
(1869) 04 CAL CK 0027

Calcutta High Court

Case No: None

Kelly

APPELLANT

Vs

Kelly and Saunders

RESPONDENT

Date of Decision: April 8, 1869

Judgement

Phear, J.

Who after pronouncing, upon the evidence adduced, a decree nisi for divorce, made the following observations:--

In this case I reserved the question of damages for further consideration. There is, strictly speaking, no standard by which damages in suits of this kind can be accurately measured, no mode by which the amount can be arrived at by any sort of calculation. In English cases of suits for crim-con, it seems to be laid down, that the sum proper to be awarded is a matter of opinion for the Jury, dependent on the circumstances under which the wrong is done to the husband. The result of my consideration is that, substituting the Court as we must here for the Jury, the Court in forming the estimate ought to consider on the one side the deprivation suffered by the husband of his wife's society and affection, the loss to him of his wife's services and assistance in domestic affairs, and the social injury which he is likely to incur from the insult and dishonor which the co-respondent has inflicted upon him. On the other side, the Court ought to weigh well the behaviour of the husband towards his wife and the adulterer, with a view to judging whether or not he has contributed to the mischief of which he complains, and also whether he is a person who is likely to fall in the estimation of society by reason of that which has happened. The ability of the adulterer to pay damages is not generally to be taken into account. In the present case, as I have already thrown out, I do not think that the husband has lost much in the society and affection of his wife through the misconduct of the co-respondent. Her affections were obviously estranged from him long before she became acquainted with Mr. Saunders. And the terms on which Captain and Mrs. Kelly were then living were such that the husband could hardly have received much comfort from the wife's society; but I think he has sustained material loss by reason of being

deprived of her assistance in the house. His establishment appears to be just upon such a scale as probably gives to the personal services of a wife a maximum of value and importance. And it is clear, I think, that the result of this suit will be to oblige him to put some person in the position of matron or house-wife in his small family. And I further think that the dishonor, which has been done him, is such as requires to be vindicated (as in a suit for libel or slander) by a verdict for substantial damages. It does not appear to me that his behaviour towards his wife has been of a kind to contribute to the consequences which have happened, and therefore I feel, after the best consideration which I have been able to give to the case, that I ought to direct the co-respondent to pay a substantial sum by way of damages. I don't wish to disguise the difficulty which I am under in the absence of any precedent in this country to guide me in arriving at an estimate of the sum which would be reasonable in this case. As I have already said, the petitioner is not entitled to, or rather there is no ground for giving him compensation for, the loss of his wife's society; and that I think in matters of this kind ought to be treated as the principal element to be taken into account. And I also desire to avoid assessing the damages at a sum so great as might lead to their being thought vindictive. On the whole, it appears to me reasonable to order the co-respondent to pay the sum of rupees 1,000, as damages. He must also be decreed to pay the costs of the suit, which will be not only the petitioner's own costs, but the costs which the petitioner has incurred on behalf of the respondent. I was asked to settle the damages simultaneously with assessing them. Certainly the practice in England, as far as I can gather from the reported cases, has been to do this not earlier than the final decree. In one case it was made later, but the Judge Ordinary then observed that it ought to have been done at the time the decree was made absolute.

Application may be made for settlement and for access to the children when the decree is made absolute.