

W.E. McGowan Vs. J.G. McGowan

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Court : Allahabad

Decided On : Jun-07-1916

Reported in : AIR1917All180(2); 37Ind.Cas.143

Judge : Walsh, J.

Appellant : W.E. McGowan

Respondent : J.G. McGowan

Judgement :

Walsh, J.

1. The case relied upon, namely that of Holt v. Holt and Davis 1 P. 610 : 38 L.J. P. 33 : 19 L.T. 662, is the one really in point. That was an application for alimony pendente lite and it was held that even pendants 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. But 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 listen to an application by a wife who has been convicted of adultery. I find the following authorities on the subject. In Winstone v. Winstone 2 Sw. & Tr. 246 : 30 L.J. Mat. 109 : 3 L.T. 895 which was of

course an ecclesiastical decision, the petition by a wife for alimony after 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* (1888) 13 P. D. 141 : 57 L.J. P. 81 : 59 L.T. 153., which was a decision with regard to costs, observed--'her adultery-prevented her from pledging the credit of her husband and prevented her from getting any alimony or allowance from the husband.' It, therefore, appears to me 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* (3) by Sir Barnes Peacock, it appears to be a matter of discretion. But in the case before me, 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 reason given by him. The application is, therefore, dismissed.

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