MATRIMONIAL JURISDICTION.

Before Rankin C. J., C. C. Ghose and Pearson JJ.

REV. M. BONHIEM

v.

KA TROLIMON.*

1929

Dec. 9.

Divorce—Jurisdiction—Domicile—Evidence—Parties—Witness for petitioner—Indian Divorce Act (IV of 1869), ss. 51, 52—Indian Divorce (Amendment) Act (XXV of 1926).

Sections 51 and 52 of the Indian Divorce Act contain the law upon the question whether a respondent or co-respondent can give evidence against themselves of adultery.

De Bretton v. *De Bretton* (1) and *Hebblethwaite* v. *Hebblethwaite* (2) referred to.

Act XXV of 1926 prevents any decree of dissolution of a marriage except where the parties are domiciled in India.

REFERENCE for confirmation of divorce decree obtained by the Revd. Max Bonhiem, petitioner.

The facts of the case out of which this Reference arose appear fully in the judgment of the Deputy Commissioner of the Khasi and Jaintia Hills, which was as follows :—

This is an application for divorce and is a peculiar case. The petitioner was a German priest, living in Shillong. Early in the war, he was interned and finally deported and has not returned to India. The petitioner has not been examined but applied for a dissolution of marriage by post : his letter is written from Amsterdam. All the facts are admitted. Regarding the marriage and subsequent adultery, I examined both Ka Trolimon and U. Orirai. The procedure in this case may be irregular, but I cannot see that any useful purpose is served by keeping a German priest tied to a Khasi woman.

Subject, therefore, to confirmation by the Hon'ble High Court, I grant a decree of dissolution of marriage.

No one appeared for any of the parties in the High Court.

*Reference in Divorce Suit, No. 33 of 1928, for confirmation of the decree of the Deputy Commissioner of Khasi and Jaintia Hills, dated March 27, 1929.

(1) (1881) I. L. R. 4 All. 49. (2) (1869) L. R. 2 P. & D. 29.

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RANKIN C. J. In this case, the husband, who appears to be a resident of Holland and who was married to a Khasi girl, was deported from this country by reason of the war. He has sent to the Deputy Commissioner of Khasi and Jaintia Hills an application for divorce, which has been treated as a petition—the ground being that the wife has been living with another man for a number of years. The petitioner produced no evidence in support of the petition. But the Deputy Commissioner of Khasi and Jaintia Hills issued summons upon the wife and upon the co-respondent. He appears to have examined them and they both say that they were living together for a certain number of years during the time when the husband had been repatriated. There appears to be no doubt about the facts; but the procedure, as the Deputy Commissioner himself acknowledges, is irregular, to say the least of it. No evidence having been given for the petitioner, it was unnecessary for the respondent or the co-respondent to give any evidence at all and no decree could be made upon the petition in the absence of evidence. The Deputy Commissioner, if minded to assist the petitioner in this case, although he could not, in my opinion, treat them as compellable witnesses on a question of adultery, could consistently with sections 51 and 52 of the Divorce Act ask them whether they were willing to give evidence to the effect that they had been living together; and, if they were willing, he could have treated them as witnesses for the petitioner and pronounced a decree. The law upon the question whether a respondent or co-respondent can give evidence against themselves of adultery seems to be contained in India in the sections which I have mentioned, namely, sections 51 and 52; and there are cases upon the subject which are worth considering. One case is *De Bretton* v. *De Bretton* (1) and there is the English case of *Hebblethwaite* v. *Hebblethwaite* (2). In the present case, it does not appear that the respondent or the co-respondent were ever asked

(1) (1881) I. L. R. 4 All. 49.

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whether they were willing to give evidence for the husband and it rather appears that they were treated as parties to the suit who were obliged to give evidence.

There is, however, a fatal objection to the decree, which we are asked to confirm. Not only is there no evidence that the domicile of the husband is in India, but all the facts disclosed point to the contrary. Act XXV of 1926 prevents any decree of dissolution of marriage being possible in the present case.

The decree of the Deputy Commissioner of the Khasi and Jaintia Hills must be set aside and the petition dismissed.

C. C. GHOSE J. I agree.

PEARSON J. I agree.

Decree set aside.

G. S.