MATRIMONIAL JURISDICTION.

Before Costello J.

TAYLOR

v.

WENKENBACH.*

1936

July 23.

Divorce—Nullity of marriage, Declaration of—Correct procedure—Parties not domiciled in India—Jurisdiction of Courts in British India—Non-registration of decree in England and Scotland, Effect of—Remarriage, Validity of—Indian Divorce Act (IV of 1869), ss. 2, 18, 19 (4), 59—Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17 Geo. V, c. 40), s. 1 (2) & (3)—Specific Relief Act (I of 1877), s. 42.

The right procedure, where a decree for a declaration of nullity of marriage is sought, is a suit brought in the Matrimonial Jurisdiction of the Court and not a suit under s. 42 of the Specific Relief Act, 1877.

The amendment of s. 2 of the Indian Divorce Act of 1869 was made by the Indian Divorce (Amendment) Act of 1926 in the light of the decision in the case of *Keyes* v. *Keyes* (1) and made it clear that Courts in British India are empowered to pronounce decrees of dissolution of marriage except where the parties to the marriage are not domiciled in India at the time when the petition is presented.

Yet at the same time it indicates that as regards decrees of nullity of marriage the only conditions necessary are that the marriage should have been solemnised in India and the petitioner should be resident in India at the time when the petition is presented.

Where the petitioner who had married as her first husband a man who was domiciled in England sought an annulment of her second marriage which was solemnised in India and the petitioner was resident in India,

Held that the Courts in India had jurisdiction to deal with the matter.

Jackson v. *Jackson* (2); *Warter* v. *Warter* (3) *and Battie* v. *Brown* (4) referred to.

The position of a petitioner, who had obtained a decree under the Indian and Colonial Divorce Jurisdiction Act of 1926, but without registering, or causing to be registered, that decree in the High Court in England, or the Court of Sessions in Scotland, is precisely the same as that of a person, who

*Matrimonial Suit, No. 18 of 1936.

(1) [1921] P. 204.
(2) (1911) I. L. R. 34 All. 203.
(3) (1890) 15 P. D. 152.
(4) (1913) I. L. R. 38 Mad. 452.

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obtains a decree under the Act of 1869 and then remarries before the expiry of six months from the date of the decree being made absolute. In either case the second marriage is invalid.

The wording of s. 1, sub-sec. (*3*) of the Indian and Colonial Divorce Jurisdiction Act of 1926 is extremely ambiguous and, if it is the fact that the effect of registration in the High Court in England, or the Court of Sessions in Scotland, would be to complete the decree absolute for all purposes as from the date on which it was actually made, there might ensue the fantastic result that a second marriage, which at one moment was invalid owing to lack of registration, might suddenly become valid by reason of subsequent registration.

Where a decree absolute of divorce has been granted in India under the Colonial Divorce Jurisdiction Act, 1926, either party may, on production of the necessary certificate, secure the registration of such decree in the High Court in England or the Court of Sessions in Scotland.

Wilkins v. *Wilkins* (1) referred to.

It is obviously desirable that the matter should be clarified by further legislative enactment. The only satisfactory method would be to make it incumbent upon the Court pronouncing the decree to direct that steps be taken by the Registrar of the Court to have the decree registered in England or Scotland as soon as convenient after the decree was pronounced.

SUIT for declaration of nullity of marriage.

The facts of the case and the arguments are fully set out in the judgment.

R. C. Bonnerjee for the petitioner.

The respondent was not represented.

Westmacott and *Sikhar K. Basu* for the Advocate-General of Bengal.

Clough as *amicus curiæ* at the hearing.

COSTELLO J. This suit raises questions of very great public importance and the decision which I have to give not only affects the rights and the status of the actual parties to these proceedings but may also have a bearing upon the status of persons who are in no way connected with these proceedings as there may be other persons in India who are in the same position as the petitioner as regards divorce and subsequent marriage. The legitimacy of children may even be affected.

(1) (1932) 101 L. J. (P. D. & A) 35; 147 L. T. 17.

The points raised in this case are of such general importance that I thought it right to ask the Advocate-General of Bengal to appear or be represented before me in order that in the public interest all aspects of the matter might be fully discussed. Mr. Westmacott appeared and argued on behalf of the Advocate-General and I am very much indebted to him for the very full and able assistance which he gave to the Court and also to Mr. Clough who took part in the proceedings as *amicus curiæ*.

The suit is one for a declaration that the marriage which took place between the petitioner Henrietta Violet Taylor and the respondent Otto Guenter Wenkenbach on August 2, 1930, is null and void. It is, in fact, a suit for nullity of marriage brought under the provisions of the Indian Divorce Act (IV of 1869) which by s. 18 provides that any husband or wife may present a petition to the District Court or to the High Court praying that his or her marriage may be declared null and void.

The facts of this case are somewhat peculiar and the point of law which I have to determine is a novel one. The petitioner was married on December 4, 1913, to one Alfred Taylor. In the year 1929 the petitioner brought a suit against her then husband praying for the dissolution of that marriage. That was Suit No. 12 of 1929 instituted in this Court in its Matrimonial Jurisdiction but under the special jurisdiction conferred on this Court by the Indian and Colonial Divorce (Jurisdiction) Act of 1926 (16 & 17 Geo. V., c. 40). The reason why that suit was brought under the Act of 1926 was because Alfred Taylor was not domiciled in India but was domiciled in England and, accordingly, the petitioner by virtue of being his wife was herself also domiciled in England. The suit of 1929 was heard by me on November 23, 1929, and on that day I pronounced a decree nisi for the dissolution of the marriage between Henrietta Violet Taylor and Alfred Taylor. That decree was made absolute on July 7, 1930. Shortly afterwards, that is to say on August 2, 1930,

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the petitioner went through a form of marriage with the present respondent Otto Guenter Wenkenbach before the Senior Marriage Registrar of Calcutta. A copy of the certificate of that marriage as entered in the marriage register kept in the office of the Senior Registrar is annexed to the present petition. After that marriage the petitioner and the respondent lived and cohabited together at several places in Calcutta and finally at an address in Waterloo Street in premises belonging to the Great Eastern Hotel. It may be taken that that is the place where "the husband and "wife last resided together" for the purpose of fixing the proper forum for the determination of the matters raised in this suit.

The petitioner has given evidence to the effect that she herself professes the Christian religion and that she resides at 36, Chowringhee, Calcutta. She is, therefore, at present residing within the territorial limits of the jurisdiction of this Court. She has stated that the respondent is of German nationality and is domiciled in Germany. His occupation is that of a Civil Engineer and his present employment necessitates that he should move about to various places in India. At the moment he is residing at Quetta. On February 19, 1936, the respondent instituted a suit in this Court asking for a declaration under the Specific Relief Act, 1877, s. 42, that the marriage which took place between him and the present petitioner on August 2, 1930, was null and void on the ground that the marriage between the present petitioner and Alfred Taylor was "still in "force" for the reason that the decree absolute which had been made on July 7, 1930, in Suit No. 12 of 1929 had never been registered in the High Court in England as required by s. 1, sub-s. (*2*) of the Indian and Colonial Divorce (Jurisdiction) Act, 1926, in the manner provided for in sub-s. (*3*) of that section.

The suit brought by Otto Guenter Wenkenbach against the present petitioner was dismissed by me on June 20, 1936, on the ground that a suit brought

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under the provisions of s. 42 of the Specific Relief Act, 1877, was not the appropriate method for obtaining the relief which the plaintiff was seeking in that suit and that the right procedure where a decree for a declaration of nullity of marriage was sought would be proceedings in the Matrimonial Jurisdiction of this Court. The present suit is obviously an outcome of the prior proceeding and now Henrietta Violet Taylor (or Wenkenbach) in her turn is asking for a declaration that the marriage between her and the respondent which took place on August 2, 1930, is null and void for the same reasons as those previously advanced by Otto Guenter Wenkenbach in the suit in which he was the plaintiff. The petition in the present proceedings is dated June 25, 1936, and on June 27, 1936, the respondent was served with the summons in the suit and, of course, a copy of that petition. On July 20, 1936, that is to say, as recently as three or four days ago the respondent entered an appearance and through his solicitor intimated that he had no objection to the case being disposed of at an early date. Furthermore, he instructed his solicitor (so the latter has testified in the witness box) not to oppose the petition. The case, therefore, comes before me as an undefended suit and it is, therefore, all the more a matter for satisfaction that I have had the advantage of the assistance rendered by Mr. Westmacott and Mr. Clough.

Mr. Clough addressed me at length upon the question of whether this Court has any jurisdiction at all in this matter. Under the provisions of the Indian Divorce Act of 1869 the Courts in India originally had taken upon themselves to grant decrees for dissolution of marriage. A large number of such decrees had been made in the course of the half century or so preceding the year 1921 when there came the case of *Keyes and Gray* (1), in which it was held that the Courts in India had no jurisdiction to decree dissolution of a marriage between parties not domiciled in India, even though the marriage was celebrated in

(1) [1921] P. 204.

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India: the parties were resident in India; and the acts of adultery relied on were committed within the jurisdiction of the Indian Court.

As a result of the decision in the case of *Keyes* v. *Keyes* (1) the Indian Divorce Act of 1869 was amended and the Indian and Colonial Divorce (Jurisdiction) Act of 1926 was enacted by the Imperial Parliament. Prior to the amendment of the Indian Divorce Act which took place in 1926, s. 2 contained these words:—

> Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition.

Mr. Clough argued as *Keyes'* case showed that under the Act of 1869 the Courts in India had no jurisdiction to grant decrees for dissolution of marriage so it showed also that the Courts had no jurisdiction to make decrees of nullity of marriage. In support of his argument Mr. Clough referred to the case of *Inverclyde* (*otherwise Tripp*) v. *Inverclyde* (2) where it was held by Bateson J. that a decree annulling a marriage on the ground of impotence was a judgment *in rem* altering the status of the parties and could be pronounced only by the Court of their domicile. A decree annulling a marriage on this ground dealt with a marriage which till the date of the decree was voidable only and not void. In substance it was a decree for the dissolution of that marriage and was thus distinguished from decrees annulling marriages for illegality or informality. Had the matter stopped there it would not have been open to Mr. Clough to contend as he did that it would necessarily follow from the decision in *Inverclyde* (*otherwise Tripp*) v. *Inverclyde* (2) that a decree annulling a marriage on the ground of some illegality or informality could only be made by a Court of the domicile of the parties. Mr. Clough was, however, able to refer me to another case reported in the same

(1) [1921] P. 204. (2) [1931] P. 29.

volume of the Law Reports—the case of *Newbould* v. *Attorney-General* (1), where it was held by Lord Merrivale who was then the President of the Probate, Divorce and Admiralty Division of the High Court of England that a final decree annulling a marriage on the ground of the incapacity of one of the parties to it to consummate it has retrospective operation, so that the effect of the decree amounts to a declaration that there is no marriage.

Mr. Clough argued from this that all decrees annulling marriages are in *pari passu*. Whether a marriage is annulled on the ground of the incapacity of one of the parties or whether it is annulled on the ground of some illegality or irregularity, the position is that in the eye of the law there was from the very outset no marriage at all. Mr. Clough submitted, therefore, that if proceedings for nullity are brought on the ground of "incapacity" it is only the Court of the domicile of the parties which has jurisdiction over the matter and it is equally so in the case of proceedings for nullity brought on the ground of illegality or irregularity.

I entirely agree that if we were considering the present matter in proceedings based on the Indian Divorce Act of 1869 as it stood prior to the amendment of 1926, the argument of Mr. Clough would not only have had considerable force but might indeed lead to the conclusion that I had no jurisdiction to entertain the present petition or to grant the relief claimed by the petitioner in these proceedings. I have, however, to consider this point in the light of the Indian Divorce Act of 1869 as it now stands since the amendment made in s. 2 in the year 1926 by the Indian Divorce (Amendment) Act of that year. As a result of the amendment then made s. 2 of the principal Act now reads as follows:—

That Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

(1) [1931] P. 75, 77.

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Nothing hereinafter contained shall authorize any Court to grant any relief under this Act except where the petitioner or respondent professes the Christian religion.

Then follows the part which is material for our present purpose:—

or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented,

or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition,

or to grant any relief under this Act other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.

The amendment of s. 2 was, as I have already stated, obviously made as a consequence of the decision in the case of *Keyes* v. *Keyes* (1) and the legislature at the time when the amendment was made must have fully considered that decision and the implications of the judgment therein given. In other words, the amendment of s. 2 was made in the light of the decision in the case of *Keyes* v. *Keyes* (1). It seems to have been the intention of the legislature to make it clear that Courts in India are not empowered to pronounce decrees for dissolution of marriage except in cases where the parties to the marriage are domiciled in India at the time when the petition is presented, but at the same time to indicate that as regards decrees of nullity of marriage the only conditions necessary are that the marriage should have been "solemnized in India" and the petitioner should be resident in India at the time when the petition is presented. It seems to me that the juxta-position of the two paragraphs in s. 2 which I have just read and the contra-distinction therein contained indicate that it was the intention of the legislature to permit the Courts in this country to make decrees of nullity of marriage even though the parties presenting the petition are not domiciled in India. The present petitioner happened to marry as

(1) [1921] P. 204.

her first husband a man who was domiciled in England. Her domicile as a consequence became an English domicile. But the marriage which she now seeks to have annulled was solemnized in India and the petitioner is resident in India and was so at the time when she presented the petition.

Mr. Clough has suggested that the legislature in this country has no power to pass any enactment which affects the rights at any rate the matrimonial rights —of persons not domiciled in this country. That, said Mr. Clough, is the underlying principle of the decision in the case of *Keyes* v. *Keyes* (1). As to whether that is so or not I do not feel called upon to express any opinion in the present proceedings. It seems to me that I am bound to act so far as these proceedings are concerned upon the assumption that the legislature intended what it purports to say in s. 2 as regards decrees of nullity of marriage and I must assume that the amending Act of 1926 was lawfully passed by the Indian legislature. In these circumstances, I feel obliged to hold that under the law in India, as it stands at present I have jurisdiction to deal with this case.

I have now to consider whether the petitioner is entitled to the relief which she seeks. Mr. Westmacott has conceded that he is not in a position to do otherwise than agree with the contention put forward by Mr. Bonnerjee on behalf of the petitioner that the effect of sub-s. (*2*) of s. 1 of the Indian and Colonial Divorce Jurisdiction Act of 1926 is to bring it about that no decree for dissolution of marriage made under the jurisdiction conferred upon Courts in India by that Act can have any force or effect either in India or anywhere else unless and until that decree is registered in the manner provided for in sub-s. (*3*). The petitioner herself has given evidence that when she first obtained the decree absolute in the suit brought by her against her former husband Alfred Taylor (that

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decree absolute, as I have stated, being obtained on July 7, 1930), the petitioner was ignorant of the fact that that decree, although a decree absolute, did not have the effect of permitting her to remarry in August, 1930. The petitioner has stated that she was unaware that there was any necessity to have the decree registered in England. It is true that later on she discovered that there was the provision in the Act of 1926 requiring registration but she then thought it was not worth while incurring the expense of effecting such registration,—apparently not realising at that time that the absence of registration meant that the marriage between her and Alfred Taylor was—at any rate to a limited extent—still in force. It is provided by s. 19 of the Indian Divorce Act, 1869, that decrees of nullity of marriage may be made on any of the grounds set forth in the section, one of such grounds being that stated in s. 19(4), namely:—

> that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Evidence has been given before me to show that at the time when the marriage between the petitioner and Otto Guenter Wenkenbach took place on August 2, 1930, the former husband of the petitioner, that is to say Alfred Taylor was still living. A daughter of the petitioner and Alfred Taylor went into the witness box and testified that she had seen and spoken with her father in England in the year 1931. It is clear, therefore, that he was living at the time when the marriage on August 2, 1930, took place. One of the conditions laid down in s. 19 (4) is, therefore, fulfilled: as to that there can be no question. The petitioner says that the other condition is also fulfilled; namely, that the marriage with her former husband, Alfred Taylor, was "then in force", that is to say, was still in force on August 2, 1930. Looking at the language of s. 1 (2) of the Indian and Colonial Divorce Jurisdiction Act of 1926, although the drafting of that sub-section is open to criticism, one can

only come to the conclusion that the law is that no decree made by virtue of the jurisdiction conferred on a High Court in India under the Indian and Colonial Divorce (Jurisdiction) Act of 1926 has any force or effect either in India or elsewhere unless and until it has been registered in the High Court in England. The position of a husband or a wife who has obtained a decree under the Act of 1926 as regards capacity—*i.e.*, legal capacity—to remarry seems to be entirely analogous to that of a husband or wife who has obtained a decree for dissolution of marriage under the Indian Divorce Act of 1869, but six months have not elapsed after the obtaining of such decree. The marriage of the parties to a suit brought under the Act of 1869 is not dissolved for all purposes, by the making of a decree absolute because by s. 57 of the Act of 1869 it is provided:—

> When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,
>
> or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,
>
> or when any such appeal has been dismissed,
>
> or when in the result of any such appeal any marriage is declared to be dissolved,
>
> but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:
>
> Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.
>
> When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

It follows that where there has been a decree for dissolution of marriage made under the Act of 1869 and that decree has been made absolute at least a further six months must elapse before there can be a fresh marriage, and if before the expiry of that six months either of the parties goes through a ceremony

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of marriage the second marriage will be null and void. In this connection I would refer to the case of *Jackson* v. *Jackson* (1) in which it was definitely held that where the successful petitioner in a suit for dissolution of marriage had entered into a second marriage within six months of the decree for dissolution of marriage becoming absolute, the second marriage was void. Mr. Justice Chamier of the Allahabad High Court in his judgment said :—

The petitioner claims to be entitled to a declaration that her marriage with the respondent is null and void.

Section 19 of the Indian Divorce Act provides that such a declaration may be made at the instance of a wife on the ground that the former wife of the husband was living at the time of the marriage, and the marriage with such former wife was then in force. Section 57 of the Act provides that when six months after the date of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction or when any such appeal has been dismissed, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death, provided that no appeal to His Majesty in Council has been presented against any such decree. There is no appeal to His Majesty in Council against a *decree nisi* for dissolution of a marriage (see s. 56), therefore there can be no doubt that the "decree of a High Court dissolving a marriage" referred to in s. 57 is the decree absolute not the *decree nisi*. The section was construed in this way by Sir James Hannen in the case of *Warter* v. *Warter* (2) where one Taylor had obtained in the Calcutta High Court a decree absolute for dissolution of his marriage on November 27, 1879, and the divorced wife was married to Colonel Warter on February 3, 1880. Three days later Colonel Warter made a will in favour of his wife. In April, 1881, on the advice of a solicitor, Colonel and Mrs. Warter were remarried at a registry office. Colonel Warter having died without re-executing his will or making another the question arose whether the marriage of April, 1881, revoked the will. It was held that the marriage of February, 1880, was null and void, and therefore the marriage of April, 1881, was valid and revoked the will.

Then Mr. Justice Chamier quoted from the judgment of Sir James Hannen, where he said at p. 155 of the report of *Warter* v. *Warter* (2) :—

It was contended that as this marriage was celebrated in England the parties were freed from the restraint imposed by the Indian Divorce Act. I am of opinion that this is not the case. Mrs. Taylor was subject to the Indian law of divorce, and she could only contract a valid second marriage by shewing that the incapacity arising from her previous marriage had been effectually removed by the proceedings taken under that law. This could not be done, as the Indian law, like our own, does not completely dissolve the tie of marriage until the lapse of a specified time after the decree. This is an integral part of the proceedings by which alone both the parties can be released from their incapacity to contract a fresh marriage.

(1) (1911) I. L. R. 34 All. 203, 204. (2) (1890) 15 P. D. 152, 155.

A decision similar to that of the Allahabad High Court was given in Madras in the case of *Battie* v. *Brown* (falsely called *Battie*) (1). The head note in that case is as follows :—

Section 57 of the Divorce Act (IV of 1869) expressly prohibits remarriage within six months of the making of the decree absolute ; the Indian law does not completely dissolve the tie of marriage until the lapse of a specified time after a decree of dissolution and the marriage is still in force within the meaning of s. 19 (*4*) so as to give the Court jurisdiction under s. 19 to pronounce a decree of nullity regarding such prohibited marriage.

Jackson v. *Jackson* (2) followed.

Chichester v. *Mure* (3) and *Warter* v. *Warter* (4) referred to.

It seems to me that the position of the present petitioner—she having obtained a decree under the Indian and Colonial Divorce Jurisdiction Act of 1926 but without registering or causing to be registered that decree in the High Court in England—is precisely the same as that of a person who obtains a decree under the Act of 1869 and then re-marries before the expiry of six months from the date of the decree being made absolute. In that view of the matter it follows that as regards the re-marriage of the present petitioner on August 2, 1930, it must be held that that marriage was null and void on the grounds set out in s. 19 (*4*) of the Indian Divorce Act of 1869.

Mr. Westmacott has pointed out that it is by no means clear what the position is under the provisions of the latter part of s. 1, sub-s. (*3*) of the Indian and Colonial Divorce Jurisdiction Act of 1926. Those provisions say that upon such registration, *i.e.*, the registration contemplated by the two foregoing subsections the decree shall, as from the date of the registration, have the same force and effect and proceedings may be taken thereunder as if it had been made on the date on which it was made, by the High Court in England or the Court of Sessions in Scotland, as the case may be.

Mr. Westmacott has suggested that it seems doubtful whether if and when registration takes place such registration really has a retrospective effect or whether the provisions of sub-s. (*3*) only mean that upon

(1) (1913) I. L. R. 38 Mad. 452.
(2) (1911) I. L. R. 34 All. 203.
(3) (1863) 32 L. J. (P. M. & A.) 146.
(4) (1890) 15 P. D. 152.

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registration a decree previously made shall take effect as from the date of such registration and not on any date antecedent thereto. I am bound to say that the wording of sub-s. (*3*) is extremely ambiguous and as Mr. Westmacott has pointed out if it is the fact that the effect of the registration would be to complete the decree absolute for all purposes as from the date on which it was actually made, there might ensue the fantastic result that that a second marriage which at one moment was invalid owing to the lack of registration might suddenly become valid by reason of subsequent registration. For example in the present case (as Mr. Westmacott pointed out) the position might be that if the marriage of August 2, 1930, is to-day declared to be null and void because the decree absolute of July 7, 1930, had never been registered, to-morrow or the day after or at some date in future the marriage of August 2, 1930, might all of a sudden become valid by reason of the decree absolute of July 7, 1930, being registered as required by s. 1, sub-s. (*2*) with effect in retrospect. One has only to consider the endless complications which might arise if that were the real position. The question is by no means academic because it has already been held—in the case of *Wilkins* v. *Wilkins* (1)—that where a decree absolute of divorce has been granted in India under the Indian and Colonial Divorce (Jurisdiction) Act, 1926, *either* party may, on production of the necessary certificate, secure the registration of such decree in the High Court in England. That case started as an application made by a husband who had been respondent in a divorce suit in India to have the decree absolute registered in the High Court in England. The application was referred by the Registrar to the President and Lord Merrivale directed that the decree should be registered, and observed :—

> If some person with a real interest in the cause, who is not meddling, comes forward to this Court and applies for the registration of a decree, on satisfactory evidence of the interest of that party the decree should be registered.

(1) (1932) 101 L. J. (P. D. & A.) 35 ; 147 L. T. 17.

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That certainly means that a husband who has been divorced by his wife under the Indian and Colonial Divorce (Jurisdiction) Act of 1926 in a suit where the decree absolute obtained by the wife has not been registered, may at any time, take steps to register that decree or cause it to be registered. The decision also seems to mean that a person other than a husband, if such person has a real interest in the case, might equally well cause the decree absolute to be registered. That seems a very unsatisfactory state of things as it puts into the hands of a spiteful person much power for mischief or at any rate power to give rise to complications and possible hardship. In the present instance (Mr. Westmacott said) upon the supposition that the second marriage is, at the present time, null and void, if the provisions of sub-s. (*3*) mean that the registration has a retrospective effect it might be possible for Alfred Taylor if he were so minded to register the decree absolute which was made on July 7, 1930, and thereby re-establish and validate the marriage between his former wife and the present respondent, Otto Guenter Wenkenbach. Mr. Westmacott further suggested that the provisions with regard to registration as they now stand might operate against the interests of public morality in that a person who had obtained a decree for dissolution of marriage might abstain from registering that decree in order to have what Mr. Westmacott described as a trial run in a second marriage while retaining a means of escape therefrom in the shape of a possible subsequent registration of the decree which purported to dissolve the first marriage.

I have said enough to indicate that it is obviously desirable that the matter should be clarified by further legislative enactment. No doubt it is all to the good that a decree made by a High Court in India under the provisions of the Indian and Colonial Divorce (Jurisdiction) Act, 1926, should be registered in the High Court in England but this present case reveals that the only satisfactory method would be to

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make it incumbent upon the Court pronouncing the decree to direct that steps be taken by an officer of the Court to have that decree registered in England as soon as convenient after the decree was pronounced.

Having regard to what seems to be the plain provisions of s. 1, sub-s. (*2*) I hold that I have no option but to pronounce a decree declaring that by reason of those provisions the marriage of August 2, 1930, between the petitioner Henrietta Violet Taylor and the respondent Otto Guenter Wenkenbach is null and void. Mr. Bonnerjee and Mr. Westmacott both agree that following the English practice and as the law stands at present in India the decree should be a *decree nisi*. The petitioner is entitled to her costs.

Decree nisi.

Attorneys for petitioner: *Clarke, Rawlins & Kerr.*

Attorney for respondent: *P. C. Ghose*

G.S