ORIGINAL CIVIL.

Before Mr. Justice Wallis.

J. S. BATTIE, PETITIONER,

v.

1913. July 29.

G. E. BROWN FALSELY CALLED G. E. BATTIE, RESPONDENT. *

Indian Divorce Act (IV of 1869), sec. 57—Marriage solemnized before the expiry of six months as required by, validity of.

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 section 19 (4) so as to give the Court jurisdiction under section 19 to pronounce a decree of nullity regarding such prohibited marriage.

Jackson v. *Jackson* (1912) I.L.R., 34 All., 203, followed.

Chichester v. *Mure* (1863) 32 L.J., 146 and *Warter* v. *Warter* (1890) L.R., 15 Pr. D., 152, referred to.

SUIT by a husband for a declaration that petitioner's marriage with respondent was null and void.

The respondent had been previously married to another and such previous marriage was dissolved by a decree of the High Court which was made absolute on 17th November 1891.

The present marriage which was sought to be declared void took place on the 25th November 1891 or eight days after the decree absolute.

The petitioner's case was that inasmuch as the present marriage had taken place within six months of the decree absolute it was null and void.

D. Chamier for the petitioner.—The petition is filed under section 19 of the Indian Divorce Act. It is contended that the former husband of the respondent was living at the time of this marriage and that the marriage with such former husband was then in force. Section 57 gives liberty to parties to marry again when six months have passed after the date of a decree of a High Court dissolving the marriage. *Jackson* v. *Jackson*(1)

* Original Matrimonial Suit No. 1 of 1913.

(1) (1912) I.L.R., 34 All., 203.

was also a case of nullity of marriage. That case was decided on the authority of *Warter* v. *Warter*(1) which was also a decision on the Indian Statute though the question arose in connection with the validity of a will. Section 19 (4) which renders it necessary to show that the marriage with the former spouse was in force is answered in this way :—

By the Common Law of England which was inherited by the Supreme Court in India a party to a marriage was incapable of contracting another valid marriage during the life-time of the other party to it. This disability was removed by the English Divorce Act of 1857 and by the Indian Act of 1869. Section 57 of the former resembles in principle section 57 of the latter. But the removal of the disability was not absolute and was subject to the condition in the Indian Act that six months should elapse from the date of the decree dissolving the marriage. The result appears to be that under the ecclesiastical law a marriage always continues to be in force during the life-time of the other spouse, but the legislature validates remarriage if contracted after a certain time has elapsed. It must be said therefore in the present case that at the time of the marriage now in question the marriage of the respondent with her former husband was in force within the meaning of section 19 (4) and that the form of marriage which the parties purported to celebrate was not a valid marriage within the meaning of section 57 as it was contracted before the six months referred to in that section had elapsed. This was the view taken in *Chichester* v. *Mure*(2) which was followed with approval in *Rogers* v. *Halmshaw*(3). Both cases are referred to in Halsbury's Laws of England, volume 16, page 594, note (*e*).

If this contention is not the true one the result might be that a man could find himself lawfully married to two wives, because he could contract a valid marriage within six months of the decree absolute and whilst an appeal was being filed to the Privy Council. In the event of the order absolute being dissolved on appeal the result would be that the first wife would remain validly married to her husband and the husband would at the same time be validly married to the second wife. It is not

(1) (1890) L.R., 15 Prob. D., 152.
(2) (1863) 32 L.J., Prob. Matr. and Adm., 146.
(3) (1864) 33 L.J., Prob., 141.

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easy to suppose that such a state of affairs was contemplated and the other construction if adopted would avoid it. The decree contemplated by the section is a decree absolute, and not merely a decree *nisi*.

The respondent had entered an appearance by solicitors after service of notice of the petition but was not represented by counsel in Court.

WALLIS, J.

JUDGMENT.—This is a case of a very unusual character in which the petitioner seeks a declaration of the nullity of the marriage which he contracted with the respondent in the year 1891, on the ground that the marriage was null and void as having been contracted within six months of the date on which a decree absolute had been passed dissolving the earlier marriage of the respondent. Now I may observe that this marriage was performed by "license." I do not know if the authorities issuing the license were aware that the previous marriage of the respondent had been so recently dissolved, but if they were so aware, clearly the license ought not to have been issued, and this case illustrates the necessity that the licensing authority, when it is brought to its notice that the marriage of one of the parties has been dissolved, should satisfy itself, before issuing the license, that the marriage had been dissolved by a decree absolute six months before the celebration of the new marriage; and it is, of course, equally incumbent on ministers of religion and others who solemnize such marriages so to satisfy themselves. The present suit is unopposed and therefore may be taken to be really by consent. But it is easy to conceive what serious and lamentable results might follow from carelessness of this kind. However, in the present case the only thing I have to do is to see whether the petitioner has made out a case for the declaration of nullity which he prays for. Now the prohibition in section 57 of the Divorce Act against remarriage within six months of the making of the decree absolute, or the determination of an appeal if one has been preferred, is express and differs very little from the similar statutory provision of the English Law. The English section has been held to render a marriage contracted in defiance of its provisions void as in *Chichester* v. *Mure*(1) cited by Mr. Chamier, and the Indian

(1) (1863) 32 L.J., Pr. Matr. and Adm., 146.

section has been construed in the same way by Sir JAMES HANNEN in *Warter* v. *Warter*(1). The question there was as to the validity of a will and not as to declaration of nullity. But there is an exactly similar decision to this of CHAMIER, J., in *Jackson* v. *Jackson*(2). The only difficulty I felt in regard to this case is not as to the nullity of the marriage which is forbidden in the plainest terms, by section 57, but as to the jurisdiction of this Court to pronounce a decree of nullity, because section 19 which deals with the grounds upon which decrees of nullity may be pronounced gives, as one of the grounds, "that the former husband or wife of either party was living at the time of the marriage, and marriage with such former husband or wife was then in force." It strikes one, at first, as strange to talk of a marriage being "in force" after it has been dissolved by a decree absolute; but as was pointed out in the case, by the earlier law as administered in the Ecclesiastical Courts marriage was indissoluble, and when marriages were dissolved by Act of Parliament, it was considered necessary to insert a special power of remarriage, so that, as Sir JAMES HANNEN said, the result of pronouncing a decree absolute was not completely to dissolve a marriage. "The Indian Law," he says in a passage cited by CHAMIER, J. "like our own, does not completely dissolve the tie of marriage until the lapse of a specified time after the decree." In other words the former marriage is to be considered still in force at any rate to the extent of preventing a subsequent marriage during the life-time of the other party to such marriage until the prohibition resulting from the survival of such other party is removed by virtue of the section. Now the prohibition is not removed by virtue of the section till the lapse of six months, or the happening of the other event therein mentioned. Consequently, I hold that not only was this marriage void on the date when it was solemnized, but also that the previous marriage was still "in force" within the meaning of section 19 (4) so as to give me jurisdiction under section 19 to pronounce a decree of nullity. I accordingly make the decree prayed for.

Solicitors for the petitioner:—*Messrs. Short, Bewes & Co.*

Solicitors for the respondent:—*Messrs. Rencontre and Tirumalai Pillai.*

(1) (1890) L.R., 15 Pr. D., 152. (2) (1912) I.L.R., 34 All., 203.