

SPECIAL BENCH.*Before Dalip Singh, Monroe and Bhide JJ.*

CECIL SAMUEL—Petitioner

versus

MARGARET SAMUEL—Respondent.

Matrimonial Reference No. 7 of 1934.

Indian Divorce Act, IV of 1869, Sections 17, 20: Decree annulling a marriage—whether can be confirmed by High Court before the expiry of the period of six months — the word ‘ clause ’ in section 20—defined.

A decree was passed on 17th April, 1934, by the District Judge, Peshawar, annulling the marriage between the parties. On 26th April, 1934, the petitioner applied to the High Court for confirmation of the said decree under section 20 of the Indian Divorce Act.

Held, that in the absence of a definition the word “clause” in section 20, Indian Divorce Act, should be taken in its natural sense of ‘ paragraph ’ and, therefore the *proviso* to section 17 does not form part of the ‘ clauses ’ rendered applicable by section 20 of the Act.

Held further, that apart from the above reason, the scheme of the Act generally shows that it makes a distinction between decrees for dissolution of marriage, and those annulling a marriage as was done by the English Law (in force in 1869 when the Act was passed) which required no interval of time before a decree of nullity could be confirmed, though prescribing an interval in the case of dissolution of marriage.

Held therefore, that the present decree of annulment could be confirmed by the High Court before the expiration of a period of six months.

Edward Caston v. L. H. Caston (1), followed.

A (wife) v. B (husband) (2), not followed.

Case referred by Mr. K. P. S. Menon, District Judge, Peshawar, with his letter No. 1303 of the 1st May, 1934, for confirmation of the decree nisi passed by him on the 17th April, 1934.

(1) (1900) I. L. R. 22 All. 270. (2) (1899) I. L. R. 23 Bom. 460.

R. S. JEREMY, for Petitioner.

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S. R. BALI, for Respondent.

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DALIP SINGH J.—A decree was passed by the learned District Judge of Peshawar, annulling the marriage between Cecil Samuel, Sub-Inspector of Police, and Dr. Margaret Sarah N. Samuel, née Benjamin, Sub-Assistant Surgeon of Lady Reading Hospital, Peshawar, on the ground that Dr. Margaret Sarah Samuel was impotent at the time of the marriage and at the time of the institution of the suit. A decree was passed on the 17th of April, 1934, and the petitioner applied for confirmation of the said decree on the 26th April, 1934.

So far as the merits are concerned, there is ample proof on the record that the decree was rightly passed and the only question arising before us is whether the decree can be confirmed under section 20 of the Divorce Act before six months have expired from the date thereof.

Section 20 of the Divorce Act provides that every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court and the provisions of section 17, clauses 1, 2, 3 and 4 shall *mutatis mutandis* apply to such decrees. Section 17 is not numbered as regards its clauses and the question arising is whether the paragraph beginning "provided that no decree shall be confirmed under this section 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," should be regarded as forming part of clauses 1, 2, 3 and 4. The matter has been considered in two rulings, one of the Bombay

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High Court, *A (wife) v. B (husband)* (1), and the other of the Allahabad High Court, *Edward Caston v. L. H. Caston* (2). The Bombay High Court held that the High Court could not confirm the decree before the expiration of six months. The Allahabad Court held to the contrary. The matter is not entirely free from difficulty, but it seems to me that there being no definition of the word "clause" anywhere, it would be proper to take it in its natural sense of paragraph, and that therefore the proviso does not form part of the clauses of section 17 rendered applicable by section 20. Apart from this, it seems to me that the scheme of the Act generally shows that it makes a distinction between decrees for dissolution of marriage and decrees annulling a marriage. This Act was passed in 1869 and at that time it appears that even under English Law there was no interval of time necessary for a decree annulling a marriage, though there was an interval of time necessary before a decree dissolving a marriage could be confirmed. The argument of expediency on which some stress was laid in the Bombay High Court is really a matter for the Legislature to consider and in view of the conflict it might perhaps be considered fit by the Legislature to make the point clear. On the whole, however, I am of opinion that the Allahabad view is correct and I would, therefore, confirm the decree of the District Judge annulling the marriage between the parties. The parties will bear their own costs of this application.

MONROE J.

MONROE J.—I agree.

BHIDE J.

BHIDE J.—I agree.

P. S.

Decree confirmed.

(1) (1899) I. L. R. 23 Bom. 460.

(2) (1900) I. L. R. 22 All. 270.