

## MATRIMONIAL.

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August 17.*Before Mr. Justice Straight, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

HOLLOWAY v. HOLLOWAY AND CAMPBELL.

*Dissolution of marriage—Discretionary bar—Separation from wife without reasonable cause—Conduct conducing to wife's adultery—Act IV of 1869 (Divorce Act), s. 14.*

A husband separated himself from his wife, who up to the time of his doing so was a virtuous woman, merely because she had run him into debt. He did not write to her, or go to see her, or make her an allowance proportionate to his income, after he had done so. *Held*, upon a petition by the husband for dissolution of his marriage on the ground of his wife's adultery, such adultery having been committed during such separation, that his conduct towards his wife disqualified him from obtaining the relief sought.

THIS was a case for confirmation of a decree for dissolution of marriage made by Mr. W. C. Turner, District Judge of Agra. The facts of the case are stated in the judgment of the High Court.

The parties did not appear.

The judgment of the Court (STRAIGHT, BRODHURST, and TYRRELL, JJ.) was delivered by

STRAIGHT, J.—This is a reference for confirmation, under the provisions of the Indian Divorce Act, of a decree passed by the Judge of Agra on the 26th October, 1881, dissolving the marriage of the petitioner and respondent, on the ground of the latter's adultery.

The parties were married at Chunar in these Provinces on the 22nd June, 1868, and have issue surviving, one son and two daughters. The petitioner is employed in the Government Telegraph Department, and his duties necessitated changes of residence from time to time, till early in 1879 he found himself stationed at Agra. Down to this period the respondent always accompanied him, and they continued to cohabit together as man and wife, and to live on good terms. In 1880 the petitioner was transferred to Pali in Rajputana, to which place he went leaving his wife behind him at Agra, under circumstances that will be more fully adverted to in a moment. It is here necessary to remark that there can be no doubt from the evidence taken before the Judge that the adultery of the respondent is abundantly established, as also that she had been, prior to the institution of the suit, leading a life of immorality at Agra and engaging in criminal connection with various persons

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at that place. *Primâ facie*, therefore, the petitioner is entitled to the relief he asks in his petition. But there are matters in this case calling for very serious consideration at our hands, and the question arises whether they do not disclose that the petitioner either wilfully and without reasonable cause separated himself from the respondent, or that he was guilty of such wilful neglect in regard to her as conduced to her adultery. If he did so separate from her or was guilty of such neglect, then this Court under the provisions of s. 14 of the Indian Divorce Act is not bound to confirm the decree of the Judge, and in the exercise of its discretion may refuse to do so and dismiss the petition. When the case came before us for hearing, we regarded the evidence given by the petitioner as highly unsatisfactory, and in order to afford him an opportunity of explaining certain parts of it, that presented him to our minds in a most unfavourable light, as well as to enable us to obtain further information, we directed him to attend before us on an adjourned date, upon which day he appeared, and questions were put to him, the answers to which were duly recorded.

The following are the portions of his statement that appear to call for our very serious attention and consideration. "My wife had been living with me on good terms from the time of my marriage up to our going to Agra. My pay was Rs. 182 a month. I kept a house for her at Agra. She had the whole of my pay as I received it. In 1880 (this should be 1879) I was transferred at my own request to Pali in Rajputana. This was in consequence of a disagreement with my wife. I complained of her getting into debt without my consent. Prior to this my wife had been to the Cantonment Magistrate, and in consequence of her application I had to pay Rs. 30 per mensem for maintenance. I separated from her at her own instance. She was living with Mrs. Warner, a woman of had reputation. She would not listen to me when I advised her against living with this person. I was at Pali for more than a year. My wife wrote to me once while I was there to say she could not live on Rs. 30 per mensem. Up to the time I went to Pali *she had not to my knowledge committed herself criminally with any one*. I heard before leaving Pali of her having committed adultery. I heard of this by wire. I tried to get leave to go to Agra, but could not succeed. I took proceedings in the Cantonment Magistrate's Court

at Agra and got the maintenance order cancelled on the 9th of June, 1880. She incurred debts over Rs. 400. I sent the Rs. 30 to her for six months. After her adultery the allowance was stopped. My wife was living with me when she went to the Magistrate's Court. It was in consequence of a summons in a civil suit that she first went to the Cantonment Magistrate. Two weeks after this she left to live at a Mr. Forster's, a married man. *It was agreed between us that she should go away for six months till I had cleared all her debts. I paid her money for her railway fare to take her to her godmother at Meerut. I allowed her maintenance because she thought she could compel me to give her a third of my pay. I have paid 200 or 300 rupees on her account for debts. For some years before we parted, I remonstrated with her about her conduct. After she left my house she went to that of a disreputable woman, but I went to her and asked her to come back, and she would not come. My wife left me before I went to Pali, at my own request. Subsequently to this I did not ask her to come back. My transfer was arranged by telegraph the day before I left for Pali.*"

Now, before proceeding to comment upon this evidence and the conclusions to be drawn from it, we are constrained to remark that the High Courts in these divorce cases are placed in a very difficult position. For, in the absence of any official like the Queen's Proctor in England, they have, where suspicion is aroused as to the conduct or good faith of the parties, to inaugurate and carry out such inquiries and investigations as may appear necessary, in order to prevent the provisions of the divorce law being abused and themselves being imposed upon. In the present matter we have felt ourselves bound to send for and examine not only the records of the maintenance proceedings in the Agra Cantonment Magistrate's Court in May, 1879, and June, 1880, but the files of two suits to which the petitioner had referred in the course of his evidence. It is impossible to avoid noticing that when the respondent appeared before the Magistrate in May, 1879, her allegation was that her husband had turned her out of his house and told her to go to her godmother at Meerut, who had replied that she could not take her in as she was living in barracks, and that she had then gone to live with a Mr. and Mrs. Forster. It is due

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to the petitioner to say that he denied the assertion that he had turned his wife out, and stated that she expressed a wish to go to Meerut, and that he gave her money to do so, but she did not go, and went to live with Mr. and Mrs. Forster. On what precise grounds does not appear, but the Magistrate ordered maintenance to be paid at the rate of Rs. 30 a month. So much for the first proceeding in the Magistrate's Court, which is mainly noticeable for the absence of any complaint on the part of the petitioner against his wife, except that she had gone to Mr. and Mrs. Forster, and of any statement that, as he now alleges, they had mutually arranged that she should go to Meerut for six months while he paid off her debts. There is, by the way, to be found in this file of proceedings a very extraordinary letter apparently handed to the Magistrate by the respondent and obviously written by the petitioner, as to which, he unfortunately not having been asked for his explanation, it is sufficient to say, that from its terms it would seem that he had been guilty of some misconduct towards the petitioner prior to writing it, for which he was asking her forgiveness, and, at any rate, that at the time of her application for maintenance his behaviour towards her had not been so blameless and without reproach as he would now have us believe. With regard to the proceedings in June, 1880, when the Magistrate cancelled his order, it is to be observed that throughout the somewhat lengthened investigation that then took place, the respondent stoutly denied that she had been guilty of adultery with any person, and fought the case out to the bitter end, asseverating her innocence to the last. Yet the same woman fifteen months after is authorising her pleader in writing to admit such adultery in the suit now before us. Such a complete change of front is, to say the least of it, extraordinary, and calculated to awaken grave suspicion of collusion between the parties, though in the view we take of the matter it is not necessary to arrive at any definite opinion upon that point.

Having regard to the whole of the evidence given by the petitioner both before the Judge and in this Court, and looking at all the circumstances, we can come to no other conclusion than that the petitioner did intentionally separate himself from the respondent when he left her at Agra and went to Pali, and that he had

no reasonable cause for doing so. He himself admits that down to this time she had been a virtuous woman, and that his only complaint against her was that she had run him into debt, and that he had had or subsequently had to pay some Rs. 300 on her account. This was no reasonable cause for his withdrawing the protection of his house and his society from her, or leaving her to incur all the risks and temptations that a young woman of twenty-eight living by herself on very inadequate means in a place like Agra would be subjected to. The law upon this point is very clearly and expressively laid down by Lord Penzance in *Jeffreys v. Jeffreys* (1) :—“It must not be supposed that a husband can neglect and throw aside his wife, and afterwards, if she is unfaithful to him, obtain a divorce on account of infidelity. The Legislature never intended that such a man should be entitled to a divorce.” Again, in the same judgment there is the following passage:—“If chastity be the duty of the wife, protection is no less that of the husband. The wife has a right to the comfort and support of the husband’s society, the security of his house and name, and the just protection of his presence so far as his position and avocation will admit. Whoever falls short in this regard, if not the author of his own misfortune, is not wholly blameless in the issue: and though he may not have justified the wife, he has so far compromised himself as to forfeit his claim for a divorce.” The propriety and wisdom of the principles thus laid down cannot for a moment be questioned, and if their recognition and application is essential to the conditions of life in England, how much more indispensable are they to the state of society in this country. The power given to the Courts to dissolve the marriage bond was not granted in the interest of husbands who, having grown tired of their wives, deliberately separate from them, careless as to what becomes of them, and virtually encouraging them to go astray. The present case is a lamentable instance of the justice of the rule laid down by the Judge Ordinary to which we have adverted, and it is impossible for us not to feel that, remembering the petitioner’s own admission that his wife was a virtuous woman till he left her and went to Pali, his thus separating himself from her, neither writing to her, nor going to see her, nor allowing her means proportionate to his income, was conduct on his part that

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largely contributed to the results of which he now seeks to take advantage. He had no reasonable cause for abandoning her to her fate or depriving her of the protection of his house and presence; and by so doing he, if he is not directly responsible for her misconduct, has at least disqualified himself from obtaining the relief prayed in the petition.

We therefore are clearly of opinion that the confirmation of the Judge of Agra's decree in this case must be refused, and the petition dismissed.

*Petition dismissed.*

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August 15.

### APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.*

HAZARI LAL AND OTHERS (PLAINTIFFS) v. JADAUN SINGH (DEFENDANT).<sup>\*</sup>  
*Act XV of 1877 (Limitation Act), sch. ii, Nos. 91, 144—Suit to cancel instrument—Champertry.*

The plaintiffs sued for possession of certain immoveable property, "by avoidance of a spurious deed of gift" executed by one N, deceased, in favour of the defendant. H, one of the plaintiffs, joined in the suit under an agreement with the other plaintiffs that he should defray the costs of the suit from the Court of first instance up to the Privy Council, and that he should then become proprietor of one-half of the property in suit and be entitled to half the costs.

*Per STRAIGHT, J.*—That the suit was governed by No. 144, and not No. 91, sch. ii of the Limitation Act, 1877.

*Per STUART, C.J.*—That the suit was governed by No. 91, and not No. 144, sch. ii of that Act. *Sikher Chund v. Dalputty Singh* (1) distinguished.

*Held by the Court that H had no right to join in the suit.*

THE plaintiffs, with the exception of Hazari Lal, sued to obtain possession, by right of inheritance under Hindu law, of ten biswas of a village called Pilkhana, and ten biswas of a village called Katlapur, by avoidance of a deed of gift executed by one Narain Singh, deceased, and the defendant Dal Kuar, in favour of the minor defendant Jadaun Singh, on the 5th July, 1876: They also sought to recover a one-third share of a village called Narwar. The plaintiff Hazari Lal, according to the plaint, "joined in the suit on this mutual contract and agreement, that he would defray

<sup>\*</sup> First Appeal No. 83 of 1881, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Mainpuri, dated the 16th July, 1881.

(1) 1. L. R. 5 Cal. 363.