

mortgagees. That suit clearly fell under s. 3, cl. (z), of the Dekkhan Agriculturists' Relief Act, and hence it fell under the 3rd Chapter and therefore under s. 10A of the Act. There are, no doubt, observations which might lend colour to the view that s. 10A was not confined to the limited class of cases described in cls. (w), (y) and (z) of s. 3. But these observations were, in my opinion, obiter and not necessary for the decision arrived at. That decision, therefore, is not an authority for the proposition advanced by the plaintiff-respondent. I think, therefore, that the present suit does not, for the reasons that I have given above, fall under s. 10A of the Act and that, therefore, the plaintiff is not entitled to get the benefit of that section. I agree, therefore, that the appeal should be allowed.

Appeal allowed.

J. G. R.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice.

NELLIE O. HARA FIDO (PETITIONER) v. AUSTIN HENRY FIDO
(RESPONDENT).*

1938
April 11

Divorce—Description as ground for divorce.—Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17, Geo. V, c. 40), s. 1 (1), Prov. (a) —“ For the time being in force;” meaning of—Matrimonial Causes Act, 1937 (1 Edw. VIII and 1 Geo. VI, c. 57).

Section 1, sub-s. (1) of the Indian and Colonial Divorce Jurisdiction Act, 1926, read with prov. (a) confers jurisdiction on High Courts in India to grant divorce to British subjects domiciled in England or Scotland on any of the grounds on which a divorce might be granted by the High Court in England. The jurisdiction is conferred only in those cases where a Court in India would have jurisdiction to grant a divorce if the parties were domiciled in India. The words “ for the time being in force ” in prov. (a) to the section mean in force at the time when the grounds of divorce fall to be considered and accordingly the High Courts in India have, under the Indian and Colonial Divorce Jurisdiction Act, 1926, jurisdiction to grant divorce on any of the extended grounds provided by the Matrimonial Causes Act, 1937.

*Matrimonial Suit No. 114 of 1938.

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SAGHARAM
—
Divatia J.

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Desertion is not broken if the husband does not offer to a wife a home on terms which a self-respecting wife can accept.

WIFE'S petition for divorce.

The facts are fully stated in the judgment.

G. C. O'Gorman, for the petitioner.

K. A. Somji, for the respondent.

BEAUMONT C. J. This is a petition by the wife for divorce on the ground of desertion for three years or upwards, and the question arises whether the amendment of the English divorce law by the Matrimonial Causes Act of 1937 applies to the parties in this case. Apart from that Act it is clear that desertion is no ground for dissolution of marriage.

Under the Indian and Colonial Divorce Jurisdiction Act of 1926, s. 1, sub-s. (1), High Courts in India have jurisdiction to make a decree for the dissolution of a marriage where the parties to the marriage are British subjects domiciled in England or in Scotland in any case where a Court in India would have such jurisdiction if the parties to the marriage were domiciled in India. Then by proviso (a) it is enacted that the grounds on which a decree for dissolution of such a marriage may be granted by any such Court shall be those on which such a decree might be granted in England according to the law for the time being in force in England. In my opinion the effect of sub-s. (1) and proviso (a) read together is that in the case of British subjects domiciled in England or Scotland this Court can grant a divorce on any of the grounds on which a divorce might be granted by the law for the time being in force in England, provided that if the parties were domiciled in India there would be a Court in India which would have jurisdiction to grant a divorce on any grounds. The reference to a Court in India having such jurisdiction, in my opinion, only limits the class of persons to whom a decree of dissolution can be granted, but does not affect the grounds upon which such a decree can be granted, which by proviso (a) are to be those in force for the time being

in England. Mr. Somji for the respondent has suggested that the words "for the time being in force" mean in force at the time of the passing of the Act of 1926. But that is not the natural meaning of the words; the words used are not "in force at the time when this Act is passed". The words used in their natural acceptation mean in force at the time when grounds of divorce fall to be considered in the suit. The object of the Act of 1926 was to confer upon British subjects domiciled in England or Scotland but resident in India an additional and more convenient forum than the Court of their own domicile. High Courts in India are acting under the Act of 1926 in place of the Court with primary jurisdiction, that is the Court of the domicile, and it is therefore only natural that High Courts should apply the same law as would be applied by the Court of the domicile, if the suit were brought there. I feel no doubt, therefore, that since the passing of the Matrimonial Causes Act of 1937 this Court has jurisdiction to grant divorce under the Indian and Colonial Divorce Jurisdiction Act of 1926 on any of the extended grounds provided by the later Act, one of those grounds being desertion without cause for a period of at least three years immediately preceding the presentation of the petition.

Now on the merits of the case, the facts are that the husband and wife are British subjects domiciled in England, and they had been since 1911, when they were married, residing mainly in India. In 1928 they went with their three children to England, and the husband made friends with a lady of whom the wife did not altogether approve. They reached England in May, and the husband returned to India in October, the wife remaining behind to look after the children. According to the wife's evidence, after the husband returned, he wrote to her very seldom, and his letters were not friendly, but he always sent money for the maintenance of herself and the children, and I do not think that it can be said that in 1928 he deserted his wife. He came

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back to England in May 1932, and the wife and children met him at the station, and took him to the flat which they were occupying in Finchley. The husband at once telephoned to the lady he had met in 1928, and after staying at his wife's flat but in a separate room from hers for about a fortnight, he went to stay with this lady and her mother. After that he never returned to his wife at all. He went back to India in October without saying good-bye and without writing to her, and I think that from the time when he left the flat at Finchley in 1932, the husband must be taken to have deserted his wife. The difficulty, however, arises from what took place in 1935. In that year the wife wanted to go to India for a holiday, and she wrote to her husband, and asked him whether he could get her a free passage, and also asked where she had better stay, and he said that she could come to his flat in Bombay, provided she did not interfere with his friends. She arrived on November 10, was met by her husband, and went to his flat, where the husband and wife occupied separate rooms. A few days later a lady who lived in Bombay and who had also met the husband in 1932 when he was in England, came to the flat, and the wife objected to her presence. Having regard to a letter from the lady in question to the husband which the wife produced in the witness box it is obvious that she had good ground for objecting to the association between her husband and the lady. As no charge is made against the lady who is not referred to in the petition, I do not mention her name. She has had no opportunity of answering the suggestions made against her. The result of this lady's arrival was that the husband and wife quarrelled, and a deed of separation was suggested. The terms of it were never actually agreed to, and the wife returned to England on December 21. The question is whether that association of the parties in 1935 in Bombay amounts to a break in the desertion. I do not think that it does, because I am satisfied that the parties were living though under the same roof, practically as strangers, and the

wife was justified in resenting the presence in the flat of the other lady. Desertion is not broken if the husband does not offer to the wife a home on terms which a self-respecting wife can accept. I think in this case the wife was offered terms which she could not be expected to accept in the way of living in this flat, and therefore the return to Bombay and stay in the husband's flat did not operate to stop the desertion started in 1932. I think, therefore, there has been desertion for more than three years, and the wife is entitled to a decree *nisi* for dissolution of marriage with costs.

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Attorneys for petitioner : Messrs. *Craigie, Blunt & Caroe.*

Attorneys for respondent : Messrs. *Pereira, Fazalbhoy & Co.*

Order accordingly.

N. K. A.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice.

P. D. SHAMDASANI, PETITIONER, v. THE CENTRAL BANK OF INDIA LTD., RESPONDENTS.*

1938

April 14

Taxation of bills of costs—Taxing officer debtor of respondents—Bias—Possibility of—Practice—Review :

On an application by the petitioner to have a taxation between him and the respondents quashed on the ground that the Assistant Taxing Master who was a debtor of the respondents was not competent to entertain the taxation and ought not to have entertained the taxation.

Held, quashing the taxation, that persons exercising judicial functions must be in an entirely impartial position. They ought not to have any interest, pecuniary or otherwise, in the subject matter of the litigation, and they must not be in such a position that any bias in favour of one side or the other can be imputed to them. Actual bias need not be proved, if the relationship is such that bias may seem likely.

From United Breweries Co. v. Bath Justices, (1) followed.

In review of taxation the Judges do not lightly interfere with the discretion exercised by the Taxing Master and accordingly they are entitled to have an entirely unbiased opinion of the Taxing Master to guide them.

*Miscellaneous application of 1938.

(1) [1926] A. C. 586.