

MATRIMONIAL JURISDICTION.

Before Mr. Justice Wilson.

HILLIARD (PETITIONER) v. MITCHELL (RESPONDENT).

1890
January 6.

*Marriage—Suit for nullity of marriage—Divorce Act (IV of 1869),
ss. 18, 19 (2)—Domicile of origin—Religious communion.*

Where the petitioner, a member of the Church of England, came to India about the year 1867, his domicile of origin being then English, and in 1871 married the illegitimate sister (since deceased) of his second wife, whom he subsequently married in 1887, it being uncertain what his domicile was at the date of his first marriage; *Held*, in a suit for nullity of marriage, that either the petitioner carried with him to India the laws as to capacity to marry by which he was originally governed, or he was governed by the law of the class to which he belonged, and that in either case the marriage could not be supported.

Lopez v. Lopez (1) referred to and applied.

ROBERT WILLIAM HILLIARD, by his petition, stated that, on the 14th day of February 1871, he was lawfully married to Mary Madeline Hilliard, then Mary Madeline Ross, spinster, at St. John's Church in Council House Street, in the town of Calcutta; that the petitioner's said wife died on the 21st day of December 1883; that, on the 19th day of November 1887, the petitioner went through the ceremony of marriage with Julia Ella Mitchell at St. Thomas's Church, Free School Street, in Calcutta; and that they had lived and cohabited together, but there had been no issue from this cohabitation.

Mary Madeline Hilliard, the petitioner's first wife, was the uterine half-sister of Julia Ella Mitchell, and the petitioner prayed for a declaration that the marriage celebrated between himself and Julia Ella Mitchell was null and void on the ground that the parties thereto were within the prohibited degrees of affinity

The case was undefended.

Mr. *L. P. Pugh*, Mr. *E. W. Ormond*, and Mr. *L. Evans Pugh* appeared for the petitioner.

They referred to the Indian Divorce Act (IV of 1869), ss. 18, 19 (2); *The Queen v. Chadwick* (2); *Lopez v. Lopez* (1).

(1) I. L. R., 12 Cal., 706.

(2) 11 Q. B. (A. & E.), 205.

The further facts appear from the following judgment :—

WILSON, J.—This is a petition by a husband for a decree of nullity of marriage, on the ground that the parties to the marriage are within the prohibited degrees of affinity. The marriage was duly proved ; and it was proved that the petitioner had been formerly married to an illegitimate sister, since deceased, of the second wife.

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The petitioner was born in England, of parents having an English or Irish domicile, and he is and has always been a member of the Church of England. He came to this country, he thinks, in 1867, as assistant in a shop in Calcutta. He has now no intention of ever returning to England ; but what his domicile was at the date of the marriage, in 1871, is not clear, nor is it, I think, material to determine it. Upon any view, I think, the decree asked for must be made.

If the domicile of the petitioner was English, the English law of prohibited degrees was applicable to his marriage, and under that law, this was a prohibited marriage. If the petitioner's domicile was Indian, still the same result must follow. It may be that, as an Englishman born, he carried with him to India the laws as to capacity to marry by which he was originally governed, irrespective of the religious communion to which he belongs ; and is therefore subject to the law of England in this matter. This is a point upon which the Full Bench in *Lopez v. Lopez* (1) at p. 720 abstained from expressing an opinion. If this view be not the true one, then the petitioner was governed by the law of the class to which he belonged, that is to say, the law of the Church of England, according to the principle applied to Christians of another class in *Lopez v. Lopez* (1).

Upon no view of the case can the marriage be supported. A decree of nullity must be made.

Decree of nullity of marriage.

Attorney for petitioner : Mr. O. N. Manuel.

A. A. C.

(1) I. L. R., 12 Calc., 706.