

CIVIL REFERENCE.

*Before Mr. Justice Young, Officiating Chief Justice, Mr. Justice May Oung,
and Mr. Justice Carr.*

MAUNG MUN
v.
LABYA NAW.*

1923
Dec. 11

Matrimonial Law—Parties Christians at the time of marriage—Subsequent reversion of the husband to animism—Cruelty—Refusal by the husband to allow wife to live with him except under the orders of a wife taken after his reversion to animism—Whether such refusal amounts to desertion.

Held, that where the parties were Christians at the time of marriage, the subsequent reversion of the husband to animism is not sufficient cause for divorce. Further, a mere change of religion coupled with adultery is not sufficient cause for divorce.

Held also, that to constitute a ground for divorce the husband must have changed his religion and gone through a form of marriage with some other woman.

Held further, that where a wife lives apart owing to a refusal by the husband to allow her to live with him except under the orders of a mistress or a wife taken subsequently, the husband has 'deserted' the wife within the meaning of the Divorce Act.

Held also, that such a refusal amounts in law to cruelty.

Swalman v. Swalman, 4 S. & T., 135—*followed*.

This was a reference made by the District Judge of Bhamo under section 17 of the Indian Divorce Act. The District Judge found that the respondent, Labya Naw, had deserted his wife, the petitioner, that at the time of his marriage he was a Christian but that he had since exchanged Christianity for animism, and that there had not been any condonation in the sense intended by law. He held further that there had been no cruelty on the part of the husband.

The reference was heard by a Full Bench of the High Court consisting of Young, Officiating Chief Justice, and May Oung and Carr, JJ.

* Civil Reference No. 8 of 1923 from Civil Regular No. 1 of 1923 of the District Court of Bhamo.

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YOUNG, Offg. C.J.—In this reference for confirmation of a decree for divorce the parties are Kachins and were, as found also by the trial Judge, Christians at the time of marriage, though the respondent declares that he reverted to animism a short time before the marriage.

Yet whatever he has done since, he was shortly before the marriage a Christian and asked to be married according to Christian rites. We think he was a Christian at the time of marriage.

Shortly after his marriage, he left his wife and went to Rangoon to get veterinary training there.

The course lasted three years presumably till May 1921, and though in the first two years he had one month's holiday in each year, he did not spend either with his wife or contribute to her support.

At the expiration of the three years, *i.e.* about May 1921 he returned to Bhamo as a veterinary assistant and soon afterwards proceeded to live with a Shan woman named Ma Tin.

About a year ago the petitioner went and stayed for about nine days with the respondent and Ma Tin: she however quarrelled with Ma Tin, whereupon she says respondent kicked her and slapped her drawing blood: she however continued to live in the house about four days and then finding that she was expected to live as the lesser wife and be under Ma Tin's orders she left the house for good, being unable to bear the indignity. On these grounds she seeks for a divorce, which the learned Judge granted to her on the ground of desertion coupled with the facts that he was a Christian when he married the respondent and that he had since exchanged Christianity for animism, and was living in adultery with Ma Tin.

The desertion prior to her return to her husband, if it was an abandonment contrary to her wish, was

condoned by her return to her husband's house, and though I should be prepared to hold that he had deserted her by refusing to let her live with him unless Ma Tin lived with them as the chief wife, the date of this refusal was only about a year ago and therefore there has been no desertion for the statutory period of two years.

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The adultery is similarly condoned, though I should hold that the offence was revived by the continuance of the relations with Ma Tin, after petitioner left the respondent's house. So far, therefore, the suit is premature ; it remains to consider the last of the grounds found by the learned Judge which is that he had exchanged Christianity for another religion, and also whether the divorce can be granted on facts not relied on by the trial Court. The learned Judge has failed to notice that the mere change of religion is no ground for a divorce : it would be absurd if it were, nor is mere change of religion coupled with adultery : to be a ground of divorce there has to be a change of religion coupled with the respondent having gone through a form of marriage with some other woman, a clause inserted in consequence of a Madras decision to the effect that a Hindu who after his conversion to Christianity and contraction of a Hindu marriage, reverted to Hinduism, reacquired his rights of polygamy. If the fact that the respondent and Ma Tin lived together openly as husband and wife constitutes marriage amongst the Kachins as it would do, if the parties were Burmans, I should be prepared to hold that there was a ground of divorce even though there was no actual marriage form gone through, but I think the decree may be supported on the ground of adultery coupled with cruelty, the cruelty being the refusal to let her live with him and Ma Tin, except

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as a lesser wife under the orders of Ma Tin, an indignity which the petitioner says she could not bear, and so preferred to leave the house. "The Court will take into consideration the husband's general conduct towards the wife and if this be of a character tending to degrade her, and subjecting her to a course of annoyance and indignity injurious to her health will feel itself at liberty to hold the cruelty proved." (*Swatman v. Swatman*, 4 S. & T., 135.)

I would confirm the decree.

MAY OUNG, J.—I concur.

CARR, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Young.

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 Dec. 17.

RASU

v.

KATTARA.*

Sale, whether on credit or for cash—Burden of proof—Revision—Failure to apply the law.

Where the question at issue is whether the sale of certain goods was on credit or for cash, *held*, that the party alleging that it was a cash transaction must discharge the burden of proof.

Where the lower Court has disregarded some provision of law and failed to apply its mind to that provision, there is ground for revision.

Zeya v. Mi On Kra San and one, 2 L.B.R., 333—*followed*.

P. S. Chari—for the Appellant.

Hay—for the Respondent.

YOUNG, J.—In this revision case the plaintiff pleaded that he had sold certain cattle on credit. The defendant replied that he had bought them for

* Civil Revision No. 153 of 1923 against the decree of the District Court of Yamèthin in Civil Appeal No. 33 of 1923.