

W.A. Collard Vs. Marie Agnes Collard and W.A. Dutton

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Court : Allahabad

Decided On : Dec-16-1921

Reported in : 69Ind.Cas.579

Judge : Grimwood Mears. C.J. and ;P.C. Banerji, J.

Appellant : W.A. Collard

Respondent : Marie Agnes Collard and W.A. Dutton

Judgement :

Grimwood Mears, C.J.

1. These are appeals by the husband, the wife and the corespondent in a matrimonial matter. On the 15th of November-her 1920 the wife filed a petition against her husband alleging cruelty and adultery. She gave sufficient specifies instances of cruelty to make that a complete charge if she had bean able to support those instances by evidence, Her petition also alleged adultery with sufficient precision to enable that to be a complete charge. If the Court had accepted the charges of cruelty and adultery she would have been entitled to her decree. The defence of the husband was a complete denial of those charges.

2. In the husband's answer of the 13th of December 1929 he set up not very clearly defined allegation; bat said that he bad evidence with which he could prove that his wife, the petitioner, had committed adultery with Mr. Dutton, but he Said he did not wish to press the charge and he attributed the divorce proceedings to Mr.

Dutton.

3. The hearing of the wife's petition was commenced on the 7th of January 1921 and on the 7th and 8th of January the wife's evidence, that of Mr. Dutton and that of Mr. Collard were taken and then it appeared that the charges of cruelty rested almost, if not entirely, upon the uncorroborated evidence of the lady and that the charges of adultery, as to the details of which the lady herself had no first-hand knowledge, had been supplied to her by Mr. Dutton, Mr. Collard then asked to be allowed to file a cross-petition and there was some argument as to whether he could be allowed to take this course because he had in Court, definitely withdrawn any imputation of misconduct against his wife. In the very singular circumstances of the case he urged that he should be allowed to file a cross-petition because all these charges of adultery were made against him by a man who was, as he contended, the lover of his wife, The Court allowed the cross-petition to be put upon the file and gave 15 days for the wife, who in that petition had become the respondent, and the co respondent to file their answers. They were duly filed and then the hearings proceeded.

4. Mr. Justice Walsh came to the conclusion on the petition of the wife that she had failed to establish her allegation of cruelty. He thought Mr. Collard very, likely was not an ideal husband. He thought Mr. Collard at times lost, his temper. I read Mr. Justice Walsh's judgment as inclining to the belief in his own mind that at times Mr. Collard may have treated his wife with some, degree of roughness. But the evidence of cruelty, which was denied by Mr. Collard, remained entirely, uncorroborated by any body No witness was called except Mr. Dutton who spoke to his having been present once when Mr. Collard was rude to his wife. No other living person was called to support Mrs. Go hard's story, and, therefore, Mr. Justice Walsh felt constrained to dismiss that part of her petition.

5. On the question as to whether Mr. Collard had been guilty of adultery he came to a conclusion adverse to him. That conclusion would not entitle the wife to anything more than a judicial separation; but it had, as it happened, in view of the cross-petition, the very important result of operating as a discretionary bar when the husband's cross-petition came up for consideration,

6. The incidents of adultery which are alleged against Mr. Collard rest upon the evidence of Mr. Dutton, of a man named Anwar Khan and another man named Kalian. Mr. Justice Walsh saw all these three persons in the witness-box and he believed the evidence which Dutton gave but he totally disbelieved the evidence of Anwar Khan and Kalian. That being so, it will be seen at once that he convicted Mr. Collard of adultery upon the uncorroborated testimony of one witness. We are by no means prepared to say that we disagree with Mr. Justice Walsh when he says that he thinks Mr. Collard was guilty of infidelity to his wife. But the matter is very different when we have to consider whether there has been presented to the Court that degree of proof which prudent and cautious men must demand when they have to approach so serious a matter as divorce. We have referred Mr. Sorabji to what we believe to be the rule of practice prevailing in the Divorce Courts in England in contested cases, namely, that the entirely uncorroborated evidence of one person is not taken to be sufficient to establish adultery. And though the cases which are cited in support of this, namely, *Evans v. Evans* (1844) 1 Rob. 165 : 8 Jar. 1055 : 3 Notes of Cases 416 : 163 E.R. 1000 and *Simmons v. Simmons* (1847) 1 Rob. 566 : 11 Jur. 830 : 5 Notes of Cases 542 : 163 E.R. 1137, are old cases, we do feel that we ought not to act upon the uncorroborated evidence of Mr. Dutton whom we believe, as appears hereafter, to have committed adultery with Mrs. Collard, Adultery can be established by the entirely uncorroborated evidence of the particular act, provided you bring in evidence of a similar character in regard to other offences which can be and are treated as corroboration. Take, for instance, the only case here in which there is any suggestion of corroboration. The allegation is that Mr. Collard admitted to his then intimate friend that he had crept past his wife's bed one night and had connection with a Punkha coolie woman. It is agreed that, if this took place, Zainab was the name of the woman. In support of that Anwar Khan speaks to visits, which he says he saw Mr. Collard pay to that Punkha coolie woman's house. Kalian says that he saw Mr. Collard and the Punkha coolie woman between 4 and 5 p. a, in the afternoon walking about and sitting down in his grove, which has a pathway across it, and is frequented by many people, and that he saw this happen not once but many times, Now if we believed the evidence of Anwar Khan and Kalian that would be sufficient corroboration, It is not corroboration of a particular act of

adultery but it leads to the inference that the story of the adultery is true if the evidence of Anwar Khan and Kalian were accepted. In the same way Mr. Dutton alleged that he accompanied Mr. Collard to Mirpur Bazar and that Mr. Collard went into a brothel and having remained there some little time returned saying that he had seen a favorite girl of his. That is an absolutely uncorroborated incident. But even if one person, who was credible to the Court, had come forward and said : 'I know that girl, I know where she lives and I have seen Mr. Collard going into that house' that would be corroboration which would be sufficient to establish the allegation. But when all this evidence is analysed bearing in mind particularly the rejection of Anwar Khan's evidence and that of Kalian's by the Judge, we are left with nothing but these statements of Mr. Button: and that being so, we have to hold, as a matter of practice under the rule which we consider to be a good one and which is spoken of in the cases which we have referred to Mr. Sorabji, that the uncorroborated evidence of one witness, even though believed, must not be acted upon so as to establish adultery either in man or woman. In that view of the matter we must upset the finding against Mr. Collard that he did, on the occasions alleged, commit adultery. That being so, the position stands that Mr. Collard is entitled to have whatever relief this Court may think he should have upon his cross-petition. The charge made by Mr. Collard in his petition was reduced to an allegation that on the 25th, 26th and 27th of July 1919 Mrs. Collard and Mr. Button came to Allahabad and stayed for 2 1/2 days in the Kenilworth Boarding House. This matter must be gone into a little carefully, because it has been said, and there is foundation for it, that this again would be a case in which corroboration depended upon the evidence of one witness only, and if that were so it would be our duty to apply the same rule to Mrs. Collard as we have applied to Mr. Collard, In order to see whether an inference should be drawn that the parties stood upon such terms with regard to each other that they would be likely to be found at Kenilworth in July 1919 we must examine the history of the married life of Mr. and Mrs. Collard and the part which we believe Mr. Button played in it, because in all these cases it is a most important circumstance to show how the respondent and co-respondent stood towards each other,

7. Mr. and Mrs. Collard were married in January 1912. They had five children, two of whom died and three of whom are living; and up to the year 1917 the marriage

seems to have been a reasonably happy one. Mr. Dutton was a friend of Mr. Collard's and was introduced to Mrs. Collard, perhaps before her marriage when she was Mies Yanderbeek, or after her marriage, but at all events he was, on his and her own statements, one of their closest friends and he remained on terms of close friendship down to 1917 and very likely a good deal later than that. Mrs. Collard has said that in or about 1917 she began to lose and did in fact lose all affection for her husband, which she attributed to three causes. She said that he had become a heavy drinker, that she suspected that his relations with women were loose, and in addition go that he was beginning to knock her about--the acts of cruelty which she alleged were, I think, later than that, but at all events we have her definite statement given in January 1921 'about three years ago I began to lose my affection for him.' That is corroborated by the evidence of Mahal Sadler who said that in August of 1920 Mrs. Collard told her that she was not going to return to her husband, that she was 'fed up with him.' Mrs. Collard also admits that she told her own father, Mr. Vender beek, that she had lost her affection for her husband in 1917, The position, therefore, up to this moment is that for some reason or other the affection with which this marriage started gradually waned until, as far as the wife was concerned, it died away altogether.

8. The evidence that she has produced as to Mr. Collard being a heavy drinker is almost of the most unsatisfactory kind. Mr. Collard says that he limits himself to three pegs before dinner, that he does, not take anything during dinner nor after dinner, and he repudiates the statement that he ever got drunk, It is likely that even three pegs were sufficient in certain conditions of weather and health to disturb Mr. Collard's balance and to make him very easily irritable, and though there! is not sufficient ground to say that Mr. Collard was, or is, an intemperate man, it may be that he was occasionally guilty of acts of violence to his wife and he behaved in a way which she says he himself described as being 'mad', partly because two or three pegs bad disturbed his balance and partly because he thought he had a grievance with regard to his wife not being an efficient housekeeper and being more anxious to go out and indulge in gaiety than look after the house. It probably was due to some extent to the loss of the two children which Mr. Collard thought attributable to the neglect of the wife, although in fairness it must be said that there is not the least evidence whatever of that. Mr.

Collard may have treated his wife with some degree of unkindness and that contributed to the ultimate loss of affection on the part of the wife.

9. Gradually, there came another matter, Mr. Dutton has argued his own case, and argued it extremely well. He asked us to consider the question as to how far he was responsible for this breaking apart of husband and wife, and he pointed out that the wife had already said that her affection ceased about 1917, and that, therefore, he, Mr. Dutton, up to 1917 took a very small part in any breach that took place.

10. Mrs. Sadler says that Mrs. Collard was often speaking about Dutton 'what a fine musician he was, good singer, good socially, very entertaining,' and there is no doubt that as the wife's affection lessened for her husband her thoughts turned to Mr. Dutton and their affection for each other became deeper. There is equally no doubt that that was the cause at a later date of great concern to Mr. Collard; and it cannot be said that Mr. Collard in commencing his cross-petition acted with any degree of precipitancy. The letters which he wrote, the form of his answer filed on the 13th of December 1920, the evidence that he gave on the 7th or 8th of January 1921, all support the theory that he did not want to divorce his wife, that he did not readily believe the things that were being laid about his wife, but that when he found Mr. Dutton coming into the witness-box and giving away to the Court the confidence which he on friendly terms with Dutton had made to him, Mr. Collard came to the conclusion that that could only have been done by Dutton in concert with his wife because there were guilty relations' between them, He had, as he lays, 'not Pucca evidence but good evidence at that moment.'

11. Now, let us come to the surrounding circumstances which are capable of being used in corroboration of the alleged fact that these two people stayed at Kenilworth in July of 1919. It is admitted that Mr. Dutton and his wife were on very friendly terms with each other. They loved a great deal of each other and though this circumstance was undoubtedly known to Mr. Collard he did not object openly to it until October 1919 when on going into the Dufferin Hospital he found Mr. Dutton in his wife's bed room, she then having been some eight days before confined of a child. He then objected to Dutton's presence there. Up till then there does not

appear to have been any quarrel between the two men. It may be that Mr. Collard was growing increasingly uneasy but at all events he did not forbid Dutton to come to the house, There is some statement that collard had asked him not to come to the house after the Mussoorie visit unless he (Mr. Collard) was at home. Therefore, we must take it that these two men were on terms of very considerable friendship at a moment when the lady's feelings for her husband were either actually dead or were dying, or had died and were turning to repugnance.

12. There is some evidence that they were seen walking arm and arm, but that is very vague. But there is more direct evidence, namely, that in April of 1920 two men, Briggs and Timms, who were passing in the evening by some isolated unfinished houses, went in to look at one. They knew Mrs. Collard and Dutton by sight, and they both came into Mr. Justice Walsh's Court and said that when they came into the compound of one of those empty houses Mrs. Collard and Dutton started up from the ground on which they had been sitting, hurriedly passed them at a close distance and went out by the gate.

13. Mr. Collard says that he heard of that incident two or three days later, he being a Railway man at Cawnpore and that he had quarrelled with several of the Cawnpore Railway people because they told him incidents in connection with his wife and Mr. Dutton, He says clearly that three or four days after that incident people had told him what took place and asked him to find out from Briggs and Timmi. There seems no reason why these two young men should say what was other than the truth.

14. In September of 1920 a very significant thing occurred. Mr. Collard had a month's leave. He proposed to spend that leave with his wife at Moghalsarai at the house of Mr, Venderbeek, who was the father of the lady. He came to that house and he stayed there three or four days, and he says in terms that he asked his wife why she was so cold and repulsed him when he wished to kiss her and she said that she did it because she loved Dutton and that the child which had been born in April 1919 was Dutton's child and not his child and she seems to have added that she did not want anything more to do with Mr. Collard. It may, of course, be that that does not accurately represent what took place between them,

and indeed the wife says that really nothing of that kind took place but that they quarreled because he was seeking to enforce his marital rights at a time when it was improper for him to do so and they had a quarrel over that. But the significant fact is that Mr. Collard left the house and having got to the Station he wrote a letter to Mr. Venderbeek, in which there can be no doubt that he attributed his departure to something which Mrs. Collard had said about Dutton, The letter has been destroyed--it was destroyed by Mrs. Collard to whom Mr, Venderbeek showed it, Mr. Collard has said that in that letter he explained to Mr. Venderbeek that he left because his wife had turned him out, having said that she was in love with Dutton. At first Mrs. Collard denied that there was a word about Dutton in that letter but when reminded that her father had said that there was a reference to Dutton she said that she had forgotten that but she had not paid much attention to that letter. At all events, Mr. Collard left the house having undoubtedly written a letter which clearly in some way connected Dutton and Mrs. Collard with his departure from that house.

15. Coupled with that statement we have had evidence given by the brother of Mr. Dutton, He stands in a very unpleasant position and he has been called in to say that at about the time when Mrs. Collard was in the Hospital in Cawnpore with her baby, he (the brother, Archibald Dutton) went to Cawnpore. He was staying with the Collards, the mother of Mr. Collard and Mr. Collard's sister, and he is now apparently engaged to Miss Collard, she having transferred her affections from Mr. Dutton, the co-respondent, to his younger brother. That has created great bitterness between the brothers. Money matters also had created bitterness and there is no doubt whatever that Archibald Dutton must be considered as a man who would not be unwilling to injure the co-respondent. Indeed, the co-respondent attributes the evidence which his brother has given to the instigation of Miss Collard who wishes to do him injury. Archibald Dutton says that he met his brother who was anxious to know how Mrs. Collard and the baby were. He asked Archibald Dutton if Mr. Collard had told him how his wife and baby were, and then very much overcome with emotion, and indeed crying, he said that he believed himself to be the father of the child. Archibald Dutton, according to the evidence, kept that statement to himself. He did not believe it. Certainly, it was not said in joke. But on the 6th of January when the first hearing of the case was about to

begin he did tell Mr. Collard what Mr. Dutton (his brother) had said to him at Cawnpore two or three months before. If we accept that abatement, it does bear out what Mr. Collard said, namely, that Mrs. Collard had said that the last baby had no claim upon Mr. Collard. The story given by the brother must, if false, be a complete invention, but the circumstance that the husband left the house so hurriedly in September and wrote that letter to Mr. Yenderbeek about Dutton cannot be an invention because it is spoken to by Mr Venderbeek.

16. It is also admitted that Dutton saw Mrs. Collard on another occasion when she was in Hospital on account of illness of the child, and from time to time Mr. Collard has been hearing from people and receiving letters about his wife which he has striven not to believe. He sent copies of two of these letters to Mr. Yenderbeek in November of 1920, having written a few days before (on the 5th of November) a letter in very nice terms obviously wishing that the father should intercede with her.

17. We now come to the incident on which the whole case of misconduct, as far as the particular act is concerned, depends. It is said that on the 25th of July 1919 at about 9 o'clock in the evening, a man and woman presented themselves at Kenil worth, a Branding House in Allahabad, kept by a Mr. and Mrs. Gilbert, They asked for temporary accommodation, they had dinner that night, stayed there 2 1/2 days and finally paid a bill for Rs. 20 8-0 under the name of Mr. and Mrs. C Jones. The question is was Mr. C- Jones Dutton; was Mrs. O. Jones Mrs. Collard? The evidence that Dutton was Mr. Jones is so clear that it cannot be doubted. The evidence as to whether Mrs. Jones was Mrs. Collard needs more careful examination.

18. Now taking Mr. Jones first, they arrived at about 9 p. m. which would be about the time that the Cawnpore train is due to reach Allahabad, That he was doing his work at Cawnpore on the 25th there is no doubt. The 26th was a Saturday, There is no evidence on which we can rely which convinces us that he was at Cawnpore on that day. It is true that Mr. Booth has said that he would not be away without his knowledge in July of 1919 as they were shorthanded and had only three men instead of five. Mr. Booth, without pretending to any special knowledge or pointing to any entry which would be conclusive, says in general terms: 'I am sure that

Dutton was at his work in Cawnpore on the Saturday.' Mr. Dutton has produced an original note book in which he records certain work that is to be done, and there are certainly two entries which purport to have been made on the 26th. There is no reason why they could not have been made on Monday, the 28th, nor has any body been called to prove that Mr. Dutton did any work at Cawnpore on that Saturday morning. Now Mr. Gilbert says that the Mr. Jones played on the Piano extremely well, that he (Gilbert) was very interested in this, that he heard him playing on two evenings and once during one of the days and that he was in the room, and he remembers two of the songs which Mr. Dutton played or sang, or played and sang. He must have talked with Mr. Dutton, and when Mr. Collard took to Mr. Gilbert certain photographs to see if Mr. Gilbert could identify his wife and Mr. Dutton, Mr. Gilbert was extremely unwilling to do anything of the kind. Mr. Gilbert has explained how Collard almost cried to him about this and finally Gilbert seeing that there was some genuine trouble underlying Mr. Collard's questions, did examine the photographs and did say that they contained the photographs of Mr. and Mrs. C. Jones, and to prove the fact that he had visitors of that name he produced a counter foil receipt book in which there is an entry of Mr. and Mrs. C. Jones in Mrs. Gilbert's hand-writing, which shows that people passing under that name stayed there on the 25th, 26th and 27th. Gilbert himself has said in terms that he has no doubt whatever as to the identity of Mr. Dutton, and of Mrs. Collard as Mrs. Jones. Mrs. Gilbert says that she is quite certain about Dutton but she never saw Mrs. Jones face to face and, therefore, she is unable to say whether Mrs. Collard was passing as Mrs. Jones, She did not say: 'I did see the woman, I am prepared to swear that Mrs. Collard is not Mrs. Jones.' She says that she is not prepared to say that the Mrs. Jones who stayed there was Mrs. Collard, and she added that she knew Mrs. Collard before Mrs. Collard was married and that she was a Miss Venderbeek. But that, was not followed up at all to explain how well she knew Miss Venderbeek. It has been left so vaguely that the point is of no value. If she had been able to say that she knew Miss Venderbeek thoroughly well, having seen her dozens of times as a girl between the age of 17 and 19, and that she could not be in a room for two minutes without recognising her, that would have been evidence of considerable value. Of course, she had not seen Miss Venderbeek for certainly seven years--because Mrs. Collard was married about

that length of time and she added: 'I do not know if Mrs. Collard was aware that I was keeping a Boarding House at Kenilworth.' There had been no social intercourse between them for seven years, and she only professed to be a connection by marriage, Mr. Gilbert indeed did not know that his wife was any connection of Miss Vender beek's. Mrs. Collard says that she knew that a relative of hers, a Mrs. Gilbert, kept a Boarding Home at Allahabad, She does not (give any reasons why she knew it and her husband Mr. Collard did not know that there was a Mrs, Gilbert who was a connection of hers at Allahabad. So that very little can be made of the point that Mrs. Collard would not have gone to Kenilworth, and it is putting it much too high to argue that it is not conceivable that she went to Kenilworth because she would, not have walked into the house of a woman who at once would have recognised her. As we have pointed out, the acquaintance of Mrs. Gilbert and Mrs. Collard may have been of the very slightest description. There is certainly no satisfactory evidence that Mrs. Collard knew that Mrs. Gilbert was keeping a Boarding House in Kenilworth, Mrs. Gilbert's evidence supports the allegation of misconduct to this extent that she swears to Dutton and agrees that he had a lady with him. Mr, Dutton's evidence has been that he never was at Kenilworth. Mrs. Collard's evidence also is that she was never at Kenilworth. But it is clear that on the 22nd of July 1919 she left her husband to go to Moghalsera the object being that she should stay with her father for six weeks, there being no suitable married quarters for Mr. and Mrs. Collard at Cawnpore, and she did not return to her husband until the end of August. Therefore, if she went to Allahabad on the 25th of July she was not at that time under the eye of her husband--and she was in fact then on a visit to her father. It is by no means satisfactorily shown from the attitude of the father that he would keep his married daughter under such control that he would not have permitted her to leave his house for two or three days, and she might indeed have given him some very reasonable explanation. At all events, she does not account for her whereabouts at that time and the father has not been invited to offer any explanation either, and, convinced as we are from the evidence that Gilbert was right as regards Mr. Dutton, we are also of opinion that he was also right as regards Mrs. Collard, and that Mr. and Mrs. Jones were none other than Dutton and Mrs. Collard.

19. That being so, the petition of the husband is a well-founded petition, and that part of Mr. Justice Walsh's judgment must be confirmed.

20. Mr. Chandra has said that his client, Mr. Collard, is not desirous of making money out of his wife, and, therefore, he voluntarily abandoned any claim to the damages for Rs, 1,000 which Mr. Justice Walsh awarded against Mr, Dutton, In the circumstances, we are of opinion that that is a proper thing for Mr. Collard to have done, because Mr, Dutton's point that these two parties, husband and wife, had got very much apart before Dutton became on terms of loose friendship with Mrs, Collard seems well-founded,

21. The result, therefore, is that the wife's petition fails both on the ground of cruelty and adultery. The husband's petition succeeds on the ground of adultery, and, therefore, we grant to the husband a decree nisi for the dissolution of his marriage on the ground of his wife's misconduct with the co-respondent, In view of Mr. Collard's withdrawal of any claim to the damages which were assessed by Mr. Justice Walsh at Rs. 1,000 we rescind that part of the Judge's order. The costs of all parties in both suits and in this appeal must be borne by the co-respondent. The costs which Mr. Dutton will have to pay for both the hearing, including Counsel's fees and all other matters, are to be taken to be Rs. 1,100. We allow Mr. Dutton two months from this date to pay this amount.

Banarji, J.

22. I concur.

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