

rence of Baron Bramwell and Justice Williams, held that he had no power to sit otherwise than with open doors; and this ruling governed the practice of the Divorce Court in petitions for declaration of nullity till 1864. In that year the case of *Marshall v. Hamilton* (3 Swabey & Tristram, 517) came on for trial before Sir J. P. Wilde, afterwards Lord Penzance. The evidence was so offensive that His Lordship heard it in private, with consent of the leading counsel engaged, and signified a desire that such cases should in future be tried *in camera*. From that time the practice of the Divorce Court reverted to the rules of the old ecclesiastical courts; suits of nullity, and even petitions for the restitution of conjugal rights (A.V.A., 3 Prob. & Matr., 230, 1875), being heard in private whenever the publication of their details would, in the opinion of the presiding judge, have been an outrage to decency and morals. To the power thus exercised by the Divorce Court there is a strange and somewhat illogical limitation. No suit for the dissolution of marriage can be heard with closed doors, even if both parties consent to privacy. The *raison d'être* of this exception is partly historical and partly grounded in public policy. The old ecclesiastical courts had no power to grant divorce. The present Divorce Court was in substance created by the statute 20 & 21 Vict., c. 85. The 22nd section of that statute enabled and directed the new tribunal to follow the practice of the old ecclesiastical courts in all proceedings other than suits for the dissolution of marriage. No authority to hear divorce petitions in private was given by the statute. Nor was the omission unintentional, for an enabling clause in an amendment to the Divorce Act was rejected by the legislature (C.V.C., 1 Prob. & Div., 640, 1869). It was no doubt felt that the dissolution, like the solemnization, of marriage should take place under the eyes of the public.

In two other classes of cases * have the English courts hitherto asserted a right to order trial *in camera*: (1) where the public hearing of an action would defeat the purpose for which it was brought, and (2) where publicity would inflict an irreparable injury upon *one* party, without being absolutely necessary to the protection of the other.

Of the former class, *Andrew v. Raeburn* and *Mellor v. Thompson*, of the latter, *Hadische Anilin v. Levinstein* may be taken as examples. Let us consider them in turn.

Andrew v. Raeburn (1874, 9 Ch.App., 522) was a suit to restrain the defendant from publishing certain letters. Lord Cairns, L.C., intimated that if the argument could not have been conducted without these letters being read aloud in court, he would probably have tried the case *in camera* without consent; but as the defendant's counsel undertook not to refer to their contents if the case was heard with open doors, a direct decision upon the point now under consideration was avoided.

Mellor v. Thompson (1885, 31 Chy.D., 55) went a little further. This was an action to restrain the defendant from disclosing information communicated to him as a solicitor. Upon an assurance by the plaintiff's counsel that a public

* It is unnecessary to deal here with the jurisdiction to order a hearing *in camera* in matters affecting lunatics or wards of Court.