

ELENI ANGELOU ELIADES (OTHERWISE
STAVRINOY),

Petitioner,

v.

ANGELOS PRODROMOU ELIADES,

Respondent.

(*Matrimonial Petition No. 11/63*)

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ELENI
ANGELOU
ELIADES
v.
ANGELOS
PRODROMOU
ELIADES

Matrimonial Causes—Jurisdiction—Wife's petition and husband's cross-petition for dissolution of marriage on ground of desertion—Parties both Cypriots, presumably members of the Greek Orthodox Church of Cyprus—Civil Marriage solemnized at a Register Office in England—Husband's domicile of origin, Cyprus—Wife petitioner resident in Cyprus for the last 4 1/2 years—Jurisdiction assumed on both grounds.

Matrimonial Causes—Divorce—Desertion—Petition by wife and cross-petition by husband—Wife living apart, with intention of putting an end to the marriage—Conduct of wife amounting to desertion—Decree nisi granted on the ground of desertion by the wife.

The petitioner wife filed the present petition for dissolution of her marriage with the respondent on the ground of desertion.

The respondent husband entered appearance and defended the petition and cross-petitioned for dissolution on the ground of desertion on the part of the wife.

The parties were married in England at the Register Office of St. Pancras, in the Metropolitan Borough of St. Pancras London, on the 20th October, 1960. There was no religious ceremony. Both parties were then living in England, the respondent apparently settled there, and the petitioner was in England on a nursing scholarship. They are both Cypriots, presumably belonging to the Greek Orthodox Church of Cyprus.

Held, (I) on the question of jurisdiction :

On the evidence before me regarding domicile. I cannot find that the respondent acquired a domicile other than his domicile of origin, which was in Cyprus. I am, therefore, satisfied that both on the husband's domicile of origin, and the wife's residence for the last 4 1/2 years, I have jurisdiction to deal with the matter before me.

(II) on the merits :

(1) The couple lived apart ever since, with the intention, I find, on the part of the wife, of putting an end to the marriage. This conduct on her part amounts, in my opinion, to desertion, which I trace back to the time she left her husband in October, 1960.

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(2) On the evidence before me I do not find desertion in the respondent ; and I reach the conclusion that the petition must fail, and be dismissed.

(III) on the cross-petition (for dissolution of the marriage on the ground of desertion on the part of the wife) :

(1) I have already found the wife guilty of desertion, definitely extending for more than three years prior to the filing of the cross-petition.

(2) I take the view that the respondent is entitled to the remedy sought, and I grant him decree *nisi* for dissolution of this marriage on the ground of desertion on the part of the wife.

(3) As to costs, I think that respondent is entitled to his costs in the cross-petition and I make order in his favour for the payment of costs at the minimum of the appropriate scale ; each party to bear own costs in the wife's petition.

(4) Decree *nisi* and order for costs accordingly.

Decree nisi of dissolution of marriage granted.

Matrimonial Petition and Cross-Petition.

Petition by wife for dissolution of her marriage on the ground of desertion and cross-petition by husband for dissolution of his marriage on the ground of desertion on the part of the wife.

C. Colocassides, for the petitioner.

A. Paikkos, for the respondent.

The facts sufficiently appear in the judgment delivered by :

VASSILIADES, J.: This is a wife's petition for dissolution of her marriage with the respondent on the ground of desertion.

Soon after the respondent came to know of these proceedings, he entered an appearance through an advocate, and filed an answer defending the petition and cross-petitioning for dissolution on the ground of desertion on the part of the wife.

The evidence before me at the conclusion of the trial consisted of several affidavits filed on behalf of the parties in connection with the proceedings—particularly the application for substituted service—and the evidence of the wife who was called by her advocate to the witness box to support the petition.

The parties were married in England at the Register Office of St. Pancras, in the Metropolitan Borough of St. Pancras, London, on the 20th October, 1960. There was no religious ceremony in connection with this marriage. Both parties were then living in England, the respondent apparently settled there, and the petitioner was in England on a nursing scholarship. It is common ground that the parties were living together for a few months before the marriage. They are both Cypriots, presumably belonging to the Greek-Orthodox Church of Cyprus.

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On the evidence before me regarding domicile, I cannot find that the respondent acquired a domicile other than his domicile of origin, which was in Cyprus. I am, therefore, satisfied that both on the husband's domicile of origin, and the wife's residence for the last 4 1/2 years, I have jurisdiction to deal with the matter before me.

Coming now to the wife's evidence, I must say that in the first part of it she gave me the impression of trying to present a version supporting her application without due regard to truth. I found the first part of her evidence unsatisfactory and hardly reliable. In the latter part of her evidence, however, she came out with frankness in her answers to questions put to her on behalf of the respondent. Her evidence in cross-examination, especially the last stages of it, reflect in my assessment the truth. Relying upon petitioner's evidence, I find that for a few months prior to the marriage the parties were living together as man and wife, very probably upon a reciprocal promise of marriage. As a result of that co-habitation the petitioner found herself an expectant mother. At that stage the news reached her that her married sister in Cyprus was gravely ill and in need of her attention. Faced with that difficult situation she discussed marriage with the respondent, prior to her leaving him to return to Cyprus to her sister. Apparently the respondent agreed to this sudden marriage, and the parties were married on the 20th October, 1960, only a few hours before the petitioner's departure for Cyprus where she came directly to her sister's bedside.

Within a couple of weeks, her sister died, leaving two very young children who urgently needed petitioner's care. She decided to stay with them, and soon after she got employment as a Nursing Sister in Limassol Hospital. In fact she was under contract with Government for such service in connection with the scholarship, under which she was doing her nursing course in England.

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Respondent apparently tried to get her back to him, but the petitioner obviously thought that her duty was in Cyprus. Shortly after that, the husband decided to come to Cyprus to see personally how could matters be best arranged. Early in 1961, he was in Limassol, where he tried to contact the petitioner. She declined to see him. Her explanation for this attitude towards her husband, is that his behaviour towards her did not encourage a meeting. I do not accept this explanation. My conclusion is that she declined to see him because she had already made up her mind that she would put an end to her matrimonial relation with him.

Returning to his home and work in England, the husband appears to have given up hope of resuming co-habitation with his wife. On the evidence before me, I find that he tacitly accepted this parting. The couple lived apart ever since, with the intention, I find, on the part of the wife, of putting an end to the marriage. This conduct on her part amounts, in my opinion, to desertion, which I trace back to the time she left her husband in October, 1960.

Immediately upon expiry of the three years period, on the 1st November, 1963, the petitioner filed the present petition for dissolution. On the evidence before me I do not find desertion in the respondent ; and I reach the conclusion that the petition must fail, and be dismissed.

I now come to the cross-petition. In his answer filed on the 9th October, 1965, the respondent alleges desertion on the part of the wife and seeks dissolution of the marriage on that ground. I have already found the wife guilty of desertion, definitely extending for more than three years prior to the filing of the cross-petition. I take the view that the respondent is entitled to the remedy sought, and I grant him *decree nisi* for dissolution of this marriage on the ground of desertion on the part of the wife.

As to costs, I think that respondent is entitled to his costs in the cross-petition and I make order in his favour for the payment of costs at the minimum of the appropriate scale ; each party to bear own costs in the wife's petition.

*Decree nisi and order for
costs accordingly.*