

**MATRIMONIAL JURISDICTION.***Before Mr. Justice Fletcher.*

FLORENCE AMELIA THOMPSON

1911

v.

Nov. 29.

GEORGE S. THOMPSON;

AND

GEORGE S. THOMPSON

v.

FLORENCE AMELIA THOMPSON AND ANOTHER\*

*Divorce—Condonation of Incestuous Adultery—Cruelty, degree of, necessary to revive condoned adultery—Subsequent conduct, without physical violence, causing injury to health.*

Where a husband had committed incestuous adultery which the wife had condoned, and subsequently the husband, without actually using physical violence, was guilty of such treatment and conduct as caused the wife's health to suffer :—

*Held*, that such treatment amounted to cruelty, and the incestuous adultery had been revived.

A lesser degree of cruelty is necessary to revive a condoned offence than to found an original charge.

*Durant v. Durant* (1), *Bramwell v. Bramwell* (2), *Cooke v. Cooke* (3), *Ridgway v. Ridgway* (4) approved and followed.

THESE were cross-petitions by the wife and husband respectively for dissolution of marriage. The parties were married on the 31st October 1901 at the Congregational Chapel at Hastings, in Calcutta, and there was one child of the marriage, a girl, born on the 23rd September 1905.

\* Original Civil Suit No. 4 of 1911 and No. 7 of 1911 (Matrimonial Jurisdiction).

(1) (1825) 1 Hag. Eccl. Rep. 733. (3) (1863) 3 Sw. & Tr. 126.

(2) (1831) 3 Hag. Eccl. Rep. 618. (4) (1881) 29 W. R. (Eng.) 612.

1911  
 THOMPSON  
 v.  
 THOMPSON.

The wife, Florence Amelia Thompson, in her petition prayed for a dissolution of her marriage on the following grounds :—(i) That her husband had, in or about November 1908, committed incestuous adultery with her married sister, who was then residing with them, which offence she had condoned ; (ii) that her husband had subsequently been guilty of cruelty towards her, which cruelty, she submitted, revived the offence of incestuous adultery.

The husband, George Sprott Thompson, denied both the charges, and in his cross-petition prayed for a dissolution of his marriage on the ground that his wife herself had committed adultery with one Hugh Doherty.

It was proved that the husband had committed incestuous adultery with his wife's married sister, but it was not proved that the wife had committed adultery with Hugh Doherty. With respect to the charge of cruelty, the evidence was, in substance, as follows :—

FLORENCE AMELIA THOMPSON. After the incident with my married sister, from the time I forgave my husband, his disposition towards me was very indifferent and silent. In August 1909 my husband went to Vasco de Gama in Southern India. Up to that time marital relations continued between us. I subsequently joined him at Vasco de Gama. We had relations once there, and then they ceased. He gave me no reason for it. We occupied the same room. He spoke to me very little and was very little attentive. It preyed upon me so much that I had very little appetite. I could not sleep thinking of what had happened in the day. If I asked him a question, I would have to follow him from room to room to coax an answer. In January 1910 we returned to Howrah, and my mother stayed with us. I confided to her my husband's neglect of marital relations. My mother went to Darjeeling in March 1910, and I went about the 1st May and stayed till October with my parents. I wrote to my husband almost every day. He wrote about once a month. I returned to Howrah in October. Marital relations were never resumed. Eventually I noticed something about my husband's habits. He used to close himself in his bath-room for about 20 minutes. One day, early in February or March 1911, I saw him in the bath-room in an act of self-abuse. It

gave me such a shock that I have never done thinking about it. It affected my health very much. It affected my mind, and my mind affected my body. I could never eat. I suffered nightly from cramps due to nothing else but emptiness. I could sleep very little. I consulted Colonel Pilgrim and Colonel Maynard.

*Cross-examined.*—I have no affection for my husband now. It ceased more than five years ago. It was gradual. I had a certain amount of affection, I suppose, up to the last.

MARY ANNE KEBLE. I am the petitioner's mother. When my daughter married, her disposition was very bright. Her husband's disposition is very sulky. In the house he never spoke to or took notice of her. He was silent and indifferent. In 1908 my daughter became a wreck. In 1909 she became very ill and complained about her marital relations with her husband.

*Cross-examined.*—No matter what my daughter ate, her mind was upset, and she could not digest. In the house her husband only spoke to her on matters connected with the household. In 1910, when my daughter stayed with us in Darjeeling, I saw her write to her husband every day, and was astonished as she got no letters. I could see her disappointment when she received no letters by the mail. In February 1911, she told me that she had found her husband in an act that was . . . (stopped). She was ready to drop.

JOHN ALFRED KEBLE. I am the petitioner's father. When my daughter married, she was a very fine girl. Her husband always treated her with indifference and silent contempt. In 1910, my daughter became a wreck. She weighed 7st. 7lbs. Her normal weight was about 9st. She could not eat or sleep and was always complaining.

*Cross-examined.*—I wrote in one of my letters that my daughter's disposition is sharp and hasty. It is exaggerated to give point to the letter. Her disposition now is crushed.

HERBERT WILSON PILGRIM. I examined Mrs. Thompson on the 5th March 1911. I found her suffering from anæmia and indigestion. Her blood was impoverished, and with it were certain abnormal sounds in her heart. I found no organic disease. Apathy and habitual indifference on the part of her husband, severance of marital relations against her will, and callousness would account for her condition. I could find nothing else.

F. P. MAYNARD. I examined Mrs. Thompson on the 9th March 1911. I found her in a state of impaired health, suffering from dyspepsia of an atonic kind. I found no organic disease. Mental worry and trouble could produce such a state of body. Apathy and indifference on the part of her husband, and abandonment of marital relations, while occupying the

1911  
 THOMPSON  
 v.  
 THOMPSON.

1911  
 THOMPSON  
 v.  
 THOMPSON.

same bed, would produce it. I could not find any other cause. She weighed 7st. 7lbs. It is very low. If the conditions I found and the cause continued, it would cause further deterioration and would ultimately cause some illness.

*Cross-examined.*—If she had no affection for her husband, and had misconducted herself with another man during that period, it would tend to neutralise the effect on her health.

*Mr. Avetoom* (with him *Mr. Charles Bagram*), for George Thompson. The evidence in this case, even if true, does not amount to cruelty in law. The definition of legal cruelty is that which may endanger the life or health of the party: *Waring v. Waring* (1). In *Cousens v. Cousens* (2), where the facts were very similar to the present case, it was held that to constitute cruelty there must be threats or acts of personal violence. In *Russell v. Russell* (3), which is now the leading authority, it was decided by the majority of the House of Lords that in order to establish cruelty there must be evidence of bodily hurt, or danger to life, limb or health, or a reasonable apprehension of one or other of these. In the present case there is no such evidence, and the cruelty has therefore not been established.

*Mr. P. L. Buckland* (with him *Mr. J. W. Langford James*), for Mrs. Thompson. My first submission is that a lesser degree of cruelty is necessary to revive a condoned offence than to found an original charge: *Durant v. Durant* (4), *Bramwell v. Bramwell* (5), and *Cooke v. Cooke* (6). This principle, which was laid down by the old Ecclesiastical Courts, has been followed in *Dent v. Dent* (7), which decided that the word “condonation” has the same meaning in the Divorce

(1) (1813) 2 Phillim. 132.

(2) (1865) 34 L. J., P. & M., 139.

(3) [1897] A. C. 395.

(4) (1825) 1 Hag. Eccl. Rep. 733,

765.

(5) (1831) 3 Hag. Eccl. Rep. 618,  
635.

(6) (1863) 3 Sw. & Tr. 126, 137.

(7) (1865) 34 L. J., P. & M., 118.

Acts as it had in the Ecclesiastical Courts, and the doctrine of revival is equally applicable to it.

Condonation is conditional forgiveness, and any subsequent misconduct on the part of the husband, even an attempt to take liberties with a female servant in the house and solicit her chastity, will revive condoned adultery: *Ridgway v. Ridgway* (1).

Physical violence is not necessary to establish cruelty. It is sufficient to show that the wife's health suffered from the treatment of the husband or from his conduct: *Walmsley v. Walmsley* (2), *Thompson v. Thompson* (3), *Jeapes v. Jeapes* (4), and *Kelcy v. Kelly* (5), which was approved of in *Bethune v. Bethune* (6); and the cumulative effect of a husband's conduct without personal violence, where it prejudiced the wife's health, has been held to constitute cruelty: *Cochrane v. Cochrane* (7). In *Russell v. Russell* (8), the remarks of the learned Judges show that it is not absolutely necessary that there should be physical or personal violence to constitute cruelty. In the present case it has been proved that the wife's health suffered from the treatment of the husband, and she is therefore, on the authorities cited, entitled to a decree.

*Mr. E. P. Ghose* (with him *Mr. H. G. Pearson*), for the co-respondent Hugh Doherty, submitted that there was no evidence that his client had committed the adultery charged.

*Mr. Aretoom*, in reply, pointed out that the authority of *Durant v. Durant* (9) had been questioned by Lord Blackburn in *Collins v. Collins* (10).

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| (1) (1881) 29 W. R. (Eng.) 612. | (6) (1890) 63 L. T. 259.            |
| (2) (1893) 69 L. T. 152.        | (7) (1910) 27 T. L. R. 107.         |
| (3) (1901) 17 T. L. R. 572.     | (8) [1897] A. C. 395.               |
| (4) (1903) 89 L. T. 74.         | (9) (1825) 1 Hag. Eccl. Rep. 733.   |
| (5) (1870) L. R. 2 P. & D. 59.  | (10) (1884) L. R. 9 A. C. 205, 241. |

1911  
 THOMPSON  
 v.  
 THOMPSON.

1911  
THOMPSON  
v.  
THOMPSON.

FLETCHER J. These are two cross-petitions for divorce, which by the consent of the parties were heard together.

The first petition presented by the wife, Florence Amelia Thompson, against her husband, George Sprott Thompson, claims a divorce on the ground of incestuous adultery by the husband. In answer to that petition, the husband denies the incestuous adultery, and charges his wife with adultery (the same acts which form the subject of the second petition), and the answer to the husband's petition is a denial by the wife, and the acts of which she complains in her own petition. Therefore the facts in the two petitions are the same, the position only being reversed; the husband being in the one case respondent and in the other case petitioner. The co-respondent to the husband's petition is Hugh Doherty, who is in business in Calcutta.

It appears from the petition and the evidence that the husband and wife were married on the 31st of October 1901 at the Congregational Chapel at Hastings in this town.

The parties profess the Christian religion.

After the marriage the parties first of all lived in a boarding house in 13, Camac Street, and then they removed to 13, Telkul Ghât Road, Howrah, as being nearer the husband's place of work, the husband being employed in an engineering firm at Howrah; and after that they left that residence where they were for two and a half years, and lived in 28, Grand Trunk Road together, until the wife finally left her husband on the 28th of March 1911.

There is one child of the marriage, Sylvia Irene, born on the 23rd September 1905.

The wife charges in paragraph 4 of the petition "that on various occasions, in or about November or

December 1908, the respondent at 13, Telkul Ghât Road, committed incestuous adultery with Ada Goodwin, the sister of the petitioner, who was then residing with your petitioner."

[His Lordship then dealt with the evidence relating to the charge of incestuous adultery against the husband, and continued:]

I have no doubt that the husband committed incestuous adultery with his sister-in-law.

The next question is, has that incestuous adultery been revived by the subsequent conduct of the husband? First of all, it is necessary to decide in what manner condoned adultery is revived, and I refer to the cases cited in the Court of Arches. First there is the case of *Durant v. Durant* (1). There the Dean of the Arches expressed his opinion thus: "Under these authorities (which he cited) I am inclined to hold: first, that cruelty will revive adultery, and, secondly, that less is necessary to revive than to found an original sentence." Then there is the case of *Bramwell v. Bramwell* (2). That was decided by a very distinguished Judge, Dr. Lushington. He followed the opinion that has been expressed by Sir John Nichols, Dean of the Arches, in *Dowden v. Dowden*. That was also followed in two other cases, the first one of which is *Cooke v. Cooke* (3). After the constitution of the Royal Court for matrimonial cases, when the Ecclesiastical Jurisdiction had been taken away, a Judge in that Court (I think it was Sir John Wilde) also adopted the opinion which has been expressed in those other cases. It has been followed also by the late President of the Probate and Divorce Division, Lord Hannen, in the case of *Ridgway v. Ridgway* (4). So one must

1911

THOMPSON  
v.  
THOMPSON.

FLETCHER J.

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(4) (1881) 29 W. R. (Eng.) 612.

1911  
 THOMPSON  
 v.  
 THOMPSON.  
 FLETCHER J.

apply one's mind to this case having regard to the authorities that have been cited.

[His Lordship then dealt with the evidence relating to the charge of adultery against the wife, and continued as follows:]

The husband has failed to establish that the wife and co-respondent committed adultery.

The question is, has the incestuous adultery, which the wife condoned certainly on the 1st January 1909, been restored by the subsequent conduct of the husband?

I am satisfied that the husband in this case, as Mrs. Keble said, only spoke to his wife on household matters. That obviously was not the terms on which the wife forgave the husband. The wife forgave the husband on the footing that if she came back to him, he should conduct himself in a manner in which a husband should conduct himself, not that the wife should be spoken to only on household matters, and that she should be treated with what has been called in the case "silent indifference."

The evidence in this case shows that the wife's health has suffered.

I do not agree with the statement as to why marital intercourse ceased, namely, that the *ayah* told the husband something. I think it is much more probable that the husband had during his absence from his wife acquired vicious habits. That a man should during this long period, even admitting the absence of the wife during the hot weather in Darjeeling, sleep alongside a young wife without resuming marital intercourse is very unusual, and that the husband satisfied his passions in other ways is very probable. Apart from the fact that the husband gave way to disgusting habits, it is a fact that the wife's



health suffered in consequence of the husband's treatment.

In my opinion the wife has established in this case that her health suffered by the conduct of the husband after she condoned his incestuous adultery, and the result of that is that the incestuous adultery has been revived, and therefore the wife is entitled to a decree.

On the wife's petition, I grant a decree *nisi* with the usual order for costs, including all reserved costs, and the husband's petition is dismissed with costs against the respondent and co-respondent. The wife to have custody of the child.

C. E. B.

1911  
 THOMPSON  
 v.  
 THOMPSON.  
 FLETCHER J.

## CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.*

GORA MIAN

v.

ABDUL MAJID.\*

1911.  
 Dec. 6.

*Magistrate, jurisdiction of—Criminal Procedure Code (Act V of 1898), ss. 100, 552—Jurisdiction of first class Magistrate, upon an application under s. 552 of the Code, to issue a search warrant under s. 100 on a fresh complaint of facts alleging wrongful confinement—Warrant under s. 100 drawn up on a printed form used under s. 98, with the necessary alterations—Presumption that such alterations were made—Destruction of original warrant by the accused—Resistance to execution of such warrant and assault on the police—Penal Code (Act XLV of 1860), ss. 147 and 332.*

Where, on an application made under s. 552 of the Criminal Procedure Code, to a Magistrate of the first class, he examined the applicant on oath,

\*Criminal Revision, No. 1082 of 1911, against the order of J. A. Dawson, Additional Sessions Judge, Chittagong, dated July 27, 1911.