

(1914) 10 BOM CK 0009
In the Bombay High Court

Miss Blanche Somerset Taylor

APPELLANT

Vs

Charles George Bleach
 Charles George Bleach Vs Miss
Blanche Somerset Taylor

RESPONDENT

Date of Decision : 07-10-1914

Acts Referred:

Divorce Act, 1869 — Section 37

Citation : (1915) ILR (Bom) 182

Hon'ble Judges : Hayward, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—Those are cross appeals from an order of the District Judge of Poona awarding a lump sum of Rs. 5,000 to be paid to the petitioner for permanent maintenance u/s 37 of the Indian Divorce Act IV of 1809. The petitioner appeals on the ground that the sum awarded is not sufficient and that, the Court should have secured to her a sum the interest of which would secure her at least Rs. 150 per mensem. The respondent appeals on the ground that the Court has no power to award payment of a lump sum and that if it had the power the sum awarded is excessive.

2. First, as to the power of the Court to award payment of a lump sum.

3. The material clause of Section 37 of the Divorce Act is the third. It gives the Court power to "order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard" etc.

4. As the sentence is punctuated in the state publications of the Act it seems to me to be clear that the words "for any term not exceeding her own life" qualify "annual sum" and do not qualify "gross sum". If so assuming a gross sum to be available, how can it be better secured to the wife than by paying it over to her?

5. The argument against this view was based upon the Judgments in *Medley v. Medley* (1882) 7 P.D. 122 and *Twentyman v. Twentyman* [1903] P. 82.

6. I can see no reason why the punctuation of the editions of the Act issued by the Government of India should be disregarded for so far as I am aware there is not in India any unpunctuated original. Statute Book. The position is not the same as in England where in *Stephenson v. Taylor* (1861) 1 B. & S. 101, Cockburn C.J. said: "On the parliament roll there is no punctuation, and we therefore are not bound by that in the printed copies." In *Barrow v. Wadkin* (1857) 24 Beav. 327. Sir John Romilly M.R. said: "I supposed I should not learn much on the subject from the inspection of the Roll of Parliament, but, as it was in my custody, I have examined it.... It seems that in the Rolls of Parliament the words are never punctuated, and accordingly very little is to be learnt from this document."

7. The punctuation, of the Queen's Printers' edition of 21 V. C. 85, Section 32, published in 1857, is the same as the Indian punctuation and it appears that in three reported cases covering a period from 1870 to 1902 viz., *Morris v. Morris* (1861) 31 L.J.P. & M. 33. *Stanley v. Stanley* [1898] P. 82, *Kirk v. Kirk* [1902] P. 145 the Divorce Court in England has taken the words now under consideration as authorizing it to award payment of a lump sum to the petitioner's wife.

8. In *Medley v. Medley* (1882) 7 P.D. 122 the appeal Court in England expressed a contrary opinion being influenced partly by the recital, in the amending Act 29 and 30 Vict. c. 32 and in *Twentyman v. Twentyman* [1903] P. 82 Jeune J. held that the Court had no power to order a lump sum to be paid over to the petitioner by way of permanent maintenance. That conclusion was possible though by no means inevitable on an unpunctuated Act, but I do not think it would be a reasonable conclusion on the clause of the Divorce Act of 1869 punctuated as it is in the Government of India edition.

9. In India we have no Amending Act with an explanatory recital such as was before the Court in *Medley v. Medley* (1882) 7 P.D. 122. Section 37 incorporates without comment the operative parts of the two English Acts and cannot be construed with reference to a recital which has been omitted.

10. In my opinion, therefore, the District Judge had power to make the order for payment of a lump sum.

11. On the second question whether the sum awarded was adequate or excessive it appears to me that on the evidence it was a reasonable award and I do not think this Court would be justified in interfering with it.

12. I would dismiss both appeals without costs.

Hayward, J.

13. I quite agree that we should not be justified on the scanty materials before us in interfering with the amount, namely Rs. 5,000, awarded for permanent maintenance by the District Judge.

14. But the question whether that amount should be paid absolutely or should be

secured for a limited term by an appropriate instrument would appear to me a more difficult matter. We have been referred to a number of conflicting decisions of the English Courts upon the corresponding provisions of the English statutes, namely Section 32 of 20 & 21 Vict. c. 85 (1857) and Section 1 of 29 & 30 Vict. c. 32 (1866) which have been combined into Section 37 of the Indian Divorce Act, 1869. The Judge Ordinary Sir C. Cresswell ordered the absolute payment of a gross sum in the case of *Morris v. Morris* (1861) 31 L.J.P. & M. 33 and Gorell Barnes J. followed this order in the subsequent cases of *Stanley v. Stanley* [1898] P. 227 and *Kirk v. Kirk* [1902] P. 145. But in the mean while Jessel M.R. had held in the case of *Medley v. Medley* (1882) 7 P.D. 122 that the absolute payment of a gross sum could not be ordered, because payment from time to time was contemplated by the word "secure" used, in the statute of 1857. It was again more recently held by Jeune J., in the case of *Twentyman v. Twentyman* [1903] P. 82, that the word "secure" was governed by the phrase occurring later on "for any term not exceeding life". Lindley L.J. concurred with the Master of the Rolls in the former case but observed that the word "secure" would ordinarily include "pay". The learned Judges appear to have been moved to their decision by the consideration that the word "secure" coupled, with the provision for the execution of a proper instrument in the statute of 1857 applied only to cases where there might be property which could properly be secured by such instrument, as recited in the preamble of the subsequent statute making provision for cases where there might be no such property namely the statute of 1860. We should no doubt feel ourselves bound to follow that decision had the provisions of the English statutes been incorporated in their entirety in the Indian Divorce Act, 1869. But the distinction between cases of property and cases of no property has, intentionally or unintentionally, not been retained owing to the omission of the preamble of the statute of 1866. So that the opening words "In every such case" which would otherwise have referred to cases of no property cannot grammatically be so read in Section 37 of the Indian Divorce Act, 1869.

15. We ought, therefore, in my opinion to approach the matter as *an Integra* from the starting point of Lindley L.J. that the word "secure" would ordinarily include "pay" and consider whether that ordinary meaning should be modified by reason of the other words used in the section. The material words are that the Court may order the husband to "secure to the wife such gross sum of money, or such, annual sum of money for any term not exceeding her own life, as...it thinks reasonable...and for that purpose may cause a proper instrument to be executed". The plain meaning of those words would appear to me to be that the gross sum of money should be paid absolutely to the wife and that the annual sum of money only should be limited for the period of her life. It was the use of the word "annual" which required the limitation "for the period of her life". The words would have been "such gross or annual sum of money for any term not exceeding her own life", if it had been intended to limit the use of the gross sum as well as the annual sums for the period of her life. It was moreover apparently foreseen that the gross sum might be paid down at once in which case there

would be no necessity for the execution of any document and hence among other reasons no doubt it was provided that the parties "may" and not "shall" be ordered to execute a proper document. The succeeding clause opening with the words "In every such case" must, as already indicated, be construed as adding power to order the payment of monthly or weekly sums in all cases and not merely in cases of no property owing to the special form of drafting of Section 37 of the Indian Divorce Act, 1869.

16. These conclusions have been reached without reference to the punctuation, but if regard may be had to punctuation, then they are confirmed by the punctuation of the section as appearing in the publication of the Act at page 375 of the Gazette of India dated 6th March 1869. The generally accepted rule was that punctuation could not be regarded in interpreting Acts of Parliament and this rule was founded on reason as no punctuation appeared in the Acts on the Rolls of Parliament. But since 1849 punctuation has been inserted. Nevertheless the old rule would appear to survive in England (Maxwell's Interpretation of Statutes, 5th Ed., chap. I, Section V, pp. 67 and 68). Lord Esher M.R. observed that there were no such things as stops and brackets in an Act of Parliament and Lord Fry refused where the sense was strong to "pause at those miserable brackets", though refraining from expressing an opinion whether brackets could be looked at in an Act of Parliament in the case of *Duke of Devonshire v. O'Connor* (1890) 24 Q.B.D. 468. It should be no matter of surprise therefore that the old rule should be applied to the old Regulations promulgated in this country and it will be found that the Privy Council remarked upon a consideration of an old Bengal Regulation of 1819 that it was an error to rely on punctuation in construing the Acts of the Legislature in the case of *The Makarani of Burdwan v. Krishna Kamini Dasi* (1887) 14 Cal. 365. But whatever may have been the practice under the old Regulations, the practice would appear since the constitution of regular Legislatures in India to have been to insert stops in Bills before the Legislatures and to retain them in the authentic copies of the Acts signed by the Governor-General and published in the Gazette of India and Maclean C.J. ventured to look at the stop in such an Act in the case of *The Secretary of State for India in Council v. Rajluchi Dabi* (1897) 14 Cal. 365 and so did Parsons Ag. C.J. in the case of *A (Wife) v. B (Husband)* 1898 23 Bom. 460, though the action of the latter was reprehended by the Full Bench of the Allahabad High Court in the case of *Edward Caston v. L.H. Gaston* (1899) 22 All. 270 relying on the remarks of the Privy Council. With due deference to that Bench there would, however, appear to me no sufficient ground, in view of the fact that it was an old Regulation under the consideration of the Privy Council and in view of the deliberate insertion of stops by the regular Legislatures, for refusing the assistance of the punctuation where the sense might otherwise be doubtful in Acts of the regularly constituted Legislatures of India.