

ANDREAS PAPA ALEXANDROU,
Petitioner,

ANDREAS
PAPA
ALEXANDROU

v.

BARBARA ANDREOU then BARBARA INGERL,
Respondent.

v.
BARBARA
ANDREOU
THEN
BARBARA
INGERL

(*Matrimonial Petition No. 7169*).

Matrimonial Causes—Divorce—Jurisdiction—Law applicable—Husband's petition for divorce—Husband domiciled in Cyprus—Husband citizen of the Republic and a member of the Greek Orthodox Church of Cyprus—Wife an Austrian National and a member of the Roman Catholic Church—Civil marriage at the District Office Nicosia on May 3, 1963 under the provisions of the Marriage Law, Cap. 279—Religious ceremony—Article 111.1 of the Constitution not applicable—As one of the parties to the marriage is not a citizen of the Republic of Cyprus—And, in any event, as there was no religious ceremony—Therefore this case is cognizable by this Court—And the law applicable is the English law in force on the day preceding Independence Day (August 16, 1960) under the provisions of sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960)—And in view of the Cyprus domicile of the husband (supra) this Court has jurisdiction to hear and determine the case—Cf. infra.

Matrimonial Causes—Divorce—Desertion by the wife—Burden on the petitioner husband to show: (a) that desertion without cause subsisted throughout the three years statutory period immediately preceding the presentation of the petition; (b) that the deserting spouse persisted in the intention to desert throughout the whole of the aforesaid three-year period—The petitioner, also, should be able to say honestly that he was all along willing to fulfil the duties of the marriage—And that the desertion continued throughout the said statutory period without his consent (see Pratt v. Pratt [1939] A.C. 417, at pp. 421 to 422)—In practice, however, it is accepted that once the desertion has been started by the fault of the deserting spouse, it is not necessary for the deserted spouse to show that during the said three years period he or she actually wanted the other spouse to come back—Because the intention to desert

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is presumed to continue—And the mere act of one spouse leaving the matrimonial home will in general make it easy to infer that the deserting spouse intended to bring the matrimonial consortium to an end.

Divorce—Desertion—See supra.

Desertion—Divorce—See supra.

Civil marriage—No religious ceremony—Article 111.1 of the Constitution—Not applicable.

Constitutional Law—Article 111, paragraph 1, of the Constitution—See supra.

Matrimonial Causes—Jurisdiction of this Court :

- (1) *ratione loci,*
- (2) *ratione materiae—See supra.*

Marriage of convenience—To enable the wife, who was of Austrian nationality, to obtain residence in Cyprus.

This is a husband's petition for divorce on the ground of desertion. The wife failed to enter an appearance or defend the proceedings. The parties were married at the District Office, Nicosia, on May 3, 1963, under the provisions of the Marriage Law, Cap. 279. There was no religious ceremony. The husband was born in 1939 in Melanarga village, in the District of Famagusta, Cyprus, and the wife was born in 1932 in Graz, Austria. The husband is a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church of Cyprus. He is domiciled in Cyprus. The wife would appear to be of Austrian nationality and a member of the Roman Catholic Church. There is no doubt that this was a marriage of convenience to enable the wife, who was of Austrian nationality, to obtain residence in Cyprus by virtue of her marriage to a citizen of the Republic. The husband's case is that his wife deserted him as from the end of May 1963 and that she never contacted him ever since. In fact she left Cyprus in February 1966 and she has not returned since. The present petition was filed on September 5, 1969.

Article 111, paragraph 1, of the Constitution reads as follows :

“ 111.1 Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce, nullity of marriage, judicial separation or restitution of

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conjugal rights or to family relations other than legitimation by order of the Court or adoption of members of the Greek-Orthodox Church or of a religious group to which the provisions of paragraph 3 of Article 2 shall apply shall, on and after the date of the coming into operation of this Constitution, be governed by the law of the Greek-Orthodox Church or of the Church of such religious group, as the case may be, and shall be cognizable by a tribunal of such Church and no Communal Chamber shall act inconsistently with the provisions of such law.”

Granting a *decree nisi*, the Court :—

Held, I. As to the question of jurisdiction (both ratione loci and ratione materiae) and of the law applicable by the Court :

(1) On the husband's evidence I am satisfied that he is domiciled in Cyprus, and that, consequently, this Court has jurisdiction to hear and determine the present case, and that under the provisions of sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) the law applicable by the Court in this case is the English law in force on the day prior to Independence Day (*viz.* August 16, 1960).

(2) Furthermore I am of the view that the provisions of Article 111, paragraph 1, of the Constitution (*supra*) are not applicable as one of the parties to the marriage is not a citizen of the Republic and, in any event, there was no religious marriage. Therefore, this case is cognizable by this Court.

Held, II. As regards the merits of the case viz. as to the question of the alleged desertion by the wife.

(1) During all the time that elapsed between June 1963 and the present day, the wife has never contacted the husband.

(2) (a) It is well settled that the burden in these cases is on the petitioner to show that desertion without cause subsisted throughout the statutory period of three years immediately preceding the presentation of the petition. It must also be shown that the deserting spouse persisted in the intention to desert throughout the whole of the three-year period, and that the petitioner should be able to say honestly

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that he was all along willing to fulfil the duties of the marriage, and that the desertion continued throughout the said statutory period without his consent (see *Pratt v Pratt* [1939] A C 417, at pp. 421 to 422, and other cases on this point).

(b) In practice, however, it is accepted that once desertion has been started by the fault of the deserting spouse, it is no longer necessary for the deserted spouse to show that during the three years period preceding the petition he or she actually wanted the other spouse to come back, for the intention to desert is presumed to continue. The mere act of one spouse leaving the matrimonial home will in general make it easy to infer that the deserting spouse intended to bring the matrimonial consortium to an end (see, generally, the cases referred to in support of these propositions in Rayden, on Divorce, 10th ed p 202, notes (a) to (f))

(3) (a) This being the law, I have reached the conclusion, not without hesitation, that, looking at all the facts of the case, the wife-respondent, who left the matrimonial home some time in May or June 1963 and has never returned, intended to bring the matrimonial consortium to an end.

(b) I am further satisfied that, as desertion has been started by the fault of the deserting wife, it is no longer necessary for the deserted husband to show that during the three years preceding the filing of the petition he actually wanted the wife to come back as, on the evidence in this case, the intention of the wife to desert must be presumed to continue.

(4) (a) Consequently, I hold that the respondent wife deserted the husband-petitioner without reasonable cause for a period exceeding three years prior to the presentation of the present petition

(b) *Decree nisi* granted As no costs are claimed there will be no order as to costs

Decree nisi granted No
order as to costs

Cases referred to

Pratt v Pratt [1939] A C. 417, at pp. 421 to 422 ;

The cases referred to in Rayden on Divorce Tenth edition
p 202 notes (a) to (f)

Matrimonial Petition.

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

A. Georghiades, for the petitioner.

Respondent absent, not represented.

The following judgment was delivered by :—

JOSEPHIDES, J. : This is a husband's petition for divorce on the ground of desertion. The respondent wife was duly served with a copy of the petition in Austria, where she now resides, but she failed to enter an appearance or defend the proceedings.

The parties were married at the District Office, Nicosia, on the 3rd May, 1963, under the provisions of the Marriage Law, Cap. 279. There was no religious ceremony, and there is no issue of the marriage. The husband was born on the 28th June, 1939 in Melanarga village, in the District of Famagusta, Cyprus, and the wife was born on the 12th June, 1932 in Graz, Austria. The marriage certificate shows that the wife, who is by seven years older than the husband, had been previously married and divorced. The husband is a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church. The wife would appear to be of Austrian nationality and a member of the Roman Catholic Church. The mother tongue of the husband is Greek and that of the wife German. Neither knew the other's language and the husband had a slight knowledge of English. He was a labourer and she described herself as a "cosmetician". I do not think that there could have been a more incongruous marriage. There is no doubt, and this is conceded by the husband, that this was a marriage of convenience to enable the wife, who was of Austrian nationality, to obtain residence in Cyprus by virtue of her marriage to a citizen of the Republic.

Previous to the present petition, this Court heard and determined another petition by the husband in 1963 for nullity of marriage on the ground of non-consummation due to the wilful refusal of the wife. That case is reported in (1963) 2 C.L.R., page 488. The Court, after hearing the parties, dismissed the husband's petition.

As regards the question of *jurisdiction*, on the husband's evidence I am satisfied that he is domiciled in Cyprus,

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and that, consequently, this Court has jurisdiction to hear and determine the present case, and that under the provisions of section 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960, the law applicable by the Court in this case is the English law in force on the day prior to Independence Day. Furthermore, I am of the view that the provisions of Article 111, paragraph 1, of the Constitution are not applicable as one of the parties to the marriage is not a citizen of the Republic and, in any event, there was no religious marriage.

As regards the *merits* of the case, I have the evidence of the husband which is corroborated in respect of the departure and absence of the wife from Cyprus by an officer serving in the Aliens and Immigration Office Headquarters of the Republic, who gave evidence to this Court from official records in his custody.

Before I proceed to give a summary of the evidence I think that I ought to place on record my anxiety over the unsatisfactory nature of the husband's evidence. I must say that he did not impress me as a dishonest person, though at times he was apt to keep the truth from the Court. My assessment of him is that he is more of a naive and stupid person rather than a liar. Be that as it may, it is my duty to weigh the evidence adduced in this case and come to a decision.

Briefly, the husband's case is that after the parties were married at the District Office in Nicosia on the 3rd May, 1963, they lived together for a week in Pallouriotissa when the wife left the matrimonial home and went to live in the "Florida Hotel" in Famagusta. A few days later he states that he went to Famagusta and tried to persuade her to come back to him, and that he even enlisted the help of the police but that it was of no avail. He tried again a few days later but the wife again refused to return to him, and she told him that she did not want to live with him. The net result of his evidence is that they only lived together for seven days in May 1963, and that he has not seen her since his second visit in Famagusta at about the end of May or beginning of June 1963.

I shall deal presently with the question whether the husband should be able to say honestly that he was all along willing to fulfil the duties of the marriage and that the desertion continued throughout the statutory period

without his consent ; but, before I do so, I shall state the gist of the evidence of the police officer who is serving in the Aliens and Immigration Office. This is to the effect that the official records show that the wife, who had been away from Cyprus, came here on the 17th November, 1964 and left on the 28th February, 1965 ; that she came again on the 6th December, 1965, and left on the 8th January, 1966 ; and that, finally, she came to Cyprus on the 20th January, 1966 and left on the 2nd February, 1966, and that she has not returned since. The present petition was filed on the 5th September, 1969.

During all the time that elapsed between June 1963 and the present day, the wife has never contacted the husband, either in 1963 or 1964, or at any time during her three brief visits to Cyprus between November 1964 and February 1966.

It is well settled that the burden in these cases is on the petitioner to show that desertion without cause subsisted throughout the statutory period of three years. It must also be shown that the deserting spouse persisted in the intention to desert throughout the whole of the three-year period, and that a petitioner should be able to say honestly that he was all along willing to fulfil the duties of the marriage, and that the desertion continued throughout the statutory period without his consent (see *Pratt v. Pratt* [1939] A.C. 417, at pages 421 to 422, and other cases on this point). In practice, however, it is accepted that once desertion has been started by the fault of the deserting spouse, it is no longer necessary for the deserted spouse to show that during the three years preceding the petition he or she actually wanted the other spouse to come back, for the intention to desert is presumed to continue. The mere act of one spouse leaving the matrimonial home will in general make it easy to infer that the departing spouse intended to bring the matrimonial consortium to an end (see, generally, the cases referred to in support of these propositions in Rayden on Divorce, tenth edition, page 202, notes (a) to (f)).

This being the law which I have to apply in the present case, I have reached the conclusion, not without hesitation, that, looking at all the facts of the case, the wife, who left the matrimonial home some time in May 1963 and has never returned, intended to bring the matrimonial consortium to an end. I am further satisfied that, as desertion has been started by the fault of the deserting

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wife, it is no longer necessary for the deserted husband to show that during the three years preceding the petition he actually wanted the wife to come back as, on the evidence in this case, the intention of the wife to desert must be presumed to continue.

I, therefore, hold that the respondent wife deserted the husband without reasonable cause for a period exceeding three years prior to the presentation of the present petition.

Decree nisi granted. As no costs are claimed, there will be no order as to costs.

*Decree nisi granted. No
order as to costs.*