

[JOSEPHIDES, J]

EDWARD GEORGE BAILIE,

Petitioner,

AND

PANAYIOTA EDWARD GEORGE BAILIE  
(OTHERWISE PANAYIOTA PLTROU)

Respondent,

AND

STAVROS N. FILIPPOU,

Co-Respondent.

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EDWARD  
GEORGE BAILIE  
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(OTHERWISE  
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PETROU)  
AND  
STAVROS  
N FILIPPOU

(Matrimonial Petition No 15/65)

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*Matrimonial Causes Divorce Jurisdiction Domicil - Adultery - Evidence Marriage sought to be dissolved - Between an Englishman and member of the Presbyterian Church - And a Greek-Cypriot girl and member of the Greek-Orthodox Church of Cyprus - Marriage celebrated by a District Officer under the provisions of the Marriage Law, Cap 279 - No religious ceremony celebrated - Husband's petition for divorce The Court has jurisdiction to deal with petition - Because on the evidence the husband's petitioner's foreign domicil of origin has been changed into a Cyprus domicil of choice Adultery Evidence required Confessions of adultery made by the respondent wife Principles applicable - Custody of the children Suitable arrangements should be made See also, under the headings which follow*

*Domicil Domicil of origin Domicil of choice - Infant's domicil of origin How changed*

*Adultery Evidence required Confessions of adultery made by the wife - With certain exceptions, the Court will refuse to act upon confessions alone and without corroboration - Corroborative evidence Evidence of opportunity - Evidence of inclination to commit adultery and of willingness to indulge into amorous dalliance.*

*Evidence - As to adultery See under Adultery above*

*Confessions In cases of petition for divorce for adultery Principles applicable - Confession made by the respondent-wife to a police officer in uniform and purporting to investigate into*

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*the commission of a criminal offence viz. as if the alleged adultery was a criminal offence Held to be inadmissible, because the police officer had exceeded his authority under sections 4 and 5 of the Criminal Procedure Law, Cap. 155 and failed to warn the wife that she was not bound to say anything to the accusation made against her - See, also, under the heading Adultery.*

*Custody Custody of the children Before permitting a decree nisi to be made absolute, the Court has to be satisfied as to the suitability of the arrangements made or proposed to be made for the children Report by a Welfare Officer ordered.*

*Marriage Civi Marriage Celebrated in Cyprus after independence day (16th August, 1960) by a District Officer under the provisions of the Marriage Law, Cap. 279 The husband being an English and a member of the Presbyterian Church, the wife a Greek Cypriot and member of the Greek Orthodox Church of Cyprus No religious ceremony celebrated See above under Matrimonial Causes.*

*Divorce See above.*

This is a husband's undefended petition for divorce on the ground of adultery. The parties were married on the 11th April, 1961, by the District Officer of Nicosia, under the provisions of the Marriage Law, Cap. 279. The petitioner husband was then 18 years of age and the respondent wife 16 years of age. The husband is English and a member of the Presbyterian Church, and the wife is a Greek-Cypriot and a member of the Greek-Orthodox Church of Cyprus but no religious ceremony was celebrated. The petitioner was born in Cairo, Egypt, on the 12th April, 1943, and the present petition was filed on the 18th November, 1965. There is no doubt that until 1951 when the petitioner's father moved to Cyprus with his family he (the father) had his Scotch or Irish domicile, it being immaterial for the purposes of this case which of the two.

The first question which falls to be determined is the husband's-petitioner's domicile, as no decree on a petition by the husband for dissolution of marriage can be pronounced unless the husband is domiciled in Cyprus. The second question for determination is whether on the evidence adduced and accepted by the Court the respondent-wife committed adultery with the co-respondent. The evidence adduced in support of the case may be sub-divided into

three categories: (1) The wife's confessions, the one made to a police officer purporting to act as an investigating officer into the commission of an offence; (2) direct evidence of an eye-witness (rejected by the Court); (3) evidence of opportunity and inclination to amorous dalliance.

The Court in granting a *decree nisi* :

Held, with regard to the question of jurisdiction (*viz.* the domicile of the petitioner husband) :

(1) A child requires at birth a domicile of origin by operation of law, that is to say, if legitimate and born in his father's lifetime, the domicile of his father: *Forbes v. Forbes* (1854) Kay 341, at p. 353; *Udny v. Udny* (1869) C.R.I.Sc. and Div. 441, at p. 457. The domicile of an infant cannot be changed by any act of his own, but it may be by an act of a person on whom it is dependent. The domicile of a legitimate infant follows any change in that of the father if living: *Sharpe v. Crispey* (1869) L.R. 1 P. and D. 611, at p. 617; and other cases ending with *Gulbenkian v. Gulbenkian* [1937] 4 All. E.R. 618.

(2) There is no doubt that until November 1951, when the father moved to Cyprus with his family the petitioner (then a boy of 8½ years of age) still had his Scottish or Irish domicile, and for the purposes of this case it is immaterial which of the two.

(3) Since his arrival in Cyprus (November, 1951) on the evidence before me, I would be inclined to the view that at the date when the petitioner came of age (*i.e.* 12th April, 1961) the father had acquired a domicile of choice and acquired a Cyprus domicile. But even if the father had not acquired a Cyprus domicile, on the evidence, I would be prepared to find, I do so find, that in any event the petitioner has since attaining majority as aforesaid changed his domicile of origin and acquired a domicile of choice in Cyprus, and that at the date of the institution of the suit (*viz.* 18th November, 1965) he was domiciled in Cyprus.

(4) For these reasons I hold that this Court has jurisdiction to hear and determine the present petition.

Held, as regards the issue of adultery and the evidence adduced :

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(1) (a) As regards the confession made by the respondent wife to police Constable F., who was called as a witness in this case, I have no doubt in my mind that if his evidence did not refer to what he did as a policeman in uniform purporting to investigate into the commission of a criminal offence, that is to say, if he was giving evidence as an ordinary citizen that the wife had voluntarily confessed to him her adultery with the co-respondent, his evidence would be admissible.

(b) But in this case it is manifest that both the husband and the policeman behaved as though the wife had committed a criminal offence. Even if that were so, it would have been the duty of the police officer to have warned the wife that she was not bound to say anything in answer to the accusation made against her.

(c) I am of the view that in this case the police officer *bona fide*, but misguidedly exceeded his authority under sections 4 and 5 of the Criminal Procedure Law, Cap. 155, as there was no offence or suspected offence under the Criminal Code or any other enactment reported to the Police and, even if he was investigating such an offence, it was his duty to inform the wife that she was not bound to say anything.

(d) I am, therefore, of the view as at present advised, that the policeman's evidence as to the wife's confession is inadmissible on the ground that such confession cannot be considered a voluntary one.

(2) As stated in *Nicon v. Nicon* (reported in this vol. at p. 106 *ante*) the Court will refuse to act upon confessions alone unless the surrounding circumstances indicate that the confession is true, e.g. where the confession is made by a spouse who is anxious for forgiveness, or by a wife who has everything to lose by such confession and in such cases the Court may act upon a confession although uncorroborated.

(3) It will be seen that in this case there was much more than opportunity, there was evidence of inclination to commit adultery and willingness to indulge in amorous dalliance (*Nicon v. Nicon supra*, at p. 114).

(4) Considering the evidence adduced, except that which I have rejected, I find that although there is no direct evidence of the actual act of adultery, this fact may be inferred from the surrounding circumstances which lead to it, by fair inference.

rence, as a necessary conclusion. The surrounding circumstances unmistakably indicate that the confession of adultery made by the wife to the husband is true. I accordingly find that the case for the petition has been proved.

Held, *as to the question of custody of the children* :

(1) The only question left is the custody of the children. The Court has to be satisfied as to the arrangements proposed for the children before permitting the decree to be made absolute.

(2) On the material before me I am not satisfied with the arrangements for the children and I proposed now to pronounce a *decree nisi* and direct that the matter be dealt with subsequently by having the matter restored in the list, when the petitioner is ready for the necessary material

(3) (a) In the meantime I directed the preparation of a report by a Welfare Officer to help the Court to determine this question.

(b) When the petitioner is ready the matter is to be restored in the list and notice given to the wife of the day of the hearing and that the husband claims custody of both children.

*Decree nisi granted. The respondent and the co-respondent to pay the costs of the petition.*

*Cases referred to :*

*Forbes v. Forbes* (1854), Kay 341, at p. 353.

*Udny v. Udny* (1869) L.R.I.Sc. and Div. 441, at p. 457;

*Sharpe v. Crispey* (1869) L.R. 1 P. and D. 611, at p. 617;

*Gulbenkian v. Gulbenkian* [1937] 4 All E.R. 618;

*Nicou v. Nicou* reported in this vol. at p. 106 ante).

### **Matrimonial Petition.**

Petition for dissolution of marriage because of the wife's adultery.

*Ph. Clerides*, for the petitioner.

*Respondent and co-respondent not appearing. Duly served.*

*Cur. adv. vult.*

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The following judgment was delivered by .

JOSEPHIDES, J This is a husband's undefended petition for divorce on the ground of adultery. The parties were married on the 11th April, 1961, by the District Officer of Nicosia, under the provisions of the Marriage Law, Cap 279. The petitioner-husband was then 18 years of age and the respondent-wife 16 years of age. The husband is English and a member of the Presbyterian Church, and the wife is a Greek-Cypriot and a member of the Greek-Orthodox Church of Cyprus, but no religious ceremony was celebrated.

The first question which falls to be determined is the husband's domicile, as no decree on a petition for dissolution of marriage can be pronounced unless the husband is domiciled in Cyprus.

On this issue I have the evidence of the petitioner husband himself and his father, which I accept. The petitioner was born in Cairo, Egypt, on the 12th April, 1943, where his father was stationed at the time as a member of the R A F. The petitioner's mother is a Greek from Cairo. The petitioner's father was born in Glasgow, Scotland, in November, 1914, and when he was about two-and-a-half years old he was taken to Belfast, Northern Ireland, where he was adopted by relatives. He lived there until 1936 when he joined the R A F, and two years later he was posted to Egypt where he served until 1947 when he was released. In November 1940 he married and he had two children, one of whom is the petitioner. Between 1947 and 1948 he served with the Freetown Police, British Military Administration, for about nine months, and from May 1948 to June 1950 he lived in Belfast with his family where he was employed in the Civil Service. In 1950 he moved to Egypt with the family where he stayed until the 7th November, 1951, when he finally moved with the family, including the petitioner, to Cyprus. Since then he has been living and working without interruption in Cyprus. He worked for a period of three years and three months, until March 1955, in the NAAFI Accounts Section in Nicosia, and in April 1955 he was appointed as a locally employed civilian by the R A F in Nicosia where he worked until August 1961 and he was then transferred to Episkopi where he is still working. He has been residing in Messa Yitonia, Limassol, and he has always lived within the Limassol town area. It is his intention to live permanently in Cyprus, as he stated.

When the petitioner came to Cyprus with his parents in November, 1951, he was 8½ years old. He attended the Sessions School, Nicosia, and the Terra Santa College Nicosia, between January 1952 and June 1960. In August 1960 he started working as an Assistant Mechanic in the R.A.F., stationed in Nicosia. While working he married respondent in April, 1961. He resigned his appointment as Assistant Mechanic in October 1961 and he was subsequently employed as follows. From December, 1961 to February, 1963, in the War Department Police; from March 1963 to November 1963, as part-time employee in the Decca shop, Episcopi; from December 1963 to April 1964 with the Express Freight Company; and since 20th July, 1964, he has been employed as a Flying Steward by the Cyprus Airways Ltd., stationed in Nicosia.

Ever since his arrival in Cyprus in November, 1951, that is for the past 15 years, the petitioner has been living in Cyprus either in Nicosia or Limassol. He is the holder of a British Passport issued by the British High Commissioner in Nicosia, Cyprus, on the 12th June, 1964, and his national status is described in the passport as "British subject; citizen of the U.K. and Colonies". The present petition for divorce was filed on the 18th November, 1965, when the petitioner was 22½ years of age.

A child acquires at birth a domicile of origin by operation of law, that is to say, if legitimate and born in his father's lifetime the domicile of his father: *Forbes v. Forbes* (1854), Kay 341, at page 353; *Udny v. Udny* (1869), L.R.1.Sc and Div. 441 at page 457. The domicile of an infant cannot be changed by any act of its own, but it may be by an act of a person on whom it is dependent. The domicile of a legitimate infant follows any change in that of the father if living: *Sharpe v. Crispey* (1869) L.R. 1 P. & D. 611, at page 617; and other cases ending with *Gulbenkian v. Gulbenkian* [1937] 4 All E.R. 618.

There is no doubt that until 1951 when the father moved to Cyprus with his family he still had his Scottish or Irish domicile, and for the purposes of this case it is immaterial which of the two. Since his arrival in Cyprus, on the evidence before me, I would be inclined to the view that at the date when the petitioner came of age the father had acquired a domicile of choice in Cyprus. On that finding the petitioner-son should also be deemed to have changed his domi-

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cil and acquired a Cyprus domicile. But even if the father had not acquired a Cyprus domicile, on the evidence I would be prepared to find, and I do so find, that in any event the petitioner has since attaining majority changed his domicile of origin and acquired a domicile of choice in Cyprus, and that at the date of the institution of the suit he was domiciled in Cyprus. For these reasons I hold that this Court has jurisdiction to hear and determine the present petition.

The second question for determination is whether the respondent-wife committed adultery with the co-respondent in the months of September and October, 1965.

As already stated, the parties were married on the 11th April 1961, when the husband was 18 years of age and the wife 16. He had known her for about three years but his parents would not consent to the marriage. Subsequently the wife became pregnant and the husband's parents consented to the marriage and the first child Diana Minerva was born on the 1st August, 1961. The second child Frederick John was born on the 23rd January, 1964.

After their marriage the parties lived at Ay Dhometos from April to December 1961, then they moved to Limassol where they lived until April, 1964, when they left Limassol and went to reside in Engomi for about three months. In July 1964 they moved to a house in 32, Aetocleous Street, Ay Dometios, where they lived together until the 5th November, 1965, when the wife left the matrimonial home taking with her the younger child Frederick.

It is the husband's case that the wife committed adultery with the co-respondent in their house at 32, Aetocleous Street, Ay Dhometos, on several occasions during the months of September and October, 1965. The evidence adduced in support of the case may be sub-divided into three categories: (1) the wife's confessions, (2) direct evidence of an eye-witness, and (3) opportunity.

First, as to (1). We have the evidence of the husband (petitioner) who stated that on the 5th November, 1965, the co-respondent's wife, Maroulla Philippou, taxed the wife with having sexual relations with the co-respondent on many occasions in the matrimonial home, in the absence from Cyprus of the husband on duty, and she added that in October, 1965, she (Maroulla Philippou) found her husband, the co-respondent, with the wife (respondent) in the petitioner's

house. The husband (petitioner) then asked his wife what she had to say to that and she replied "I love him and I am going to leave you and go with him to England". Whereupon the husband said to the wife "so you accept that you have been sleeping with him", and she replied "Yes". Upon this he telephoned the Police at Ay. Dhometios and P.C. 452 Ioannis Frangeskos arrived on the spot. This witness stated that he was in police uniform when he visited the residence of the parties. In the wife's presence the husband said to the policeman "my wife has a lover and be a witness as I want to take her to Court", and he then asked his wife whether she has a lover and she gave a reply which the policeman took down in writing in his notebook. That reply is a complete confession of adultery with the co-respondent. The policeman then informed the husband that he should take the matter to Court himself because the Police could not take any action, and he left. At a later stage of this judgment I shall consider the question of the admissibility of the policeman's evidence.

Two neighbours, a mother and daughter (Katina Georgioui Paphiti and Mato Paphiti), gave evidence to the effect that, in confidential conversations they had with the wife over cups of coffee and fortune-telling by the witness Katina, the wife admitted having illicit relations with the co-respondent and she expressed the intention of running away from the husband with the co-respondent to England and taking the son with her. This was in August or September, 1965. I must say that I was not very impressed with these two witnesses and I do not think that this is the kind of evidence that may be relied upon by a Court in scrutinizing jealously a confession made by a spouse who desires to be divorced. But this is not really very material in the present case as there is other evidence in support of the case. As stated in *Nicou v. Nicou* (reported in this Vol. at p. 106 *ante*) "the Court will refuse to act upon confessions alone unless the surrounding circumstances indicate that the confession is true, e.g. where the confession is made by a spouse who is anxious for forgiveness, or by a wife who has everything to lose by such confession, and in such cases the Court may act upon a confession although uncorroborated".

As regards the policeman (P.C. 452 Frangeskos), who was called as a witness in this case on the question of the wife's confession, I have no doubt in my mind that if his evidence did not refer to what he did as a policeman in uniform pur-

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porting to investigate into the commission of a criminal offence, that is to say, if he was giving evidence as an ordinary citizen that the wife had *voluntarily* confessed to him her adultery with the co-respondent, his evidence would be admissible ; but, in this case it is manifest that both the husband and the policeman behaved as though the wife had committed a criminal offence. Even if that were so, it would have been the duty of the police officer to have warned the wife that she was not bound to say anything in answer to the accusation made against her. The powers possessed by police officers to take statements from persons are those laid down in sections 4 and 5 of the Criminal Procedure Law, Cap. 155, and it will be seen that those powers are only in respect of the investigation of an "offence" which is defined as an act, attempt or omission punishable under any enactment. I am of the view that in this case the police officer *bona fide* but misguidedly exceeded his authority, as there was no offence or suspected offence under the Criminal Code or any other enactment reported to the Police ; and, even if he was investigating such an offence, it was his duty to inform the wife that she was not bound to say anything. This question was not fully argued before me but, as at present advised, in the circumstances of this case, I am of the view that the policeman's evidence as to the wife's confession is inadmissible on the ground that such confession cannot be considered a voluntary one

(2) *Direct evidence of adultery* : Before considering this evidence, it should be stated that the husband, who has been employed as an Air Steward with the Cyprus Airways since July 1964, used to fly on the Athens-Ankara-Istanbul routes, and that during the material period he was absent from Cyprus on the nights of Tuesday, Wednesday and Friday every week. He used to sleep at home on the remaining four nights of the week. The co-respondent is a police dog-handler at Athalassa and he was friendly with the husband having grown-up together in Nicosia. The families were on friendly terms, so that the co-respondent was aware of the husband's movements.

Ioannis Charalambous, a National Guardsman, aged 18, who resided in the same house with the parties and had his room next to the parties' bedroom, gave evidence to the effect that the co-respondent used to visit the wife in the house in the husband's absence from Cyprus very frequently in the months of September and October, 1965, and that he stayed

in the house until late at night. He further stated that he saw the wife and the co-respondent in the bedroom naked on the bed many times. He saw them through an opening in the door while he was passing on his way to and from his bedroom ; presumably he was peeping through the opening.

(3) *Evidence as to opportunity* : The neighbour Katina and her daughter Maro stated that in September and October, 1965, they used to see the co-respondent arrive at the house of the parties frequently, soon after the departure of the husband, and that he used to open the door with a key which he carried with him. On one occasion in October, 1965, these witnesses saw the co-respondent jumping over the back fence of the house and running away at the moment when the husband was arriving at the house by car.

In addition to these opportunities, there is also the evidence of the husband's father that on one day in October, 1965, at about noon, as he was entering the living-room of his son's house unexpectedly he saw the wife and the co-respondent break away from an embrace. He pretended not to see and did not make any remark about it. A couple of weeks later as the same witness was coming in a taxi very near his son's house he saw the wife with the co-respondent in a taxi with one of the children going away from the house. This witness has impressed me as a witness of truth and I have no hesitation in accepting his evidence.

It will be seen that in this case there was much more than opportunity, there was evidence of inclination to commit adultery and willingness to indulge in amorous dalliance (*Nicou v. Nicou, (supra)*; at page 114).

Considering the evidence adduced before the Court, except that which I have rejected, I find that although there is no direct evidence of the actual act of adultery, this fact may be inferred from the surrounding circumstances which lead to it, by fair inference, as a necessary conclusion. The surrounding circumstances unmistakably indicate that the confession of adultery made by the wife is true. I accordingly find that the case for the petition has been proved, that is to say, that the respondent-wife committed adultery with the co-respondent on many occasions in the months of September and October, 1965.

The only question left is the custody of the children. The Court has to be satisfied as to the arrangements proposed

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for the children before permitting the decree to be made absolute. On the material placed before me by the petitioner I am not satisfied with the arrangements for the children and I propose now to pronounce a *decree nisi* and direct that the matter be dealt with subsequently by having the matter restored in the list, when the petitioner is ready with the necessary material. In the meantime I directed (on the 5th December, 1966) the preparation of a report by a Welfare Officer to help the Court determine this question. When the petitioner is ready the matter is to be restored in the list and notice given to the wife of the day of hearing and that the husband claims custody of both children.

The respondent and co-respondent to pay the costs of this petition.

*Decree nisi* granted.

*Order, and order as to costs,  
in terms.*