

[JOSEPHIDES, J.]

ANGELA COSGROVE,

Petitioner,

v.

ALFRED COSGROVE,

Respondent.

(*Matrimonial Petition No. 10/60*)

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Matrimonial Cause—Divorce—Adultery—Wife's undefended petition for divorce on ground of adultery—Confessions of the respondent and the woman named—Wife petitioner given custody of the child.

Matrimonial Cause—Jurisdiction—Wife petitioner ordinarily resident in Cyprus for a period exceeding 3 years immediately preceding the commencement of these proceedings—Therefore, the High Court has jurisdiction to deal with this petition under the provisions of section 18 (1) (b) of the English Matrimonial Causes Act 1950.

This is a wife's petition for divorce on the ground of adultery. A preliminary ruling was made by the Court (Josephides, J.), on the 29th June, 1961, on the question of jurisdiction (reported in (1961) C.L.R. p. 221), whereby it was stated that the following two questions fell to be determined with regard to the question of jurisdiction of the Court :

1. Is this matrimonial cause under the provisions of Article 111 of the Constitution cognizable by a tribunal of a Church or by a court established by a Communal Law under Article 160 of the Constitution? If yes, then this Court has no jurisdiction to deal with the present petition.

2. Does the present petition come within the provisions of section 18 (1) (b) of the English Matrimonial Causes Act, 1950?

(A) As to question 1, it was held that as the marriage was not celebrated by the Greek Orthodox Church, obviously a matter relating to the dissolution of marriage cannot be governed by the Law of that Church ; and as it appears that the respondent is not a member of a religious group to which the provisions of Article 2. 3 of the Constitution apply, it

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follows that the provisions of Article 111 of the Constitution do not apply either to the present case. Neither do the provisions of Article 22 of the Constitution apply to the parties in these proceedings, nor do they alter the situation.

(B) As to question 2 it was held that the facts put forward by counsel in support of his submission, to the effect that the petitioner was ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of these proceedings, as well as other facts which were stated to bring the petitioner's case within the provisions of section 18 (1) (b) of the English Matrimonial Causes Act, 1950 would have to be proved in evidence, before the Court would be in a position to consider this question. Consequently, the question whether this Court has jurisdiction to deal with the present petition under the provisions of section 18 (1) (b) of the 1950 Act, could only be decided on the evidence to be adduced at the hearing of the case.

Consequently, at the hearing of this petition on the 29th May, 1964, evidence was adduced as required under (B) above.

Held. (1) on the question of jurisdiction :

On the evidence adduced, I am satisfied that the wife petitioner has been ordinarily resident in Cyprus since December, 1949, that is to say, for a period exceeding three years immediately preceding the commencement of these proceedings and that, consequently, this Court has jurisdiction to deal with the present petition.

(2) On the issue of adultery :

On the evidence I am satisfied that the charge of adultery has been proved and I accordingly grant a decree *nisi* to the wife petitioner, who is also given custody of the child.

*Decree nisi granted. Custody
of the child to the wife
petitioner.*

Matrimonial Petition.

Petition by wife for dissolution of her marriage on the ground of adultery.

L. N. Clerides, for the petitioner.

Respondent, absent ; duly served.

The facts sufficiently appear in the judgment delivered by :

JOSEPHIDES, J. : This is an undefended wife's petition for divorce on the ground of adultery.

The respondent husband is domiciled in England and the wife submits that she has been ordinarily resident in Cyprus since December, 1949. In a preliminary ruling dated the 29th June, 1961 (now reported in (1961) C.L.R. 221), I dealt with the question of the jurisdiction of this Court and I concluded as follows :

“ The facts put forward by counsel in support of his submission, to the effect that the petitioner is ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of these proceedings, as well as other facts which are stated to bring the petitioner's case within the provisions of section 18 (1) (b) of the English Matrimonial Causes Act, 1950, will have to be proved in evidence, before the Court will be in a position to consider that question. Consequently, the question whether this Court has jurisdiction to deal with the present petition, under the provisions of section 18 (1) (b) of the 1950 Act, can only be decided on the evidence adduced at the hearing of the case.”

I shall first deal with the question of jurisdiction. The facts as proved before me are as follows : The petitioner is a cabaret artiste and the respondent was, at the time of the marriage in 1947, a member of H. M. Forces. He is now employed in a factory in England and he resides at 35, Withington Street, Pendleton, Salford, England. The petitioner and the respondent were married at the Roman Catholic Cathedral in Athens on the 16th April, 1947. The petitioner's residence at the time of the marriage was stated to be in Athens, Greece, while that of the respondent was given as 140 Ord. Depot (RVP). The petitioner is a member of the Greek Orthodox Church but not of the Greek Orthodox Church of Cyprus. The respondent is a member of the Roman Catholic Church. No other religious ceremony was celebrated except that in the Roman Catholic Cathedral in Athens.

The respondent, who is an Englishman, is domiciled in England. The marriage in the Roman Catholic Cathedral in Athens was celebrated by the R. C. Chaplain to H. M. Forces, and the marriage certificate produced in evidence states that they were married in the “ Lines ”

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according to the rites and ceremonies of the Roman Catholic Church "in accordance with section 22 of the Foreign Marriage Act 1892".

After their marriage in April, 1947, the parties lived in Greece until July, 1947. They then moved to England where they lived at Salford between July, 1947 and December, 1949. A child was born to the parties, named Thomas, on the 19th January, 1948. In December, 1949 the petitioner, with the respondent's consent, came to Cyprus to see her sister and brought the child with her. The respondent was to join them in Cyprus later but he never did. Since December, 1949, that is to say, for the last 14 1/2 years, the petitioner has been residing in Cyprus permanently. Between December, 1949 and March, 1950, letters were exchanged between the parties but in March, 1950, the respondent husband stopped writing and he stopped sending any money for the maintenance of the petitioner and their child. Ever since the petitioner has been maintaining the child. From December, 1949 to the year 1958, the petitioner resided in Famagusta where she built two small flats which she still owns. From 1958 until the present day the petitioner has been residing in Limassol.

The present petition was filed on the 22nd August, 1960.

On this evidence I am satisfied that the petitioner has been ordinarily resident in Cyprus since December, 1949, that is to say, for a period exceeding three years immediately preceding the commencement of these proceedings and that, consequently, this Court has jurisdiction to deal with the present petition.

On the issue of adultery we have the confessions of the respondent and the woman named, which are embodied in the following affidavits which have been put in evidence by leave of the Court dated the 7th October, 1963 :

- (a) Affidavit dated the 31st August, 1963, sworn by the respondent Alfred Cosgrove of Salford England (*exhibit 2*); and
- (b) Affidavit dated 31st August, 1963, sworn by Florence Miriam Jones of Salford, England (*exhibit 3*).

The affidavit of the respondent states that the document marked "A" attached to the affidavit is a true copy of his statement confessing to having committed adultery with Florence Miriam Jones, that the contents of that statement are true, that he was warned that he was not

obliged to make the said statement or any statement, and that if he did it might be used in evidence in matrimonial proceedings, and that he made that statement voluntarily. The material part of his confession dated the 6th August, 1960, reads as follows :

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“ I first met Florence Miriam Jones around June 1950 and adultery was first committed between us in the year 1954, and onwards. A son named Alan was born to us on the 6th July 1956 and a further son named Colin was born on the 5th of July 1960.

Since April 1957 we have lived together as man and wife at 35, Withington Street aforesaid where we occupy the whole house.

I have had produced to me today a photograph marked ‘ A ’ which I recognise as a true likeness of myself and have signed same as proof of my identity.”

That photograph has been produced in evidence in this case.

The affidavit of the woman named, Florence Miriam Jones, of 35, Withington Street, Salford, states that the document marked “ A ” attached to the affidavit is a true copy of her statement confessing to having had sexual intercourse with Alfred Cosgrove, the respondent, that the contents of the said statement are true, that she was warned before making the same that she was not obliged to do so and that if she did it might be used in evidence in matrimonial proceedings ; and that she made the said statement voluntarily.

The material part of her confession dated the 6th August, 1960, reads as follows :

“ I have read over the statement overleaf and dated the 6th August 1960 made by Alfred Cosgrove and declare it to be true in all details in so far as it concerns me. I have read over my own statement above and declare it to be true in all detail.”

Two birth certificates (marked *exhibit* 5 and 6) were put in evidence, in corroboration of the confessions made by the respondent and the woman named. The first birth certificate, (*exhibit* 6) is that of a child named Alan, born on the 6th July, 1956, and referred to in the confession of the respondent. The birth certificate is a certified copy of an entry of birth made in the Registration District of Salford, given at the General Register Office, So-

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merset House, London (Application No. 062242). The birth certificate states that the boy named Alan was born on the 6th July, 1956, that the name and surname of the father is Alfred Cosgrove ; that the name and surname and maiden surname of the mother is Florence Miriam Jones, formerly Graley ; and the original entry bears the signature of " A. Cosgrove Father " and " F. M. Jones Mother ". The birth was registered on the 23rd July, 1956.

The second birth certificate produced (*exhibit 5*) is that of a boy named Colin, born on the 5th July, 1960 and referred to in the confession of the respondent. This is an official certificate from the same source (Application No. 062243) as the previous birth certificate and it states that the name and surname of the father of the boy named Colin is Alfred Cosgrove ; the name, surname and maiden surname of the mother is Florence Miriam Jones, formerly Graley, and the original entry bears in the same way as the previous certificate, the signature " A. Cosgrove Father " and " F. M. Jones Mother ". The birth was entered in the Register on the 25th July, 1960.

On this evidence I am satisfied that the charge of adultery has been proved and I accordingly grant a decree nisi to the petitioner, who is also given custody of the child.

Mr. Clerides : I shall not be claiming costs in this case.

Court : Decree nisi granted.

Custody of the child to the petitioner.

No order as to costs.

Order in terms.