

1967
Oct. 9, 23
Dec. 4

[JOSEPHIDES, J.]

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EDMONDO
GIACOMO
BRANCO
v.
CHARLOTTE
EDMONDO G.
BRANCO
(OTHERWISE
EHMKI)
AND
EDWARD
LUDWIG
MICKELSEN

EDMONDO GIACOMO BRANCO,

Petitioner,

v.

CHARLOTTE EDMONDO G. BRANCO
(OTHERWISE EHMKI),

Respondent,

and

EDWARD LUDWIG MICKELSEN

Co-respondent.

(*Matrimonial Petition No. 2/67*).

Matrimonial causes—Divorce—Domicil of husband—Jurisdiction—Husband's petition for divorce on the ground of adultery— Husband a Roman Catholic domiciled in Cyprus—Wife of "no religion"— Civil marriage celebrated in 1956 in the marriage registry office in Vienna—Adultery proved—Decree nisi granted—See, also, herebelow.

Matrimonial Causes—Divorce on the ground of adultery—Evidence— Husband's undefended petition—Proof—Evidence of eye-witness— Considered together with other circumstances such as coolness of the wife, her refusal to accompany the husband on any of his business trips abroad although repeatedly invited and the fact that, although duly served personally with a copy of the petition, she did not enter an appearance or defend the proceedings.

Domicil—See above.

Adultery—Proof—See above.

Divorce—Jurisdiction—See above.

Marriage—Civil marriage celebrated in Austria (Vienna)— Divorce— Jurisdiction—Cyprus domicil of the husband petitioner—See above.

This is a husband's petition for divorce on the ground of adultery. Neither the respondent nor the co-respondent entered an appearance or defended the proceedings. The parties were married in the marriage registry office in Vienna on the 17th

September, 1956. The husband is a Roman Catholic and the respondent-wife, in accordance with the marriage certificate issued by the Vienna authorities, appears to be of "no religion". The respondent wife was born in Vienna and the petitioner in Cyprus (Famagusta) of Italian father who, it appears, had lived all his life, and was domiciled, in Cyprus. Likewise the petitioner's grandfather was born in Triкомо (Famagusta district) and lived in Cyprus. The petitioner, who has a ship-salvage and marine construction business, has lived all his life in Cyprus except for short trips abroad on business.

In granting a decree-nisi the Court :

Held, (1) the first question which has to be determined is whether this Court has jurisdiction to entertain the case. On the petitioner's evidence I am satisfied that he is domiciled in Cyprus and that, consequently, this Court has jurisdiction to hear and determine the present petition.

(2) The second and final question is whether the matrimonial offence of adultery has been proved by the petitioner. In addition to his evidence I heard the evidence of three other witnesses, but the case mainly turns on the evidence of S.D. who stated quite clearly that she caught respondent and co-respondent in the very act in bed on the morning of the 16th April, 1966.

(3) (a) This witness S.D. has impressed me as a witness of truth and having given the matter my best consideration I have decided to accept her evidence.

(b) In weighing matters in this case I have taken into consideration the coolness shown by the wife to the husband during the latter part of their marriage, her refusal to accompany him on any business trip out of Cyprus although repeatedly invited by him, and the fact that, although duly served personally with a copy of the petition, she did not enter an appearance or defend the proceedings.

(c) On the direct evidence of the eye-witness S.D. and the other evidence in the case, including the above-mentioned in (b) circumstances, I am satisfied that adultery has been proved as alleged.

Decree nisi granted. No order as to costs.

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Matrimonial Petition.

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

A. Emilianides, for the petitioner.

No appearance, for the respondent and co-respondent.

Cur. adv. vult.

The following Judgment was delivered by :

JOSEPHIDES, J. : This is a husband's petition for divorce on the ground of adultery. Neither the respondent nor the co-respondent entered an appearance or defended the proceedings. Service was effected personally on the respondent wife, and substituted service was approved by Court in the case of the co-respondent by publication twice in an English newspaper published in Nicosia, Cyprus.

The parties were married in the marriage registry office in Vienna, Brigittenau, on the 17th September, 1956. At the time of their marriage they were both aged about 32. He was a bachelor and she was a divorcée with one child. The marriage certificate issued by the Vienna authorities states that the petitioner is a Roman Catholic and the respondent wife of "no religion". The respondent wife was born in Vienna and the petitioner was born in Famagusta of Italian father who, it appears, had lived all his life, and was domiciled, in Cyprus. Likewise the petitioner's grandfather was born in Trikomo and lived in Cyprus. The petitioner, who has a ship-salvage and marine construction business, has lived all his life in Cyprus except for short trips on business.

The respondent was a cabaret artiste before her marriage to the petitioner and they first met in a Famagusta cabaret in 1955. In the following year, when on a business trip, he went to Vienna where they married in September 1956. There is no issue of the marriage.

The first question which has to be determined in these proceedings is whether this Court has jurisdiction to entertain the case. On the petitioner's evidence I am satisfied that he is domiciled in Cyprus and that consequently the present petition may be heard and determined by this Court.

The second and final question is whether the matrimonial offence of adultery has been proved by the petitioner. In addition

to his evidence, I heard the evidence of three other witnesses, but the case mainly turns on the evidence of Sotira Demetriou Ioannou (witness No. 2), who stated quite clearly that she caught respondent and co-respondent in the very act in bed on the morning of the 16th April, 1966. The other evidence by itself would not be sufficient to prove the case.

The petitioner gave me the impression of an honest and hard-working man who apparently has been successful in his business but, very probably due to his eagerness for business success, did not have sufficient time to find out in time the inclinations of his wife. It was his case that this was a happy marriage for about seven years after which the wife changed and their relations cooled down. The husband does not drink or gamble and he stated that he was not responsible for this cooling down but he conceded that his only mistake was that he worked too hard. On one occasion he stated he was away in Israel for six months. When he was going away from home he used to ask his wife to accompany him but she would refuse and the net result was that he did not suspect anything until she left for Vienna never to return on the 9th December, 1966, ostensibly to see her boy there. In fact, at her request, the petitioner bought for her a return ticket to Vienna but he later found out that she only used the outward ticket and cancelled the return trip. After she left Cyprus the petitioner received certain information for the first time, regarding the fidelity of his wife, and it was then that he began investigations about this case after obtaining legal advice. This is briefly the petitioner's evidence which I accept in toto.

As already stated, the main evidence in this case comes from a woman who, at the material time, was employed as a domestic servant in the residence of the parties. She was with them from October, 1965, until about the end of April, 1966. She is married and has three children and she is now working in a mosaic factory. She did not live in with the parties but she used to go to their house at 6.30 in the morning and leave at three in the afternoon. She gave evidence of an incident stated to have taken place on Saturday, the 16th April, 1966, at about 6.45 a.m., at a time when the petitioner was away from Cyprus on business.

As usual, she prepared breakfast and took it to the respondent's bedroom. As soon as she opened the door she saw in bed the respondent with a German named Edward Ludwig (the co-respondent) who had been the petitioner's tug engineer. They were both naked and, according to this witness, they were

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actually having sexual intercourse. She was taken aback, turned back and left the room without saying anything. About ten minutes later the respondent came out of her bedroom and told her (the witness) not to say anything to the petitioner adding "I love this man more; he knows better ways in bed and I prefer him". Following this incident the witness stayed on for about three more weeks in the service of the parties and during that period she saw the co-respondent in the petitioner's bedroom on four different occasions. Both the respondent and the co-respondent were on those occasions in their underwear but they were sitting on the bed and it seems that nothing untoward was taking place. On other occasions the witness found them kissing in another room or in the dining room.

The witness did not mention anything to the petitioner until after the respondent left Cyprus, and she did so after the petitioner himself asked her about it. She did not mention this incident to anybody even to her own husband up to the day that she gave her evidence to this Court. She explained that she did not tell the petitioner anything before she was asked as she did not want to create scandal in the family. As already stated, the adultery is stated to have taken place on the 16th April, 1966 and the respondent left Cyprus on the 9th December, 1966.

The other witness who gave evidence in this case Charalambou Michael (witness No. 3) stated that after she had been in England for some time she returned to Cyprus in the last week in April, 1966 and she went to work in the petitioner's house some time in the first week in May, 1966, immediately after witness Sotira Demetriou Ioannou (witness 2) had left. In fact, this witness had been working before in the petitioner's house but she left for England and Sotira had been replacing her. Witness Charalambou worked in the petitioner's house for about 13 months from May, 1966 but she did not see the co-respondent in the house and she did not give evidence as to any incident. She stated, however, that about one week before the respondent left Cyprus in December, 1966, respondent told her that she was in love with a German and that she was going to leave her husband to go and live with the other man. She even stated that she would pretend to her husband that she would be going to Austria to see her son and that she would move her belongings to a German friend in Famagusta which, in fact, she did a few days—about a week—before she left. This

she did in the absence and without the knowledge of the petitioner, and with the help of this witness (Charalambou). What she removed were two big cases, 5 to 6 suitcases and one trunk of personal belongings and household articles. Finally, this witness stated that the respondent repeated to her that she preferred the German as a husband to her own husband, the petitioner. She stated that she did not warn the petitioner before the respondent left Cyprus but that she informed him about the respondent's plans immediately after she left Cyprus.

The last witness to give evidence was a driver in the petitioner's service who stated that one morning at about 6 a.m. in April, 1966, and while he was in the back-yard of petitioner's house, which is also the back-yard of his office, he saw the respondent through a glass-window on the first floor, where the matrimonial home used to be; she was in nightdress and was embracing and kissing the co-respondent. He knew the co-respondent as he was a mechanic on the petitioner's tug. Although this witness stated that on the same day he mentioned this incident to his friends on the Z-craft on which he had been working, he did not mention anything to the petitioner until long after the respondent had left Cyprus and after the petitioner asked him if he knew anything about this matter.

This is the substance of the evidence adduced on behalf of the petitioner. If all the witnesses are telling the truth there is no doubt that adultery against the respondent and co-respondent has been proved. But the question is are they telling the truth? And, mainly, is Sotira Demetriou Ioannou telling the truth? Because, if she is telling the truth, there is no doubt that the respondent has committed adultery.

This witness has impressed me as a witness of truth and having given the matter my best consideration I have decided to accept her evidence.

In weighing matters in this case I have taken into consideration the coolness shown by the wife, an ex-cabaret artiste, to the husband during the latter part of their marriage, her refusal to accompany him on any business trip out of Cyprus although repeatedly invited by him, and the fact that although duly served personally with a copy of the petition she did not enter an appearance or defend the proceedings.

On the direct evidence of the eye-witness and the other evidence in the case, including the above-mentioned circumstances,

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I am satisfied that adultery has been proved both against the respondent and the co-respondent.

EDMONDO
GIACOMO
BRANCO

I accordingly grant a decree *nisi* to the petitioner. No order as to costs.

v.

Decree nisi granted. No order as to costs.

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