

MATRIMONIAL JURISDICTION.

895
 May 2.

Before Mr. Justice Sale.

LEDLIE v. LEDLIE. ^a

Divorce—Practice—Judicial separation, Previous decree for—Dissolution of marriage, Evidence in suit for—Res judicata—Cruelty—Adultery—Identity of parties—Divorce Act (IV of 1869), section 10.

In a suit for dissolution of marriage by reason of the cruelty and adultery of the respondent, the first charge and the marriage of the parties were held to be established by the production of a previous decree for judicial separation on account of cruelty, and by proof of the identity of the parties. *Bland v. Bland* (1) followed.

THIS was a suit under section 10 of the Indian Divorce Act by Alicia Ellen Ledlie, praying for dissolution of her marriage, on the ground of cruelty and adultery on the part of her husband Henry St. Clair Ledlie. The petitioner on the 14th April 1891, in suit No. 4 of 1890, obtained a decree in this Court for a judicial separation. In that suit it was found that there was sufficient evidence of cruelty on the part of her husband to entitle the petitioner to a decree.

Mr. Caspersz for the petitioner.—In England it has been held that a decree for judicial separation does not bar a suit for dissolution of marriage. The decree in the previous suit is conclusive evidence in this. I only propose to offer now evidence of the subsequent adultery and the identity of the parties. *Bland v. Bland* (1).

[SALE, J.—The previous decree proves the marriage of the parties and the acts of cruelty. You need only prove the identity of the present parties and give evidence of adultery.]

Evidence was then given accordingly.

SALE, J.—I think the petitioner is entitled to the relief which she seeks in this suit, and the marriage must be declared to be dissolved. A decree, dated 14th April 1891, was obtained by the petitioner in the former proceedings instituted by her for

^a Suit No. 6 of 1895.

judicial separation, and is sufficient evidence, in the first place, of the marriage of the parties ; and, in the second place, of the cruelty, on which the decree is founded. There is further evidence now of the identity of the parties to the present proceedings, and, further, of the fact that the respondent is now living in adultery with a woman, who is not the petitioner. Under these circumstances the petitioner has sufficiently made out a case for dissolution of marriage. There must be a decree *nisi* for dissolution of the marriage, with costs to be taxed on scale No. 1.

Attorneys for the Petitioner: Messrs. *Orr, Robertson & Burton.*

C. B. G.

1895

LEDLIE

v.

LEDLIE.

APPELLATE CIVIL.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

JUGUL KISHORI CHOWDHURANI, MINOR, REPRESENTED BY HER
GUARDIAN, PEARY CHURN SARKAR AND ANOTHER (DEFENDANTS) v.
ANUNDA LAL CHOWDHURI AND ANOTHER (PLAINTIFFS). *

1895

March 7.

Specific performance—Suit for specific performance of a contract against a minor—Contract entered into by a guardian with the sanction of the Court—Act XL of 1858, section 18—Guardians and Wards Act (VIII of 1890), section 31.

In a suit to enforce specific performance of a contract against a minor, entered into by a guardian appointed under Act XL of 1858 with the sanction of the Court, it was not shown that the contract was for the benefit of the minor. *Held*, that a decree for specific performance of a contract should not be made against the defendant while an infant.

Flight v. Bolland (1) and *Silsher Chand v. Dulputty Singh* (2) referred to.

Held also, that although the jurisdiction to decree specific performance is discretionary, it must be judicially exercised, and no Court would, even if it could, make a decree for the specific performance of a contract, unless the contract was shown to be for the infant's benefit.

* Appeal from Appellate Decree No. 2139 of 1893, against the decree of J. F. Bradbury, Esq., District Judge of Pubna and Bogra, dated the 27th of September 1893, affirming the decree of Babu Shambhu Chandra Nag, District Judge of Pubna and Bogra, dated the 15th of September 1892.

(1) 4 Russ., 298.

(2) I. L. R., 5 Calc., 363.