

Bowen Vs. Bowen

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Court : Kolkata

Decided On : Aug-10-1909

Reported in : (1909)ILR36Cal1018,4Ind.Cas.699a

Judge : Harington, J.

Appellant : Bowen

Respondent : Bowen

Judgement :

Harington, J.

1. This is an application by the wife against whom a decree nisi for dissolution of marriage has been made for alimony until the decree is made absolute.
2. The husband has tendered the amount due up to the decree nisi and says that, inasmuch as the wife has been found guilty of misconduct, she has forfeited her right to receive any alimony subsequent to the decree nisi.
3. Alimony has been paid by the husband to the wife since the institution of the suit: that payment was made in pursuance of a private arrangement between the parties, no application was made in Court in respect of it.
4. The husband relies on the case of *Dunn v. Dunn* (1), in which it was held in England that where alimony pendente lite had been granted to a wife in a petition

for divorce the right to such alimony ceased upon the wife's being found guilty of adultery.

5. But in this country the period during which alimony is payable is regulated by Section 36 of the Divorce Act, which provides that it shall continue in the case of a decree for dissolution of marriage until the decree is made absolute. This provision, therefore, makes the law as laid down in *Dunn v. Dunn* (1) inapplicable in this country. Had alimony been granted it must by the express words of the statute have been continued to be payable until the decree is made absolute.

6. The decree nisi then under Indian law is no ground for depriving the wife of her alimony, and if it be no ground for depriving a wife of alimony, it appears to me equally to be no ground for refusing a wife the alimony which would otherwise be granted to her. The Indian Divorce Act contemplates the payment to the wife of alimony as long as she is in law a wife. Mrs. Bowen is still the wife of Mr. Bowen and should therefore be supported until she ceases, under a decree absolute, to fill that position. The parties are agreed that alimony, if payable, shall be at the rate of Rs. 70 a month.

7. The result is that the application must be granted with costs on scale 2.

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