Charles Walter George Cox Vs Emily Florence Cox

None

Court: Calcutta High Court

Date of Decision: June 3, 1910

Acts Referred:
Divorce Act, 1869 â€" Section 11

Citation: 47 Ind. Cas. 510

Hon'ble Judges: Fletcher, J

Bench: Single Bench

Judgement

Fletcher, J.
This is a petition presented to the Court by C.W.G. Cox for the dissolution of his marriage with the respondent B.F. Cox on

the ground of adultery to this petition there is no co-respondent. The adultery alleged in the petition is said to be proved by the admission contained

in a letter, dated the 31st January, written by the respondent and addressed to the petitioner, in which it is said that she admitted that in a weak

moment, she had committed adultery with a man who sympathises with her but whose name she will not give up."" The other case of adultery

alleged is in the month of December, when it is said the respondent on three occasions was visited in the petitioner''s house by a man whose name

the petitioner has been unable to discover. Now the petition was presented to the Court and the Master directed citations to issue to the

respondent. In my opinion, he was wholly wrong in doing that. However that may be, the jurisdiction is a special jurisdiction vested in the Court by

the Indian Divorce Act to enable it to grant divorces in respect of persons professing the Christian religion and resident in India. The Act is chiefly

modelled on the Matrimonial Causes Act of 1857. Section 7 is the 6rst material section, being placed under the heading ""Jurisdiction"", and it says:-

- ""Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give

relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the

Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief,"" The other section that is material in I his case, and

which is substantially taken from Section 28 of the Matrimonial Causes Act of 1857, is Section 11, which enacts:-- ""Upon any such petition

presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition,"" unless he is excused from so doing on

one of the, following grounds, to be allowed by the Court:--(i) that the respondent is leading the life of a prostitute, and that the petitioner knows of

no person with whom the adultery has been committed; (ii) that the name of the alleged adulterer is unknown to the petitioner, although he has

made due efforts to discover it; (iii) that the alleged adulterer is dead."" Now the rules in England which govern this application are Rules 4, 5 and 6

of the Divorce Court Rules. First Rule 4 provides: ""Upon a husband filing a petition for dissolution of marriage on the ground of adultery, the

alleged adulterers shall be made co respondents in the cause, unless the Judge Ordinary shall otherwise direct."" Rule 5 says: Application for such

direction is to be made to the Judge Ordinary on motion founded on affidavit."" That it must be by affidavit shows obviously that the direction must

be by application to the Judge on motion founded on affidavit before the hearing of the petition. Then Rule 6 applies to the case where the address

of the adulterer is unknown to the petitioner. It is obvious in this case that the direction ought to have been applied for on motion to the Judge

supported by an affidavit and the affidavit ought to be sufficient to satisfy the Court that the petitioner,"" after having made reasonable endeavours,

has been unable to find the name of the co-respondent. It seems to me to be a matter of grave public importance that a person should not be

allowed to proceed in a Court for the dissolution of his marriage without having observed all the safeguards imposed by the law to prevent the

chance of connivance or collusion. In my opinion, the Master ought not to have issued the citation when the petition contained no co-respondent,

unless the Judge had granted leave to the petitioner to proceed without a co-respondent. In my opinion, the Court has no jurisdiction to entertain

the petition and that, therefore, the petition must be dismissed with costs to the respondent.