

MATRIMONIAL JURISDICTION.

Before Rankin C. J., Buckland and Costello JJ.

PETER WILLIAM CRESSWELL

v.

OLIVE CATHERINE CRESSWELL.*

1932

Nov. 28.

Divorce—Jurisdiction—Domicil—Indian Divorce Act (IV of 1869), s. 2.

Before exercising jurisdiction under the Indian Divorce Act, the court ought to carefully enquire, on proper legal principles, into the question of domicil of the parties.

Wright v. Wright (1) and Stroud v. Stroud (2) relied on.

REFERENCE FOR CONFIRMATION of divorce decree.

This matter came up before the High Court for confirmation of a decree for divorce granted by the District Judge of Dinajpur under the Indian Divorce Act.

No one appeared for any of the parties.

RANKIN C.J. This is a husband's petition for dissolution of marriage on the ground of the adultery of the wife. The learned District Judge of Darjeeling has granted a decree of divorce and the facts appear to be borne out by the evidence so far as the merits of the case are concerned. It is necessary, however, to point out to the learned District Judge that he has not properly dealt with the question of domicil of the parties. Unless the parties are of Indian domicil, they do not come under the jurisdiction conferred by the Indian Divorce Act, but under a different jurisdiction altogether. In his petition, the husband alleges that he was born in British India and has always resided there and is at present residing at Kalimpong. In his evidence, he says "I

*Divorce Suit, No. 2 of 1931, of the Court of the District Judge of Darjeeling.

(1) (1930) I. L. R. 58 Calc. 259.

(2) (1931) I. L. R. 58 Calc. 1332.

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“am a Christian, I was born in the Dooars, British “India”. This Court has pointed out before, for the benefit of the learned District Judges, that evidence such as this is not proper evidence of domicil. There are many Europeans who are born in British India but are not of Indian domicil. It is necessary to have regard to the circumstances and to carefully enquire on proper legal principles into the question of domicil. It may be quite plain that these parties belong to the domiciled community. All I can say is that there is no evidence of that. Nothing appears from the name Cresswell which is an ordinary European name. The learned District Judge has exercised a jurisdiction without having proper proof that he is entitled to exercise it.

I may add that this defect in the treatment of divorce cases is constantly causing trouble and I must really ask the District Judges to appreciate the rulings on this subject of domicil [*Wright v. Wright* (1) and *Stroud v. Stroud* (2)] and to take care to see that in all cases there is proper proof of Indian domicil before giving a decree under the Indian Divorce Act.

The case must be sent back to the learned District Judge for further enquiry on this point. He will take such additional evidence as may be necessary and certify its result to this Court.

BUCKLAND J. I agree.

COSTELLO J. I agree.

Case remanded.

N. G.

(1) (1930) I. L. R. 58 Calc. 259. (2) (1931) I. L. R. 58 Calc. 1332.