

1978 October 31

[A. LOIZOU, J.]

ANTOINETTE CHARBEL TANOUS NAMMOUR,

Petitioner,

v.

CHARBEL TANOUS NAMMOUR,

Respondent.

(*Matrimonial Petition No. 8/78*).

Matrimonial Causes—Jurisdiction—Section 29 (2) (b) of the Courts of Justice Law, 1960—Section 18 (1) (a) and (b) of the English Matrimonial Causes Act, 1950—Wife's petition for dissolution of marriage—Husband not domiciled in Cyprus—Wife not resident in Cyprus for a period of three years immediately preceding the commencement of the proceedings—No jurisdiction to entertain the petition.

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The sole issue for consideration in this undefended wife's petition for divorce on the ground of cruelty was whether the Court had jurisdiction to entertain the petition.

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The parties were married under the provisions of the Marriage Law, Cap. 279, in the office of the District Officer, Nicosia, on the 1st February, 1978.

The petitioner was born in Lebanon but at the age of five she went to Australia where she has lived ever since. She is an Australian National and she first came to Cyprus on the 25th January, 1978, apparently for the purpose of marrying here the respondent whom she met in Lebanon.

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The respondent was, also, born in Lebanon and he came to Cyprus a few days before the celebration of the marriage. They both left Cyprus a day after the marriage for Australia where they set up their matrimonial home with the obvious intention of settling in Australia. The husband is still living in Australia.

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Since the marriage the petitioner, who is a business woman, has visited Cyprus for short periods in May, July and September

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and each time she was given a visitor's entry permit for one month by the Immigration Authorities. On the last occasion she was given a temporary visitor's permit for six months.

The petitioner alleged that after the marriage she lived and cohabited with the respondent at Nicosia and decided to live and cohabit with him in Cyprus for good but after the marriage the respondent abandoned her and left for Australia. The petitioner was then obliged to follow respondent to Australia to find out what was happening.

Section 29 (2) (b) of the Courts of Justice Law, 1960 provides that in the exercise of its Matrimonial jurisdiction this Court shall apply the English law relating to matrimonial causes which was in force when Cyprus became independent in 1960.

The English Court has jurisdiction in the following cases all of which, except the first, are based on domicile:— (1) In proceedings by a wife, where she is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, provided that the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or in the Isle of Man. (2) Where both parties are domiciled in England at the commencement of the proceedings. (3) In proceedings by a wife, where the wife has been deserted by her husband or where the husband has been deported from the United Kingdom, and the husband was immediately before the desertion or deportation domiciled in England (see Rayden on Divorce, 8th ed. p. 28 and the Matrimonial Causes Act, 1950 section 18 (1) (a) and (b)).

Held, that as the wife-petitioner has never acquired a domicile of choice in Cyprus or, being a married woman, she cannot acquire a domicile of choice of her own separate from that of her husband who, in any event, could not be held by any stretch of imagination to be domiciled in Cyprus; and that as the petitioner has not been and does not claim to have been ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of the present proceedings, this Court does not possess jurisdiction to entertain the petition; and that, accordingly, this petition will be dismissed for lack of jurisdiction.

Petition dismissed.

Per curiam: This petition could be dismissed also on the

ground that it had been presented before the expiration of three years from the date of the marriage and no leave had been granted for its presentation on the ground that the case was one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent. (See Matrimonial Causes Act, 1950 s. 2 (1) and *Dunne (No. 2) v. Dunne* (1965) 1 C.L.R. 344).

Cases referred to:

Dunne (No. 2) v. Dunne (1965) 1 C.L.R. 344;
Herd v. Herd [1936] P. 205 at 213.

Matrimonial Petition.

Petition for dissolution of marriage because of the husband's cruelty.

A. Papakokkinou (Miss), for the Petitioner.
 Respondent absent, duly served.

Cur. adv. vult.

A. LOZOU J. read the following judgment. This is an undefended wife's petition for divorce on the ground of cruelty. The respondent, although duly served personally at Lonsdale Street, Melbourne, Australia, failed to put in an appearance or defend the proceedings.

The parties were married under the provisions of the Marriage Law, Cap. 279, in the office of the District Officer, Nicosia, on the 1st February, 1978. The petitioner was born in Lebanon but at the age of five she was taken to Australia by her uncle where she has lived ever since. She is an Australian national. She first came to Cyprus on the 25th January, 1978, apparently for the purpose of marrying here the respondent whom she had met in Lebanon on a visit there where he was also born. The respondent, like the petitioner, came to Cyprus a few days before the celebration of their marriage and they both left Cyprus on the 2nd February for Lebanon and from there to Australia where they set up their matrimonial home as it was the respondent's wish to go to that country. Neither of them are members of the Greek Orthodox Church or of the Moslem faith. The petitioner was married before and has two children, aged 9 and 10, from her previous marriage; they are at present living at Lebanon.

Since February the petitioner, who is a business woman, has

visited Cyprus for short periods in May, July and September, being given each time by the Immigration Authorities a visitor's entry permit for one month. This time she has been given a temporary visitor's permit valid for six months, namely, until the 27th May, 1979, and her present address is c/o Cleopatra Hotel, Nicosia. 5

It is stated in the petition that after the said marriage the petitioner lived and cohabited with the respondent at Nicosia, Cyprus, and decided to live and cohabit in Cyprus for good but after the said marriage the respondent abandoned the petitioner and left for Australia and the petitioner was obliged to follow the respondent to Australia to find out what was happening. This is an inaccurate statement of facts, to say the least, as one night's stay in Nicosia, that is on the night of their wedding, cannot bear out the claim that the petitioner lived and cohabited with the respondent at Nicosia after their marriage, nor is it born out from the petitioner's own testimony that the respondent abandoned her and left for Australia. Moreover, it is alleged in the petition and this apparently for the purpose of justifying the exercise of jurisdiction by this Court in this matter, that the petitioner resides and is domiciled in Cyprus and that the respondent is a nurse in a Hospital and resides at 28 Lynne Street, Donville, Melbourne. 10 15 20

The first question, therefore, for determination in a matrimonial matter of this nature is that of the jurisdiction of this Court. Under the provisions of section 19(b) of the Courts of Justice Law, 1960, this Court has jurisdiction to try matrimonial causes except cases which come within the provisions of Article 111 of the Constitution and are cognizable by the Ecclesiastical Tribunal or a Communal Court. In exercising such matrimonial jurisdiction, this Court is empowered by section 29(2)(b) of the said Law, to apply the English Law on such matter which was in force when Cyprus became independent in 1960. 25 30

As summed up in Rayden on Divorce, 8th Edition, p. 28, "a Court in England"—and by virtue of the aforesaid provisions, *mutatis mutandis*, a Court in Cyprus,—“has jurisdiction in the following cases all of which, except the first, are based on domicile: (1) In proceedings by a wife, where she is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the pro- 35 40

ceedings, provided that the husband is not domiciled in any other part of the United Kingdom or in the Channel Islands or in the Isle of Man. (2) Where both parties are domiciled in England at the commencement of the proceedings. (3) In
 5 proceedings by a wife, where the wife has been deserted by her husband or where the husband has been deported from the United Kingdom, and the husband was immediately before the desertion or deportation domiciled in England”.

As it appears, therefore, from the aforesaid, apart from the
 10 statutory exceptions to be found in section 18 (1) (a) and (b) of The Matrimonial Causes Act, 1950, which have been referred to just now, no decree on a petition for dissolution of marriage can be pronounced unless the husband and therefore the wife, are domiciled in England. This is an application of the general
 15 principle that the Court of the parties' domicile has an exclusive jurisdiction to dissolve the marriage. The parties must be so domiciled at the commencement of the proceedings and as stated in Rayden on Divorce (*supra*), p. 30, para. 6, “The Court must consider the question of domicile, whether it is pleaded or
 20 not, for the parties cannot by consent confer on the Court jurisdiction to dissolve a marriage”. Also a divorce Court does not act on “consents or defaults of pleading or mere admissions by the parties” (see *Herd v. Herd* [1936] P. 205, at p. 213).

Moreover, it has to be considered that a married woman
 25 acquires the domicile of her husband immediately on marriage and during the existence of the marriage her domicile is that of her husband; the fact that the wife is living apart from the husband under an agreement of separation or that the husband
 30 has been guilty of desertion or of such misconduct as would entitle the wife to abandon a judicial separation, or even a divorce, does not enable the wife to acquire a domicile separate from that of her husband (See Rayden (*supra*) p. 44, para. 22).

In no less definite way the same principle is stated in Dicey
 35 and Morris, “The Conflict of Laws”, p. 122, Rule 16, where it is stated that the domicile of a married woman is the same as, and changes with, the domicile of her husband. Furthermore it is stressed that to this rule there is no exception; it applies although the spouses are living apart, whether or not they
 40 are doing so pursuant to a formal separation agreement although

the husband has committed acts which would enable the wife to obtain a decree, of divorce or of judicial separation.

Applying the aforesaid principles of law to the facts of our case set out hereinabove, I cannot say that the petitioner has ever acquired a domicile of choice in Cyprus; or, being a married woman, she could acquire a domicile of choice of her own separate from that of her husband which, in any event, could not be held by any stretch of imagination to be domiciled in Cyprus. He has paid a fleeting visit in Cyprus for a few days, had his marriage celebrated here and left on the following day with the obvious intention of settling in Australia where he lives ever since.

On the question of residence, it is clear that the petitioner has not been and does not claim to have been ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of the present proceedings.

I, therefore, dismiss the present petition for lack of jurisdiction, which could be dismissed also on another ground. The marriage was solemnized on the 1st February, 1978, and under the provisions of section 2(1) of the English Matrimonial Causes Act, 1950, a petition for divorce could not be presented to this Court unless at the date of the presentation of the petition three years have passed since the date of marriage and there has been no application for leave on the ground that the case is one of exceptional hardship suffered by the petitioner and or of exceptional depravity on the part of the respondent, within the proviso of section 2(1) thereof (see *Dunne (No. 2) v. Dunne* (1965) 1 C.L.R. 344).

In the result this petition is dismissed with no order as to costs.

Petition dismissed. No order as to costs.