

**MATRIMONIAL JURISDICTION.***Before Mr. Justice Fletcher.*

GIORDANO

v.

GIORDANO.\*

1912

July 22

*Divorce—Husband's petition—Foreign domicile—Divorce Act (IV of 1869)  
—Territorial jurisdiction.*

The husband, who was an Italian subject with an Italian domicile, instituted proceedings for divorce on the ground of his wife's adultery. The marriage had been solemnized in India, and the parties were residing in British India :

*Held*, that, under the provisions of the Indian Divorce Act, the Court was bound to grant a divorce on proof of adultery, although the divorce would have no effect outside India.

*Le Mesurier v. Le Mesurier* (1) and *Shaw v. Gould* (2) referred to.

**DIVORCE.**

This was a petition by the husband, Francesco Giordano, for the dissolution of his marriage on the ground of his wife's adultery with one Berto Alasia. The parties were married in Calcutta at the office of the Registrar of Marriages on the 22nd October 1908. The lady was described in the marriage certificate as a British born subject. Francesco Giordano was an Italian. Shortly after their marriage, the parties proceeded to Shillong, where they lived together as man and wife till about June or July 1909, when the wife returned to her mother's house, No. 2, Wellesley Second Lane, in Calcutta. The husband returned to Calcutta in October of the same year but the wife

\* Matrimonial Suit No. 7 of 1912.

(1) [1895] A. C. 517.

(2) (1868) L. R. 3 E. & I. App. 55.

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refused to have anything further to do with him. He continued living in Calcutta till February 1912, when he removed to Sealdah, where he was residing when the petition was filed.

Early in the year 1910, the wife removed to No. 19, Chowringhee Road, in Calcutta, and continued living there under the assumed name of Mrs. Thomson. It came to the knowledge of the petitioner that on the 26th October 1910 and on the 13th November 1911, respectively, two children were born to the respondent, and that their births were registered on the 20th February 1912 under the name of Thomson. Thereupon, he instituted these proceedings. It was alleged by the petitioner that since his wife left Shillong, he had had no access to her, and he charged her with committing adultery with the co-respondent, claiming the sum of Rs. 5,000 from the co-respondent by way of damages.

It appears that the petitioner had been residing in Calcutta for a period of eight or nine years, had been twice married here and had been enrolled as a volunteer. At the date of his petition, he was a travelling ticket-inspector in the service of the Eastern Bengal State Railway.

No answer was filed either by the respondent or co-respondent, and the suit came on as an undefended cause, on the 15th July 1912, before Fletcher J. In reply to a question put by his Lordship, the petitioner stated that he had no intention at present of returning to Italy. The case stood over for argument as to whether the Court had jurisdiction to grant a divorce.

*Mr. J. N. Banerjee*, for the petitioner. Although the petitioner's domicile of origin may have been Italian, he has acquired an Indian domicile by his long residence here and his course of conduct. Petitioner's

evidence was that he had no present intention of returning to Italy. It is not necessary that a man should abandon all hope of returning: *In re Craignish* (1). The jurisdiction which the Divorce Act confers on the Court is territorial: it would be straining the phraseology and scope of the Act to read "residence" as meaning "domicile." It is clear from section 2 that, so far as British India is concerned, the Act is not limited to British subjects only.

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FLETCHER J. This is a petition presented by Francesco Giordano, asking the Court to grant a decree dissolving his marriage with the respondent on the ground of her adultery. The case stood over for argument, it appearing that the petitioner was an Italian subject, and that a question as to whether he retained his Italian domicile was set up on the evidence. It seems to me quite clear, first of all, that the petitioner is an Italian subject, notwithstanding Mr. Banerjee's statement that he has been enrolled in the civil force in this country and his allegiance to the Crown of Italy is not altered by such means. I have little doubt also that the petitioner retains his Italian domicile. His evidence is that he has no intention at present of returning to Italy. Under the circumstances, one has to consider whether the Court has jurisdiction to grant the petitioner a divorce under the terms of the Indian Divorce Act. Now, there can be no doubt that where the husband has a foreign domicile, that a decree in a divorce suit made by the Court other than that of his domicile, even if it is a divorce made in accordance with the Municipal law, will have no effect outside the territory in which the Court granting the decree is situate. There are many decisions to that effect. There is the case of *Le Mesurier v. Le*

(1) [1892] 3 Ch. 180.

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*Mesurier* (1). That case expressly dissented from the dictum of Lord Colonsay in *Shaw v. Gould* (2). Lord Colonsay expressed an opinion that there might be a matrimonial domicile which fell short of either the domicile of origin or domicile of choice, and on that dictum apparently Sir Henry Maine framed the Indian Divorce Act under which it is provided that residence in India is sufficient to give the Court jurisdiction. That being so, I have to consider whether under the terms of the Indian Divorce Act I am bound to grant a decree in favour of the petitioner. I think I am bound to. Doubtless it will have a strange result. The petitioner will have a valid divorce in British India, but his marriage will be valid in every other civilized State of the world. But the law is clear that where the party is resident in British India, and the marriage is solemnized in India, then on the grounds specified in the Act the Court is bound to grant the petitioner a divorce. It seems to me notwithstanding the strange result that, though an Italian subject will remain married in the country where his domicile of origin is and in every other civilized country, under the terms of the Indian Divorce Act he is entitled to a divorce. I, therefore, grant a decree *nisi*.

Attorney for the petitioner, *S. C. Basack*.

(1) [1895] A. C. 517.

(2) (1868) L. R. 3. E. & I. App. 55.

J. C.