

suggested above, then the words of Explanation (1) aforesaid have no application whatsoever to a case like the one now before us and must altogether be excluded from consideration. In that case we are driven back to the words of clause (5) of article 182 itself. The point we have to decide is whether the application of the 6th of March, 1918, was or was not an application in accordance with law to the proper court for execution of the decree, or to take some step in aid of execution of the decree. We cannot answer that question otherwise than in the affirmative. We think the appeal fails and it is dismissed with costs.

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BADR-UD-DIN
 &
 MUHAMMAD
 HAFIZ.

Appeal dismissed.

MATRIMONIAL JURISDICTION.

Before Sir Grimwood Mears, Knight, Chief Justice, Mr. Justice Piggott and Mr. Justice Walsh.

A. A. GARLINGE (PETITIONER) v. IRENE REBECCA GARLINGE (RESPONDENT) AND JOSEPH PRIOR (CO-RESPONDENT).*

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 June, 12.

Divorce—Petition for dissolution by husband on the ground of adultery—Respondent not represented by counsel—Duty of petitioner to provide respondent with means of obtaining legal assistance—Practice.

Where, in a petition for dissolution of marriage upon the ground of adultery filed by the husband, the wife enters an appearance and denies the allegations against her, she has an absolute right to require her husband to furnish her with funds sufficient to enable her to make a full and satisfactory defence, and to obtain such assistance from counsel as is reasonable in the circumstances, and the Court should take upon itself the duty of seeing that this is done.

THIS was a decree *nisi* for dissolution of marriage submitted to the High Court for confirmation. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Mr. C. Thompson, for the petitioner.

Babu Sula Nath Mukerji, for the respondent.

The co-respondent was not represented.

MEARS, C. J. and PIGGOTT and WALSH, JJ. :—This is a reference from the Court of the District Judge of Ajmer-Merwara, under section 17 of the Indian Divorce Act No. IV of 1869. The petitioner is Alfred A. Garlinge, described as a guard in the employment of the Bombay, Baroda and Central India Railway. The respondent is his wife, Irene Rebecca Garlinge, and the co-respondent is Joseph William Prior, employed in the Locomotive shops at Ajmer.

* Matrimonial Reference No. 9 of 1922.

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The fact that the petitioner and the respondent were married on the 16th day of May, 1910, and the further fact that one child was born of the marriage, a daughter, in the month of December, 1910, are admitted. The said daughter is still living and is referred to by the name of Dorothy in the evidence.

In the third paragraph of the petition it is alleged in general terms that soon after the marriage the respondent began to misconduct herself and continued in her evil conduct in spite of repeated promises to reform. A general allegation of this kind should have been struck off the record, nor should the Judge have permitted the petitioner, when giving evidence, to mention the names of two men with whom the respondent was said to have committed adultery in 1912, when he had not made that charge against her in the petition. Again, the Judge ought to have struck out the latter part of paragraph 4 where he says that by his absence in Mesopotamia his wife "found further opportunities for her misconduct." These general allegations are unfair and the Court should have protected the respondent by an order in these words:—"Para. 3 and the last eleven words of para. 4 to be struck out, unless within seven days the petitioner gives particulars in writing of the alleged misconduct, stating when, where and with whom the said misconduct took place."

From 1915 to 1920 the petitioner was on active service in Mesopotamia and returned to India in January, 1920, and admittedly came to Ajmer about the 27th of that month. There was a difference of opinion between the parties as to whether or not the wife should go and live with the husband when he received an appointment which made his headquarters station Abu Road, whereas the wife, the respondent, desired to remain at Ajmer. A suggestion has been put forward on her behalf that her only reason for refusing to go to Abu Road was that she was able to make better arrangements at Ajmer for the education of the daughter. This, however, along with many other circumstances in the case, has not been subjected to any satisfactory or adequate inquiry. The petitioner's own evidence on the point is inconsistent with the pleading set forth in the fifth paragraph of his petition. He there distinctly said that, in consequence of facts discovered by him within a week of his arrival at Ajmer, and therefore early in the month of February, 1920, he (the petitioner) left Ajmer

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and began to work at Abu Road, from whence he wrote to tell his wife that under no circumstances could he live with her any longer. Mr. Garlinge's evidence at the trial in the court below is quite inconsistent with this plea. What he says is that on his return from field service, about the end of January, he was posted to Abu Road, whereupon his wife refused to accompany him there. During the months that followed, the petitioner's work took him backwards and forwards between Abu Road and Ajmer and he was continually pressing his wife to come to him at Abu Road, a request which she continued to refuse. The petitioner should not have been allowed to make a statement of this sort without being confronted with his own pleadings and asked to explain the discrepancy.

This makes it necessary for us to comment at once upon another most unsatisfactory feature of the trial in the court below. The wife had entered an appearance, she denied the allegations against her and she did as a matter of fact go into the witness-box and give evidence on oath. She was not represented by counsel, and it was the duty of the court to have seen that she was so represented. Where a petition of this nature is filed by the husband, and the wife enters an appearance and denies the allegations against her, she has an absolute right to require her husband to furnish her with funds sufficient to enable her to make a full and satisfactory defence, and to obtain such assistance from counsel as is reasonable under the circumstances, and the court should have taken upon itself the duty of seeing that this was done.

As a matter of fact the petition itself is, as we have already pointed out, full of vague and unsatisfactory allegations; although in the fifth paragraph it is distinctly alleged that the petitioner discovered that his wife was carrying on adulterous intercourse with the co-respondent Joseph Prior, no particulars are given, and on the wording of the paragraph the court is left to infer that the petitioner made this discovery early in the month of February, 1920. If that were the petitioner's case it would be a case unsupported by any shred of evidence.

[The judgment then went on to discuss the evidence at length, and concluded by refusing to confirm the decree *nisi* and dismissing the husband's petition with costs.]