

DAVID JOSEPH BACK,

Appellant,

v.

DOREEN MARGARET BACK,

Respondent.

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DAVID
JOSEPH
BACK
v.
DOREEN
MARGARET
BACK

(Civil Appeal No. 5551).

Maintenance Order—Made in England—And registered in Cyprus under section 3(1) of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16—No power by Cyprus Court to vary or set aside such order.

- 5 *Maintenance Orders (Facilities for Enforcement) Law, Cap. 16—Construction of s. 3(1) of the Law—English case-law (Pilcher v. Pilcher [1955] 2 All E.R. 644) followed.*

10 The appellant applied for the variation, or setting aside, of a maintenance order made in London, which had been registered at the District Court of Nicosia under the provisions of s. 3(1)* of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16.

15 The trial Judge relying on the English case of *Pilcher v. Pilcher*** [1955] 2 All E.R. 644, held that it had no power to vary, or set aside the said maintenance order and dismissed the application.

20 In both the *Pilcher* case and in a subsequent case (*R. v. Rose, ex Parte McGibbon*, [1959] 123 J.P. 374, D.C.) it was held that when a judgment has been registered in England under section 1(1)*** of the Maintenance Orders (Facilities for Enforcement) Act, 1920, the Court with which the judgment is registered can only deal with the enforcement of the maintenance order and is not enabled to deal with complaints for alteration, variation or discharge of the registered order; the said section (1) is, practically, exactly the same as our corresponding said section 3(1).

* Quoted in full at p. 235 *post*.

** The relevant passages of this case are quoted at p. 236 *post*.

*** Vide pp. 237–238 *post*.

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Held, in view of the position in England being as found in the *Pilcher* and *Rose* cases (*supra*), and in view of the practically identical wording of the corresponding provisions in Cyprus and in England, as well as because of the fact that we are dealing with a matter of reciprocal enforcement, we feel that the only proper course open to us is to follow, in relation to the construction of our own section 3(1) of Cap. 16, the English case-law regarding the interpretation of the corresponding provision in England, namely the aforesaid section 1(1); and the fact that there exists some difference as regards the method of enforcement of a registered order for maintenance in England and in Cyprus, respectively, is not a sufficient reason for refusing to follow the English case-law relevant to the interpretation of our section 3(1). 5 10

Appeal dismissed. 15

Per Curiam: The registration in Cyprus, for enforcement purposes, of a maintenance order made in England is an administrative procedure initiated by the English authorities; and, in this respect, the position is the same in England where, when a maintenance order made abroad has been registered under the relevant English Act, there is no right to appeal against such order, even though under such Act the registered foreign order is to be treated as an order made by the Court with which it has been registered (see Halsbury's Laws of England, 4th ed., Vol. 8, p. 394, para. 558). 20 25

Cases referred to:

Pilcher v. Pilcher [1955] 2 All E.R. 644;

R. v. Rose, ex parte McGibbon [1959] 123 J.P. 374, D.C.;

Pilcher v. Pilcher (No. 2) [1956] 1 All E.R. 463.

Appeal. 30

Appeal by respondent against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 3rd February, 1976, (Application No. 1/74) whereby it held that it had no power to vary, or set aside, a maintenance order made in England and registered in Cyprus. 35

A. Ladas, for the appellant.

A. Markides, for the respondent.

The facts sufficiently appear in the judgment of the Court delivered by:—

TRIANTAFYLIDIS, P.: In this case the appellant has appealed 40

against a judgment of the District Court of Nicosia by means of which it held that it had no power to vary, or set aside, a maintenance order made in England and registered in Cyprus.

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The history of the matter is briefly as follows:

5 By a letter dated March 1, 1974, the Secretary of State for the Home Department in England sent to the Minister of Justice of Cyprus, for the purpose of registration and enforcement, a certified copy of a maintenance order made in London, on February 7, 1964, by the High Court of Justice, in favour
10 of the respondent and against the appellant. The Ministry of Justice forwarded the matter, for any necessary action, to the District Court of Nicosia, and, as a result, on March 14, 1974, the maintenance order was registered under the provisions of the Maintenance Orders (Facilities for Enforcement) Law, Cap.
15 16; the relevant provision of this Law is section 3(1), which reads (modified under Article 188 of the Constitution) as follows:—

“ 3.(1) Where a maintenance order has, whether before or after the passing of this Law, has been made against any
20 person by any Court in England or Ireland, and a certified copy of the order has been transmitted by the Secretary of State to the Council of Ministers, the Council shall send a copy of the order to the prescribed officer of a Court in Cyprus for registration; and on receipt thereof the order
25 shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Law, all proceedings may be taken on such order as if it had been an order originally obtained in the Court in which it is
30 so registered, and that Court shall have power to enforce the order accordingly.”

On June 12, 1975, the appellant applied for the variation, or setting aside, of the said maintenance order, and on August 7, 1975, his application was opposed by the respondent.

35 On January 16, 1976, it was directed by the trial Court, with the consent of both parties, that the issue of whether such Court has power to vary, or set aside, the maintenance order in question should be decided as a preliminary point; and, as already stated, it was, eventually, held that there exists no such
40 power and the relevant application of the appellant was dismissed. In holding so, the trial Court relied on *Pilcher v.*

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Pilcher, [1955] 2 All E.R. 644, where the following were stated in the judgment of Lord Merriman P. (at pp. 652-653):—

“ We appreciate, however, the force of the argument that absurd results may follow if the proper construction of the sub-section excludes the possibility of a registered order being discharged or even varied by the registering Court. For example, the husband may have conclusive evidence that the wife has died; or he may have been able to initiate proceedings for divorce by virtue of the provisions for substituted service prevailing in the High Court; and may have obtained a decree on ground which would impel a magistrates’ Court to discharge the order if it were in fact an order which had been obtained in that Court: (see *Bragg v. Bragg* ([1925] P. 20); *Mezger v. Mezger* ([1936] 3 All E.R. 130); *Prest v. Prest* ([1949] 2 All E.R. 790)—particularly the sentence at letter D., at p. 794, the last word of which should be ‘desertion’, not ‘adultery’; see *Wood v. Wood* ([1949] W.N. 59)). If it is thought that this situation calls for a remedy, consideration might be given to the advisability of applying to orders registered under s.1(1) of the Act of 1920 some procedure similar to the ‘shuttlecock procedure’ which applies to orders confirmed under s. 3 or s. 4 of the Act, or under s. 22 of the Maintenance Orders Act, 1950, to orders registered under that Act, with or without an amendment of the rules so as to enable process or notice of process to be served out of England and Wales by registered post (see Magistrates’ Courts Rules, 1952, r. 76(5)). Recognising as we do that neither registered nor confirmed orders are free from certain anomalies and difficulties, the essential differences between the scope of the two sections by which they are governed remain. These seem to us to be such that the true conclusion is that s.1(1) is limited to enforcement and does not permit of complains for alteration, variation or discharge of orders registered by virtue of that section.”

Counsel for the appellant has tried very hard to persuade us that we should not treat as correct law the *Pilcher* case, *supra*, in view of the fact that its *ratio decidendi* seems to be erroneous.

As it appears, however, from Halsbury’s Laws of England, 4th ed., vol. 8, pp. 396-397, para. 562, the approach adopted in the *Pilcher* case was followed in *R. v. Rose, ex parte McGibbon*, [1959] 123 J.P. 374, D.C.; unfortunately, we do not

have available the full report of that case in our library, but we have traced what we think is quite an adequate summary of it in *The English and Empire Digest, Continuation vol. A, 1952-1963*, p. 254, para. 1440b; such summary reads as follows:-

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5 “On Jan. 23, 1957, a maintenance order was made in Jamaica against appct. on the ground that he had deserted his wife & wilfully refused to maintain her. Appct. was then in England, his wife being in Jamaica. On Febr. 11, 1958, appct.'s wife came to England at the request of the
10 appct., who had sent her part of the expenses for the journey. She resumed cohabitation with appct. in Brixton for about a month. Appct. applied at Lambeth Magistrates' Ct. where the order of the Jamaican ct. had been duly registered, for a summons to rescind the order made in Jamaica.
15 The magistrate held that he was bound by *Pilcher v. Pilcher*, (see, *ante*, No. 1440a), to hold that no such summons as was sought could be issued under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c.33) & refused to issue the order. On appln. for mandamus directing the
20 magistrates to issue the summons:-

 Held: an appln. to rescind a provisional order made in some part of Her Majesty's Dominions could be made under sect. 4(6) of the Act following the appropriate procedure, but sect. 1(1) contemplated only a summons to enforce
25 an order, & not an appln. to issue a summons for rescission, & the magistrate was right in holding that he was bound by *Pilcher v. Pilcher* to refuse to issue the summons.”

 In both the *Pilcher* and the *Rose* cases, *supra*, it was held that when a judgment has been registered in England under section
30 1(1) of the Maintenance Orders (Facilities for Enforcement) Act, 1920, the Court with which the judgment is registered can only deal with the enforcement of the maintenance order and is not enabled to deal with complaints for alteration, variation or discharge of the registered order; the said section 1(1) is,
35 practically, exactly the same as our corresponding section 3(1), and reads as follows:-

 “1-(1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any part of His Majesty's dominions
40 outside the United Kingdom to which this Act extends, and a certified copy of the order has been transmitted by the governor of that part of His Majesty's dominions to

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the Secretary of State, the Secretary of State shall send a copy of the order to the prescribed officer of a Court in England or Ireland for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the Court in which it is so registered, and that Court shall have power to enforce the order accordingly.”

In view of the position in England being as found in the aforementioned two cases, and in view of the practically identical wording of the corresponding provisions in Cyprus and in England, as well as because of the fact that we are dealing with a matter of reciprocal enforcement, we feel that the only proper course open to us is to follow, in relation to the construction of our own section 3(1) of Cap. 16, the English case-law regarding the interpretation of the corresponding provision in England, namely the aforesaid section 1(1).

In order to dissuade us from adopting the above course it has been contended that there exists some difference as regards the method of enforcement of a registered order for maintenance in England and in Cyprus, respectively, and, in particular, that in England there is power to grant remission in respect of accumulated arrears under a registered maintenance order. We do not consider that this is a sufficient reason for refusing to follow the English case-law relevant to the interpretation of our own section 3(1); as it was pointed out in *Pilcher v. Pilcher* (No. 2), [1956] 1 All E.R. 463, by Lord Merriman P. (at p. 464), by remitting arrears one does not revoke an order, the two things being entirely distinct.

We would like to conclude this judgment by observing that the registration in Cyprus, for enforcement purposes, of a maintenance order made in England is an administrative procedure initiated by the English authorities; and, in this respect, the position is the same in England where, when a maintenance order made abroad has been registered under the relevant English Act, there is no right to appeal against such order, even though under such Act the registered foreign order is to be treated as an order made by the Court with which it has been registered (see Halsbury's Laws of England, 4th ed., vol 8, p. 394, para. 558).

For all the above reasons this appeal fails and is hereby dismissed with costs.

Appeal dismissed with costs.

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