

Giordano Vs. Giordano

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Court : Kolkata

Decided On : Jul-22-1912

Reported in : (1913)ILR40Cal215

Judge : Fletcher, J.

Appellant : Giordano

Respondent : Giordano

Judgement :

Fletcher, J.

1. 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 Mesurier* [1895] A. C. 517. That case expressly dissented from the dictum of Lord Colonsay in *Shaw v. Gould* (1868) L. R. 3. B. & I. App. 55. 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 civilised country, under the terms of the Indian Divorce Act he is entitled to a divorce. I, therefore, grant a decree nisi.

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