

HEATHCOTE'S DIVORCE BILL.

1851.
4th and 6th March.

THIS was a bill brought in on the petition of Edmund Heathcote, Esq., to dissolve his marriage with his then wife, and to enable him to marry again.

Mr. *Talbot*, Q.C., appeared on behalf of the Petitioner.

After the usual preliminary evidence, it was proved that the Petitioner, who was a lieutenant in the navy, embarked, on the 1st of August, 1846, for South America, leaving his wife in England; and that he did not return till the 24th November, 1849, when he rejoined her and cohabited with her till the 18th May, 1850, on which day she was delivered of a child, *full grown*.

The period from the return of the husband till the birth of the child being only six lunar months and one week, it was evident that *he* could not have been its father.

Strict proof was required to establish the fact of non-access, and that the husband's absence was occasioned by circumstances which justified him in being so long away from his wife.

The Log and Muster Books of H. M. ship *Constance*, returned quarterly to the Accountant-General's department in the Admiralty, were produced, specifying the names of the officers of the ship to which the Petitioner was attached in South America; and his name, with the others, appeared periodically. But their Lordships required further evidence. The captain of the ship was consequently called, and he proved that the Petitioner was constantly with him in the Pacific for two years; and that it was impossible, in the nature of things, that he could have been in England at any

Where a husband after a long absence did not rejoin his wife till 24th November, 1849, and where she, nevertheless, produced to him a full-grown child on the 18th May, 1850,—HELD, that *he* could not have been the father, and that *she* was guilty of adultery. Bill passed, with a clause bastardizing the child.

Strict proof of non-access required in such cases.

The log and muster-books of a ship, returned every quarter to the Admiralty, mentioned the name of an officer as with the ship, at a certain place for a given period of time,—HELD, that this was not sufficient evidence of his having actually been there for the time specified.

The usual clause interdicting the marriage of the paramours unnecessary when they are within the forbidden degrees.

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moment between the 27th November, 1847, and the 24th November, 1849. The House was satisfied.

One of their Lordships (*a*) suggested that it was a case for a bastardising clause. On the second day, therefore, the following clause was proposed for insertion in the bill :

That the child hereinbefore mentioned, of which the said Elizabeth Lucy Heathcote was delivered on or about the said 18th day of May, 1850, was not, nor shall such child be deemed, the lawful issue of the said Edmund Heathcote.

This clause was approved of, and was subsequently introduced in committee (*b*).

It appears that the paramour was within the forbidden degrees of the wife. The usual clause interdicting marriage between them was therefore deemed superfluous; seeing that by Lord Lyndhurst's Act marriages within the forbidden degrees (which were formerly only voidable) are now made absolute nullities.

The bill passed.

(*a*) Lord Brougham.

(*b*) To induce the House to bastardize, the case must be strong, there being no one to watch the interests of the child. See *Hayne's case*, Macq. House of Lords, p. 650; and see the Remarks of Lord Cottenham in the *Townshend Peerage case*, Session 1843, Parl. Deb. vol. lxxviii. & lxxix. See also *Williams' Divorce*, Session 1783: Parliamentary History, vol. xxiii. p. 709; and Remarks of Mr. Burke and Mr. Fox on bastardizing enactments generally.

On the 6th March, 1851, after agreeing to adopt the above clause in *Heathcote's case*, the House rejected a similar one in *Mc Lean's case*, of which the facts were, that the wife left her husband in India in April, 1846, and returned to England. She rejoined him in India on the 22nd Dec., 1847, and on the 5th July, 1848, was delivered of a child full grown. The proof of her adulterous conduct, while at home in England, was complete. And the decision of the House, in passing the bill, went on *that* evidence, rather than on the fact of non-access; so that the case was quite distinguishable from *Mr. Heathcote's*.

Where a wife after a long absence did not rejoin her husband till the 22nd December, 1847, and where she, nevertheless, produced to him a full-grown child on the 5th July, 1848; the evidence of adultery (independently of non-access) being complete,—Bill passed, but a clause proposing to bastardize the child rejected.

DORRINGTON, ELLICOMBES, CURREY, & THOMAS.