

SPECIAL BENCH.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice,
Mr. Justice Mya Bu, and Mr. Justice Dunkley.*

MA U v. KIN RAW GAM.*

1939

Dec. 20.

*Burma Divorce Act, s. 7—Marriages founded on Christian principle—
Monogamous marriages—Laws recognizing polygamous marriages—
Parties married according to Burmese Buddhist law—Subsequent conver-
sion to Christianity—No jurisdiction to grant relief for divorce or judicial
separation under Burma Divorce Act.*

In view of s. 7. of the Burma Divorce Act, the marriages contemplated by the Act are those founded on the Christian principle of a voluntary union for life of one man with one woman to the exclusion of others though they need not necessarily have been celebrated in accordance with Christian rites or ceremonies. Consequently, no relief can be given under the Act where the parties have been married according to Burmese Buddhist law, or any other law which recognizes polygamy.

The Court has no jurisdiction to grant relief under the Act, either by way of divorce or judicial separation, to parties who were married according to Burmese Buddhist law but had become Christians subsequent to the marriage and were Christians at the date of the petition.

Thapita Peter v. Thapita Lakshmi, I.L.R. 17 Mad. 235, F.B., followed.

No appearance by the parties.

DUNKLEY, J.—In this case the learned Additional District Judge of Myitkyina passed a decree for judicial separation, under the provisions of section 22 of the Burma Divorce Act, and he has submitted the proceedings for confirmation of that decree.

A decree for judicial separation does not require the confirmation of the High Court. But in this particular case it is necessary to consider whether we ought not to interfere under our revisional powers, granted by section 115 of the Civil Procedure Code, and, in my opinion, we ought to interfere.

According to the petition, the parties were married at Myitkyina about 32 years ago, and at the time of

* Civil Reference No. 4 of 1939 made by the Additional District Judge of Myitkyina.

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their marriage the petitioner was a Shan Buddhist whilst the respondent was a Kachin Animist ; and they were not converted to Christianity until about two years after their marriage. In evidence, both parties stated that the marriage was performed according to Buddhist rites. There was no re-marriage after the parties became Christians. Under these circumstances, the Burma Divorce Act had no application to the marriage and the learned Additional District Judge had no jurisdiction to grant any relief to the petitioner under the provisions of that Act.

Section 7 of the Burma Divorce Act enacts that the High Courts and District Courts shall, in all suits and proceedings under the Act, act and give relief on principles and rules which 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. Now, the Court for Divorce and Matrimonial Causes would not recognize such a marriage as this as a valid marriage. A marriage to be recognized as such by the Courts of a Christian country must be a voluntary union for life of one man with one woman to the exclusion of all others, although it need not necessarily have been celebrated in accordance with Christian rites or ceremonies. A marriage contracted in a country where polygamy is lawful, between a man and a woman who profess a faith which allows polygamy, is not a marriage as understood in England.

The Burmese Buddhist Law recognizes polygamy, and Animists are also polygamists, and, consequently, the marriage which is set up in this particular case is not such a marriage as entitles the parties to relief under the Burma Divorce Act, although they may have become Christians subsequently to the marriage.

This question was considered by a Full Bench of the Madras High Court in *Thapita Peter v. Thapita Lakshmi and another* (1), where the petitioner and his wife were Hindus and married according to the rites of the Hindu religion, and both subsequently became Christians. The learned Judges, after considering the rulings of the English Court for Divorce and Matrimonial Causes, came to the conclusion, having regard to section 7 of the Divorce Act, that the marriages contemplated by the Act are those founded on the Christian principle of a union of one man and one woman to the exclusion of others and that, consequently, the Act did not contemplate relief in cases where the parties have been married under the rites of Hindu Law, a Hindu marriage not being a monogamous one. In the course of his judgment (at page 243) Shephard J. said :

“ Now, in order to satisfy the English Divorce Court, while it is not necessary to prove that the marriage was celebrated with any specifically Christian ceremonies, or even that both the parties were Christians, it is necessary to show that the union was a union for life of one man with one woman to the exclusion of others. That is what is meant by a Christian marriage or a marriage in Christendom. See *Hyde v. Hyde* (L.R., 1 P. & D., 130) and *Brinkley v. Attorney-General* (L.R., 15 P.D., 76). This definition of marriage clearly excludes from the category of marriage as understood for the purposes of the Divorce Court alliances such as the one which took place between the parties to the present suit * * * .”

With these observations I respectfully agree, and therefore the learned Additional District Judge had no jurisdiction to grant the petitioner any relief under the Burma Divorce Act.

Consequently, the judgment and decree of the learned Additional District Judge must be set aside

(1) (1894) I.L.R. 17 Mad. 235, F.B.

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and the petition of the petitioner, Ma U, must be dismissed.

ROBERTS, C.J.—I agree.

DUNKLEY, J.

MYA BU, J.—I agree that the District Judge acted without jurisdiction and that the order should be set aside by this Court in the exercise of the powers of revision under section 115 of the Civil Procedure Code.