

MATRIMONIAL JURISDICTION.

Before Mr. Justice Wilson.

HUNTER v. HUNTER.*

Practice—Decree absolute, application for—Decree nisi, non-service of—
Notice of motion—Divorce.

1891
June 22.

In an application to have a decree *nisi* made absolute where it appeared that the decree had been passed *ex-parte*, after the original summons had been personally served on the respondent, and that owing to this, the petitioner being unable to discover the whereabouts of the respondent, who had left Calcutta immediately after the decree was passed, no copy of the decree had been served on him or notice of the application given him.

Held, that sufficient cause was shown for the decree being made absolute, notwithstanding it had not been served or notice of the application given, and order made accordingly.

THIS was an application on behalf of the petitioner to have the decree *nisi* which had been passed in this suit on the 18th December 1890 made absolute.

The original summons in the suit had been served personally on the respondent, but as no appearance was entered by him, the suit was heard *ex-parte*, and the allegations of adultery and cruelty set out in the petition having been duly proved, the usual decree *nisi* was passed.

No copy of the decree was served on the respondent, nor had any notice been given to him of the present application, which was based on an affidavit of the petitioner sworn on the 19th June, and a certificate of the Registrar of the same date to the effect that no appearance had been entered by or on behalf of any person or persons, and that no affidavit in opposition to the decree *nisi* being made absolute had been filed in the suit.

In her affidavit the petitioner stated that she had not seen the respondent since the date of the decree, nor had she been able to ascertain where he had since been living; that a few days after the decree was passed, she was informed that he had left Calcutta two days after the decree for Vizianagram; that in the month of May she received information from Bombay that the

* Original Civil Suit No. 5 of 1890.

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respondent was there, and that she then wrote to her informant to ascertain his address and received a reply saying that he had left Bombay; that since leaving for Vizianagram the respondent had not returned to Calcutta, and that she had enquired of friends of the respondents and of persons with whom he had business dealings in Calcutta if they could give her his address, but without success, and that she had been unable to get any information regarding his whereabouts, and that consequently she had been unable to have a copy of the decree served upon him or give him notice of this application.

Mr. T. A. Apear on behalf of the petitioner applied to have the decree made absolute, and submitted that under the circumstance he was entitled to the order asked for, notwithstanding that no copy of the decree had been served or notice of the motion given. He referred to the cases cited in Belchambers's Practice, pages 419 and 420, to the decision of Trevelyan, J., in *Hoskins v. Hoskins* (1), and to Brown on Divorce, Appendix II, page 534, Rule 80.

WILSON, J.—On the authorities I think you have shown sufficient cause for making the decree absolute, and it will be made absolute accordingly. Costs of this application will be cost in the cause.

H. T. H.

Order made.

Attorney for petitioner, Baboo O. C. Gangooly.

PRIVY COUNCIL.

P. C.*
 1891.
 January 28,
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MAHABIR PERSHAD AND OTHERS (OBJECTORS, APPELLANTS) AND
 RADHA PERSHAD SINGH (PETITIONER, RESPONDENT)
 AND A CROSS-APPEAL.

[On appeal from the High Court at Calcutta.]

Mesne profits—Evidence—Presumption of fact.

In determining the mesne profits upon alluvial land gained by accretion and decreed to the respondent, the amount of such profits depending upon

* *Present* :—LORDS WATSON, HOBHOUSE, and MORRIS, and SIR R. COCHRAN.

(1) Unreported.