

MATRIMONIAL JURISDICTION.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Mya Bu.

1933
Jan. 4.

MA MAW

v.

MAUNG YAW HAN.

MAUNG HLA MYINT

v.

DOROTHY HLA MYINT.

MA NGWE AUNG

v.

MAUNG KYAW HLA AUNG.*

Divorce Act (IV of 1869), ss. 2, 10, 12, 13, 14, 17—Petition for divorce in proper form—Averment and proof of necessary facts—Requirements of the Act—Court's duty.

As divorce affects the status of the parties it is of importance that the necessary conditions to justify a decree for dissolution of marriage should be complied with. It is specifically laid down in the Act that certain facts must be averred and proved before a Court has jurisdiction to pass a decree for dissolution of marriage, and in the absence of the averment or proof of the facts required by law in support of a petition for divorce a decree for divorce will not be passed.

PAGE, C.J.—We have considered the form of these petitions, and the evidence adduced in support of them. There is a good deal of misapprehension in the minds of persons who are concerned with divorce matters as to what it is necessary to aver and prove in a divorce case. As divorce affects the status of the parties it is of importance that the necessary conditions to justify a decree for dissolution of marriage should be complied with. It

* Civil Reference Nos. 5 and 6 of 1933 from the judgments of the District Court of Insein in Suits Nos. 9 and 22 of 1932 and Civil Reference No. 7 of 1933 from the judgment of the District Court of Manbin in Suit No. 5 of 1932.

is specifically laid down that certain facts must be averred and proved before a Court has jurisdiction to pass a decree for dissolution of marriage.

In *Barnett v. J. D. Howe and 1* (1) the Court had occasion to point out that

"there is no averment in the petition that there was no connivance between the petitioner and the other party to the marriage; and there was no evidence that there was no collusion or connivance on the part of the petitioner or to explain the delay of more than two years between the alleged adultery and the presentation of the petition. There was no direct evidence that the petitioner or the respondent professed the Christian religion at the time when the petition was presented, or that at such time the parties to the marriage were domiciled in India. All these facts it was incumbent upon the petitioner to prove."

In that case the proceedings were sent back to the District Court of Hanthawaddy in order that the petitioner should have an opportunity of putting the proceedings in proper form, and in order that the Court on a duly presented petition should consider whether a decree for dissolution of marriage ought to be passed or not.

District Courts must see that the necessary steps are taken to bring a petition for divorce in the proper form, as otherwise the proceedings have to be returned in order that they may be put in order. In none of the present cases is there any averment or direct evidence that the parties to the marriage were domiciled in India at the time when the petition was presented. We have considered whether in such circumstances we ought to confirm these decrees. In the circumstances obtaining in each of these cases, however, it appears to us to be clear that the parties are domiciled in India and we do not consider that it is necessary that the proceedings should be further delayed by returning

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(1) Civil Reference No. 18 of 1931 of this Court.

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the records to the District Courts. But District Judges must be careful to see that the due provisions of the law are complied with in a matter which so greatly affects the status of the parties.

Upon the merits in each case the petitioner has proved a right to a dissolution of the marriage. In each case the decree for dissolution of marriage will be confirmed.

DAS, J.—I agree.

MYA BU, J.—I agree.

INCOME-TAX REFERENCE.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Mya Bu.

1933

Jan. 4.

IN RE THE COMMISSIONER OF INCOME-TAX, BURMA

v.

THE RANGOON ELECTRIC TRAMWAY & SUPPLY CO., LTD.*

Income-tax Act (XI of 1922), ss. 7 (1), 18—Salaries—Bonus scheme for employees—Assessee company's shares as bonuses—Shares transferred by trustees to employee on termination of service—Transfers whether "salaries"—Company's interest in the shares.

The assessee company gave annual bonuses to their employees in the shape of the company's shares purchased in the joint names of the managing agents of the company and the employee on whose behalf they were purchased. Dividends on the shares were paid to the employees as they arose. On the termination of an employee's engagement with the company, the managing agents as trustees transferred his shares to the employee. The Commissioner of Income-tax claimed that this transfer was a payment of "salaries" within the meaning of s. 7 (1) of the Indian Income-tax Act, the tax on which the company was bound to deduct and pay over to the Income-tax Office under s. 18 of the Act.

Held, that such a transfer of shares by the trustees to an employee was not a payment of "salaries" within s. 7 (1) of the Act. The effect of the company's scheme was that after the shares had been transferred into the joint names of the managing agents and an employee as trustees for the employee the company did not possess any legal or beneficial interest in the shares.

* Civil Reference No. 17 of 1932.