

MATRIMONIAL JURISDICTION.

Before Mr. Justice Fletcher.

BRIGHT *v.* BRIGHT.*

1909
July 19

*Divorce—Jurisdiction—“ Permanent Residence ”—Divorce Act (IV of 1869)
s. 3 (1)—“ Last resided together.”*

In a petition for dissolution of marriage, where the husband and wife had no permanent residence :—

Held, that the petition could be entertained by the Court having jurisdiction over the place where they ‘ last resided together ’ though for a short period.

PETITION for divorce by the husband.

The facts of the case are as follows : The petitioner, George Edmond Bright, was a Railway Engineer by profession and had no permanent residence. He married the respondent, Elizabeth, at Karachi in 1896, and then they lived together at various places in the Bombay Presidency till they came, in December 1901, to Calcutta where they lived at the “ Grand ” hotel for about a fortnight. While living there, they mutually agreed on certain terms to separate and live apart from each other. It was alleged by the petitioner that later on he discovered that the respondent and the co-respondent, E. J. Simpson, had lived together at certain places in the Bombay and Madras Presidencies, and were still living together at Bombay. He, however, presented his petition for divorce in the Calcutta High Court. The respondent and the co-respondent did not enter appearance.

Mr. Langford James, for the petitioner. The only question that may arise in this case is whether this Court has jurisdiction to entertain this petition. No doubt the parties live outside the jurisdiction of this Court, but by section 3 (1) of the Indian Divorce Act (IV of 1869) the petitioner has an option of two Courts, namely, either the Court within the jurisdiction of which the parties “ reside ” at the time of filing the petition, or

* Original Civil Suit (Matrimonial) No. 6 of 1909.

the Court in whose jurisdiction they "last resided together." The petitioner may choose in which of these two Courts he may bring his suit: *Ratnagiri Pillai v. Syed Ravuthan* (1). The words of section 3 (1) of the Act are "within whose jurisdiction the husband and wife reside or last resided together." It is not necessary to contend that there was any fixed residence such as might have to be proved in cases under other Acts where residence must be shown. The words are tantamount to "last cohabited together": *Rattigan on Divorce*, page 22. If it is necessary to show some residence, then there are cases which show that in the absence of any fixed home a man must be taken to reside at the place where he is in fact living at any time: *Morris v. Baumgarten* (2), *Fernandez v. Wray* (3), *In re DeMomet* (4), *Alexander v. Jones* (5), *Lawrence v. Ingmire* (6), *Jogendra Nath Banerjee v. Elizabeth Banerjee* (7).

Cur. adv. vult.

FLETCHER J. This is a petition presented to the Court by the petitioner for the purpose of obtaining the dissolution of his marriage with the respondent on the ground of her adultery with the co-respondent.

At the hearing, I was satisfied with the proof of the adultery and also with the reasons given for not bringing the suit earlier.

The only question on which I reserved judgment was as to the jurisdiction to make a decree.

Now, the only period during which the petitioner and the respondent resided together in Calcutta was for a period of 16 or 17 days in the month of December 1901, when they finally separated. Prior to that, the petitioner and the respondent had cohabited together at Raigarh, and if the petition had been presented when the parties were living together at Raigarh, it would have had to be presented to the High Court at Bombay.

(1) (1896) I. L. R. 19 Mad. 477.*

(2) (1865) Coryton 152.

(3) (1900) I. L. R. 25 Bom. 176.

(4) (1894) I. L. R. 21 Cal. 634.

(5) (1866) L. R. 1 Ex. 133.

(6) (1869) 20 L. T. 391.

(7) (1898) 3 C. W. N. 250.

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At the time of the presentation of the present petition, the petitioner, the respondent and co-respondent were all resident in Bombay.

The petitioner, however, says that the Indian Divorce Act gives him an option of either bringing his suit in the High Court at Bombay as the place where the husband and wife "reside," or in this Court as being the High Court of the place where the parties "last resided together."

I have, therefore, to consider whether the husband and wife "last resided together" during the short visit to the Grand Hotel, Calcutta, in December 1901.

I have come to the conclusion, not without some hesitation, that in this particular case the parties did last reside together in Calcutta. This, I think, is one of those cases where the husband and wife never had a permanent residence. The petitioner was engaged as an Engineer on the Railway and his habitation seems to have changed very frequently. It is difficult to say which of the many places at which he dwelt before he separated from his wife in 1901, was his 'residence' or 'last residence' except on the basis that this is one of the cases where the actual abode for the time being is the only residence.

I accordingly hold that the husband and wife 'last resided together' in Calcutta and pronounce a decree *nisi* for dissolution of the marriage between the petitioner and the respondent.

As there is no evidence that the co-respondent was aware that the respondent was a married woman before the filing of the petition, I cannot make any order for costs against him

Attorneys for the petitioner : *Leslie & Hinds.*

S. C. R.