

Hilliard Vs. Mitchell

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Court : Kolkata

Decided On : Jan-06-1890

Reported in : (1890)ILR17Cal324

Judge : Wilson, J.

Appellant : Hilliard

Respondent : Mitchell

Judgement :

Wilson, J.

1. This is a petition by a husband for a decree of nullity of marriage, on the ground that the parties to the marriage are within the prohibited degrees of affinity. The marriage was duly proved; and it was proved that the petitioner had been formerly married to an illegitimate sister, since deceased, of the second wife.

2. The petitioner was born in England, of parents having an English or Irish domicile, and he is and has always been a member of the Church of England. He came to this country, he thinks, in 1867, as assistant in a shop in Calcutta. He has now no intention of ever returning to England; but what his domicile was at the date of the marriage, in 1871, is not clear, nor is it, I think, material to determine it. Upon any view, I think, the decree asked for must be made.

3. If the domicile of the petitioner was English, the English law of prohibited degrees was applicable to his marriage, and under that law, this was a prohibited marriage. If the petitioner's domicile was Indian, still the same result must follow. It may be that, as an Englishman born, he carried with him to India the laws as to capacity to marry by which he was originally governed, irrespective of the religious communion to which he belongs; and is therefore subject to the law of England in this matter. This is a point upon which the Full Bench in *Lopez v. Lopez* I.L.R. 12 Cal. 706 at p. 720 abstained from expressing an opinion. If this view be not the true one, then the petitioner was governed by the law of the class to which he belonged, that is to say, the law of the Church of England, according to the principle applied to Christians of another class in *Lopes v. Lopez* I.L.R. 12 Cal. 706.

4. Upon no view of the case can the marriage be supported. A decree of nullity must be made.

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