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 RUNJIT SINGH
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 MEHERBAN
 KOEL,
 AND
 OTHER CASES.

think this Court is still empowered to hear these appeals, and that, therefore, these appeals ought to be heard. In dealing with these appeals we have not given to s. 6 of Act I of 1868 so wide an application as the Chief Justice and one other of the learned Judges are disposed to do. It seems to us that difficulties may arise if we give that section too wide an operation. We prefer, therefore, to admit these appeals on another ground upon which they seem to us admissible, reserving, for the present, the consideration of the exact limits of application of s. 6 of Act I of 1868 to the new Code of Procedure.

AINSLIE, J.—I concur with my learned brothers, Markby and Mitter, JJ., in thinking that, in all cases in which an appeal lay under Act VIII of 1859, the right of appeal is saved by the 16th clause of the Letters Patent.

This disposes of all the appeals before us excepting No. 323. The order in this case was made under s. 208, Act VIII of 1859, and was not open to appeal. The matter dealt with by the order is now governed by s. 232 of the present Code. Reading s. 588, cl. (j), with cl. (p), an order made under s. 232, if in favor of the assignee of a decree, is appealable as an order; but s. 588 only applies to orders made under the Code, and s. 591 bars any appeal from an order not provided for by s. 588.

I, therefore, concur in rejecting appeal No. 323, and in admitting all the others before us.

APPELLATE CRIMINAL.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Markby, and Mr. Justice Birch.

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J. WILLIAMS (PETITIONER) v. WILLIAMS (RESPONDENT) AND CONRAN (CO-RESPONDENT).*

Divorce Act (Act IV of 1869), s. 14—Delay—Connivance—Rebuttal of Presumption.

Whilst on the one hand there is no absolute limitation in the case of a petition for dissolution of marriage, yet the first thing which the Court looks to when the charge of adultery preferred, is, whether there has been such delay

* Reference in Divorce Suit, No 1 of 1877, from an order of J. F. Browne, Esq., Offg. Judge of Zilla Patna, dated the 22nd June 1877.

as to lead to the conclusion that the petitioner had either connived at the adultery, or was wholly indifferent to it; but any presumption arising from apparent delay may always be rebutted by an explanation of the circumstances.

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THE facts of this case, so far as they are material, appear from the judgment of the Court.

GARTH, C. J.—In this case the petitioner, John Alexander Vincent Williams, sues for a divorce from his wife, Grace Evelina Williams, on the ground of her adultery with the co-respondent, Robert Conran; and he also claims damages against the co-respondent. The District Judge has granted a decree *nisi* for the dissolution of the marriage with Rs. 3,000 damages against the co-respondent, and this decree is now before us for our confirmation.

It appears that the parties were married in the year 1858 at Benares. They had several children, but only one survived. In the year 1863 they were living together at Allahabad in the police barracks, where the co-respondent, who is a single man, also resided, the petitioner and the co-respondent being both at that time Police officers. The co-respondent was on intimate terms with the petitioner and his wife; but there is no reason to suppose that the petitioner had at that time discovered any thing which could give him cause for suspicion.

In the year 1864 or 1865 the petitioner and his wife went to reside at Benares, and in the year 1866 Mrs. Williams became so ill that her life was despaired of. She then expressed a wish to see the co-respondent. She said that she thought she was going to die, and that she wished to make over her only child to him. The petitioner, accordingly, sent for the co-respondent, but it does not appear that the child was actually made over. The co-respondent stayed for a few days, and then went to Allahabad. A week afterwards the co-respondent returned to the house, having been sent for again by the respondent's sister at the respondent's request.

About a month afterwards the petitioner was transferred from Benares to Cawnpore. The respondent was then recovering, and the petitioner states that it was then arranged that he

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should furnish a house at Cawnpore, and remove the respondent thither when she was stronger. The petitioner says, that whilst he was getting the house ready, he got a letter from his wife, saying that he was to consider her as dead, and that she would not join him. This letter is not produced, nor is the date of it given. The only attempt which the petitioner then made to find his wife was by writing letters, but he does not say to whom he wrote, nor does he give any particulars as to the information he received except with reference to a letter which he says he wrote to Mr. Conran fifteen or twenty days after the respondent had expressed her intention not to join him. His account of this correspondence is as follows :

“ I wrote to Mr. Conran about fifteen or twenty days after my wife told me by letter that she would not join me. I wrote to ask him whether he had ever seen her in the course of his duties at the different stations on the line. He evaded a direct answer, and sent me an impertinent answer to the effect that my wife's grandmother, Mrs. McKinnon, had told him that I did not approve of his proceedings with my sister-in-law, and under such circumstances I should not ask him for information. I answered the letter, and he then wrote to me to say that he did not wish to hear from me again as I did not entertain a high opinion of his morality.” None of these letters are produced. He further says, that he heard from his wife in 1868, when she complained that her own relations had charged her with unchastity. He does not produce this letter, nor does he say where it was posted. But he says that he wrote to her relations stating that these imputations were unfounded. He does not say so explicitly, but he evidently desires it to be understood that this is all that he heard of his wife between 1866, when she left him, and February 1877, when by a mere accident he was informed by a person at Benares that his wife was then at Burdwan with Mr. Conran. He says, that a few days after receiving this information, when on his way through Dinapore, he saw the co-respondent on the railway platform. He says, that he did not speak to him, because he had written to him long before and had received what he calls the rude answer above-mentioned. He says, that he then employed a Mr. Smith

residing at Dinapore to make enquiries, and Mr. Smith ascertained that the respondent was living with the co-respondent at Dinapore. Thereupon the petitioner came down himself to Dinapore, and having disguised himself as a native, went to the house and had an interview with his wife. Subsequently, Mr. Smith sent for Mr. Conran to the dak-bungalow, and he then admitted the adultery. Immediately afterwards, these proceedings were instituted.

The petitioner's account of himself since 1868 is not very definite. He says that he left the police in 1872, and was then employed as manager of an estate in Oudh for about thirteen months at a salary of Rs. 200 a month. He then got the command of the troops of the Rajah of Benares at the same salary. This post he held about nine months, and since that time he has been acting as agent for a Mrs. Kawty at Assensole and elsewhere, and also carrying on a general business, apparently on his own account, at Dinapore. He does not say where he has resided. He says that he does not know where his child is, but he has heard that he is at a school in Darjeeling.

We have no exact information where the respondent has resided since she left her husband, but it is proved that in May 1875 a child was baptized at Dinapore as being the daughter of Richard Harper and Grace Evelina Conran, therein described as living at Khagoul. Khagoul is a suburb of Dinapore, and is in fact the railway station which usually passes under the name of Dinapore. The co-respondent has apparently been all along, and still is, in the police. The petitioner swears that he had no suspicion even against his wife until he received the information in February that she was at Burdwan with the co-respondent.

Neither respondent nor co-respondent have appeared in this suit.

The Judge considers the petitioner's story, though a remarkable one, as implicitly true in every respect, and sufficient to show there was no connivance, collusion, or unusual delay.

We cannot accept this view of the matter.

It has been a long established principle, that whilst on the one hand there is no absolute limitation in the case for a peti-

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tion of dissolution, yet that the first thing which the Court looks to when the charge of adultery is preferred, is, whether there has been such delay as to lead to the conclusion that the petitioner had either connived at the adultery or was wholly indifferent to it; but any presumption arising from apparent delay may always be removed by an explanation of the circumstances. That principle is recognized in s. 14 of the Act.

Now the way in which the petitioner meets the question of delay in this case is as follows. He wishes it to be believed that he never suspected the chastity of his wife at all from the time she left him in 1866 until the accidental discovery in February of last year. He also would have it inferred, that he was wholly ignorant of where his wife was residing during those eleven years, and that he commenced these proceedings as soon as he discovered the truth. Upon the evidence given in this case, this appears to us to be wholly incredible. After his wife's strange conduct in sending twice for Mr. Conran when she supposed herself to be dying, and expressing a desire to hand over her child to him, it seems incredible that when a month afterwards she declared her intention to leave her husband, he should not have even suspected Mr. Conran; and this is all the more strange when we consider the petitioner's account of the correspondence which took place between himself and Mr. Conran, which alone was quite sufficient to have aroused the suspicion of any ordinary man. At least, it was to be expected that, on receiving his wife's letter, the petitioner would have at once come down from Cawnpore to Benares, and have had an interview with his wife, if, as he says, he was really then desirous that she should return to him, and considering her condition, and the facilities which he as a police officer would have for making enquiries, there cannot be the least doubt that he could then have easily found her, if he had been so minded; still less is it credible that during all these years the petitioner has never been able to find any clue to where his wife was residing, or that he has never had any suspicion that she was residing with Mr. Conran. She had never gone to any great distance, and has apparently been residing for a considerable time with Mr. Conran near to the railway station at Dinapore, where

these parties have been living openly as man and wife. The petitioner does not deny that he has been frequently at Dinapore, and as he carries on a business there, the reasonable inference is, that he has been so. It is impossible that it can have escaped his knowledge that Mr. Couran was residing at Dinapore as a married man, and even if it did not come directly to his ears, that the person living at Dinapore as Mrs. Conran was the respondent, which is in itself very improbable; it is at any rate impossible to believe that he did not know where Mr. Conran was to be found, and yet knowing this, he did not make any attempt to obtain information from him as to the whereabouts either of his wife or his child.

Upon the whole, it seems to us impossible to escape the conclusion that the petitioner from the first knew perfectly well that his wife was living with Mr. Conran, and that knowing this, he forebore taking any steps to procure a divorce. This of itself would not disentitle the petitioner to a divorce if he were capable of explaining the delay; but when this delay not only remains unexplained, but the petitioner has attempted to get rid of the difficulty by deceiving the Court, it is impossible to avoid the conclusion that there are in this case, if the truth were known, some circumstances of connivance or insincerity which would disentitle the petitioner to the relief which he asks.

Had the petitioner stated the true facts of the case, it is quite possible that we should not have considered the delay to be a bar to the granting of the decree; but the true facts having been concealed from us, we are not in a position to give the petitioner the relief which he asks. We, therefore, refuse to confirm the decree for the dissolution made by the District Judge, and we direct that the petition be dismissed.

Petition dismissed.

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