

W.E. Mc Gowan Vs. John George Mc Gowan

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Court : Allahabad

Decided On : Jun-07-1916

Reported in : (1916)ILR38All688

Judge : Walsh, J.

Appellant : W.E. Mc Gowan

Respondent : John George Mc Gowan

Judgement :

Walsh, J.

1. The case relied upon, namely Holt v. Holt (1868) L.R. 1 P and D 610 : 33 L.J. P. and M. 33 is the one really in point. That was an application for alimony pendente lite and it was held that even pendente lite when it was shown that the wife was living with the co-respondent, whether they were living in adultery or not, alimony should not be ordered against the husband during that period. For the purpose of an application by a wife for alimony it is always assumed that the wife is innocent. The practice of the Divorce Court seems to be uniform on the question of alimony after the wife has been convicted of adultery. The absence of any statement in the text books is probably due to the fact that it is taken for granted that an ecclesiastical court would never have listened to an application by a wife who had been convicted of adultery. I find the following authorities on the subject. In Winstone v. Winstone (1861) 2 S.W. and J.R. 246 which was of course an

ecclesiastical decision, the petition by a wife for alimony after a decree nisi had been passed against her was ordered to be taken off the file. This was in 1861. In 1888 the Court of Appeal in *Otway v. Otway* (1838) 13 P.D. 141 which was a decision with regard to costs observed (on p. 155): 'Her adultery prevented her from pleading the credit of her husband and prevented her from getting any alimony or allowance from the husband.' Therefore it appears that there is decision by the ecclesiastical court that a wife against whom a decree nisi for divorce has been passed on the ground of adultery is not entitled to apply for alimony and that this was the view taken by a Court of Appeal in 1888. In the absence of any authority to the contrary it would be my duty to refuse to entertain the present application.

2. In this country, however, having regard to the decision in *Kelly v. Kelly and Saunders* (1870) B.L.R. 71 by Sir Barnes Peacock it appears to be a matter of discretion. But in the present case there being no suggestion in the suit, which I tried, that the husband's conduct led to the wife's misconduct, and the wife being in fact at the present moment under the roof of the co-respondent, I think I ought not to exercise my discretion in the manner in which it was exercised by Sir Barnes Peacock for the reasons given by him. The application is therefore dismissed.