[JOSEPHIDES, J.]

ALFRED C. SIMONDS,

Petitioner,

v.

EIRWEEN A.C. SIMONDS, THEN EIRWEEN HELEN JONES,

Respondent,

and

MICHAEL N. HARBOTTLE,

Co-Respondent.

(*Matrimonial Petition No.* 2/69).

Matrimonial Causes—Divorce—Husband's petition for divorce on the ground of adultery—Adultery admitted by both respondent and co-respondent—Admissions and confessions fully corroborated—Decree nisi granted.

Adultery—Proof of—Test applicable—A high standard of proof required—Confession by the respondent—Should be jealously scrutinized—Corroboration required.

Matrimonial Causes—Divorce—Jurisdiction of the Court in a husband's petition—Domicil of husband—Domicil of origin—Domicil of choice—Husband abandoning English domicil of origin and acquiring domicil of choice in Cyprus—Principles applicable.

Domicil of origin—Abandoning English domicil of origin and acquiring domicil of choice in Cyprus—Principles applicable—See, also, hereabove.

This is a husband's petition for divorce on the ground of adultery. The respondent wife did not enter an appearance nor was she represented at the hearing; but as to the question of her alleged adultery there are confessions both oral and written, made by her. Regarding the question of jurisdiction the case turns on whether or not the petitioner—husband has abandoned his English domicil of origin and has acquired a domicil of choice in Cyprus some time in 1952.

Granting a decree nisi on the ground of adultery against the respondent and the co-respondent, Josephides J.

Held, I. Regarding the question of jurisdiction viz. whether or not the petitioner husband has acquired in Cyprus a domicil of choice:

(1) On the evidence before me I am satisfied that the petitioner has ever since 1952, abandoned his English domicil of origin and that he has acquired a domicil of choice in Cyprus: See *Bailie* v. *Bailie and Philippou* (1966) 1 C.L.R. 283 and the recent case of *In re Flynn* deceased [1968] 1 W.L.R. 103, in which the law of domicil is considered at some length.

(2) This Court, therefore, has jurisdiction to deal with the present petition.

Held, II. Regarding the proof of the charge of adultery both against the respondent and the co-respondent:

(1) With regard to the question of adultery I have to consider the issue from two angles: The one is as regards the respondent wife and the other as regards the co-respondent; because, though it may be trite to mention, adultery may be proved against the respondent but not against the co-respondent.

(2) *Charge of adultery against the respondent wife:*

(a) On this issue there is the evidence of the petitioner himself, the confessions, both oral and written, and the corroborative evidence of the witness Mrs. E.T.

(b) According to our rules of practice confessions of adultery by a respondent are jealously scrutinized especially if made by a spouse who desires to be divorced. The Court will refuse to act upon confessions alone unless the surrounding circumstances indicate that the confession is true (*Nicou* v. *Nicou and Wood* (1966) 1 C.L.R. 106 at p. 115 where I dealt fully with this matter as well as with the question of corroboration).

(c) Had the evidence in the present case stopped at the evidence of the petitioner and the respondent's written confession, I entertain considerable doubts whether this would provide the "high standard of proof" required in matrimonial offences but the evidence of Mrs. E.T. fully corroborates the respondent's confession.

(d) On the evidence I am satisfied that adultery has been proved to my satisfaction against the respondent. And when I say "proved", the test I apply is that recently laid down in the case of *Bastable* v. *Bastable* [1968] 1 W.L.R. 1684, that is to say, a high standard of proof. The guidance I have is from the oft-quoted passage by Denning L.J. (as he then was) in *Bater* v. *Bater* [1951] P. 35, at p. 37.

(3) *Charge of adultery against the co-respondent:*

(a) With regard to the co-respondent we have his admission in his answer filed in this case; and we have also the corroborative evidence of the said Mrs. E.T.

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

Held, III. (1) For the above reasons I hereby grant a *decree nisi* against both the respondent and the co-respondent.

(2) As regards damages claimed against the co-respondent, they have been agreed upon by the parties before the close of the hearing at £500 payable not later than six months after the decree absolute.

(3) With regard to the custody of the second child Rosemary (the first daughter is of age and married) she will be 18 in about ten days' time. If necessary, I may deal with this question at the time of the granting of the decree absolute.

(4) In view of the fact that the damages had been agreed before the hearing and that the co-respondent filed his answer, containing his admission, on October 20, 1969, I rule that he should pay all the costs of the petitioner up to and including that date.

(*Note*: No costs were claimed against the respondent).

Decree nisi granted.

Cases referred to:

Bastable v. *Bastable* [1968] 1 W.L.R. 1684;

Bater v. *Bater* [1951] P. 35, at p. 37 per Denning L.J;

Bailie v. *Bailie and Phillippou* (1966) 1 C.L.R. 283;

In re Flynn deceased [1968] 1 W.L.R. 103;

Nicou v. *Nicou and Wood* (1966) 1 C.L.R. 106 at p. 115.

Matrimonial Petition.

Petition by husband for dissolution of the marriage on the grounds of cruelty and adultery.

X. Clerides, for the petitioner.

R. Stavrakis, for the co-respondent.

The respondent was not represented.

The following judgment was delivered by:

JOSEPHIDES, J.: This is a husband's petition for divorce on the grounds of cruelty and adultery. Regarding cruelty, I think that learned counsel for the petitioner very rightly abandoned that ground in the course of his final address to the Court, as there was no adequate evidence to support it.

The respondent did not enter an appearance nor was she represented at the hearing. The co-respondent admitted adultery in his answer, which was filed out of time, on the 20th October, 1969, by leave of the Court; but he admitted liability to nominal damages only.

On the evidence before me I have no difficulty in deciding that this Court has jurisdiction to hear and determine the present petition and that the adultery has been proved to my satisfaction both against the respondent and the co-respondent. And when I say " proved ", the test I apply is that recently laid down in the case of *Bastable* v. *Bastable* [1968] 1 W.L.R. 1684, that is to say, a high standard of proof. The guidance I have is from the oft-quoted passage by Denning L.J. in *Bater* v. *Bater* [1951] P. 35, at page 37. I have directed myself in accordance with that statement of principle: " In the present case, what is charged is 'an offence'. True, it is not a criminal offence; it is a matrimonial offence. It is for the husband petitioner to satisfy the Court that the offence has been committed. Whatever the popular view may be, it remains true to say that in the eyes of the law the commission of adultery is a serious matrimonial offence. It follows, in my view, that a high standard of proof is required in order to satisfy the Court that the offence has been committed " (per Willmer L.J. in the *Bastable* case, *supra*, at page 1687).

I shall *first* deal with the question of the petitioner's domicil which is the basis for the *jurisdiction* of this Court. The petitioner is a citizen of the United Kingdom and his domicil of origin was English. He was born in 1909 in Shinfield, Berkshire, England and he became a regular officer in the Royal Berkshire Regiment in 1931. He served in that Regiment until 1952 when he retired. He met his wife, the present respondent, during the last war in Cyprus and they were married in the District Commissioner's Office in Nicosia on the 22nd September, 1944. There was a religious ceremony on the following day in St. Paul's Church (Church of England), in Nicosia. Whilst still in the army the petitioner bought a big plot of property in Cyprus, of approximately 140 donums, in the locality "Boghazi" in the village of Bellapaise, as shown in the Land Registry title-deeds which he produced to Court. This property consists of a dwelling house, cottages and extensive farm-land. In 1952, when he retired from the army, he came to live permanently in Cyprus; in fact, he has been living in the Boghazi farm ever since. He lived there with his wife until the 2nd December, 1968, when she left the matrimonial home virtually never to return.

He has been doing farming, as a flower-gardener, and for many years he employed some 13 people until he had a car accident on the 7th December, 1968. Since then, due to the accident and to the fact that his wife left him, he has been gradually slowing down his farming. He has taken full part in the community life in Cyprus, becoming a member of many committees and councils since 1952 – in the Board of Censors, in the Board of the Governors of the Junior School and in the Racing Club and Turf Club committees. He owns no real property whatsoever in England; he only has a very small investment income there. He now draws an army and disability pension.

In support of his evidence on the question of domicil, he called Lord Vivian, who has been a close friend of his for the past two years, but I do not think that his evidence added much to the petitioner's evidence. The other evidence on this point is that of the family doctor, Dr. Partellides, who has been their doctor for the past six years.

On this evidence I am satisfied that the petitioner has, ever since 1952, abandoned his English domicil of origin and that he has acquired a domicil of choice in Cyprus: see *Bailie* v.

Bailie and Philippou (1966) 1 C.L.R. 283 at p. 290; and the recent case of *In re Flynn*, decd., [1968] 1 W.L.R. 103, in which the law of domicil is considered at some length. This Court, therefore, has jurisdiction to deal with the present petition.

On the question of *adultery* against the respondent, there is the evidence of the petitioner himself, the confessions, both oral and written, made by the respondent, and the corroborative evidence of the witness, Mrs. Elizabeth Thorton. With regard to this question of adultery I have to consider the issue from two angles: The one is as regards the respondent, and the other as regards the co-respondent; because, although it may be trite to mention, adultery may be proved against the respondent but not against the co-respondent.

As it appears both from the letters of the respondent and from the evidence of Mrs. Thorton, this has not been a happy marriage. They had two daughters: Sally, who is of age and married; and Rosemary Catherine Evelyn, who was born on the 3rd December, 1951. Eventually, after 24 years of married life, the respondent met the co-respondent and she decided to abandon the petitioner and make a new life with the co-respondent. When she was taxed by the petitioner with her association with the co-respondent she made a clean breast of it some time in November, 1968, orally. In addition to that, we have here her three letters, dated the 18th November, 1968, the 1st December, 1968, and the 3rd December, 1968, in which she complains of her unhappy life with the petitioner, of his bad temper, and she admits that she is in love with the co-respondent. Her confession appears in her letter dated the 1st December, 1968, and it is in no uncertain terms. She admits adultery with the co-respondent.

According to our rules of practice confessions of adultery by a respondent are jealously scrutinized, especially if made by a spouse who desires to be divorced. The Court will refuse to act upon confessions alone unless the surrounding circumstances indicate that the confession is true: *Nicou* v. *Nicou and Wood* (1966) 1 C.L.R. 106 at p. 115, where I dealt fully with this matter as well as with the question of corroboration, and I need not elaborate on it now.

Had the evidence in the present case stopped at the evidence of the petitioner and the respondent's written confession, I entertain considerable doubts whether this would provide the

" high standard of proof " required in matrimonial offences but, fortunately for the petitioner, he called today Mrs. Thornton, whose evidence corroborates fully the respondent's confession. Briefly, Mrs. Thornton's evidence may be sub-divided into two periods: *Firstly*, the late 1968, and, *secondly*, from about the end of January to May 1969.

With regard to the first period, which tallies with the evidence of the petitioner, that is, from about the 2nd December, 1968, to the end of December, 1968, when the co-respondent left Cyprus, the respondent was residing, as a friend, with Mrs. Thornton in Nicosia, at 3, Verdi Street. During that period the respondent was visited regularly by the co-respondent who used to take her out every evening. During part of this time the co-respondent resided opposite Mrs. Thornton's house. At the material time he was a Brigadier in the Army, serving with the United Nations Forces in Cyprus. He has since retired and left Cyprus.

After the first period of December, 1968, the respondent went back to the matrimonial home in Boghazi, after the petitioner had a car accident and he was in hospital; but she went there for a brief period only to look after the farm and the house. She returned to Mrs. Thornton's house in Nicosia at about the end of January, 1969, where she stayed, as already stated, until she left for England in May, 1969. She has been living there ever since.

Mrs. Thornton further stated, and I accept her evidence in toto, that while she was on a brief visit to England in September, 1969, she visited the respondent. She found her living together with the co-respondent in flat No. 96, at 29, Abercorn Place, London, N.W. 8.

Meantime, and after the filing of the petition, namely, on the 21st July, 1969, the respondent by deed-poll changed her surname to " Mrs. Harbottle " – the co-respondent's surname.

On this evidence I am fully satisfied that adultery has been proved against the respondent.

With regard to the co-respondent, we have his admission, which is contained in his answer, filed in this case on the 20th October, 1969; and we also have the corroborative evidence of Mrs. Thornton.

I am, therefore, satisfied that adultery has been proved both against the respondent and the co-respondent and I hereby grant a *decree nisi* against both.

Now, with regard to *damages* claimed by the petitioner against the co-respondent: The petitioner in his evidence stated that the respondent-wife helped him in his business to a great extent, and he gave particulars of his loss. Before the close of the hearing, however, the damages were agreed upon by the parties at £500, payable not later than six months after the decree absolute.

With regard to the *custody* of the second child, Rosemary (the first daughter is of age and married), she will be 18 in about ten days' time. I do not think I need consider this matter now. If necessary, I may deal with it at the time of the granting of the decree absolute.

Finally, as to *costs*: The petitioner claimed costs against the co-respondent only, and it was submitted on the latter's behalf that he should only pay costs up to but excluding the hearing, as the damages had been agreed upon before that date. As he, filed his answer, containing his admission, on the 20th October, 1969, I rule that he should pay all the costs of the petitioner up to and including that date.

In the result –

(1) *decre nisi* granted on the ground of adultery against the respondent and the co-respondent.

(2) The co-respondent shall pay to the petitioner the sum of £500 damages, payable not later than six months after the date of the decree absolute.

(3) There will be an order as to costs in the above terms.

(4) As to custody, the question is reserved until application is made for a decree absolute.

Order accordingly.