this appeal.