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SUBHASH
CHANDRA
BOSEv.
R KNIGHT
& SONS.

the Court. In default of that being done the case will appear on my list on Monday the 15th November. Liberty to apply.

Attorneys for the plaintiff: Dutt & Sen.

Attorneys for the defendants: Orr Dignam & Co.

A. P. B.

MATRIMONIAL JURISDICTION.

Before Sanderson C. J., Panton and Graham JJ.

MARY REBERIO

v.

VINCENT SHERLOCK REBERIO.*

Divorce—Wife's petition—Adultery after desertion—Indian Divorce Act (IV of 1869), ss. 14 and 17.

A wife, who was deserted by her husband for four years and was forced by necessity and circumstances created by her husband to become unchaste, presented a petition for divorce.

Held, that the Court should exercise its discretion in that case and grant the divorce.

Symons v. Symons (1) referred to.

ON the 30th June 1914 the petitioner Mary Reberio was married to the respondent Vincent Sherlock Reberio in Calcutta and thereafter lived together in Calcutta or at Bandel till March 1919. It was alleged that during that period the respondent treated the petitioner with great cruelty. Last time the petitioner and the respondent lived together was at

* Divorce Suit No. 6 of 1925 of the Court of the District Judge of Hooghly.

Bandel, where the respondent was working. Afterwards the respondent became unemployed and went to live with his mother; there being no room for the petitioner she went to live with her mother and lived there until her mother died. Thereafter the petitioner worked as a housekeeper for a time but afterwards had no means of livelihood. On 20th June 1925, the petitioner filed her petition for dissolution of marriage before the District Judge of Hooghly on the grounds of adultery, desertion and cruelty. At the hearing she admitted that she had a child born to her a year ago of whom the respondent was not the father. The learned District Judge granted her the divorce finding that the petitioner was forced by necessity and circumstances created by her husband to become unchaste. The decree came up before the High Court for confirmation.

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Mr. R. C. Bonnerjee and Babu Sachindra Nath Banerjee, for the petitioner.

None appeared for the respondent.

SANDERSON C. J. This is a case which has been referred to the High Court by the learned District Judge for confirmation of a decree which the learned Judge made in favour of the petitioner dissolving her marriage with the respondent.

The learned Judge found that the husband had deserted the petitioner for nearly six years and had not maintained her and her child and that he had been guilty of habitual cruelty and adultery. The learned Judge then said that *prima facie* the petitioner was entitled to the relief asked for.

It appears, however, that the petitioner admitted that she had given birth to a child about a year ago and that the child was not her husband's.

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The question, therefore, arises, under the proviso to section 14 of the Divorce Act, whether the Court, in the exercise of its discretion, should have granted a decree.

The proviso to this section is similar to the proviso to section 31 of the Matrimonial Causes Act. In respect of that proviso, it has been held in several cases that the fact that the husband caused or conduced to the wife's adultery by his own wilful neglect or misconduct may be taken into consideration.

One of the cases is *Symons v. Symons* (1) and at page 175 Sir Francis Jeune is reported to have said as follows: "After very careful consideration, I have come to the conclusion that it is safe and proper to hold that the circumstances, which may be considered in exercising this discretion, should include the case of a husband causing or conducing to his wife's adultery by his own wilful neglect or misconduct"; and again, at page 177 the learned President is reported to have said, "On principle, there appear to me to be strong reasons for holding that such wilful neglect or misconduct by a husband should constitute matters, possibly not always conclusive, but fit to be taken into consideration in exercising the discretion, whether a divorce shall be granted against him".

In this case, the learned Judge found that the respondent deserted the petitioner for at least four years, that she went to live with her brother until his death, after that, with her mother until she died, and, that after her mother's death she was absolutely destitute. He referred to other matters and concluded by saying: "There can be no doubt that the husband by his own conduct is largely, if not wholly, responsible for his wife's guilt. On the facts of the case I

(1) [1897] P. 167, 175.

“I am inclined to believe that the petitioner was forced
 “by necessity and circumstances created by her
 “husband to become unchaste.”

I am not prepared to disagree with the finding at
 which the learned Judge arrived; and, in view of that
 finding, I am of opinion that the Court should exer-
 cise its discretion in this case in favour of the
 petitioner and confirm the decree for dissolution of
 marriage which has been made by the learned District
 Judge.

PANTON J. I agree.

GRAHAM J. I agree.

N. G.

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