MATRIMONIAL JURISDICTION.

Before Gregory J.

ISHARANI NIRUPOMA DEVI

v.

VICTOR NITENDRA NARAIN*

1925

June 24.

Divorce—Jurisdiction—Foreigner domiciled in Cooch Behar—Marriage contracted under the Special Marriage Act (III of 1872)—Test of jurisdiction whether residence or domicile—Indian Divorce Act (IV of 1869), whether ultra vires *of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67)—Meaning of the word 'reside'—Indian Divorce Act, 1869, ss. 2, 3, 7, and 10—Indian Councils Act, 1861 (24 & 25 Vict. c. 67) s. 2.*

The jurisdiction conferred by the Indian Divorce Act (IV of 1869) on Courts in India to make decrees of dissolution of marriage on the basis of residence is not restricted to the cases of persons domiciled in India and such jurisdiction is not beyond the authority given by the Indian Councils Act of 1861 (24 and 25 Vict. c. 67).

The decision in *Keyes* v. *Keyes* (1) not followed.

Giordano v *Giordano* (2), *Thornton* v. *Thornton* (3), *Water* v. *Water* (4), *In re Norton's Settlement* (5), *Wilkinson* v. *Wilkinson* (6), *Jones* v. *Jones* (7), *Lee* v. *Lee* (8), *Miller* v. *Miller* (9), and *LeMesurier* v. *LeMesurier* (10), and other cases referred to.

DIVORCE.

This was a petition by the wife for dissolution of marriage on the ground of cruelty and adultery. The respondent entered appearance under protest and in his answer denied the charges and in the alternative pleaded condonation. The respondent further took

* Matrimonial suit No. 17 of 1924.

(1) [1921] P. 204.
(2) (1912) I. L. R. 40 Calc. 215.
(3) (1886) 11 P. D. 176.
(4) [1890] P. D. 152.
(5) (1908) I. C. 471.
(6) (1923) I. L. R. 47 Bom. 843.
(7) (1923) I. L. R. 1 Rangoon 705.
(8) (1924) I. L. R. 5 Lah. 147.
(9) (1924) I. L. R. 52 Calc. 566.
(10) [1895] A. C. 517.

objection to the jurisdiction of the Court to entertain the petition on the ground that he was a foreign subject domiciled in Cooch Behar. He further denied that he was residing within the appellate jurisdiction of the Court when the petition was presented and contended that the petition could not be entertained by this High Court.

The respondent was a member of the Cooch Behar Raj family and his marriage with the petitioner was contracted in Calcutta on the 18th April 1916 under the Special Marriage Act (III of 1872). The parties did not profess the Christian religion. There was issue of the marriage, *viz.*, two sons. Between 1916 and 1923 the petitioner and respondent lived at Darjeeling, Ranchi, Cooch Behar and Calcutta. Trouble arose in 1923 and ultimately in 1923 it was arranged between the parties that the petitioner should have a separate residence provided for her in Calcutta.

On the 12th August 1924 the respondent took both the children away from the petitioner's custody and took them to Darjeeling. The petition was presented on the 26th August 1924 when the respondent was living at Darjeeling.

The facts of the case and the argument of counsel are fully stated in the judgment and are not reported here.

Mr. Langford James and *Mr. B. C. Ghosh*, for the petitioner.

Mr. A. N. Chaudhuri, *Mr. A. A. Avetoom*, *Mr. L. P. E. Pugh*, *Mr. R. C. Bonnerjee* and *Mr. N. N. Chatterjee*, for the respondent.

GREGORY J. In this case the petitioner sues for a dissolution of her marriage with the respondent on

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the ground of his cruelty and adultery. The respondent has entered appearance under protest, and in his answer denies these charges and in the alternative pleads condonation. He takes objection to the jurisdiction of this Court to entertain the petition on the ground that he is a foreign subject domiciled in Cooch Behar; he also denies that he was residing within the appellate jurisdiction of this Court when the petition was presented, and it is consequently contended that the petition cannot be entertained by this High Court. After taking evidence bearing on the question of jurisdiction I intimated to the parties that in my opinion this Court has jurisdiction. The petitioner's case then proceeded on the merits but the respondent took no further part in the proceedings.

The respondent is a member of the Cooch Behar family and his marriage with the petitioner was contracted in Calcutta on the 18th April 1916 under the Special Marriage Act (III of 1872). There is issue of the marriage, two sons; the elder Nidhendra Narayan born in July 1917 and Gautam Narayan born in August 1918 Between 1916 and 1923 the petitioner and respondent lived at Darjeeling, Ranchi, Cooch Behar and Calcutta. The correspondence indicates that in 1923 there was trouble brewing; matters went from bad to worse and ultimately in or about March 1924 it was arranged between the parties that the petitioner should have a separate residence provided for her in Calcutta. This arrangement was carried out by the petitioner renting a house in Lansdowne Road, Calcutta, where she lived with her children. Though the parties separated, letters that passed between them show there was further friction on account of the children; the elder boy had been ill, and the petitioner and the respondent apparently held different views as to the advisability of their being

sent to Darjeeling. On the 12th August 1924 the respondent took both the children from the petitioner's custody and took them to Darjeeling. The petition in this case was filed on the 26th August 1924 when the respondent was living at Darjeeling.

I shall first deal with the question of jurisdiction and state my reasons for the view that I have already intimated that this Court has jurisdiction to entertain this petition. I shall then deal with the question whether the respondent was residing within the appellate jurisdiction of the Court when the petition was filed, and finally with the charges on which the petition is based.

The contention that the Court has no jurisdiction inasmuch as the respondent has a foreign domicile is founded on the authority of the case of *Keyes* v. *Keyes* (1); and the point involves the construction of the Indian Divorce Act and of the Indian Councils Act, 1861. On behalf of the petitioner it has been argued that residence is the basis of jurisdiction under the Indian Divorce Act, and that as the parties were married under the provisions of the Special Marriage Act, (III of 1872) which provides that the Indian Divorce Act shall apply to all marriages contracted under it, and that such marriages may be dissolved in the manner therein provided and for the causes therein mentioned, the question of domicile does not enter into this case at all. I cannot take this view of the matter since the argument raised does not meet the objection that the Indian Divorce Act is *ultra vires* of the Indian Councils Act. It will be necessary therefore, to examine and decide this question.

I think it is correct to say that before the decision in 1921 in the case of *Keyes* v. *Keyes*, (1) the jurisdiction of the Courts in India to make decrees of

(1) [1921] P. 204.

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dissolution of marriage on the basis of residence, and irrespective of the domicile of the parties, has never been questioned. Such decrees have consistently been made since the Indian Divorce Act was passed. In the case of *Giordano* v. *Giordano* (1) the parties had an Italian domicile but were residing in India. Fletcher J. held that on case proved, the Court was bound to grant a divorce although it would have no effect outside India; and reported cases show that the validity of Indian decrees has not been challenged by the Courts in England. The cases of *Thornton* v. *Thornton* (2), *Water* v. *Water* (3), and *In re Norton's Settlement* (4) may be cited as instances.

In *Keyes* v. *Keyes* (5) the President of the Court of Divorce held that the Courts in India have no jurisdiction to decree dissolution of a marriage between parties not domiciled in India. This ruling was not necessary for the purpose of deciding that case, but the decision of the President has occasioned a conflict of judicial opinion. In *Wilkinson* v. *Wilkinson* (6) it was held by Macleod C. J. and Martin J., Crump J. dissenting, that the Indian Divorce Act did not confer jurisdiction on Indian Courts to decree dissolution of marriage between parties domiciled in England, and the decision in *Jones* v. *Jones* (7) is to the same effect. On the other hand, the Full Bench of the Lahore High Court in *Lee* v. *Lee* (8) adopted the opposite view which was also taken by Pearson J. in *Miller* v. *Miller* (9) which was an undefended case and by Chotzner J. in *Gillies* v. *Gillies* (10) also an undefended case not yet

(1) (1912) I. L. R. 40 Calc. 215.
(2) (1886) 11 P. D. 176.
(3) [1890] P. D. 152.
(4) (1908) I. C. 471.
(5) [1921] P. 204.
(6) (1923) I. L. R. 47 Bom. 843.
(7) (1923) I. L. R. 1 Rangoon 705.
(8) (1924) I. L. R. 5 Lahore 147.
(9) (1924) I. L. R. 52 Calc. 566.
(10) Unreported decision in Matrimonial suit No. 1 of 1924.

reported. So far as the decision in *Keyes* v. *Keyes* (1) is concerned, I do not regard it as clearly deciding that on its construction the Indian Divorce Act does not confer the jurisdiction on the Courts in India, or that Indian decrees are invalid in India. I regard the decision that the Indian Courts have no jurisdiction, to be based on the view that the Indian Councils Act, 1861, did not warrant the making of a law empowering Courts in India to decree dissolution of marriage in cases where the parties are not domiciled within their jurisdiction. It is contended on behalf of the respondent, that having regard to the rule of English law as ultimately laid down in the case of *Le Mesurier* v. *Le Mesurier* (2), the decision in *Keyes* v. *Keyes* (1) ought to be followed in the present case, and the Indian Divorce Act construed subject to limitations, in order to avoid the consequences following on decrees of Indian Courts not receiving recognition outside India, and in support of this principle of construction the case of *Macleod* v. *Attorney-General of New South Wales* (3) was referred to.

The two broad questions raised in the present case are (*1*) whether the Indian Divorce Act confers jurisdiction on the Courts in India to make decrees of dissolution of marriage in cases where the parties are not domiciled in India and (*2*) if so, whether the Act is to that extent *ultra vires* of the Indian Councils Act 1861.

Section 2 of the Indian Divorce Act is in these terms :—"Nothing shall authorise any Court to grant "any relief under the Act except in cases where "the petitioner professes the Christian religion "and resides in India at the time of presenting

(1) [1921] P. 204. (2) [1895] A. C. 517.
(3) [1891] A. C. 455.

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"the petition or to make decrees of dissolution of "marriage except in the following cases (*a*) "where "the marriage shall have been solemnised in India; "(*b*) where the (matrimonial offences mentioned) shall "have been committed in India or (*c*) where the "husband has since the solemnising of the marriage, "exchanged his profession of Christianity for some "other form of religion." Section 10 sets out the causes for which any husband or wife may petition for dissolution of the marriage to the District Court or High Court. "High Court" is defined in section 3 as being one of the Courts referred to within the local limits of whose ordinary appellate jurisdiction or of whose jurisdiction under the Act the husband and wife reside or last resided together. The next important section to consider is section 7. That section is in these words:—"Subject to the provisions contained "in this Act the High Courts and District Courts "shall, in all suits and proceedings hereunder, act "and give relief on principles and rules which in the "opinion of the said Courts, are, as nearly as may be, "conformable to the principles and rules on which the "Court for Divorce and Matrimonial Causes in England "for the time being acts and gives relief."

Following the argument of counsel in *Keyes* v. *Keyes* (1) it was suggested on behalf of the respondent in the present case that the word "reside" in section 2 should not be construed to mean reside in its ordinary sense, by reason of the provisions of section 7, and that the word should be construed as equivalent to "domiciled" This construction does not appear to have been adopted by the President in *Keyes* v. *Keyes* (1) and as pointed out by Marten J. in *Wilkinson* v. *Wilkinson* (2) if such a construction were accepted, it would prevent the Courts from exercising jurisdiction

(1) [1921] P. 204. (2) (1923) I. L. R. 47 Bom. 843.

to grant decrees for judicial separation where the parties reside but are not domiciled, within the jurisdiction. Moreover, it would not be possible to attach the meaning suggested, to the word "reside" occurring in the definition of High Court in section 3. In my opinion the word "reside" must be construed in its ordinary sense in section 2 of the Act, and taking it in this sense, it is clear that residence is the one and only condition (apart from the Christian faith of the petitioners) which is expressly prescribed for general jurisdiction, as well as for jurisdiction to make decrees of dissolution of marriage.

The argument raised that section 27 of the Matrimonial Causes Act makes no express provision for domicile as the basis of jurisdiction although under the law of England domicile is the foundation of jurisdiction, would have more force had the English Statute contained a provision for residence to found jurisdiction. In *Banerjee* v. *Banerjee* (1), it was held that the Indian Legislature made residence and not domicile the test of the Court's authority to grant a divorce, and that the departure from the test of domicile was deliberate. In this connection I would also refer to Dicey's Conflict of Laws (3rd-edition, page 345) in support of the same proposition.

The contention that the Indian Divorce Act does not confer jurisdiction to dissolve the marriage of persons not domiciled in India is based on the provisions of section 7 of the Act. This section, as noticed before, requires the Court to act on principles and rules which are, as nearly as may be, conformable to those on which the Court in England acts in matrimonial causes and the contention is that section 7 imports by implication the element of domicile as the foundation of jurisdiction. I am unable to take this view of the

(1) (1898) 3 C. W. N. 250.

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object and scope of section 7. The only express condition laid down for jurisdiction is contained in section 2, and it is residence. The terms of section 2 point to this condition being one of general application to all persons; and to read section 7 as importing a different basis of jurisdiction in the case of persons having an English or foreign domicile is to qualify the provisions of the Act, and make them subject to the provisions of section 7. Such a construction is opposed to the opening words of that section. The decisions in *Bailey* v. *Bailey* (1), and *Ramsay* v. *Boyle* (2); which are to the same effect are authorities against the view contended for that section 7 controls the jurisdiction of the Court. In both of these cases the question arose whether the Court had the same jurisdiction under section 11, read with section 7, as the Court in England had under section 28 of the Matrimonial Causes Act; namely, to allow a person with whom the husband is alleged to have committed adultery to intervene and be made a respondent. It was held by Jenkins J. in the first mentioned case, and by the Court of Appeal in the second, that the Court had not the jurisdiction; there was no express power given under section 11 such as section 28 of the English Act contained, and section 7 did not operate to confer the jurisdiction. In discussing the meaning of the words "rules and principles" Jenkins J. expressed himself in these words :—"It appears to me clear the expression "'rules and principles' does not apply in support of "the applicants' contention here. They point rather "to the rules and principles on which the Court "deals with these matrimonial causes in requiring a "certain degree of evidence and other cognate "matters". The question what constitutes cruelty may be instanced as a matter that would fall within the

(1) (1897) I. L. R. 30 Calc. 490. (2) (1903) I. L. R. 30 Calc. 489.

scope of section 7, and this question was considered in the case of *Russell* v. *Russell* (1), according to the principles and rules of the Ecclesiastical Courts upon which the Court had to act in view of the provisions of section 28 of the Matrimonial Causes Act. Section 7 of the Indian Divorce Act is modelled on section 28 of the English Act. The conclusion I arrive at is that residence is the basis of jurisdiction and that all Christian persons residing in India stand on a common ground in relation to that jurisdiction under the Indian Divorce Act. The provisions of section 7 are subject to the provisions contained in the Act, and the section does not operate to import domicile as the foundation of jurisdiction in respect of cases where the parties have a non-Indian domicile. I therefore hold that the Indian Devorce Act on its construction empowers the Courts in India to make decrees of dissolution of marriage though the parties be not domiciled in India.

I pass on to the further question whether this jurisdiction was within the legislative powers vested in the Governor-General in Council by the Indian Councils Act 1861. The Indian Divorce Act was passed by the Indian Legislature under the legislative authority conferred by the Indian Councils Act, 1861 (24 & 25 Vict. c. 67). Section 22 of this Act is in these words: "The Governor-General in Council shall "have power . . . . . to make laws "and regulations for all persons whether British or "native, foreigners or others and for all Courts of "Justice whatever, and for all places and things "whatever, within the Indian territories now under "the dominion of Her Majesty . . . . . provid-"ed always that the said Governor-General in Council "shall not have the power of making any laws or

(1) [1897] A. C. 395, 444.

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"regulations . . . . . which may affect the "authority of Parliament, or the constitution and "rights of the East India Company, or any part of the "unwritten laws or constitution of the United King-"dom of Great Britain and Ireland, whereon may "depend in any degree the allegiance of any person to "the Crown of the United Kingdom, or the sove-"reignty or dominion of the Crown over any part "of the said territories". The Privy Council in the case of *Empress* v. *Burah* (1) considered the scope of the powers of the Indian Legislature conferred by the Act of the Imperial Parliament (24 & 25 Vict. c. 104) which passed in the same sessions with the Indian Councils Act and in the judgment of the Privy Council Lord Selborne laid down the rule of construction for the guidance of Courts. That rule is binding on this Court and on account of its importance in the present case, I quote it at length. "The Indian Legis-"lature has powers expressly limited by the Act of the "Imperial Parliament which created it, and it can, "of course, do nothing beyond the limits which "circumscribe these powers, but, when acting within "these limits it is not in any sense an agent or dele-"gate of the Imperial Parliament, but has, and was "intended to have, plenary powers of legislation as "large, and of the same nature, as those of Parliament "itself. The established Courts of Justice when a "question arises whether the prescribed limits have "been exceeded must of necessity determine that "question; and the only way in which they can "properly do so is by looking to the terms of the "instrument by which, affirmatively, legislative "powers were created, and by which, negatively, they "are restricted. If what has been done is legislation "within the general scope of the affirmative words

(1) (1878) I. L. R. 4 Calc. 172.

"which gave the power, and if it violates no express "condition or restriction by which that power is "limited (in which category would, of course, be "included any Act of the Imperial Parliament at "variance with it) it is not for any Court of Justice to "enquire further, to enlarge constructively those "conditions and restrictions". Matrimonial jurisdiction was conferred in 1861 on the High Courts by section 9 of 24 & 25 Vict. c. 104 an Act for establishing High Courts of Judicature in India and the Indian Divorce Act was passed in 1869. Applying the rule in *Burah's case* (1), this legislation by the Indian Legislature comes affirmatively within the scope of the powers created by section 22 of the Indian Councils Act 1861, and it does not violate any express condition or restriction contained in the proviso to section 22. The learned President in *Keyes* v. *Keyes* (2) however considered that the enacting words in section 22, taken by themselves in their ordinary meaning, could not be deemed to warrant the making of laws by the Indian Government to interfere with the status of subjects of the crown, not domiciled in India, and that the principles enunciated in the cases of *Shaw* v. *Gould* (3) and *Le Mesurier* v. *Le Mesurier* (4), were material in determining whether upon the true construction of the Indian Councils Act, 1861, power was conferred to legislate for British subjects so as to affect their status as to marriage in the country of their domicile I venture to express it as a reasonable view of the cases decided between 1861, when the Indian Councils Act was passed, and 1895 when the rule of English law relating to the basis of divorce jurisdiction was finally laid down in *Le Mesurier* v. *Le Mesurier* (3), that

(1) (1878) I. L. R. 4 Calc. 172.
(2) [1921] P. 204.
(3) (1868) 3 H. L. 55.
(4) [1895] A. C. 517.

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there was during that period no clear and definite rule that was consistently followed by the Courts in England. In *Brodie* v. *Brodie* (1) the parties had their domicile in Australia where the wife was residing at the time of the suit. It was considered that the *bona fide* residence of the husband in England gave the English Court divorce jurisdiction over him and also over his wife although she continued to reside in Australia. In *Shaw* v. *Gould* (2) it was held that a foreign tribunal had no authority so far as any consequences in England were concerned, to pronounce a decree of divorce *a vinculo* in the case of an English marriage between English subjects, unless they were domiciled in the country where that tribunal had jurisdiction. In this case Lord Westbury held that a foreign Court could settle the conditions on which it would exercise its jurisdiction, and that on those conditions being fulfilled, it might exercise that jurisdiction, but that the judgment could not claim extra territorial authority unless pronounced in accordance with the rules of international public law. Lord Colmsay favoured the view that a decree of dissolution of marriage passed in Scotland on a *bona fide* residence for a considerable period in Scotland, though not changing the domicile for all purposes, must be recognized in England. It is to be noticed that the facts in this case were strongly emphasized in all the judgments, so much so that Lord Chelmsford stated that his opinion was founded entirely upon the peculiar circumstances attending the case. The divorce in Scotland he said had been obtained by preconcerted arrangement, the parties resorting to the Scotch Courts for the sole purpose of making it instrumental to the attainment of their objects. In *Wilson* v. *Wilson* (3)

(1) (1861) 2 S. & T. 259. (2) (1868) 3 H. L. 55.
(3) (1872) 2 P. D. 435.

the parties were Scotch and were married in Scotland. The husband abandoned his domicile of origin, and acquired an English domicile and instituted a suit for dissolution of his marriage. It was objected that the English Court had no jurisdiction as the parties were married in Scotland, lived in Scotland and the adultery took place in Scotland; in short the parties were really domiciled in Scotland. Though Lord Penzance expressed it as his opinion that matrimonial matters should be referred to the Courts of the country of the domicile, he did not decide the question whether any residence in England short of domicile would give the Court jurisdiction over parties whose domicile was elsewhere, but said that this was a question upon which the authorities were not consistent. The next case is that of *Nihoyet* v. *Nihoyet* (1) which came before the Court of Appeal. The respondent the husband, had a French domicile but resided in England. It was held by James and Cotton L. JJ., Brett L. J. dissenting, that the English Court had jurisdiction to grant a divorce. As Marten J. in *Wilkinson* v. *Wilkinson* (2) observes, the Court could not have regarded the case of *Shaw* v. *Gould* (3) as clear authority that a *bona fide* residence was not sufficient to give jurisdiction. Finally in 1895 the rule, which has since been settled law of England, was laid down in *Le Mesurier* v. *Le Mesurier* (4) that the domicile of the parties within the country is necessary to give to its Courts jurisdiction so to divorce *a vinculo* as that its decree to that effect shall possess extra territorial authority.

Having regard to the above cases it is not possible to say that when the Indian Councils Act,

(1) (1878) 4 P. D. (C. A.) 1.
(2) (1923) I. L. R. 47 Bom. 843.
(3) (1868) 3 H. L. 55.
(4) [1895] A. C. 517.

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1861, was passed and for over 30 years afterwards until the decision in *Le Mesurier* v. *Le Mesurier* (1), the Courts of England were acting definitely or consistently on the principles enunciated in 1868 and 1895, and I am unable to take the view that the decision in *Shaw* v. *Gould* (2) and *Le Mesurier* v. *Le Mesurier* (1) should be relied on to construe section 22 of the Indian Councils Act of 1861. The conclusion to which I have come is that the jurisdiction conferred by the Indian Divorce Act on the Courts in India to make decrees of dissolution of marriage on the basis of residence, is not restricted to the cases of persons domiciled in India, and that this jurisdiction is not beyond the authority given by the Indian Councils Act. With all the respect due to the high authority of the President, I have found myself unable to follow the decision in the case of *Keyes* v. *Keyes* (3).

Lastly, it is contended that assuming there is jurisdiction the Courts ought not to make decrees which will be of no effect outside the territorial limits of their jurisdiction. I think, however, that as their decrees are valid and operative within British India, the Courts are bound to exercise their jurisdiction if the conditions and requirements prescribed by the Indian Divorce Act are satisfied and this was the view expressed by Fletcher J. in *Giordano* v. *Giordano* (4).

[His Lordship then dealt with the evidence of the respondent's residence within the appellate jurisdiction of the Court and with the evidence on the charges of adultery and cruelty, and held that the respondent at the time the petition was presented

(1) [1895] A. C. 517
(2) (1868) 3 H. L. 55
(3) [1921] P. 204.
(4) (1912) I. L. R. 40 Calc. 215.

was residing within the appellate jurisdiction and that the charges of adultery and cruelty were proved. Upon these findings a decree *nisi* was pronounced.]

Attorneys for the petitioner: *Leslie & Hinds.*

Attorney for the respondent: *G. N Sen.*

A. P. B.

APPELLATE CIVIL.

Before Cuming and Chakravarti JJ.

UMASHASHI DEBI.

v.

AKRUR CHANDRA MAZUMDAR *

1925 *July* 21.

Title—Civil Procedure Code (Act V of 1908) s. 66—Suit for declaration of title and confirmation of possession against the certified purchaser—Maintainability.

A declaratory suit equally with a suit to recover possession comes within the purview of section 66 of the Civil Procedure Code. It is immaterial whether the plaintiff is in possession and seeks a confirmation of possession or whether he is out of possession and seeks to recover possession, in either case the section applies.

Sasti Charan v. *Annapurna* (1) dissented from. *Hanuman Prosad Thakur* v. *Jadunandan* (2) and *Bishan Dayal* v. *Gaziuddin* (3) referred to.

SECOND APPEAL by Umashashi Debi, the plaintiff.

This appeal arose out of a suit for declaration of title to and confirmation of possession of certain plots.

* Appeal from Appellate Decree, No. 282 of 1923, against the decree of Baman Das Mukerji, Subordinate Judge of Hooghly, dated 11th Sep. 1922, modifying the decree of M. Lutfur Rahman, Munsif of Serampur, dated 26th April 1921.

(1) (1896) I. L. R. 23 Calc. 699. (2) (1915) 21 C. W. N. 147

(3) (1901) I. L. R. 23 All. 175.