

MATRIMONIAL REFERENCE.*Before Broadway, Addison and Dalip Singh, JJ.*

P.—Petitioner

versus

P.—Respondent and F.—Co-Respondent.

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*Dec. 20.***Matrimonial Reference No. 11 of 1928.***Indian Divorce Act, IV of 1869, section 34—Damages—grant of, conditional upon co-respondent marrying respondent—whether legal.*

The District Judge passed a decree for dissolution of marriage and, notwithstanding his finding that the petitioner was only entitled to damages amounting to Rs. 1,500, passed a further order directing the co-respondent to pay an additional sum of Rs. 12,000 into Court, in the event of his not marrying the respondent.

Held, that the latter part of the order was in contravention of section 34 of the Act and therefore illegal.

Reference under section 17 of Act IV of 1869, for confirmation of the decree of H. B. Anderson, Esquire, District Judge. Multan, dated the 5th June 1928.

O'CONNOR, for Petitioner.

Nemo, for Respondents.

BROADWAY J.—This is a petition under section 17 of the Indian Divorce Act praying for the confirmation of a decree for dissolution of marriage between the petitioner and the respondent passed by the District Judge of Multan on the 5th of June, 1928. BROADWAY J.

It has been found that the petitioner, Captain P. is domiciled in India and that, therefore, the Courts in India have jurisdiction to pass the decree.

The learned District Judge in dealing with the

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claim for damages which amounted to Rs. 20,000 came to the conclusion that a sum of Rs. 1,500 would be more than sufficient to meet the case, that is to say, would compensate the petitioner for "the loss and pain" suffered by him. He accordingly decreed that amount against the co-respondent in favour of the petitioner. He then proceeded to decree a further sum of Rs. 12,000 by way of damages directing that "this amount will be paid into Court by the co-respondent" (Captain F.) in the event of his failing to marry the respondent within six months of the date on which this decree for dissolution was confirmed. In my judgment this latter direction allowing Rs. 12,000 damages with this condition attached contravenes the provisions of section 34 of the Indian Divorce Act which directs that the damages to be recovered "shall be ascertained" by the said Court "whether the respondents appear or not." It then proceeds, "after the decision has been given, the Court may direct in what manner such damages shall be paid or applied." In the present case the learned District Judge has found that the petitioner was only entitled to Rs. 1,500 damages. His order directing the payment of Rs. 12,000 into Court in the event of the co-respondent not marrying the respondent is, therefore, bad in law. I would, therefore, confirm the decree dissolving the marriage and allowing the petitioner Rs. 1,500 damages but not that portion of the decree which relates to the further sum of Rs. 12,000.

ADDISON J.

ADDISON J.—I concur.

DALIP SINGH J.

DALIP SINGH J.—I concur.

N. F. E.

Application accepted in part only.