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purchasers derive their own. There had been a cross-objection filed on behalf of the plaintiffs, contesting the dismissal of their claim in respect of shop No. 1 and also with regard to part of the plaintiffs' claim on account of shop No. 2. On this point we think it sufficient to say that there is nothing in the evidence to lead us to differ from the conclusion arrived at by the learned Subordinate Judge.

The result is that the appeal and cross-objection both fail, and we dismiss them both with costs.

Appeal dismissed.

Before Mr. Justice Walsh.

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June, 7.

W. E. Mc GOWAN *v.* JOHN GEORGE Mc GOWAN. *

Act No. IV of 1869 *(Indian Divorce Act), section* 37 *—Practice—Alimony—Discretion of Court.*

Held that the power to make an order for alimony in favour of the wife after a decree for divorce obtained by the husband on the ground of adultery is discretionary. In a case where there was no suggestion that the husband's conduct had led to the wife's misconduct and the wife was in fact under the roof of the co-respondent, the court refused to exercise its discretion. *Kelly* v. *Kelly* (1) referred to.

THIS was an application for alimony by the wife after a decree *nisi* for divorce.

The facts of the case for the present purpose are briefly as follows :—

The petitioner Mrs. McGowan was the defendant in a suit for divorce which was decreed against the petitioner by a single Judge of this Court on the 23rd of May, 1916. This was a petition claiming alimony from the husband pending the confirmation of the decree. The defence to the application was that the wife was living with the co-respondent.

Mr. *E. A. Howard*, for the petitioner :—

A wife is entitled to alimony. She has filed an appeal against the decree for divorce and it is the legal duty of the husband to support his wife as long as the decree has not been made absolute.

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* Miscellaneous Application in Matrimonial Suit No. 2 of 1916.

(1) (1870) 5 B.L.R., 71.

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Babu *Saila Nath Mukerji*, for the opposite party :—

The wife is still living with the co-respondent. He is maintaining her. Her suit for judicial sepration has been dismissed. So long as she resides with the co-respondent she is not entitled to any alimony according to law; *Holt* v. *Holt and Davis* (1). The granting of alimony is entirely at the discretion of the court and the circumstances of the case are such that no alimony should be granted. The case was then argued on the merits.

Mr. *E. A. Howard*, in reply.

The petitioner is a woman and in a delicate condition. She is residing with her father ; she has nowhere else to go.

[WALSH, J.—Unfortunately the father is the co-respondent and the divorce suit has been decreed.]

The court has power under section 37 of the Indian Divorce Act, No. IV of 1869, to grant alimony, even after the husband has obtained a decree for divorce on the ground of the wife's adultery ; *Kelly* v. *Kelly* (2).

WALSH, J.—The case relied upon, namely *Holt* v. *Holt* (1) is the one really in point. That was an application for alimony *pendente lite* and it was held that even *pendente lite* when it was shown that the wife was living with the co-respondent, whether they were living in adultery or not, alimony should not be ordered against the husband during that period. For the purpose of an application by a wife for alimony it is always assumed that the wife is innocent. The practice of the Divorce Court seems to be uniform on the question of alimony after the wife has been convicted of adultery. The absence of any statement in the text books is probably due to the fact that it is taken for granted that an ecclesiastical court would never have listened to an application by a wife who had been convicted of adultery. I find the following authorities on the subject. In *Winstone* v. *Winstone* (3) which was of course an ecclesistical decision, the petition by a wife for alimony after a decree *nisi* had been passed against her was ordered to be taken off the file. This was in 1861. In 1888 the Court of Appeal in *Otway* v. *Otway* (4) which was a decision with regard to costs observed (on p. 155) :—" Her

(1) (1868) L.R., 1 P. and D., 610 ; 38 L. J., P. and M., 33.

(2) (1870) 5 B. L. R., 71.

(3) (1861) 2 S. W. and J. R., 246.

(4) (1888) 13 P. D. 141

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adultery prevented her from pleading the credit of her husband and prevented her from getting any alimony or allowance from the husband." Therefore it appears that there is decision by the ecclesiastical court that a wife against whom a decree *nisi* for divorce has been passed on the ground of adultery is not entitled to apply for alimony and that this was the view taken by a Court of Appeal in 1888. In the absence of any authority to the contrary it would be my duty to refuse to entertain the present application.

In this country, however, having regard to the decision in *Kelly* v. *Kelly and Saunders* (1) by Sir BARNES PEACOCK it appears to be a matter of discretion. But in the present case there being no suggestion in the suit, which I tried, that the husband's conduct led to the wife's misconduct, and the wife being in fact at the present moment under the roof of the co-respondent, I think I ought not to exercise my discretion in the manner in which it was exercised by Sir BARNES PEACOCK for the reasons given by him. The application is therefore dismissed.

Application rejected.

REVISIONAL CIVIL.

1916
June, 12.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BHAIRON PRASAD (DECREE-HOLDER) *v.* AMINA BEGAM (JUDGEMENT-DEBTOR)*

Act No. VII of 1887 (*Provincial Small Cause Courts Act*), *section* 25—*Revision—Jurisdiction of High Court—Execution of decree—Limitation—Application to court to take a step in aid of execution—Application for extension of time.*

A *bonâ fide* application made by a decree-holder praying for extension of time for the purpose of ascertaining the whereabouts of his judgement-debtor is an application to take a step in aid of execution and saves limitation. Where a Small Cause Court without any materials on the record gratuitously assumed that such an application presented by the decree-holder was not *bonâ fide*, and consequently that a subsequent application for the execution of the decree was time-barred, *it was held that there was ground for interference* by the High Court in revision.

THE first application to execute a decree passed on the 11th of February, 1909, was made on the 9th of February, 1912. Notice

* Civil Revision No. 154 of 1915.

(1) (1870) B. L. R., 71.