

MIDDLETON, J., in a written judgment, said that by the agreement referred to the husband agreed to pay his wife \$1,200 per annum; but, in the event of his income being reduced to such an extent as to render this allowance unreasonable, in view of altered conditions, the husband "may apply to a Judge of the High Court to reduce the said allowance to such an amount as may be just and equitable under the then existing conditions;" and the wife may thereafter "apply to a Judge of the High Court to have the same increased to an amount not exceeding the sum of \$1,200 per annum as aforesaid." At the time of this agreement there was no action pending between the parties.

The agreement contained a further provision under which the husband's liability to pay the allowance would terminate upon certain misconduct upon the part of the wife. Instalments having fallen in arrear, an action was brought, which came on for hearing before Mulock, C.J. Ex., who found that the alleged misconduct of the wife set up as an answer to the claim did not constitute a defence; but, acting under the clause quoted, he reduced the amount payable to \$800 per annum. The wife now asserted that her husband was better off than ever, and sought to have her allowance increased to \$1,200. Her solicitor had asked the husband to name "some Judge or Judges" by whom he would desire to have the matter disposed of, but he had not answered this letter.

It was said but not shewn that no Judge could be found ready to mediate in this dispute. To do so was no part of the duty of a Judge. He must deal with all cases that come before him in the ordinary course, but the duty of interposing in a matrimonial dispute cannot be thrust upon him by agreement. To ascertain the true financial position of the husband might well involve prolonged and tedious inquiry. On this motion the learned Judge was asked to name a Judge who must act or to seek out a Judge willing to act. He declined to do either.

The husband took the position that this was not an agreement to arbitrate, and did not come under the Act at all; and, secondly, that this action was not brought within any of the provisions of sec. 9. In both contentions he was right.

It might be that the Judge who had once acted on this agreement, and reduced the wife's allowance, would, on her application, increase it; but the agreement contemplated a direct application by or on behalf of the wife, and not an application to another Judge.

Motion dismissed without costs.