

ARTIN STEPHAN HAGOPIAN,

*Petitioner.*

ARTIN STEPHAN  
HAGOPIAN

*v.*

DEKRANOUHI  
HAGOPIAN  
(OTHERWISE  
DEKRANOUHI  
BAMBOUKIAN)

DEKRANOUHI HAGOPIAN (OTHERWISE

DEKRANOUHI BAMBOUKIAN),

*Respondent.*

(*Matrimonial Petition No. 2/65*).

*Matrimonial Causes - Practice - Stay - Divorce - Maintenance Husband's petition for divorce - Respondent wife's application for a stay of proceedings until arrears due by the petitioner husband under a maintenance order of this Court are paid or secured - Matters for consideration - Law applicable - Powers of the Court to order stay - Discretion of the Court - Limitation in practice to one year's arrears - The Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) sections 19 (b) and 29 (2) (b) - The Matrimonial Causes Rules rule 102 - Cfr rule 83.*

*Matrimonial Causes - Maintenance - Failure to obey maintenance order - Onus on party in default to show that his failure to obey order was due to his misfortune and not to his fault - Execution - Matrimonial Causes Rules, Rule 83.*

*Matrimonial Causes - Maintenance - Arrears - Recovery - Legislation - Practice and discretion of Court - Limitation in practice to one year's arrears.*

In this husband's petition for divorce, the respondent wife filed an application for a stay of the proceedings, until the sum of £375 arrears payable to her by the husband petitioner under a maintenance order of this Court made on the 22nd December, 1959, be paid to her or otherwise secured.

*Held*, (1)(a) the first question which falls for determination is whether this Court has power to order stay of proceedings as applied for.

(b) It would seem that the law and rules applicable to matrimonial proceedings are to be found in sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960 (Law of the

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Republic No. 14 of 1960) and the Matrimonial Causes Rules (Subsidiary Legislation, volume II, page 297) Rule 102 of those Rules provides that in any matter the practice and procedure in regard to which is "not governed by law or provided for by these rules the practice and procedure of the Supreme Court of Judicature in England in respect of like matters shall apply".

(c) There is no express provision either in the statute law in Cyprus or in the law applicable by the High Court of Justice in England with regard to such matters and, consequently we have to ascertain what is the practice and procedure of the Divorce Division in England in like matters.

(d) Counsel for both parties are agreed that the practice applicable to the present case is to be found in the English case of *Leavis v. Leavis* [1921] P. 299 ; now reported in [1921] All F.R. Rep 266. In that case it was held that, where a husband had failed to comply with an order of alimony *pendente lite*, the Court had a discretion whether or not to allow him to take a further step in the litigation ; in exercising that discretion the Court would take into consideration whether his failure to comply with the Court's orders was due to his fault or misfortune

(2) Considering that the maintenance order made by consent in December, 1959 is still in force it must, I think, be presumed that the husband's means and circumstances are unchanged as he has not taken any steps to have the order varied. The onus is on him to show that his failure to pay as ordered was due to his misfortune and not to his fault. He has failed to adduce any evidence to discharge that onus. Having regard to all the circumstances of this case, and considering that his failure to comply with the Court's order is not due to his misfortune, in the exercise of my discretion whether or not to allow the husband to proceed with his petition, I direct that the proceedings be stayed unless he complies with the said order, subject to what is stated below.

(3) The question which now remains to be determined is whether the husband should be directed to pay the whole arrears of more than six years, that is to say, £375, or something less. Here, again, I must have resort to the practice of the Divorce Division in England. Payments of maintenance are intended for the wife's support and not to be hoarded, and therefore, the amount of arrears recoverable is in the discretion of the Court : *Campbell v Campbell*

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[1922] P. 187. The wife was entitled to enforce payment of the monies due under the maintenance order by execution against the property of her husband, or take proceedings to have him committed to prison for contempt in not making a payment or a succession of payments that had been adjudged to be within his capacity. This she has failed to do; and as a matter of practice the Divorce Division in England imposes a retrospective time limit of a year, beyond which the husband would not be required to pay arrears: *Pilcher v. Pilcher* (No. 2) [1956] 1 All E.R. 463; and *Luscombe v. Luscombe* (*Westminster Bank Ltd., Garnishee*) [1962] 1 All E.R. 668.

(4) Relying on that practice and in exercise of my discretion, I shall require the husband to pay to his wife or lodge in Court one year's back maintenance from 1st May, 1966, namely £60, and the costs of this application, before allowing him to proceed with his petition.

*Order and order as to costs,  
accordingly.*

*Cases referred to.*

*Leavis v. Leavis* [1921] P. 299; now reported in [1921] All F.R. Rep. 266;

*Campbell v. Campbell* [1922] P. 187;

*Pilcher v. Pilcher* (No. 2) [1956] 1 All F.R. 463;

*Luscombe v. Luscombe* (*Westminster Bank Ltd.—Garnishee*) [1962] 1 All E.R. 668.

#### **Application.**

Application by respondent wife to stay proceedings in a petition for divorce, presented by the husband, until the sum of £375 payable to her under a maintenance order of this Court be paid to her or otherwise secured.

X. *Clerides*, for the petitioner.

S. *Devletian*, for the respondent.

The following judgment was delivered by:

JOSEPHIDES, J.: This is an application by the respondent wife for a stay of proceedings in a petition presented by her husband, until the sum of £375, payable to her under a main-

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tenance order of this Court made on the 22nd December, 1959, be paid to her or otherwise secured to the satisfaction of the Court.

The husband filed his petition for the divorce in February, 1965, on the ground of his wife's desertion and the wife filed an answer to the petition in which, *inter alia*, she contends that in September, 1959, she filed a petition for restitution of conjugal rights which was refused on the 22nd December, 1959, and that on the same day the then Supreme Court of the Colony of Cyprus made an order by consent directing her husband to pay to her, as from the 1st November, 1959, maintenance for herself during their joint lives until further order at the rate of £5 per month, payable monthly; that on the 15th January, 1960 the husband paid to the wife's counsel the sum of £10 representing the instalments due on the 1st November and 1st December, 1959, but that he has failed to pay any other instalment or part thereof since then.

The question which falls for determination is whether this Court has power to order stay of proceedings as applied for.

It would seem that the law and rules applicable to matrimonial proceedings are to be found in sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960, and the Matrimonial Causes Rules (S.L., volume II, page 297). Rule 102 of those Rules provides that in any matter the practice or procedure in regard to which is "not governed by law or provided for by these rules the practice and procedure of the Supreme Court of Judicature in England in respect of like matters shall apply". There is no express provision either in the Statute Law in Cyprus or in the Law applicable by the High Court of Justice in England with regard to such matters and, consequently, we have to ascertain what is the practice and procedure of the Divorce Division in England in like matters. Counsel for both parties are agreed that the practice applicable to the present case is to be found in the English case of *Leavis v. Leavis* [1921] P. 299; now reported in [1921] All E.R. Rep. 266. In that case it was held that, where a husband had failed to comply with an order of alimony *pendente lite*, the Court had a discretion whether or not to allow him to take a further step in the litigation; in exercising that discretion the Court would take into consideration whether his failure to comply with the Court's orders was due to his fault or misfortune.

Relying on that principle I now turn to the facts of this case.

The only material before this Court is the husband's petition, the wife's answer, an office copy of the maintenance order made on the 22nd December, 1959, and certain admissions made in the course of the hearing. Neither party filed any affidavit evidence. The maintenance order of 1959, which is admitted by the husband, is a consent order. It was further admitted on behalf of the husband that he has not made any payments since December 1959 and that he has not taken any steps to have the said order varied in any way. On the other hand, it is admitted by the wife that she did not take any steps to have the said order enforced against her husband for a period of six years until November, 1965, when she applied to this Court, under the provisions of rule 83 of the Matrimonial Causes Rules, to have the said order transferred to the District Court of Nicosia for execution; and that in fact she has not taken out any writ of execution against the husband. The husband has been residing and working in Nicosia during the whole of this period, while the wife has been living in Beirut, Lebanon.

Considering that the maintenance order made by consent in December, 1959 is still in force it must, I think, be presumed that the husband's means and circumstances are unchanged as he has not taken any steps to have the order varied. The onus is on him to show that his failure to pay as ordered was due to his misfortune and not to his fault. He has failed to adduce any evidence to discharge that onus. Having regard to all the circumstances of this case, and considering that his failure to comply with the Court's order is not due to his misfortune, in the exercise of my discretion whether or not to allow the husband to proceed with his petition, I direct that the proceedings be stayed unless he complies with the said order, subject to what is stated below.

The question which now remains to be determined is whether the husband should be directed to pay the whole arrears of more than six years, that is to say, £375, or something less. Here, again, I must have resort to the practice of the Divorce Division in England. Payments of maintenance are intended for the wife's support and not to be hoarded, and therefore the amount of arrears recoverable is in the discretion of the Court: *Campbell v. Campbell* [1922] P. 187. The wife was entitled to enforce payment of the monies due under the maintenance order by execution against the pro-

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perty of her husband, or take proceedings to have him committed to prison for contempt in not making a payment or a succession of payments that had been adjudged to be within his capacity. This she has failed to do; and as a matter of practice the Divorce Division in England imposes a retrospective time limit of a year, beyond which the husband would not be required to pay arrears: *Pilcher v. Pilcher* (No. 2) [1956] 1 All E.R. 463; and *Luscombe v. Luscombe* (*Westminster Bank Ltd. Garnishee*) [1962] 1 All E.R. 668

Relying on that practice and in exercise of my discretion, I shall require the husband to pay to his wife or lodge in Court one year's back maintenance from the 1st May, 1966, namely £60, and the costs of this application, before allowing him to proceed with his petition.

*Order* of stay of proceedings accordingly. The husband shall pay to the wife the costs of this application on the scale of £60 but for one appearance only

*Order and order as to costs, accordingly.*