ODIN AMICHAND *v.* SURAJI AND OTHERS.

[In Divorce (Young, C.J.) January 14, 1925.]

Aboriginal Native of India—meaning of expression in Divorce Ordinance 1883[1]*—Confession of a correspondent—no evidence of the respondent having committed adultery—conflicting evidence—Commissioner in best position to weigh such evidence—principle upon which Court will act.*

HELD.—(1) The expression " Aboriginal Native of India " should be read and construed to include persons of wholly Indian blood.

(2) The Court will not upset a trial Court's finding on questions of fact so long as there is sufficient evidence upon which such finding could reasonably be based.

CONSIDERATION OF COMMISSIONER'S DECISION under s. 12 of the Divorce Ordinance, 1883.[1]

YOUNG, C.J.—At the hearing of this petition an objection was taken by Mr. Mann of counsel on behalf of the respondent to the jurisdiction of the Commissioner to entertain the suit under the provisions of Ordinance 3 of 1883[1] on the ground that both the petitioner and the respondent were persons born in Fiji, and therefore not aboriginal natives of India within the meaning of s. 2 of the Divorce Ordinance of 1883.[1] The Commissioner disallowed the objection.

If the expression " Any aboriginal native of India " is to be construed in its strict etymological sense, as submitted by Mr. Mann, then the provisions of the Ordinance in so far as they relate to Indians or natives of India would be a dead letter. It is quite clear that the Legislature could never have had any such intention inasmuch as that would lead to an absurdity. The expression is perhaps an unfortunate one, but I am of the opinion that it is capable of a secondary meaning and that the Legislature intended to use the same in the sense that an aboriginal native of India is the equivalent of a person of wholly Indian blood as opposed to a half-caste or person of mixed Indian and non-Indian blood, such a person as the last-mentioned falling within the definition of the term " half-caste " as defined in s. 3 of the Ordinance. The definition of " aboriginal " as given in Webster's revised and unabridged dictionary, 1918, namely, " native of or pertaining to aborigines as a Hindoo of aboriginal blood," supports me in arriving at this conclusion. Sir H. S. Berkeley, Chief Justice, in *Reading v. The Queen*[2] gave a considered judgment on the meaning of a similar expression occurring in the Liquor Ordinance of 1881, and for the reason set out at length in his judgment arrived at the conclusion that the expression " aboriginal natives of India," as used in the Ordinance, must be taken as synonymous with " natives of India " and that an " Indian " is a native of India and described the expression as " careless and inaccurate not clearly expressing the intention of the legislation." For the reasons stated I am of opinion that the Commissioner had jurisdiction to entertain the suit under the Divorce Ordinance, 1883.

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[1] *Divorce (Summary Jurisdiction) Ordinance (Cap. 16) (Revised Edition, Vol. I, page 403.)*
[2] 1891. *Omitted from this volume. Reported in Old Series of Fiji Law Reports, Vol. I, p. 237.*

The case comes before me pursuant to s. 13[1] of the Divorce Ordinance, 1883, which provides, *inter alia*, that after the termination of the hearing of a suit the Commissioner before whom it is heard is required to forward a certified copy of the evidence, etc., to the Supreme Court together with a statement of the decree (if any) to which the petitioner is in his opinion entitled, for the decision of the Supreme Court or such other order as the Court shall make.

The Commissioner in compliance with the provisions of the section cited has for the reasons given by him recommended that the Court grant a decree *nisi* dissolving the marriage.

Objection has been taken to the admission in evidence of the confession of the co-respondent, and I am unable to appreciate the grounds upon which this document was allowed in.

It is well established that the decision of a co-respondent is no evidence of the wife having committed adultery, in such circumstances how can the document be admitted ? The Commissioner, however, seems rightly to have rejected it as evidence against the respondent when he ruled " the confession in this case is merely an admission and nothing more," nor does he rely upon the document in giving his opinion ; it may therefore be ruled out.

Further objection has been taken to the letters (exhibits C and D). It is clear that what Ramlal, the father, wrote to the petitioner could not be evidence against the respondent, but these letters might properly be used in cross-examination for the purpose of discrediting Ramlal, and then put in if he denied their contents. This was done, Ramlal admitting their contents with certain reservations or explanations. I am of opinion therefore that in such circumstances the letters are admissible is so far as they go to discredit Ramlal's evidence.

Now, when there is a mass of conflicting evidence, as there is in this case, no one is in a better position to weigh such evidence and to decide what value and importance should be attached to it, than the Commissioner who heard the case. He both saw the demeanour of and heard the witnesses, an advantage which I have not had. In such circumstances, so long as there is evidence before him upon which he could reasonably come to the conclusion which he has, and which I myself might have done if I had heard the evidence, I should feel justified in confirming his opinion, just as much as if a case of conflicting evidence were to come up on appeal, a Court of Appeal would not upset the trial Court's finding on questions of fact so long as there was sufficient evidence upon which the trial Court could reasonably come to the decision arrived at.

In the present case there is ample evidence upon which the Commissioner can base his opinion, and I therefore confirm the same, and order decree *nisi* not to be made absolute till after the expiration of three months from date hereof.

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[1] *Now s. 12 of the Divorce (Summary Jurisdiction) Ordinance (Cap. 16) (Revised Edition, Vol. I, p. 405.)*