

MATRIMONIAL JURISDICTION.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, Mr. Justice Maung Ba and Mr. Justice Brown.

BLACKMORE, E. W.

v.

BLACKMORE, NORA AND ANOTHER.*

1929

Mar. 5.

Divorce Act (IV of 1869), ss. 2, 11—Domicile of parties essential for jurisdiction of District Court—Condonation of matrimonial offence, implied condition of—Repetition of offence—Revival of right to divorce for the condoned offence—Character of repeated offence—Desertion, a ground for revival of right to divorce on ground of condoned adultery.

Parties to a marriage must be domiciled in India at the time when the petition is presented, in order to give jurisdiction to the District Court under the Indian Divorce Act.

Condonation of past matrimonial offences is impliedly conditioned upon the future good behaviour of the offending spouse. If after condonation, the offences are repeated, the right to make the condoned offence a ground for divorce, revives. To constitute such revival, the offending spouse need not be guilty of offences of the same character as that condoned; any misconduct is sufficient which indicates that the condonation was not accepted in good faith and upon the reasonable conditions implied.

Desertion would therefore be a sufficient ground for making the previous allegation of condoned adultery a ground for divorce.

C. C. Moreno v. H. W. B. Moreno, 47 Cal. 1068—referred to.

RUTLEDGE, C.J., MAUNG BA and BROWN, JJ.—
The District Judge, Mandalay, has passed a decree for dissolution of marriage in favour of one Earnest Walker Blackmore against Mrs. Nora Blackmore, and has referred the proceedings to this Court for confirmation.

The proceedings were taken under the Indian Divorce Act and by section 2 of that Act as amended by Act No. XXV of 1926 the District Court only has jurisdiction in cases where the parties to the marriage are domiciled in India at the time when the petition is presented. Of the parties to the

* Civil Reference No. 8 of 1928.

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marriage in this case, the petitioner was born in England and the respondent at Allahabad.

The petitioner says that he has been with the Indian Army since 1913, that is, for some 15 years, that he is domiciled in India and that he has no intention of returning to England, and the respondent also says that she intends settling in India and does not mean to go back to Ireland or Britain. The parties have certainly been residing in India ever since their marriage in the year 1918, and we see no reason why we should not accept their statements that they have made India their domicile. The District Court therefore had jurisdiction in the matter.

The petition filed by the petitioner sets forth that the parties were married in 1918 and have three children. A fourth child was born to the respondent but the paternity of that child is denied by the petitioner. In December 1927 the respondent left the petitioner who was then in Rangoon and went to Mandalay. She has admitted committing adultery there with a person unnamed. Later on the petitioner was transferred to Mandalay and the parties lived together again from the 19th of April 1928. They remained under the same roof until the 8th July when the respondent left the petitioner taking her children with her. The petition further sets forth that the petitioner has reason to suspect the respondent's relations with the co-respondent, but he makes no definite allegation of adultery with him.

The respondent in her written statement denies the charge of adultery. She has since however admitted that the fourth child is not by her husband. The District Judge has held that adultery with the co-respondent has not been proved but that it is clear that she had previously committed adultery with

others in India and that she has subsequently been unfaithful in Mandalay. Although there was a temporary condonation of these matrimonial offences, the subsequent desertion revived the offences and he therefore gave a decree for divorce.

The learned District Judge has dealt with the facts at some length in his judgment and we agree with him generally thereon. There is certainly no proof of adultery with the co-respondent. It is admitted however that the fourth child who was born in Bombay in about June 1927 is not the petitioner's child and in a letter, Exhibit H, dated the 16th April 1928 the respondent wrote:—"Since leaving you on the 24th of December, I have been unfaithful to you, having committed adultery with a certain person. This took place in January, while living at the Grand Hotel." The petitioner has also given oral evidence as to alleged admission by the respondent to him. The respondent says that she wrote this letter because at that time she wished him to divorce her, and that the statement in it as to her committing adultery is not true. But this does not sound very convincing and we accept the District Judge's conclusion that adultery with some persons unknown in Mandalay was proved.

The respondent left the petitioner four days before he filed his petition and has lived apart from him ever since. This does not seem to have been with the consent of the petitioner. In the case of *Constance Catherine Moreno v. Henry William Bunn Moreno* (1), Mookerjee, J., remarks:—"We may then treat it as well settled that condonation of past matrimonial offences is impliedly conditioned upon the future good behaviour of the offending spouse, and it follows that if after condonation, the offences are repeated,

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(1) (1920) 47 Cal. 1068 at p. 1075.

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the right to make the condoned offences a ground for divorce revives; to constitute revival of the condoned offences, the offending spouse need not, however, be guilty of offences of the same character as that condoned; any misconduct is sufficient which indicates that the condonation was not accepted in good faith and upon the reasonable conditions implied."

We agree that in the present case the desertion was a sufficient ground for making the previous allegation of adultery a ground for divorce. Neither of these adulterers has been joined as co-respondents in the case, but with regard to the offence in Mandalay, it is clear that the name of the adulterer is unknown to the petitioner, and cannot be found out by him. That being so, the petitioner has a good ground for being excused by the Court under section 11 of the Act from naming this adulterer.

There is no suggestion of collusion in this case and we think the decree for divorce is justified. We accordingly confirm the decree.

APPELLATE CRIMINAL.

Before Mr. Justice Heald.

KING-EMPEROR

v.

NGA PO SEIK.*

1929

May 3.

Burma Excise Act (Burma Act V of 1917), ss. 30 (a), 37—'Country, liquor' a generic term—Importance of distinguishing different kinds of country liquor—Quantities allowed without license, different—Guilty knowledge or belief essential for conviction under s. 37—Illegal conviction under s. 30 cannot be altered to conviction under s. 37.

* Criminal Revision No. 389A of 1929 being a review of the order of the Township Magistrate of Myanaung in Criminal Regular Trial No. 114 of 1928.