APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.

1914. *October 7.*

MISS BLANCHE SOMERSET TAYLOR (ORIGINAL PETITIONER), APPELLANT, *v.* CHARLES GEORGE BLEACH (ORIGINAL OPPONENT), RESPONDENT, AND CHARLES GEORGE BLEACH (ORIGINAL OPPONENT), APPELLANT, *v.* MISS BLANCHE SOMERSET TAYLOR (ORIGINAL PETITIONER), RESPONDENT.*

Indian Divorce Act (IV of 1869), section 37—Decree for divorce—Permanent maintenance—Award of a lump sum—Payment.

In a suit for divorce brought by the wife, the District Judge has, under section 37 of the Indian Divorce Act (IV of 1869), power to make the order for payment of a lump sum for the permanent maintenance of the wife.

Per Hayward, J. :—The plain meaning of the words of section 37 of the Indian Divorce Act (IV of 1869) is that the gross sum of the money should be paid absolutely to the wife and that the annual sum of money should be limited for the period of her life.

CROSS appeals against the decision of C. A. Kincaid, District Judge of Poona, in suit No. 116 of 1914.

The petitioner, Miss Blanche Somerset Taylor, had applied to the High Court for a judicial separation from her husband. This was granted to her on the 20th September 1904 and the Court awarded her alimony at the rate of Rs. 150 a month. This allowance the petitioner recovered from her husband until 1913 when she applied to the District Court at Poona for a divorce. The Court passed a decree *nisi* for divorce in suit No. 50 of 1913 on the 17th December 1913 and the High Court confirmed the decree on the 26th June 1914. Subsequently on the 11th July 1914 the petitioner presented an application, No. 116 of 1914, to the District Court praying that the opponent may be directed to pay her Rs. 50,000 in lump under section 37 of the Indian Divorce Act. The Court awarded her a lump sum of Rs. 5,000 with 6 per cent. interest from the date of the decree till payment and an injunction restraining the opponent

* Cross Appeals Nos. 200 and 201 of 1914.

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from disposing of his property till he had satisfied the petitioner's claim with costs. The interest was directed to be recoverable monthly.

The petitioner and the opponent being dissatisfied with the said order, they preferred cross appeals Nos. 200 and 201 of 1914 respectively.

G. S. Rao for the appellant (opponent) in appeal No. 201 of 1914 :—We submit that the District Judge had no jurisdiction to award a lump sum to the petitioner with a direction that it be paid over to her, and secondly, that in any event, the amount awarded is excessive. Section 37 of the Indian Divorce Act authorizes a Judge to secure a sum to the wife. "Secure" cannot mean "pay over". The object of the statute is to secure maintenance to the wife during her life-time. The Indian statute follows the English law. In *Medley v. Medley*[1] it was doubted if "secure" included "payment". In a recent case, *Twentyman* v. *Twentyman*[2], it was definitely ruled that Court has no authority to award lump sum. The words "any term not exceeding her life" qualify the whole clause and having regard to the frame and scheme of the section the construction accepted in *Twentyman* v. *Twentyman*[2] should be followed.

We further submit that on the evidence the award of Rs. 5,000 is very excessive. Originally the petitioner was awarded Rs. 125 per month and even that amount being excessive we were going to have it reduced.

Binning with *T. R. Desai* and *P. Bunter* for the respondent (petitioner) in appeal No. 201 of 1914 :—The order of the Judge is correct. So far as his power to award a lump sum is concerned, the conditions in England differ from those in India. The wife may leave India and cannot be expected to return here

[1] (1882) 7 P. D. 122. [2] [1903] P. 82.

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every time to receive her allowance. Hence the statute empowers the Court to grant to the wife a lump sum. Now as to "securing" we contend that there could be no better method than "paying over". Even in England it was understood that the Court had such power. No doubt the recent ruling in *Twentyman* v. *Twentyman*[1] is against us. But the English and Indian statutes differ. In the authorized copy of the Indian statute there is a comma after the words "gross sum", and so the words "for any term not exceeding her life" cannot qualify "gross sum". The recitals of reasons in the two statutes also differ.

In our appeal (No. 200) we submit that the amount awarded to us is too little. Originally we were given Rs. 150 per month, that is, Rs. 1,800 per year. Rs. 5,000 if invested, will not fetch even Rs. 200 a year, that is, not even of Rs. 16 per month. The opponent has fair means and we should be awarded, on the principle of English cases, a gross sum which would yield at least Rs. 100 per month.

SCOTT, C. J.:—These are cross appeals from an order of the District Judge of Poona awarding a lump sum of Rs. 5,000 to be paid to the petitioner for permanent maintenance under section 37 of the Indian Divorce Act IV of 1869. The petitioner appeals on the ground that the sum awarded is not sufficient and that the Court should have secured to her a sum the interest of which would secure her at least Rs. 150 per mensem. The respondent appeals on the ground that the Court has no power to award payment of a lump sum and that if it had the power the sum awarded is excessive.

First, as to the power of the Court to award payment of a lump sum.

[1] [1903] P. 82.

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The material clause of section 37 of the Divorce Act is the third. It gives the Court power to "order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard" etc.

As the sentence is punctuated in the state publications of the Act it seems to me to be clear that the words "for any term not exceeding her own life" qualify "annual sum" and do not qualify "gross sum". If so assuming a gross sum to be available, how can it be better secured to the wife than by paying it over to her?

The argument against this view was based upon the judgments in *Medley* v. *Medley*[1] and *Twentyman* v. *Twentyman*[2].

I can see no reason why the punctuation of the editions of the Act issued by the Government of India should be disregarded for so far as I am aware there is not in India any unpunctuated original Statute Book. The position is not the same as in England where in *Stephenson* v. *Taylor*[3], Cockburn C. J. said: "On the parliament roll there is no punctuation, and we therefore are not bound by that in the printed copies." In *Barrow* v. *Wadkin*[4], Sir John Romilly M. R. said: "I supposed I should not learn much on the subject from the inspection of the Roll of Parliament, but, as it was in my custody, I have examined it. . . . It seems that in the Rolls of Parliament the words are never punctuated, and accordingly very little is to be learnt from this document."

The punctuation of the Queen's Printers' edition of 20 & 21 Vict. c. 85, section 32, published in 1857, is the same as the Indian punctuation and it appears

(1) (1882) 7 P. D. 122 at p. 124.
(2) [1903] P. 82.
(3) (1861) 1 B. & S. 101 at p. 106.
(4) (1857) 24 Beav. 327 at p. 330.

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that in three reported cases covering a period from 1870 to 1902 (*viz.*, *Morris* v. *Morris*[1], *Stanley* v. *Stanley*[2], *Kirk* v. *Kirk*[3]) the Divorce Court in England has taken the words now under consideration as authorizing it to award payment of a lump sum to the petitioner's wife.

In *Medley* v. *Medley*[4] the appeal Court in England expressed a contrary opinion being influenced partly by the recital in the amending Act 29 and 30 Vict. c. 32 and in *Twentyman* v. *Twentyman*[5] Jeune J. held that the Court had no power to order a lump sum to be paid over to the petitioner by way of permanent maintenance. That conclusion was possible though by no means inevitable on an unpunctuated Act, but I do not think it would be a reasonable conclusion on the clause of the Divorce Act of 1869 punctuated as it is in the Government of India edition.

In India we have no Amending Act with an explanatory recital such as was before the Court in *Medley* v. *Medley*[4]. Section 37 incorporates without comment the operative parts of the two English Acts and cannot be construed with reference to a recital which has been omitted.

In my opinion, therefore, the District Judge had power to make the order for payment of a lump sum.

On the second question whether the sum awarded was adequate or excessive it appears to me that on the evidence it was a reasonable award and I do not think this Court would be justified in interfering with it.

I would dismiss both appeals without costs.

HAYWARD, J.:—I quite agree that we should not be justified on the scanty materials before us in interfering

(1) (1861) 31 L. J. P. & M. 33.
(2) [1898] P. 227.
(3) [1902] P. 145.
(4) (1882) 7 P. D. 122 at p. 124.
(5) [1903] P. 82.

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with the amount, namely Rs. 5,000, awarded for permanent maintenance by the District Judge.

But the question whether that amount should be paid absolutely or should be secured for a limited term by an appropriate instrument would appear to me a more difficult matter. We have been referred to a number of conflicting decisions of the English Courts upon the corresponding provisions of the English statutes, namely section 32 of 20 & 21 Vict. c. 85 (1857) and section 1 of 29 & 30 Vict. c. 32 (1866) which have been combined into section 37 of the Indian Divorce Act, 1869. The Judge Ordinary Sir C. Cresswell ordered the absolute payment of a gross sum in the case of *Morris* v. *Morris*[1] and Gorell Barnes J. followed this order in the subsequent cases of *Stanley* v. *Stanley*[2] and *Kirk* v. *Kirk*[3]. But in the mean while Jessel M. R. had held in the case of *Medley* v. *Medley*[4] that the absolute payment of a gross sum could not be ordered, because payment from time to time was contemplated by the word "secure" used in the statute of 1857. It was again more recently held by Jeune J. in the case of *Twentyman* v. *Twentyman*[5] that the word "secure" was governed by the phrase occurring later on "for any term not exceeding life". Lindley L. J. concurred with the Master of the Rolls in the former case but observed that the word "secure" would ordinarily include "pay". The learned Judges appear to have been moved to their decision by the consideration that the word "secure" coupled with the provision for the execution of a proper instrument in the statute of 1857 applied only to cases where there might be property which could properly be secured by such instrument, as recited in the preamble of the subsequent statute making provision for cases

(1) (1861) 31 L. J. P. & M. 33.
(2) [1898] P. 227.
(3) [1902] P. 145.
(4) (1882) 7 P. D. 122 at p. 124.
(5) [1903] P. 82.

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where there might be no such property namely the statute of 1866. We should no doubt feel ourselves bound to follow that decision had the provisions of the English statutes been incorporated in their entirety in the Indian Divorce Act, 1869. But the distinction between cases of property and cases of no property has, intentionally or unintentionally, not been retained owing to the omission of the preamble of the statute of 1866. So that the opening words 'In every such case' which would otherwise have referred to cases of no property cannot gramatically be so read in section 37 of the Indian Divorce Act, 1869.

We ought, therefore, in my opinion to approach the matter as *res integra* from the starting point of Lindley L. J. that the word "secure" would ordinarily include "pay" and consider whether that ordinary meaning should be modified by reason of the other words used in the section. The material words are that the Court may order the husband to "secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as . . . it thinks reasonable . . . and for that purpose may cause a proper instrument to be executed". The plain meaning of those words would appear to me to be that the gross sum of money should be paid absolutely to the wife and that the annual sum of money only should be limited for the period of her life. It was the use of the word "annual" which required the limitation "for the period of her life". The words would have been "such gross or annual sum of money for any term not exceeding her own life", if it had been intended to limit the use of the gross sum as well as the annual sums for the period of her life. It was moreover apparently foreseen that the gross sum might be paid down at once in which case there would be no necessity for the execution of any

document and hence among other reasons no doubt it was provided that the parties "may" and not "shall" be ordered to execute a proper document. The succeeding clause opening with the words "In every such case" must, as already indicated, be construed as adding power to order the payment of monthly or weekly sums in all cases and not merely in cases of no property owing to the special form of drafting of section 37 of the Indian Divorce Act, 1869.

These conclusions have been reached without reference to the punctuation, but if regard may be had to punctuation, then they are confirmed by the punctuation of the section as appearing in the publication of the Act at page 375 of the Gazette of India dated 6th March 1869. The generally accepted rule was that punctuation could not be regarded in interpreting Acts of Parliament and this rule was founded on reason as no punctuation appeared in the Acts on the Rolls of Parliament. But since 1849 punctuation has been inserted. Nevertheless the old rule would appear to survive in England (Maxwell's Interpretation of Statutes, 5th Ed., chap. I, sec. V, pp. 67 and 68). Lord Esher M. R. observed that there were no such things as stops and brackets in an Act of Parliament and Lord Fry refused where the sense was strong to "pause at those miserable brackets", though refraining from expressing an opinion whether brackets could be looked at in an Act of Parliament in the case of *Duke of Devonshire* v. *O'Connor*[1]. It should be no matter of surprise therefore that the old rule should be applied to the old Regulations promulgated in this country and it will be found that the Privy Council remarked upon a consideration of an old Bengal Regulation of 1819 that it was an error to rely on punctuation in construing the

[1] (1890) 24 Q. B. D. 468.

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Acts of the Legislature in the case of *The Maharani of Burdwan* v. *Krishna Kamini Dasi*[1]. But whatever may have been the practice under the old Regulations, the practice would appear since the constitution of regular Legislatures in India to have been to insert stops in Bills before the Legislatures and to retain them in the authentic copies of the Acts signed by the Governor-General and published in the Gazette of India and Maclean C. J. ventured to look at the stops in such an Act in the case of *The Secretary of State for India in Council* v. *Rajlucki Debi*[2] and so did Parsons Ag. C. J. in the case of *A (Wife)* v. *B (Husband)*[3], though the action of the latter was reprehended by the Full Bench of the Allahabad High Court in the case of *Edward Caston* v. *L. H. Caston*[4] relying on the remarks of the Privy Council. With due deference to that Bench there would, however, appear to me no sufficient ground, in view of the fact that it was an old Regulation under the consideration of the Privy Council and in view of the deliberate insertion of stops by the regular Legislatures, for refusing the assistance of the punctuation where the sense might otherwise be doubtful in Acts of the regularly constituted Legislatures of India.

Appeals dismissed.

G. B. R.

(1) (1887) 14 Cal. 365 at p. 372.
(2) (1897) 25 Cal. 239 at p. 242.
(3) (1898) 23 Bom. 460.
(4) (1899) 22 All. 270 at pp. 276, 277.