

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

1915.

MINNIE WALLACE, APPLICANT v. SERGEANT MAJOR ARTHUR WALLACE, OPONENT. °

August 12.

*Indian Divorce Act (IV of 1869), sections 3, 16, 37 and 44—Dissolution of marriage—Alimony—Jurisdiction—Nature of High Court's jurisdiction—Civil Procedure Code (Act V of 1908), section 24 (1) (a)—Transfer of proceedings.*

In a suit for dissolution of marriage under the Divorce Act (IV of 1869) a decree was passed in favour of the petitioner by the Divisional Judge, Nagpur Division. The said decree was confirmed by the High Court on the 20th November 1914. The successful petitioner, thereupon, having applied to the High Court, praying that the opponent may be ordered to pay her proper sums by way of alimony,

*Held*, that the Court which was empowered to make the order either for alimony or for the maintenance and education of the children was the Court of the Divisional Judge and not the High Court.

*Held*, further, that having regard to the nature of the personal jurisdiction which the High Court possessed over European British subjects under section 3 of the Divorce Act 1869, the Court of the Divisional Judge was not a Subordinate Court in the sense in which that expression was used in section 24 (1) (a) of the Civil Procedure Code, so as to enable the High Court to transfer the proceedings of which notice had been served upon the respondent to the Divisional Court for disposal.

CIVIL application against the decree passed by the Divisional Court, Nagpur Division.

The petitioner Minnie Wallace filed suit No. 1 of 1913 in the Court of the Divisional Judge, Nagpur Division, against her husband praying for divorce under Act IV of 1869. On the 7th March 1914 the Divisional Judge, Nagpur, passed in the said suit a decree for dissolution of the marriage subject to the confirmation of the High Court. On the 20th November 1914 the said decree of

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the Divisional Judge was confirmed by the High Court. Prior to the filing of the said suit No. 1 of 1913 the petitioner had filed against the opponent a suit being 1 of 1912 in the Court of the Divisional Judge, Nagpur. In the said suit a decree for judicial separation was passed by consent on the 15th March 1912. By the said consent decree, the opponent was ordered *inter alia* to pay to the petitioner as alimony  $\frac{1}{4}$ ths of his pension as also  $\frac{1}{3}$ rd of such other income as he might make thereafter for the petitioner and for the maintenance of the petitioner's children. The opponent having left India the petitioner having remarried in May 1914 applied to the High Court at Bombay on the 13th April 1915 praying that the opponent may be ordered to pay to the petitioner proper sums by way of alimony from the 1st April 1912 up to the date of her remarriage and desired that provision should be made for the maintenance and education of her children.

The opponent failed to put in appearance though notice was served upon him.

*N. M. Patwardhan with Dixit and Purushottamrai* for the applicant :—We submit that this Court has jurisdiction under section 37 of the Indian Divorce Act to make an order for alimony. The words “on any decree absolute, &c.,” in the petition do not come in the way of the petitioner making this application sometime after the decree was confirmed: see *Bradley v. Bradley*<sup>(1)</sup>.

No appearance or the opponent.

SCOTT, C. J. :—This is a petition by the successful petitioner in a suit for dissolution of marriage under the Indian Divorce Act instituted in the Court of the Divisional Judge, Nagpur Division, in which the decree of the Divisional Judge for dissolution was confirmed

(1) (1878) 3 P. D. 47.

by this High Court on the 20th November 1914. The petitioner prays that this Court may decree such sum or sums per month by way of alimony from the 1st April 1912, or such other date as to this Honourable Court may seem proper. This petition was, when presented, served through the War Office upon the respondent, and in consequence of such service a letter dated the 11th June 1915 has been addressed by his Solicitor on his behalf to the Registrar of this Court making certain proposals for payment to the petitioner for the children of the marriage. It is now stated on behalf of the petitioner that she was remarried in the month of May last, and only claims alimony up to that date. But she has two children dependent upon her whose father is the respondent, and she desires that provision should be made for their maintenance and education. The relevant sections of the Indian Divorce Act are respectively sections 37 and 44. Each of them empowers the High Court to act on any decree absolute declaring the marriage to be dissolved, and the District Judge to act, if he thinks fit, on the confirmation of any decree for dissolution. In the present case, the decree was the decree of a District Judge confirmed by this High Court by reason of the personal jurisdiction which the High Court possesses over European British subjects under section 3 of the Indian Divorce Act. The jurisdiction is not strictly speaking that of a superior over a subordinate Court, but arises purely owing to the race and nationality of the persons concerned. The decree for dissolution was not a decree absolute under section 16 of the Act upon a decree *nisi* which could only be passed by the High Court, but it was a decree confirming the Divisional Judge's decree for dissolution under section 17. It is, therefore, clear, we think, that the Court which is empowered to make the order either for alimony or for the maintenance and

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education of the children is in this case the Court of the Divisional Judge and not the High Court, and we do not think that having regard to the nature of the jurisdiction we can hold that the Court of the Divisional Judge is a subordinate Court in the sense in which that expression is used in section 24 (1) (a) of the Civil Procedure Code so as to enable us to transfer this proceeding, of which notice has been served upon the respondent, to the Divisional Court for disposal. It is an unfortunate case, but we must be particular in the exercise of the very special jurisdiction given to us under the Indian Divorce Act, and the only course now open to us is to return the petition for presentation to the proper Court.

*Application returned.*

J. G. R.

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## APPELLATE CIVIL.

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*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Batchelor.*

1915.  
August 10.

RANGAPPA BIN NINGAPPA IMMADI AND OTHERS (ORIGINAL DEFENDANTS) APPELLANTS *v.* VENKANBHAT BIN LINGANBHAT JOSHI AND ANOTHER (ORIGINAL PLAINTIFFS) RESPONDENTS.\*

*Vatandar Joshi—Right to officiate at marriages—Yajman—Ceremony in Pancha-Kalas Lingayet form—Claim for fees in respect of part of the ceremonial in Hindu form—Ceremony cannot be split up.*

The question raised in this appeal was whether the ceremonials observed by Lingayets in marriages are to be regarded as a whole in deciding whether or not the village Gramopadhya is entitled to perform the ceremony or whether the ceremony can be split up into parts, and if it is found that some part of the ceremonial is similar to the Brahmin ritual the Gramopadhya can insist upon payment of fees in respect of such part of the ceremonial as may have been performed by another.

*Held,* that if the ceremony performed was not a Hindu marriage ceremony as a whole the Joshi or Gramopadhya had no right to demand the fees.

\* Second Appeal No. 216 of 1914.