

Youd Vs. Youd and ors.

Youd Vs. Youd and ors.

SooperKanoon Citation : sooperkanoon.com/866465

Court : Kolkata

Decided On : Dec-10-1900

Reported in : (1901)ILR28Cal221

Judge : Harington, J.

Appellant : Youd

Respondent : Youd and ors.

Judgement :

Harington, J.

1. I find that there has been: (1) Adultery of respondent with Metcalfe in October 1899.

(2) Condonment of that adultery by the Petitioner in December 1899.

(3) Adultery with Meade in January 1900.

2. Mr. Knight--I ask for a decree nisi against both co-respondents. [Harington, J.--The adultery of Metcalfe was condoned.] Yes, but revived by subsequent adultery with Meade. [Harington, J.--That is misconduct with a different person; how can that affect the petitioner's rights against Metcalfe?] Any subsequent marital misconduct revives the right, The misconduct need not be ejusdem generis, nor quo ad hunc. The principle as laid down by Lord Stowell in the case of D'Aguilar v.

D'Aguilar (1794) 1 Hagg. 773, 786 is perfectly general in terms; 'misconduct' not 'the misconduct.' This was adopted by the Judge ordinary in Curtis v. Curtis (1858) 1 S. & T. 192; Ridgway v. Ridgway (1881) 29 W.R. 612; Newsane v. Newsane (1871) L.R. 2P. 306, 311; Bernstein v. Bernstein (1893) L.R. 1893, 292; Pomero v. Pomero (1884) L.R. 10 P.D. 174. In the case of Norris v. Norris (1861) 4 S. & T. 237 the Court granted a decree nisi on the ground of adultery with each and both of the co-respondents. I ask for costs against both co-respondents. [Harington, J.-- The petitioner does not claim costs in the petition.] Nevertheless he is entitled to them--Finlay v. Finlay (1861) 30 L.J.P. & M. 104; Goldsmith v. Goldsmith (1846) 15 L.J.CH. 264; West v. West (1870) L.R. 2 P.L.D. 196, 198. Apart from the general power of the Court under Section 220 of the Code of Civil Procedure, a. 35 of the Divorce Act is clear. The Act only requires adultery to be established to the satisfaction of the Court, Compare schedule of forms to the Act: 'form (1) costs not prayed.' Section 35 of Divorce Act is almost in the same words as Sections 20 and 21 Vic. c. 85, Section. 43. Finlay v. Finlay is a direct authority.

Harington, J.

3. I will give you costs as against Meade. I follow Norris v. Norris and refuse costs as against Metcalfe, on the ground that adultery with him was condoned.]

4. Mr. Knight.--I ask for costs as between attorney and client against Meade. Outhwaite v. Outhwaite and Diaz (1900) I.L.R. 28 Cal. 84.

Harington, J.

5. That was a very gross case. I must look to the conduct of the parties. I refuse the application for attorney and client's costs against Meade.