

Appellate Jurisdiction. (a)*Matrimonial Case No. 3 of 1873.*DEVASAGA'YAM PITCHAMATHOO.....*Petitioner.*NAIYAGAM.....*Respondent.*THULUCKANAM.....*Co-respondent.*

Suit for a divorce on the ground of adultery. The marriage took place in 1860, the adultery commenced almost simultaneously with the marriage. The relief was sought in 1872. *Held*, that as until 1869 there was no means of obtaining relief, the question was whether the delay since that time had been sufficiently accounted for. Petitioner's excuse was that he believed that after seven years he could contract a second marriage. *Held*, also that the delay ought not to be construed into an insensibility to the injury sustained, as the other circumstances of the case rebutted the existence of indifference approaching to connivance.

1874.
January 20.
Mat. C. No. 3
of 1873.

CASE referred under Section 17, Act IV of 1869 by R. Davidson, the District Judge of Trichinopoly, for confirmation of the decree, in Original Suit No. 38 of 1872, declaring the marriage of the Petitioner with the respondent to be dissolved subject to confirmation by this Court.

No Counsel were instructed.

This case coming on for hearing, the Court delivered the following judgment :—

HOLLOWAY, J.—The adultery commenced almost simultaneously with the marriage and has accompanied it throughout its course. The marriage took place in 1860 and in 1872 the relief is sought.

The facts are clear enough, and, if the remedy had existed in 1860, the delay itself ought probably to prevent the divorce being granted. Until 1869, however, there was no means of obtaining such relief, and the question is whether the delay since that time has been sufficiently accounted for. Petitioner's excuse is that he believed that after seven years he could contract a second marriage. After much fluctuation of opinion, I think that the delay in this case ought not to be construed into an insensibility to the injury sustained.

The other circumstances of the case rebut the existence of indifference approaching to connivance (*Bellew v. Bellew and Tollemache*, 1, Sw. and Tr., 553.) I would therefore affirm the decree.

INNES, J.—I agree and would affirm the decree.

KINDERSLEY, J.—I concur.

(a) Present : Holloway, Innes and Kindersley, JJ.