

FANNY HALL CASTLEDEN (THE WIFE), APPELLANT.
 GEORGE CASTLEDEN (THE HUSBAND), RESPONDENT (a).

Suit for Nullity of Marriage—Bar by Lapse of Time and Acquiescence.—Circumstances in which it was held that a wife was precluded from asking a decree of nullity of marriage by reason of lapse of time and acquiescence on her part, the marriage having taken place twenty-four years prior to the institution of the suit. In such a case the evidence to establish the complaint must be more than ordinarily cogent.

1861.
 April 11th.

THE marriage of Mr. and Mrs. Castleden took place on the 16th December 1834. The parties cohabited till July 1838, when they separated. The suit was not instituted until the 23rd November 1858; it charged the husband with impotence, and prayed, on that ground, a sentence of nullity. He made no appearance.

After a trial before Sir *Cresswell Cresswell*, Mr. Justice *Williams*, and Mr. Baron *Bramwell*, the Court decided (Baron *Bramwell* dissenting) that the Petitioner was barred by lapse of time and acquiescence.

Against this judgment she appealed to the House, and was supported at the bar by Mr. *Roundell Palmer* and Dr. *Spinks*, at the close of whose arguments, impeaching the decree appealed from, the following opinions were delivered by the Law Peers :—

The LORD CHANCELLOR (b):

Lord Chancellor's opinion.

My Lords, I must say that I should have thought it very much to be lamented if we had felt it our duty, in this case, to reverse the decree. I honestly confess that I should have deeply regretted it, as I think it would not be creditable to the jurisprudence

(a) See this case fully reported, 1 Swab. & Trist, 605.

(b) Lord Campbell.

CASTLEDEN
v.
CASTLEDEN.
—
Lord Chancellor's
opinion

of England. Here is a woman who lives and cohabits four years with her husband, and then she parts with him, being, according to her own statement, fully aware that he is unable to consummate the marriage. She remains for sixteen years wishing to return to him, and live with him as his wife; and during that time she allows him to be sued for her debts, and then, in the year 1858, twenty-four years after the marriage, she commences her suit to have the marriage pronounced a nullity.

If lapse of time is not a bar (I do not say that it is an absolute bar), at all events we must require, after such a lapse of time, the clearest, strictest, and most unequivocal evidence of the facts necessary to support such an application. Now I think there is not anything like strict and judicial proof of non-consummation, or of her being intact, or of his impotence. I think that not one of those three things is proved at all in a satisfactory manner. There may be suspicion or probability of non-consummation, but there is not strict proof of it. There is not proof that she was *virgo intacta apta viro*, nor is there proof that he was impotent, either from rigidity or malformation or any other cause (a).

At all events lapse of time is most important with regard to the evidence which shall be required. It is said that stricter evidence than that which has been produced cannot now be given; but stricter evidence might have been given if she had brought forward this suit in the year 1838, or at some subsequent period much before the time when it was actually brought. But she makes no such attempt, and it seems to me that she does not now sue on

(a) The Code Napoléon which is spread over Europe does not allow suits for nullity of marriage on the grounds relied upon by Mrs. Castleden.

account of what is supposed to be the general motive for a woman bringing such a suit of nullity of marriage, but she brings this suit merely because he has ceased to support her. That is the reason, and the only reason, why the suit is instituted. And according to the cases that have been referred to, lapse of time, coupled with that indirect motive, is considered of itself an absolute bar.

CASTLEDEN
v.
CASTLEDEN.

Lord Chancellor's
opinion.

I have carefully read the judgment of Mr. Baron *Bramwell* in this case, and I must say that I by no means agree with it. I think that the reasons given by the *Judge Ordinary* (a), in which Mr. Justice *Williams* concurred, greatly outweigh the observations made by Mr. Baron *Bramwell*; and I think that the Court did well to dismiss the petition. I must therefore advise your Lordships that this Appeal should be dismissed. This being a case *ex parte*, nothing is to be said about costs.

Lord CHELMSFORD :

*Lord Chelmsford's
opinion.*

My Lords, I have already sufficiently indicated my opinion by the remarks which I have made in the course of the argument, and I think it quite sufficient now to say that I entirely acquiesce in the observations which have been made by my noble and learned friend the *Lord Chancellor*, and in the conclusion at which he has arrived, that the Appeal should be dismissed.

Lord KINGSDOWN :

*Lord Kingsdown's
opinion.*

My Lords, I am entirely of the same opinion.

Decree or Order appealed from affirmed, and Appeal dismissed.

(a) Sir Cresswell Cresswell.