desire to continue the right of pre-emption, as showing that a pre-existing custom existed. We do not so interpret these words. The proper translation, we think, is "currency, or practice, of the right of pre-emption and custom as to remarriage." We are unable to distinguish the language of the wajib-ul-arz in this case from that in the earlier case decided by us and must dismiss this appeal. We accordingly dismiss it, but without costs as no one appears to represent the respondent.

Appeal dismissed.

FULL BENCH.

1910
January 15.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Richards and Mr. Justice Tudball.

ARTHUR FLOWERS (PETITIONER) *v.* MINNIE FLOWERS (RESPONDENT) AND THOMAS JOHN MOORE (CO-RESPONDENT).*

Act No. IV of 1869 (*Indian Divorce Act*), *section* 3—*Divorce—Jurisdiction—"Reside."*

Held that a mere temporary sojourn in a place, there being no intention of remaining there, will not amount to residence in that place within the meaning of section 3 of the Indian Divorce Act, 1869, so as to give jurisdiction under the Act to the court within the local limits of whose jurisdiction such place is situated.

THIS was a petition for dissolution of marriage. The petitioner and the co-respondent had at one time been stationed together at Meerut, and, being both free-masons, were on terms of the greatest intimacy. Subsequently the petitioner was transferred to Hyderabad (Scinde), the co-respondent remaining in Meerut. Whilst the petitioner was stationed at Hyderabad he had occasion to pay a short visit to Meerut. The petitioner took his wife with him, and they stayed with the co-respondent. On this occasion the petitioner accidentally found a letter which led him to believe that the respondent had committed adultery with the co-respondent. The petition was filed in the court of the District Judge of Meerut, who heard the case and granted the petitioner a decree for dissolution of marriage. The decree then came up to the High Court for confirmation. The rest of the facts of the case are stated in the judgement.

Mr. *E. A. Howard*, for the petitioner.

* Matrimonial Reference No. 5 of 1909.

1910

ARTHUR FLOWERS v. MINNIE FLOWERS.

STANLEY, C. J., RICHARDS and TUDBALL JJ.—This matter comes before us on a reference by the learned District Judge of Meerut for confirmation of the decree passed by him for dissolution of the marriage of the petitioner, Arthur Flowers, and his wife Minnie Flowers, in consequence of her adultery with the co-respondent, Thomas John Moore. The petitioner is a Battery Quarter-Master Sergeant. He and the respondent were married in the year 1898 in the Church of St. Nicholas at Plumstead in Kent. Since their marriage they lived together as man and wife in several places, and appear, until the co-respondent came on the scene, to have lived happily. In 1906 the petitioner and the respondent came to Meerut, where the petitioner was stationed with his battery, and there the petitioner met the co-respondent Thomas John Moore, who was also stationed there with his regiment, the 17th Lancers. They became intimate friends, and in consequence an opportunity was given to the co-respondent of making advances to the respondent, which unhappily resulted, as established before the learned District Judge, in adulterous connection. The learned Judge has found that the adultery is proved and has given the parties a divorce.

We are not satisfied upon the evidence that the learned District Judge of Meerut had any jurisdiction whatsoever to grant a decree for divorce, in view of the fact that the petitioner and his wife did not last reside at Meerut. Their last residence together was at Hyderabad, Scinde, outside the jurisdiction of the District Judge of Meerut. This appears from the judgment. In it we find the following passage:—

"The petitioner was transferred with his battery to Hyderabad (Scinde) at the beginning of this year (*i.e.*, 1906). He was unable to take the respondent with him at first, but she soon came to him there. He had to return to Meerut in April last on business which was partly connected with a meeting of a lodge of free-masons. The respondent wished to accompany him. Hyderabad (Scinde) not being a very pleasant place, he acceded to her request and brought her with him. They stayed with the co-respondent in his quarters." It is clear from this that the last residence of the

petitioner with his wife was at Hyderabad in Scinde. The temporary sojourn for a day or two in Meerut did not constitute residence. The petitioner merely paid a flying visit to Meerut for a temporary purpose and not with any intention of remaining. Mere casual residence in a place for a temporary purpose with no intention of remaining is not "dwelling" and where a party has a fixed residence out of the jurisdiction, an occasional visit within the jurisdiction will not suffice to confer jurisdiction by reason of residence. Now the jurisdiction of the court depends upon the residence or last residence of the petitioner and his wife. In section 3 of the Act a definition is given of the term "High Court," which is empowered by the Act to grant divorce, and at the end of the first clause of the section we find the following :—"In the case of any petition under this Act 'High Court' is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together," and in clause (3) of that section "District Court" is defined as meaning, "in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together." The learned counsel for the petitioner has been unable to show us that the last residence of the petitioner and his wife was at Meerut or within the jurisdiction of the District Judge of Meerut. This being so, it appears to us that the learned District Judge had not jurisdiction to grant a divorce. We may point out here that in all cases of this kind a District Judge ought to inquire into and set out in his judgment the facts relied on as giving jurisdiction to the court to pronounce a decree for dissolution of marriage : see *Durand* v. *Durand* (1). In the case of *Wingrove* v. *Wingrove* (the same page of 14 W. R.) it was pointed out that in a suit for dissolution of marriage where at the time of the presentation of the petition the respondent does not reside within the jurisdiction of the court, the jurisdiction of the Judge and the right of the petitioner to present a

(1) (1870) 14 W. R., 416.

1910

ARTHUR FLOWERS v. MINNIE FLOWERS.

petition to him must rest on the fact that the parties last resided together within his jurisdiction. The learned District Judge may in this case have been labouring under the misapprehension that the petitioner and his wife last resided at Meerut because of the temporary visit which they paid to this city. But it is clear that that temporary visit did not constitute residence within the meaning of the Act. In view of the fact that the learned District Judge had not jurisdiction to entertain the petition, we have no jurisdiction to confirm the decree which has been passed. It is unnecessary for us to consider the merits of the case. We abstain from expressing any opinion upon the facts set forth in the petition or upon the evidence in support of the petition.

Hyderabad in Scinde is not within the jurisdiction of this Court. It was in Hyderabad, Scinde, that the petitioner and respondent appear to have last resided together, and this Court has no authority to confirm the decree.

We, therefore, decline to confirm it. We set it aside and dismiss the petitioner's petition. Under the circumstances we say nothing as to costs.

Reference rejected.

1910
January 15.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Karamat Husain.

KASHI KUNBI AND ANOTHER (PLAINTIFFS) *v.* SUMER KUNBI AND ANOTHER (DEFENDANTS).*

Act No. III of 1877 (*Indian Registration Act*), *sections* 17, 49—*Registration—Compromise, not embodied in the decree, containing a contract for pre-emption.*

The parties to a suit filed a compromise, which, in addition to setting forth the rights of the parties as to the property in suit, went on to provide that if either party sold his share of the property, the other party should have a right to pre-empt. The decree based on this compromise was silent as to the right of pre-emption. *Held* that the compromise required registration, and, not being registered, could not be used to support a suit for pre-emption.

THE facts of this case were as follows:—

The plaintiffs and the defendant vendor had certain disputes as to the shares each inherited from their common ancestor,

* Second Appeal No. 640 of 1909 from a decree of E. H. Ashworth, District Judge of Benares, dated the 1st of May 1909, confirming a decree of Hira Lal Singh, Munsif of Benares, dated the 26th of February 1909.