

MATRIMONIAL JURISDICTION.

Before Panckridge J.

WILSON-DE-ROZE

v.

WILSON-DE-ROZE.*

1929

Aug. 2, 5.

Divorce—Wife's suit—Adultery of petitioner—Discretion of court, principles upon which discretion should be exercised—Indian Divorce Act (IV of 1869), ss. 8, 14—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V. c. 49), s. 178—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31.

Where the husband treated the wife with great brutality and subsequently deserted her without making any provision for her maintenance or that of the surviving child of the marriage, and, thereafter, frequently visited brothels; and the wife, driven desperate by want, and to maintain herself and her children, adopted the life of a prostitute and, having saved some money, gave up the said mode of livelihood, and then filed a petition for the dissolution of her marriage, and in the pleading as well as at the trial did not conceal anything from the court,

held that this was a fit case in which the court should exercise its discretion (conferred by the proviso to section 14 of the Indian Divorce Act) in favour of the petitioner.

Symons v. Symons (1) referred to.

Tickner v. Tickner (2), *Burdon v. Burdon* (3), *Pretty v. Pretty* (4), *Hampson v. Hampson* (5) followed.

This was a wife's petition for the dissolution of her marriage on grounds of cruelty and adultery of the husband. The petitioner was married on the 3rd day of October, 1916, to William-James Wilson-de-Roze at the Church of St. John of Evangelists, Upper Circular Road, Calcutta. The petitioner and the respondent were domiciled in British India and professed the Christian religion. There was one child surviving of the marriage born on the 8th day of December, 1917. After the marriage, the respondent treated the petitioner with great cruelty and deserted her during the month of March, 1919, and left her wholly unprovided for and also made no provision for the children of the marriage.

* Matrimonial Suit, No. 19 of 1929.

(1) [1897] P. 167.

(3) [1901] P. 52.

(2) [1924] P. 118.

(4) [1911] P. 83.

(5) [1914] P. 104.

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The petitioner driven desperate by her poverty and finding no means of earning her living and in order to provide for herself and her child adopted the life of a prostitute. Thereafter, saving a little money, she abandoned that method of living. The petitioner all along supported her child. For a long time she lost sight of the respondent altogether and recently discovered that he was living at Howrah in a most dissolute manner, visiting brothels. There were no previous proceedings in reference to the marriage taken in any court by or on behalf of either party to the marriage.

Mr. R. C. Bonnerjee and Mr. Sikhar K. Bose,
 for the petitioner.

No one for the respondent.

Cur. adv. vult.

PANCKRIDGE J. In this case, I made a formal decree *nisi* for dissolution of marriage on Friday, but, inasmuch as the circumstances raise questions of some public importance, I intimated that I would deliver a considered judgment to-day.

The petition is a wife's petition for dissolution of marriage, on the ground of the respondent's adultery, cruelty, and desertion. The facts can be briefly stated. The parties, who are domiciled in British India, were married on 3rd October, 1916; there have been two children of the marriage, a son born in December, 1917, who is still surviving, and another child who was born in 1919 and died in infancy. The petitioner complains that not only did her husband treat her with great brutality, but, from the very outset, he neglected to maintain her or her children. She was compelled, as early as 1918, when her elder child was ill, to seek the hospitality of her sister Mrs. Cove. After the child recovered she was willing to return to her husband, but he refused to take her back and from the middle of 1919, he absented himself and has not contributed an anna to the petitioner's support. The second child was born shortly after his departure in October, 1919. I hold,

in the circumstances, that the respondent's conduct amounts to desertion. I also accept the petitioner's evidence as to cruelty. She says her husband frequently assaulted her, especially when he was drunk, and in this she has been corroborated by her sister, Mrs. Cove, and her sister-in-law, Mrs. Spry.

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The important part of her story is the sequence of events following the desertion. It is quite obvious that the petitioner's family has little or no means and I believe her when she says that her parents are penniless and are supported by what their children can allow them.

After the birth of the second child, the petitioner found it necessary to seek employment, but the best situation she could obtain was one in a shop on a salary of Rs. 25 a month: this she found insufficient for her needs and she got into debt. Shortly after the death of the second child, she met a woman, who suggested to her that, if she would become a prostitute, she would make money. She says she felt desperate, as well she might, left her employment and became an inmate of a brothel in Marsden Street, conducted, as I understand, by the woman, who made the suggestions referred to above. After about a year, she migrated to a similar establishment in Karaya Road. She states that, in 1927, having saved some money, she gave up a life of prostitution, after notifying the police of her intention. She says that, from 1920 to 1927, she regularly supported her surviving child, spending about Rs. 100 a month on his account. Receipted bills from the school, where the child was being educated, have been shown me, which bear out her story in this respect. Since 1927, she has been making a small income by dealing in secondhand furniture and by dress-making, with which she has supplemented the savings she accumulated while she was leading the life I have described. Early in this year, on the suggestion of a Catholic priest, she wrote to her husband, proposing a reconciliation. She has not kept a copy of the

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letter, but his reply has been put in, in which he declines to have anything to do with the petitioner, on the ground that his marriage has been a failure and he goes on to tell her that, since they parted, he has frequently misconducted himself. After receipt of this letter, the petitioner discovered the respondent's whereabouts, and, in May of this year, in the company of Mrs. Spry, she was successful in tracing him to a house in Wellesley 2nd Lane, where she found him in the company of a prostitute, in circumstances which leave no doubt that adultery was committed. Thereafter, these proceedings were circulated. The petitioner has given her evidence with the utmost candour and I have not the slightest hesitation in accepting her statements, which have besides been corroborated on the important points. I, therefore, find that the respondent has been guilty of cruelty and of adultery. I also find that he deserted the petitioner in 1919, but, in view of the wife's conduct in 1920, it is difficult to say that he has been guilty of desertion, without reasonable excuse, for two years and upwards.

Now adultery and cruelty are matrimonial offences, which combined *prima facie* entitle a wife to a decree of dissolution. However, the proviso of section 14 of the Indian Divorce Act is as follows "provided that "the Court shall not be bound to pronounce such decree "if it finds that the petitioner has during the marriage "been guilty of adultery." Section 178 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V. c. 49), which reproduces section 31 of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), is in similar terms. The provisions of section 8 of the Indian Divorce Act, 1869, render it necessary that I should consider the principles on which the Divorce Division of the High Court of Justice exercises the discretion conferred by the proviso.

Now it is clear that, since the year succeeding 1857, the standard which the English Court applies in affording relief to a guilty spouse has tended to become less rigid. That this is so is specifically

recognised by Duke P. in *Tickner v. Tickner* (1) and in that case the learned President, though invited so to do by the King's Proctor, expressly declined to lay down a system of classification and contented himself with observing :—

“Two limitations suggest themselves, for which there is authority. As between parties a petitioner may not claim divorce on account of misconduct to which the petitioner has conduced; and on the same principle, as was explained in *Symons v. Symons* (2), a respondent may not rely upon misconduct of a petitioner to which the respondent has conduced.”

The passage just cited shows that, in considering the case of a guilty petitioner, the conduct of the respondent has to be taken into account and that is so whether or not the respondent appears. Applying this test, I have no doubt that, although the respondent did not cause the petitioner's misconduct, in the sense of coercing her into a life of prostitution, his cruelty, his desertion and above all his neglect to maintain their child contributed and conduced in a very large measure to her adopting the means she did to get a living.

In *Burdon v. Burdon* (3) Gorell Barnes J. exercised his discretion in favour of a wife, who, although originally forced to lead the life of a prostitute by her husband, continued to do so for some time after the coercion had been removed.

The Court further is disposed to look with more favour on a petitioner, who is frank and candid than on one who is guilty of concealment. This appears from the judgment of Bargrave Deane J. in *Pretty v. Pretty* (4), where that learned judge observed :—

“I must put aside the feelings of indignation with which I naturally regard the petitioner owing to her having committed perjury. Some people seem to think that it is not a matter to be surprised at that people who have sinned should also commit perjury. There can be no greater mistake. In this Court,

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(1) [1924] P. 118, 123.

(2) [1897] P. 167.

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(4) [1911] P. 83, 88.

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“perhaps above all other Courts, honesty is the best policy; and, where the honest and straightforward course is pursued, this Court is always willing to recognise the weakness of the sex.”

The same Court in *Hampson v. Hampson* (1) reluctantly gave relief to an adulterous wife who had been guilty of perjury. Now, in this case, as I have already observed, no attempt has been made either in the petition or in the evidence which the petitioner has given to keep material facts from the court. She has, therefore, this in her favour that her mode of life from 1920 to 1927 was one for which the respondent's behaviour is largely responsible and in the proceedings themselves her candour has been beyond criticism. I think too, the fact that she has maintained her child in a way which is perfectly satisfactory, considering the position in life of the family, is entitled to some weight. She is now living a respectable life and has, I am told, made proper arrangements for the future education of the boy.

From the moral aspect, I do not consider that her conduct compares unfavourably with that of the petitioner in *Tickner v. Tickner* (2), in whose favour the court exercised its discretion, although, having been compelled to leave her husband in 1909, she formed an adulterous connection with her employee in 1910, which was still subsisting when the petitioner was heard in 1923.

After consideration of all the circumstances, I am prepared to exercise my discretion in the petitioner's favour. I do not think that either the welfare of those directly or indirectly concerned or the interests of morality demand the preservation of the matrimonial tie in this case, and I, therefore, pronounce a decree *nisi* for dissolution with costs.

Decree nisi made.

Attorneys for the petitioner: *Basu & Co.*

No one for the respondent.

O. U. A.

(1) [1914] P. 104.

(2) [1924] P. 118.