

## APPELLATE CIVIL—FULL BENCH.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,  
Mr. Justice Courts Trotter and Mr. Justice  
Kumaraswami Sastri.

1922,  
Aug. 28.

PENDURTI JOSEPH (PETITIONER), PETITIONER,

v.

- |                                  |                                  |
|----------------------------------|----------------------------------|
| 1. PENDURTI RAMAMMA (RESPONDENT) | } RESPONDENT,<br>CO-RESPONDENT.* |
| 2. BOYI GURUVULU (CO-RESPONDENT) |                                  |

*Divorce—Indian Divorce Act (IV of 1869), sec. 7—Petition by husband for divorce on the ground of adultery of wife—One of the adulterers, not made a co-respondent—Evidence of husband or wife alone, whether sufficient—Corroboration, necessity for—Nature of corroboration—Joinder of known adulterer as co-respondent—Settled principles and rules of practice of English Matrimonial Court, application of, in India.*

By section 7 of the Indian Divorce Act (IV of 1869), in all suits and proceedings under the Act, the High Courts and the District Courts shall act and give relief on principles and rules which, in their opinion, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

There is a definite established practice in the Court for Divorce and Matrimonial Causes in England which should be followed in India that the evidence of the husband or the wife alone is never to be accepted without corroboration either by witnesses or at least by strong surrounding circumstances.

Another rule in the English Courts, which should be followed in India, is that where charges of adultery are made against a known person, that man must be made a co-respondent unless the Judge shall otherwise direct.

CASE referred by T. S. TYAGARAJA AYYAR, the District Judge of Gōdāvāri at Rajahmundry, for confirmation by the High Court under section 17 of the Indian Divorce

Act (IV of 1869) of the decree *nisi* passed in Original Suit No. 36 of 1920.

JOSEPH  
B.  
RAMAMMA

The petitioner instituted the present suit for divorce under the Indian Divorce Act (IV of 1869) in the District Court of Gōdāvāri against his wife the first respondent, on the ground of adultery alleged to have been committed by her with one T. Jivaratnam who was not joined as a party to the suit, and with another person who was joined as a co-respondent in this suit. The defendants remained *exparte* in the lower Court. There was only formal evidence of marriage and the evidence of the plaintiff (the husband) as to the alleged adultery of the wife with the persons known and named by him. In the absence of other evidence to the contrary, the learned District Judge accepted the evidence of the husband and granted a decree *nisi*, subject to confirmation by the High Court under section 17 of the Act. The case came on reference to the High Court for confirmation of the decree *nisi* under section 17 of the Act.

### JUDGMENT.

SCHWABE, C.J.—This is an application to confirm a decree for divorce given by the District Court of Gōdāvāri. It involves questions of considerable importance, and questions our views upon which it is most desirable should become public property. The suit was a simple one. The petitioner claimed divorce from his wife on the ground, as shown in his petition, of adultery with two persons, the first a man called T. Jivaratnam who is not cited as a co-respondent in the suit and the second Boyi Guruvulu who is cited as a co-respondent in the suit. The co-respondent did not appear and the evidence, except the formal proof of the marriage, consisted entirely of the evidence of the petitioner, and that evidence was a statement that two weeks after the

SCHWABE,  
C.J.

JOSEPH  
v.  
RAMAMMA.  
—  
SCHWABE,  
C.J.

marriage the respondent was found by him to be in adultery with one Jivaratnam, and that she admitted her guilt before the elders of his church.

As regards the second case against the respondent, his evidence was that the co-respondent contracted intimacy while she was at Pithapuram and that she is now living at Bezwada with this co-respondent. Further he produced a letter in which she said that he could marry any girl whom he liked according to his pleasure and added "this is the deed of relinquishment caused to be written and given with my freewill."

By section 7 of the Indian Divorce Act of 1869—

"The High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being, acts and gives relief."

In this case the learned Judge expressed the view that, as she was *ex parte* and he saw no reason to disbelieve the petitioner's evidence, a decree should be granted. That is absolutely contrary to the principles and rules on which the Court of Divorce and Matrimonial Causes in England acts. There is a definite established practice there that the evidence of the husband or the wife alone is never to be accepted without corroboration either by witnesses or at least by strong surrounding circumstances, and the reason for that rule is that, but for it, there would be nothing easier than a collusive divorce, there would be no necessity for the respondent to appear and the petitioner need only go into the witness-box and say that the respondent committed adultery. In this case there was no corroboration of any kind. I doubt if there was any evidence of adultery, because what the petitioner said was that he discovered that she was committing adultery. He says that she is living in the

house with the named co-respondent. He does not say how he knows or whether it is hearsay, or give any facts. It must be understood that it is absolutely essential that there should be corroboration.

JOSEPH  
v.  
RAMAMMA.  
—  
SCHWAPP,  
C.J.

Secondly there is a rule in England that where charges of adultery are made against a known person, that man must be made a co-respondent unless the Judge shall otherwise direct. It has been put in the shape of a rule in English Divorce Rules No. 4 —

“ A husband filing a petition for dissolution of marriage on the ground of alleged adultery, the alleged adulterers shall be made co-respondents in the cause, unless the Judge Ordinary shall otherwise direct.”

Under that provision, if the name is unknown the Judge can dispense with that co-respondent. In this case the first alleged act of adultery is with a known man. He is not added as a co-respondent nor is there any application to the Court for dispensing with his being made a co-respondent. The result is that we cannot confirm this decree.

As regards the evidence in respect of Jivaratnam, he not having been a party to the suit, that evidence ought not to have been admitted. As regards the evidence against the co-respondent there is no corroboration as I have pointed out. That corroboration in a case of this kind can in all probability easily be obtained. It is only necessary for some one who knows the respondents by sight to give evidence that he has been to the place where it is alleged that she is living in adultery with the co-respondent and that he has seen them living together under conditions that lead to presumption that they are guilty. If there is no person available such as a relative of the petitioner who knows her by sight, the petitioner himself must go with somebody else, e.g., the local police, and identify the person living with the co-respondent as being his wife.

JOSEPH  
P.  
RAMAMMA,  
—  
SCHWABE,  
C.J.

The proper course in this case is to set aside this decree and remand the case to the District Court so as to enable the petitioner to adduce corroborative evidence in respect of the charge against the co-respondent or if so advised, and he finds that course necessary, to join the other alleged adulterer as a co-respondent and adduce evidence in respect of that act of adultery.

COUTTS  
TROTTER, J.

COUTTS TROTTER, J.—I am of the same opinion. This difficulty arises because people do not take the trouble in this country to get up divorce cases properly and do not appreciate that the Courts of this country are bound of themselves to guard against the possibility of collusive litigants; I agree that this case should be retried in the way suggested by my Lord.

KUMARA-  
SWAMI  
SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree with my Lord the Chief Justice.

K.R.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Oldfield and Mr. Justice  
Krishnan.*

NARANTAKATH AVULLAH (COMPLAINANT),  
PETITIONER,

*v.*

PARAKKAL MAMMU AND FOUR OTHERS (ACCUSED),  
RESPONDENTS.\*

*Indian Penal Code (XLV of 1860), ss. 79, 494—Bigamy—  
Muhammadian husband becoming Ahmediyan, whether an  
apostate—Wife marrying again, whether guilty of bigamy  
—Good faith and mistake of law whether good defences.*

The essential doctrine of the Muhammadian religion is that God is only one and that Muhammad is His Prophet; hence

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\* Criminal Revision Case No. 366 of 1921.