

S. v. S. AND G.

HIGH COURT CIVIL CAUSE NO. 1 OF 1940.

Divorce—adultery proved by production of decree nisi against co-respondent and letter of admission from respondent.

In this case the only evidence produced to the Court was the decree *nisi* in which the High Court in England found that the present co-respondent had committed adultery with the present respondent and also a letter from the present respondent admitting that she was living with the co-respondent. On this evidence the High Court granted a decree *nisi* although in the decree *nisi* from the High Court in England there was no definite finding that the present respondent, who was not a party to those proceedings had committed adultery with the present co-respondent.

Robinson, J.: In this case the petitioner is asking for the dissolution of his marriage with his wife, the respondent, on the grounds of her adultery with the co-respondent, G.

The only unusual point in this case is that it is sought to prove the adultery by producing in evidence the petition of Mrs. G., the wife of the present co-respondent in which the adultery of her husband (present co-respondent) is alleged with Mrs. S., the present respondent. That petition, which was undefended, was heard in the divorce court in London and a decree *nisi* was pronounced. A certified copy of the decree *nisi* is also produced which sets out that the Judge pronounced that the petitioner had sufficiently proved the contents of the said petition and decreed that the marriage between the petitioner and G. be dissolved by reason that the respondent has been guilty of adultery.

The difficulty in this case is that, although it has been found that G. committed adultery with Mrs. S., there is no direct finding that Mrs. S. committed adultery with G.

In the case of *Ruck v. Ruck* (1896) p. 152 the facts were somewhat similar. In a petition by a wife for dissolution of her marriage on the grounds of adultery coupled with desertion, the decree in a previous suit in which her husband was co-respondent, was produced. This decree stated that the jury found the respondent had been guilty of adultery with the co-respondent and that he had been condemned in costs, but contained no finding by the jury that the co-respondent had been guilty of adultery with the respondent. It was held that the decree was not by itself sufficient evidence of adultery against the husband.

In *Little v. Little* (1927) p. 224 the position was broadened. In that case the adultery of a husband respondent in his wife's suit for dissolution of marriage was sufficiently established by the production of the decree in a former suit, upon which it appeared that damages had been assessed

against him as co-respondent in respect of the same adultery and that he had been ordered to pay such damages without the decree in question containing any express and separate finding that he committed the adultery in question. In this case I have before me the position in which the only allegation of adultery is that G. committed adultery with Mrs. S. There is also the decree *nisi* which sets out that the petitioner had sufficiently proved the contents of the said petition and there is a letter, Ex. 1, written by the respondent, Mrs. S., in which she says she has been living with G. for well over the past year and she is continuing to do so.

I am driven to the irresistible conclusion that she is guilty of adultery with G. and I pronounce a decree *nisi* with costs against the co-respondent as prayed.