

Minnie Wallace Vs. Arthur Wallace

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Court : Mumbai

Decided On : Aug-12-1915

Reported in : AIR1915Bom261; (1915)17BOMLR948

Judge : Basil Scott,Kt., C.J. and ;Batchelor, J.

Appeal No. : Civil Application No. 305 of 1915

Appellant : Minnie Wallace

Respondent : Arthur Wallace

Judgement :

Basil Scott, C.J.

1. 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 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 re-married 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 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.