

[WARD, J.: I cannot allow a amendment to the petition of so material a nature.]

*Millin*, was not called on to reply.

WARD, J.: It is quite clear that there is no allegation in the petition that the applicants are creditors of the respondents in the sum of £100, as required by sec. 7 of Law 13 of 1895, nor is there any allegation that they have any *locus standi*. It was said by Mr. *Morris* that that could be inferred from the words "Just claims of the petitioners" used in paragraph 5 of the petition; I cannot make such a deduction. "Claims" may mean merely that the applicants have a claim for damages, and in any case there is nothing to show that the claim amounts to £100. Then it was suggested that I could look at the order of court granting the final order of sequestration against the partnership estate of the respondents; that order of court, however, is not embodied in the petition, and I am not sure that if it were I could look at it. The application therefore must be dismissed as against both respondents.

*Morris*: How about the respondent Smukler who does not oppose?

I cannot help that; the application is dismissed as against him as well.

Applicants' Attorney: *B. Guinsberg*; Respondent's Attorney: *M. Marks*.

[G. W.]

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KOHN v. KOHN.

1914. March, 19, 26. WARD, J.

*Husband and Wife.—Divorce.—Forfeiture by guilty spouse.—Jewellery given after marriage.*

On a decree of divorce being granted the guilty spouse is not allowed to retain any benefit derived from the marriage; this includes gifts of jewellery by the husband to the wife after marriage.

Action by the husband for (1) Divorce on the ground of the defendant's adultery; (2) Forfeiture of the benefits of the marriage in community of property; (3) The return of certain jewellery donated to the defendant by the plaintiff; (4) Costs.

The third claim only is material to this report. The evidence showed that the plaintiff had after the marriage given to the

defendant certain articles of jewellery, the return of which he now claimed. The adultery of the defendant was proved.

*H. H. Kent*, for the plaintiff, submitted that he was entitled to the jewellery.

Judgment was granted in terms of claims 1, 2 and 4.

*Cur adv. vult.* (On claim 3).

*Postea* (March 26, 1914).

WARD, J.: The case of *Celliers v. Celliers* (1904, T.S. 926) settled the practice in this Court that where one of two spouses has been declared guilty of a matrimonial offence the penalty is that she shall not enjoy any profit which could be derived out of the marriage with the innocent spouse.

Such spouse is consequently declared to have forfeited any benefit he or she may derive from the antenuptial contract, or the community of property, and shall be bound to restore all gifts conferred by the innocent spouse before or at the time of marriage.

This rule is laid down in the Cape Colony in the case of *Dawson v. Dawson* (9 S.C. 416) and in *Voet* 24.2.9.

No specific mention is made of gifts given by the innocent spouse after the marriage has been entered into. The reason for this is probably that such gifts are void, and may be recovered by the husband.

But there is a distinction between gifts generally and clothes and jewels which the husband gives for the attire and ornament of the wife. The latter are considered by some of the authorities to be properly received and given so far as they do not exceed the fitness and circumstances of the husband. So also jewellery given by the bridegroom to his bride on marriage, or as a morning gift are considered to belong to the wife.

It was in view of this distinction that I reserved the question in this case. I have been unable to find any discussion on the point in the authorities, but it is clear that gifts on marriage can be recovered by the innocent spouse, and this is on the ground that the guilty spouse is not allowed to retain any benefit derived from the marriage. The reasoning covers gifts of jewellery after marriage.

The order of the Court will therefore be that the defendant deliver to the plaintiff the jewellery mentioned in the declaration.

Plaintiff's Attorney: *E. G. Gluckmann.*

[G. W.]