

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

BATEMAN—*Appellant*.OLIVIA, Countess of Ross—*Respondent*.

OLIVIA leaves her husband's (Bateman's) house, commences a suit in Ecclesiastical Court for divorce, and files a Bill in Chancery for payment of her separate annuity. All matters in difference referred to arbitration; and the award made a rule of Court by consent. Bateman, the husband, obtains an order of Court, which, without setting aside the award, partly does away the effect of it, by which means the records of Court are made contradictory. Bateman, upon this, takes possession of a house which the award had given to his wife, and she goes there to protect her property. Bateman then pretends a reconciliation, and takes an exception to suit in Ecclesiastical Court on that ground—but exception disallowed. Olivia files another bill, praying benefit of award: cause comes before Lord Redesdale, who receives sentence of Ecclesiastical Court as admissible, but not conclusive, evidence of non-reconciliation, and decrees according to prayer of bill. Chancellor states general doctrine to be clear, that reconciliation after separation entirely does away the effects of it; but here no reconciliation. Lord Redesdale's decree affirmed.

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A RECONCILIATION OF MARRIED PERSONS AFTER A SEPARATION ENTIRELY DOES AWAY THE EFFECT OF IT.

THE Respondent upon the death of her husband, the Earl of Ross, in 1764, became entitled for life to the estate of Castle Gore, in the county of Tyrone which had been devised to her by the will of her father, dated 12th October, 1737; and also to an additional annuity of 500*l.* secured on the Earl of Ross's estate. On the 8th October, 1770, the Respondent and Appellant intermarried; and on the 28th May, 1777, the Appellant, in pursuance of marriage articles to that effect, conveyed the Castle

Marriage of the Respondent and Appellant, 8th Oct. 1770. Separate an

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1780. Differences and suit for divorce.

1781. Bill in Chancery by Respondent, to compel payment of her annuity, &c.

June 1782. Cross bill by Appellant, praying an account of articles taken from him by Respondent, who had left his house.

June 1784. The whole matters in dispute referred to arbitration. Award.

Gore estate to trustees, to secure to the Respondent a separate annuity of 500*l.* by way of pin money; and about the same time conveyed in trust for her during life, after his decease, a house which he had purchased in Granby-row, Dublin, subject however to a mortgage to Lord Farnham.

Differences having arisen between the parties, the Respondent in 1780 instituted a suit for divorce and alimony in the Spiritual Court; and in 1781, by her next friend, filed a bill in Chancery against the Appellant, stating, that he had neglected to pay the incumbrances on the estate and the Respondent's pin money; and praying among other things for an account and payment of the arrears of her annuity and for a separate maintenance. The Appellant, by his answer, alleged, that he had been induced to give her so large an annuity by false representations as to the income from her estates: and in June, 1782, filed a cross bill praying an account of various articles of value, stated to have been taken from him by the Respondent, who had left his house, to which the Respondent answered that she had a right to the articles in question.

In June, 1784, the parties consented to a reference of all the matters in dispute, and on the 1st July, 1784, the arbitrators published the following award: "We, the arbitrators, &c. &c. do award, that
 " John Bateman, Esq., the Defendant in the original
 " cause, do, within one month from the date hereof,
 " convey to a trustee, to be named by Olivia Countess
 " of Ross, the Plaintiff in the original cause, the
 " mansion house and demesne lands of Castle Gore
 " in the pleadings mentioned, and the furniture in

“ said house, as also the term, estate, and interest, in
 “ the house and premises in Granby Row in the
 “ pleadings also mentioned, together with the fur-
 “ niture thereof; to hold said house and demesne
 “ lands free from quit rent and all other incum-
 “ brances, and said house in Granby Row free from
 “ all rent and incumbrances, save the ground rent
 “ payable thereout, without prejudice however to
 “ the mortgage thereof in the pleading mentioned,
 “ to said trustee, in trust, and for the sole use of the
 “ said Olivia, for and during the joint lives of them
 “ the said John Bateman and Olivia Countess
 “ of Ross, *provided they shall live so long separate
 “ and apart.*—And we do also award, that the said
 “ John Bateman do and shall likewise, within the
 “ space of one month from the date hereof, grant,
 “ assign, and confirm, to such trustees as the said
 “ Olivia shall nominate for the purpose, during the
 “ joint lives of them, the said John Bateman and
 “ Olivia, *provided they shall so long continue to
 “ live separate,* the annuity or rent charge of 500*l.*
 “ chargeable on the estate of the late Earl of Ross,
 “ as and for the jointure of the said Olivia, in the
 “ pleadings mentioned, in trust, for the sole and
 “ separate use of the said Olivia. And we award,
 “ adjudge, and decree, that the said Olivia shall
 “ yearly and every year from the first day of June
 “ 1787, during the joint lives of her and the said
 “ John Bateman, *provided they shall continue to
 “ live separate so long,* receive out of the rents and
 “ profits of the Castle Gore estate in the pleadings
 “ mentioned, under and by virtue of the deed of
 “ the 20th of May 1777, in the said pleadings
 “ mentioned, the sum of 50*l.* by half yearly, pay-

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ments; the first payment thereof to be made on the first day of December, 1787; and that she the said Olivia, or her trustees in said deed named, shall have and exercise all the powers for recovery of the said annuity of 50*l.* to which she or they is or are entitled thereby, for the more easy recovery of the annuity of 500*l.* in said deed and in the pleadings mentioned. And we award, *that during such separation* the said Olivia and her trustees shall not be at liberty to receive any greater sum, annually or otherwise, out of the said rents of the Castle Gore estate under said deed, than said annuity of 50*l.*—And we further declare and award, that the said Olivia Countess of Ross is entitled to detain in her separate possession, free from the control of the said John Bateman, *during the time she and the said John Bateman shall live apart from each other*, all her jewels.—And we further award, that the said Olivia shall, within the space of one month from the date hereof, deliver to the said John Bateman all the plate bequeathed by the will of her father, Hugh Edwards, Esq. deceased, and now in her possession.—And we further order and award, that the said Olivia Countess of Ross shall, within one month from the date hereof, deliver up to the said John Bateman the wardrobe, wearing apparel, and ornaments of the person, belonging to the said John Bateman, hitherto detained by her the said Olivia, as in the pleadings mentioned; as also the accounts and vouchers which respect a contest subsisting between the said John Bateman and George Semple, Esq. in the pleadings also mentioned.—And we further adjudge and award, that the said John

“ Bateman likewise shall, within the term of one
 “ month from the date hereof, deliver up to the said
 “ Olivia Countess of Ross the wearing apparel,
 “ wardrobe, and ornaments of every kind, belong-
 “ ing to the said Olivia Countess of Ross, which
 “ have been hitherto detained by him, as in the
 “ pleadings mentioned.—And we also award, that
 “ the said John Bateman shall also, within one
 “ month from the date hereof, perfect to a trustee,
 “ to be named by the said Olivia Countess of Ross,
 “ in trust, and for the separate use of the said Oli-
 “ via, one bond, with warrant of attorney for con-
 “ fessing judgment thereon, for securing the sum of
 “ 300*l.* payable with interest in one year from the
 “ date of the said bond, and that he shall also, at the
 “ same time, perfect to such trustee, in trust, and for
 “ the separate use of the said Olivia, two other
 “ bonds, with warrants of attorney for confessing
 “ judgment thereon; the one for securing the sum
 “ of 300*l.* payable with interest in two years, from
 “ the date of said bond, and the latter for securing
 “ a like principal sum of 300*l.* payable in three
 “ years from the date of said bond.—And we fur-
 “ ther adjudge, decree, and award, that the said
 “ John Bateman shall, during the joint lives of him
 “ and the said Olivia, *provided the separation shall*
 “ *so long continue*, enjoy to his own use the re-
 “ maining part of the rents and profits of the said
 “ Castle Gore estate, subject to the outgoings,
 “ debts, and incumbrances affecting the said
 “ estate, &c.”

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The award was, on the 8th December, 1784, made
 a rule of Court on the consent of the Six Clerks and
 agents for the respective parties; and by an order

1784. Award
 made a rule of
 Court by con-
 sent.

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March 1795. Appellant applies to set aside award, and Court, without setting aside the award, makes an order partly doing away the effects of it.

Appellant, in consequence of this last order, takes possession of Castle Gore, and Respondent repairs thither to protect her property. Appellant excepts to suit in Ecclesiastical Court, on ground of re-union and reconciliation, but this disallowed.

1797. Bill in Chancery by

of 15th July, 1785, the Appellant was directed to execute certain instruments to carry it into execution, which he did. He soon after applied to the Court to have the award set aside, but this was refused. Lord Farnham, in 1787, filed his bill to foreclose the premises in Granby Row, under the mortgage above-mentioned, when the Respondent paid the mortgage money, and had an assignment of the house executed in trust for herself.

In 1789 the Appellant made a second application to have the award set aside, but without success. In March 1795 the Appellant renewed his application to set aside the award, when the Court, *without setting aside the award*, directed that the “injunction by which the Respondent had been put “in possession of the demesne lands and mansion-house of Castle Gore, and Granby Row house, in “pursuance of the award, should be set aside; that “the Master should deliver up their papers to the re- “spective parties,” &c. In consequence of this order of Lord *Chancellor Clare*, the Appellant resumed possession of the Castle Gore mansion-house, and the Respondent, hearing of this, repaired thither to protect her property. As the parties now resided in the same house, the Appellant caused an exception to be taken to the suit in the Spiritual Court on the ground of re-union and reconciliation between himself and the Respondent. But it appeared in point of fact, that though living under the same roof they were in a state of the greatest animosity. The exception was therefore disallowed, and the sentence of the Ecclesiastical Court to that effect was, upon appeal, affirmed by the delegates.

In 1797 the Respondent filed another bill, pray-

ing that the Appellant might be compelled to abide by the award, or to restore to her the property which had been paid for out of her separate funds. The Appellant answered, that the award was not conclusive or obligatory, as it proceeded on the supposition of a separation, whereas no deed of separation had been executed, and no sentence of separation had been pronounced by any competent Court. The cause was heard before Lord Redesdale, who admitted the sentence of the Ecclesiastical Court in evidence as to the point of re-union; and on the 17th March, 1804, decreed, that the Respondent ought to have the benefit of the award, and ordered that the Respondent should be put in possession of her estates, and an account taken upon the basis of the award.

The Appellant endeavoured to protract the proceedings under this decree, and gave in a list of one hundred and fifty-two witnesses. But at length a sum of 8,333*l.* 11*s.* 9*d.* was reported due to the Respondent, and upon hearing on the report and merits, the same was ordered to be paid her by the Appellant. From this decree of March 1804, and orders under it, the Appellant lodged his appeal, and contended that they ought to be reversed:

1st, Because the paper writing purporting to be an award is the basis of the decree, and such award is void for two reasons: 1st, Because the subject matter was not within the jurisdiction of the arbitrators: and 2dly, Supposing the subject matter to be cognizable by an arbitrator, because the Respondent's next friend in whose name this suit was

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Respondent, to compel Appellant to abide by award, &c.

March 1804. Decree by Lord Redesdale, that Respondent entitled to benefit of award.

A sum of 8333*l.* 11*s.* 9*d.* found due to Respondent.

Appeal.

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instituted was not a party to such arbitration, and cannot be compelled to obey the award.

2d, Because the award, if originally valid, has been avoided by the subsequent cohabitation of the Appellant and Respondent.

3d, Because the sentence of the Ecclesiastical Court, disallowing the exception taken on the ground of re-union and reconciliation, ought not to have been admitted in evidence.

The Respondent on the other hand contended that the decree and orders in question ought to be affirmed.

1st, Because the decree of 17th March 1804 gives the Respondent the benefit of the award made between her and the Appellant July 1, 1784, founded upon a submission executed by him; which award was not only confirmed in the Court of Chancery by the Appellant's consent on the 8th of December 1784, but a deed was actually executed by him so long ago as 22d July 1785, to carry the same into effect; and the said award was never questioned, or attempted to be set aside by the Appellant, until the 28th July 1789; a period of five years after it had been executed by the arbitrators, and acted upon by the parties.

2dly, Because there is not the slightest proof, nor pretence, to support the Appellant's assertion, that a re-union and cohabitation of the Appellant and Respondent, as man and wife, took place subsequent to publishing the award; by which circumstance the said award could alone be satisfied, and its operation made cease.—But, on the contrary, the

sentence of the Consistorial Court of the diocese of Dublin, affirmed by the Court of Delegates, is decisive evidence, that the Appellant and Respondent did and now continue to live separate; and that no reconciliation, nor subsequent cohabitation, has taken place between them since the said award was executed.

3dly, Because it appeared from the proceedings, that the Appellant neither had nor could establish any claims against the Respondent, (other than have been already allowed by the Master in taking the account,) which could operate in his discharge, and lessen the general balance, which had been found due to the Respondent by the report.

Sir S. Romilly and *Mr. Montagu*, for the Appellant; *Sir T. Plomer* and *Mr. Nolan*, for the Respondent.

Lord Redesdale (after stating the case as above.) Bateman, the Appellant, at the time of the marriage, was a young man very well received in the world, the Respondent not a very young woman, and the Appellant himself described her as not very agreeable either in person or manners; so that the object of the marriage was quite obvious. An annuity of 500*l.* was settled upon her separately, by way of pin-money, and the whole of the rest of her property came to Bateman. The usual consequences ensued; quarrels, and a suit for divorce in the Ecclesiastical Court for adultery in the husband. A suit likewise was commenced in Chancery, and the whole matters in dispute were referred to

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Observations and Judgment.

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No objection
to the award
that the Re-
spondent was
not regularly
separated from
her husband,
and that her
next friend
was not a party
to the award ;
as the award
was founded
on consent,
and her hus-
band had
treated her as
feme sole.

Different from
the case of an
infant suing
by next friend

Mr. Toler, now Lord Norbury, and Mr. Hussey, afterwards Recorder of Dublin.

It had been objected to the award, that the Countess could not agree to the submission, so as to bind herself, unless she had been separated from her husband ; and her next friend was not made a party to it. But it appeared to him that there was nothing in this objection, as the award was founded on an agreement on both sides, and he had filed a cross bill against her, which she had answered ; so that, under the circumstances of this case, she was to be regarded quite as a *feme sole*, and there was no occasion to make the next friend a party, as there was nothing for him to consent to. He must act entirely as the wife directed ; it was not like the case of an infant suing by a next friend. The award was confirmed by order upon consent.—Some time after, the Court made an order, not setting aside the award, but partly doing away the effect of it. The cause afterwards came before him, when he pronounced the decree appealed from. Bateman contrived to delay the proceedings under this decree for some time ; but at last a sum of 8,333*l.* 11*s.* 9*d.* was decreed to be due to Lady Ross. It could not be necessary to examine one hundred and fifty-two witnesses, to prove what had become of certain pieces of plate, articles of wearing-apparel, and a few accounts and vouchers ; so that the object appeared to have been merely delay.

Sentence of
Ecclesiastical
Court admis-
sible evidence,

It had been contended, that the sentence of the Ecclesiastical Court ought not to have been received in evidence at all ; but he was of opinion that

it was admissible, though not conclusive evidence. As to the alleged reconciliation, no such thing, but the very reverse, appeared on the evidence. The Appellant was living at Castle Gore; the Respondent went there, not for the purpose of reconciliation, but to protect her property. There was no reconciliation to do away the effect of the award.

Lord Eldon (Chancellor.) It was objected to the award, that it assumed the jurisdiction of the Ecclesiastical Court, and went beyond the submission, in awarding a separation. But it did no such thing. It only assumed that there must be a separation, and provided accordingly. In regard to the point of reconciliation, notwithstanding what might be found in some of the Reports, he held the general doctrine to be clear, that a reconciliation after a separation entirely did away with the effects of it. This rested upon the ground of public policy; as it must not be permitted to parties to make agreements for themselves, to hold good whenever they chose to live separate. The question then was, Whether, in the present case, there was a reconciliation? It appeared to him that there was not; unless their Lordships were prepared to say, that living under the same roof amounted to a reconciliation, though in a state of the highest animosity, which was the case here. He had no doubt but the decree and orders appealed from were correct, and he should therefore propose that they be affirmed, taking notice that the money decreed to be due having been paid into Court pending the appeal, Lady Ross should be at liberty to take it out,

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but not conclusive.

No evidence of reconciliation, but the reverse.

Award did not assume the jurisdiction of the Ecclesiastical Court, nor adjudge a separation: but, only assumed that separation was inevitable, and provided accordingly.

General doctrine clear, that a reconciliation after separation entirely does away the effects of it.

Living under the same roof not to be taken as a proof of reconciliation, if it appears that the parties live in a state of animosity.

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on satisfying the Court that Bateman was using harassing and vexatious delays,

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The judgment was in the following form :—

It is declared, that in case the sum of 8,333*l.* 11*s.* 9¼*d.* hath been paid into the Bank of Ireland, the Respondent is to be at liberty to apply to the Court for immediate payment thereof; respecting which application such order shall be made as to the Court seem just, having such regard to any proceedings in the cause now depending in the said Court, as to the Court seem meet. And that in case such sum hath not been paid into the said Bank, the said Respondent is to be at liberty to apply to the Court for immediate payment thereof to the said Respondent, or into the said Bank; respecting which application such order shall be made as to the Court shall seem meet, having such regard as aforesaid: and with this declaration, it is ordered and adjudged, that the decree and orders complained of be affirmed.

Agent for Appellant, **BEDFORD.**

Agent for Respondent, **MUNDELL.**