1945 *Present:* **Keuneman S.P.J.**

WOOLDRIDGE, Petitioner, *and* WOOLDRIDGE, Respondent.

IN THE MATTER OF A PETITION UNDER THE CEYLON DIVORCE JURISDICTION ORDER IN COUNCIL 1936, AND THE CEYLON (NON-DOMICILED PARTIES) DIVORCE RULES, 1936.

Divorce Suit No. 34.

Divorce—Desertion as ground—Requirements necessary to confer jurisdiction on Court—Indian and Colonial Divorce Jurisdiction Act, 1940 (3 and 4 Geo. 6, c. 35) s. 2.

In a suit for dissolution of marriage on the ground of desertion, under section 2 of the Indian and Colonial Jurisdiction Act, 1940, the only two requirements to confer jurisdiction on the Court are that the plaintiff resided in Ceylon at the time of the petition and that the parties to the marriage last resided together in Ceylon. The alternative requirement that the marriage should have been solemnized in Ceylon has no application to suits on other grounds than " adultery, cruelty, or crime ".

ACTION for divorce under the Indian and Colonial Divorce Jurisdiction Act of 1926.

E. F. N. Gratiaen, for the petitioner.

No appearance for the respondent.

November 15, 1945. KEUNEMAN S.P.J.—

In this case Col. Wooldridge seeks the dissolution of his marriage with his wife on the ground that she deserted him on April 22, 1942, without cause. The suit was brought on September 5, 1945.

The petitioner has proved that he now resides in Ceylon, and that the parties to the marriage last resided in Ceylon. For some years the relations between the spouses had been unhappy and there were quarrels, principally due to the fact that the wife flirted with other men. There had been periods of separation for various causes. Eventually the wife and child joined the petitioner in Ceylon on April 16, 1942, but they only lived together till April 22, 1942, when, after violent quarrelling, the wife left the petitioner saying she would have nothing further to do with him. She apparently went to Delhi and thereafter to Bangalore.

For some little time the petitioner gave his wife a good allowance but when he was satisfied that she would not change her mind he reduced the allowance to the bare minimum, viz., an allowance for the child only. This evidence is supported by the wife's letter of May 28, 1945, in which she said—" When I left you on April 22, 1942, I had no intention of ever returning to you and I still have none ". But the circumstances under

which this letter came to be written are somewhat mysterious and I do not think too much reliance can be placed on the admission in the letter.

An affidavit from Monica Walford has also been tendered in evidence. This lady had known both Col. and Mrs. Wooldridge well, and had been married in Singapore from their house. In April, 1942, the wife told her that she was leaving her husband and going to India, and that she had decided that she would never return to him. There is possibly some irregularity in admitting this evidence in view of the fact that prior leave of Court had not been obtained. But it is common knowledge that in October, 1945, when the affidavit was signed the transport position was very critical, and only very short notice was given when passages were available, and failure to take up a passage when offered entailed considerable delay in obtaining another passage. Under these special circumstances, and in view of the fact that I think the affidavit is *bona fide*, I allow the affidavit to be read in evidence.

The affidavit supports the petitioner's story, but even apart from it, I think the petitioner has proved that his wife who was then with him in Ceylon deserted him on April 22, 1942, without cause. I hold that on that date she left him intending not to return to him again, and I think the fault should be attributed to her. More than three years have elapsed from that date to the bringing of this suit.

The question of jurisdiction has caused me some anxiety. Under the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 and 17 Geo. & V c 40) section 1, proviso (*c*) " No such court shall grant any relief under this Act except in cases where the petitioner resides in (Ceylon) at the time of presenting the petition and the place where the parties last resided together was in (Ceylon), or make any decree for dissolution of marriage except where the marriage was solemnized in (Ceylon) or the adultery or crime was committed in Ceylon ". (Rayden p. 554.)

Under this section it is clear that no suit like the present one will lie, because the marriage in this case was not solemnized in Ceylon and the ground for claiming divorce, viz., desertion without cause for three years—cannot be regarded as falling within the term " adultery or crime ". The question whether the adultery or crime was committed in Ceylon does not arise. Apparently there was some doubt whether a decree could be made on grounds other than adultery or crime under this section, and the amending Act to which I shall presently refer removes doubts on that question by declaring that the section " did not operate so as to prevent the making of such a decree on grounds other than adultery or crime where the marriage was solemnized in (Ceylon) ".

But section 1, proviso (*c*), has been repealed by the Indian and Colonial Divorce Jurisdiction Act, 1940 (3 and 4 Geo. VI. c 35), section 2, and a new proviso (*c*) has been enacted which runs as follows:—

" (*c*) No such Court shall grant any relief under this Act except in cases where the petitioner resides in (Ceylon) at the time of presenting the petition and the place where the parties to the marriage last resided

together was in (Ceylon), or make any decree of dissolution of marriage on the ground of adultery cruelty or crime except where the marriage was solemnised in (Ceylon) or the adultery cruelty or crime complained of was committed in (Ceylon) ".

As I read the new proviso, there are two conditions necessary in all suits for the dissolution of marriage, viz.—(1) that the plaintiff must reside in Ceylon at the time of presenting the petition, and (2) that the parties to the marriage must have last resided together in Ceylon. Thereafter special provision is made for suits where dissolution is prayed for on the ground of " adultery cruelty or crime ", and in such suits there is the further requirement that the marriage must have been solemnized in Ceylon or that the " adultery cruelty or crime " must have been committed in Ceylon. Whether this was the real intention of the Legislature may be open to question, and there may be some doubt whether in cases other than " adultery cruelty or crime " there should not have been the requirement at least that the marriage should have been solemnized in Ceylon. In this connection I think the section relating to the removal of doubts has some bearing.

But I think the words of the new section 1, proviso (*c*), are clear and that the alternative requirement that the marriage should have been solemnized in Ceylon has no application to suits on other grounds than " adultery cruelty or crime ". The new proviso therefore seems to go further than the old section in this respect.

To apply this to the present case, I hold that the present suit based on the ground of desertion cannot be regarded as a suit on the ground of " adultery cruelty or crime ". The only two requirements in the present case are that the plaintiff resided in Ceylon at the time of the petition and also that the parties to the marriage last resided together in Ceylon. The petitioner has satisfied both these requirements, and there is no statutory bar to the grant of a decree of dissolution of marriage. I may add that the other requirements of the 1926 Act have been satisfied and that the petitioner is not disentitled to obtain a decree of dissolution.

Enter decree nisi dissolving the marriage of the petitioner to the respondent. Application may be made after six months to make the decree absolute. The respondent is entitled to the custody of the child Nigel Derek but the petitioner is entitled to all reasonable access to the child and if necessary may apply to Court in this connection. The petitioner will pay to the respondent the sum of Rs. 250 a month or its equivalent in other currency for the maintenance of the child, but it is open to the petitioner or the respondent—or to the child if properly represented to move the Court for a variation of the amount to be paid.

Decree nisi granted.