

MATRIMONIAL JURISDICTION.

Before Mr. Justice Leach.

1935
 Dec. 10.

WILLIAMS

v.

WILLIAMS AND ANOTHER.*

Divorce—English principles and practice, applicability—Notification dated 8th July 1928—Government Advocate as King's Proctor—Decree nisi made absolute—Objections by the respondent—"Any person," meaning of—Intervention of Government Advocate or a third party—Duties of the Government Advocate as King's Proctor—Divorce Act (IV of 1869 and XV of 1927), ss. 7, 16, 17A.

By s. 7 of the Indian Divorce Act English principles and rules of practice are made, as far as may be, applicable to divorce cases under the Act.

By a notification dated the 8th July 1928, issued in pursuance of s. 17A of the Act, the Government Advocate in Burma has been appointed by the Governor-General in Council to exercise the rights and duties of the King's Proctor in England.

S. 16 of the Act does not give any right to a respondent in the divorce proceedings to object to a decree *nisi* being made absolute. The words "any person" do not apply to parties to the proceedings. This right can only be exercised by the Government Advocate as the King's Proctor or a third party.

King v. King, I.L.R. 6 Bom. 416; *Madan v. Madan*, 19 L.T.R. 612; *Stephen v. Stephen*, I.L.R. 17 Cal. 570; *Stoute v. Stoute*, 5 L.T.R. 138—referred to.

The Government Advocate cannot leave the matter in the hands of the respondent. The correct course is for him to consider the respondent's allegations and what may be placed before him in connection therewith, and if he considers the evidence sufficient it is his duty to intervene. If he is of opinion that the evidence is not sufficient to justify his intervention, the matter ends so far as he is concerned.

Ray for the petitioner.

Christopher for the 1st respondent.

A. Eggar (Government Advocate) as King's Proctor.

* Civil Regular No. 281 of 1934.

LEACH, J.—On the 18th January this year I granted the petitioner a decree *nisi*. On the 6th August the petitioner applied for an order making the decree *nisi* absolute. On the 11th September objections to the decree *nisi* being made absolute were filed by the respondent. In support of her objections she alleged that the petitioner had committed adultery with two women (whose names were mentioned) after the decree *nisi* had been passed. By an order dated the 21st August, the Deputy Registrar directed that notice of the application should issue to the learned Government Advocate, who exercises in this country the rights exercised in England by the King's Proctor. In response to this notice the learned Government Advocate appeared before the Deputy Registrar on the 25th September and raised the following questions : (1) Whether the King's Proctor should appear where allegations have been put forward or made by the respondent who is a party to the proceedings and on her own responsibility. (2) Whether misconduct of the petitioner subsequent to the granting of the decree *nisi* is sufficient to prevent the decree *nisi* being made absolute.

The case was then placed before me to decide the questions raised by the Government Advocate, who does not wish to intervene. He has not considered whether the objections of the respondent can be supported and he desires to leave the matter entirely in the hands of the respondent, which he contends the Court can permit. I have heard the arguments, and it seems to me that it is quite clear on the authorities, both English and Indian, that the matter cannot be left in the hands of the respondent. She is not entitled in law to challenge the right of the petitioner to have the decree *nisi* made absolute.

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This can only be challenged by the Government Advocate as the King's Proctor or a third party.

Section 16 of the Indian Divorce Act reads as follows :

" Every decree for a dissolution of marriage made by a High Court not being a confirmation of a decree of a District Court shall, in the first instance be a decree *nisi* not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi* or by requiring further inquiry or otherwise as justice may demand.

The High Court may order the cost of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she has separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit."

These provisions are exactly the same as the provisions of section 7 of the Matrimonial Causes Act, 1857, but that section also provides for intervention by the King's Proctor. There was no such provision in the Indian Divorce Act until section 17A was added by Act XV of 1927. Section 17A reads as follows :

" The Governor-General in Council may appoint for each High Court of Judicature established by Letters Patent an officer who shall, within the jurisdiction of the High Court for which he is appointed, have the like right of showing cause.

why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's Proctor, and the Governor-General in Council may make rules regulating the manner in which the right shall be exercised and all matters incidental to, or consequential on, such exercise."

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In pursuance of the powers conferred on him by this section the Government Advocate was placed in the position of King's Proctor by a notification dated the 8th July, 1928, and published in the *Burma Gazette* of the 22nd September, 1928.

Section 7 of the Indian Divorce Act states :

"Subject to the provisions contained in this Act, the High Courts, and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are, as nearly as may be, conformable to the principles and rules on which the Court for Divorce and Matrimonial causes in England for the time being acts and gives relief."

English principles and English rules of practice are, therefore, made, so far as may be, applicable to divorce cases under the Indian Divorce Act.

Now, section 16 of the Indian Divorce Act does not give the right to the respondent to object to a decree *nisi* being made absolute. The words "any person" do not apply to parties to the proceedings, and, therefore, cannot include the respondent. In *Stoate v. Stoate* (1) it was expressly held that the respondent had no right, under section 7 of the Matrimonial Causes Act, 1860, to show cause against the decree *nisi* being made absolute. In *Madan v. Madan and De Thoren* (2) there was a decision to the same effect. In *Harriette A. King v. James S. King* (3) Bayley J. held that under the Indian Divorce Act

(1) 5 L.T.R. 138.

(2) 19 L.T.R. 612.

(3) (1882) I.L.R. 6 Bom. 416.

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a third person may show cause against the decree *nisi* being made absolute, but a solicitor, who was really representing the respondent, was not entitled to intervene or to show cause against the decree *nisi* being made absolute. This case was followed by Wilson J. in *Stephen v. Stephen* (1). There the respondent wished to intervene, but it was held that he could not.

Mr. Christopher who appears for the respondent concedes that his client herself cannot object to the decree *nisi* being made absolute, and accepts the position that only the Government Advocate or a third party can intervene. Mr. Ray for the petitioner takes the same view. There is, in my opinion, no doubt that this is the correct position, and it only remains for me to consider what must be done in this case.

The learned Government Advocate, as I have already pointed out, does not wish to intervene, but wishes to leave the matter in the hands of the respondent. He cannot do that. It is quite clear that the correct course is for the learned Government Advocate to consider the respondent's allegations and what may be placed before him in connection therewith and then decide whether he should intervene. If he does not consider that the evidence is sufficient to justify his intervention, there is an end of the matter so far as he is concerned. If he does consider that the evidence does justify him in intervening, it is his duty to intervene.

I will adjourn the case until the 6th January. This will give the learned Government Advocate an opportunity of inquiring into the matter. If he decides to intervene, then the procedure laid down

by the rules will be followed. If he decides not to intervene, the petitioner will be entitled to a decree absolute, unless some third party steps in.

[Pursuant to his Lordship's order the Government Advocate intervened on the 5th February 1936 and took time to investigate the case. On the 18th March 1936 he intimated to the Court that the evidence was not sufficient, and withdrew his intervention. His Lordship thereupon made the decree *nisi* absolute.]

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CRIMINAL REVISION.

Before Mr. Justice Dunkley

KING-EMPEROR

v.

NGA BALA.*

1936

Jan. 15.

Prevention of Crime (Young Offenders) Act (Burma Act III of 1930), ss. 24 (b), 25 (1).—Detention in senior training school—"Beyond the age of 18," meaning of.

Under clause (b) of s. 24 of the Prevention of Crime (Young Offenders) Act a person ordered to be detained at a senior training school cannot be detained there beyond the age of 18. The magistrate, therefore, ought to fix the age of the offender. In accordance with usage a person is 18 years of age until he reaches his 19th birthday. Therefore the expression "beyond the age of 18" must mean and include the period up to the nineteenth birthday of the person.

DUNKLEY, J.—The respondent was convicted by the Subdivisional Magistrate of Amherst of an offence under section 307 of the Indian Penal Code and, under the provisions of section 24 of the Prevention of Crime (Young Offenders) Act, was ordered to be detained in the Senior Training School at Thayetmyo for a period of three years.

* Criminal Revision No. 866A of 1935 from the judgment of the Sessions Judge of Amherst in Criminal Appeal No. 257 of 1935.