

**H. Vs. H.**

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**SooperKanoon Citation :** [sooperkanoon.com/335917](http://sooperkanoon.com/335917)

**Court :** Mumbai

**Decided On :** Apr-16-1937

**Reported in :** (1937)39BOMLR1182

**Judge :** John Beaumont, Kt., C.J.

**Appeal No. :** Matrimonial Suit No. 78 of 1937

**Appellant :** H.

**Respondent :** H.

**Judgement :**

John Beaumont, Kt., C.J.

1. This is a husband's petition for divorce, and Mr. O'Gorman has drawn my attention to a question as to jurisdiction arising from a decision of the Judicial Commissioner of Sind in Bernard Louis William Hall v. Constance Thurzia Hall A.I.R. [1933] Sind 70 in which the learned Judicial Commissioner expressed the view not only that he had no jurisdiction to divorce persons domiciled in England who last resided together in Skid, but that no other Court in India had such jurisdiction. If that view is right, it discloses a serious omission in the Indian and Colonial Divorce Jurisdiction Act, 1926, but I think the view cannot be supported. Under Section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926, a High Court in India to which Part IX of the Government of India Act applies (and that would include this High Court) shall have jurisdiction to make a decree for the

dissolution of a marriage, and give incidental relief, where the parties to the marriage are British subjects domiciled in England or Scotland, in any case where a Court in India would have such jurisdiction if the parties to the marriage were domiciled in India. So I have to see whether a Court in India would have jurisdiction if the parties were domiciled in India. They are in fact domiciled in Scotland. The difficulty arises from the fact that by an amendment to the Indian Divorce Act of 1869 which was passed; in 1926, in the definition of a 'High Court' is included these words- 'In Sind the Chief Court of Sind.' Apart from those words, there is no doubt, I think, that this Court would have jurisdiction to divorce persons domiciled in India and residing in Sind. In fact there is no Chief Court of Sind, and there may be a question whether the reference to the Chief Court of Sind, which does not exist, takes away from this Court jurisdiction previously vested in it. However, apart from that point, it seems to me clear that having regard to the definition of 'District Judge' in Section 3, Clause (2), and the provisions of Section 10 of the Act, a District Court in Sind would have jurisdiction to divorce the parties if they were domiciled in India. That being so, there is a Court in India which has jurisdiction, and therefore in my opinion under Section 1 of the Indian and Colonial Divorce Jurisdiction Act this Court has jurisdiction to divorce persons domiciled in England or Scotland who reside or last resided together in Sind.

2. With regard to the evidence, the case clearly establishes adultery on the part of the wife. She has written a letter to her husband admitting that she stayed with the co-respondent in Bombay at the Taj Mahal Hotel on September 1, 1936. That fact is corroborated by the reception clerk and the floor waiter has identified the photograph of the wife as being the lady who occupied the bed-room at the Taj Mahal Hotel on that night with a man who was not the petitioner. There will, therefore, be a decree nisi with costs against the corespondent and custody of the children.