
(1878) 02 CAL CK 0005

Calcutta High Court

Case No: None

J. Williams

APPELLANT

Vs

Williams and Conran

RESPONDENT

Date of Decision: Feb. 16, 1878

Citation: (1878) ILR (Cal) 689

Hon'ble Judges: Richard Garth, C.J; Markby, J; Birch, J

Bench: Full Bench

Judgement

Richard 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.

2. 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 anything which could give him cause for suspicion.

3. 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.

4. 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 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:

5. 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 Dimipore, 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 dakbungalow, and he then admitted the adultery, Immediately afterwards, these proceedings were instituted.

6. 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 Rg. 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 his wife resided. He says that he does not know where his child is, but he has heard that he is at a school in Darjeeling.

7. 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 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.

8. Neither respondent nor co-respondent has appeared in this suit.

9. 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.

10. We cannot accept this view of the matter.

11. It has been a long established principle, that whilst on the one hand there is no absolute limitation in the case for a petition 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 Section 14 of the Act.¹

12. 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 Dmapore, where these parties have been living openly as man and wife. The petitioner does not deny that he has been frequently at Pinapore, 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. Conran was residing at Pinapore 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.

13. 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.

14. 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.

[Section 14: In case the Court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to, or connivant at, the going through for of the said form of marriage, or the adultery of the other party, solving marriage, or has condoned the adultery complained of,

Power to Court to
Pronounce decree for
Solving marriage

or that the petition is presented or prosecuted, in collusion with either respondents, the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared:

Provided that the Court shall not be bound to pronounce such decree if it is shown that the petitioner has, during the marriage, been guilty of adultery, or if the petitioner has, in the opinion of the Court, been guilty of unreasonable conduct in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the, other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct of or towards the other party as has contributed to the adultery, * * *]