

1979 July 26

[A. LOIZOU, J.]

WILLIAM HENRY HOLROYD,

Petitioner,

and

CAROL ANNE HOLROYD THEN CAROL ANNE GODDEN,

Respondent,

and

CHRISTAKIS ADONIS OF NICOSIA,

Co-respondent.

(Matrimonial Petition No. 7/79).

Matrimonial causes—Petition for dissolution of marriage—Alimony pendente lite—And interim order with respect to the maintenance of the children of the marriage—Alimony pendente lite may be allotted even if the wife admits adultery—Whether proper to come to any conclusion on the substantive issue—Discretion of the Court—Quantum—Principles applicable.

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Following the filing of a petition by the husband for the dissolution of his marriage to the wife, on the ground of the latter's adultery with the co-respondent named in the petition, the wife applied for alimony pending suit and for an interim order with respect to the maintenance of the two children of the marriage. There had been a previous petition by the husband which was dismissed as he failed to prove the alleged adultery. Pending that suit an order for alimony in the sum of £70 per month, was made in favour of the wife which was discharged upon the dismissal of that petition.

The wife alleged that as a result of her marriage with the petitioner—husband they have two children born on the 1st February, 1974 and on the 18th November, 1978.

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The husband alleged that since the middle of 1971 he had no sexual relations with his wife; that they were living in separate rooms until she left the matrimonial home in the middle of 1973,

since when he has not seen or spoken to her. He further contended that the wife gave birth to a child on the 18th November, 1978 and that child was registered in the Register of Births, kept by the District Officer, under the name of Zacharias with the co-respondent in this petition registered as the father of the child. 5

Held, (1) that an order for alimony pending suit may be made even if the wife admits adultery (see Rayden on Divorce, 8th ed. p. 415); and that the Court has, also, power to make an interim order with respect to the maintenance of the children (see Rayden, *supra*, at p. 444). 10

(2) That, bearing in mind all the circumstances of the case, including the allegations of adultery made by the petitioner-husband and their denial by the respondent-wife, as well as the fact that on the evidence it is not proper to come to any conclusion on the merits of this substantive issue, this Court has decided to make an order for alimony pending suit for the wife and for the maintenance of the children of the marriage. 15

(3) (After referring to the principles governing the amount to be awarded—vide p. 312 post) that it transpires, from his own statement and from the fact that until recently he was paying £70.— per month to the wife for alimony pending the already dismissed suit for divorce, that the husband is in a position to pay an amount of £60.— per month for the wife and £40.— per month for the two children (i.e. £25.— for the eldest and £15.— for the youngest) which amounts, bearing in mind also the social standing of the parties, are fair in the circumstances; and that an order is made accordingly. 20 25

Application granted.

Cases referred to: 30

Sonat v. Sonat, 1961 C.L.R. 164;

Waller v. Waller [1956] P. 300; [1956] 2 All E.R. 234 (C.A.)

Bullock v. Bullock and Vargolici [1942] P. 134; [1942] 2 All E.R. 259;

Brierley v. Brierley and William [1918] Vol. 34 Times Law Reports p. 458. 35

Application.

Application by wife for alimony pending suit and for an

interim order with respect to the maintenance of the two children of the marriage.

D. Demetriades, for the applicant—wife.

A. Pandelides, for the respondent—husband.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is a petition for alimony pending suit by the wife and also for an interim order with respect to the maintenance of the children of the marriage, namely Lucia Stefania—and Zacharias.

10 The facts in support, as set out in the affidavit are as follows: The petition for divorce was filed by the husband for the dissolution of his marriage to the wife, on the ground of her adultery with Christakis Adonis of Nicosia, named as the co-respondent in the said petition. There had been a previous
15 petition by the petitioner/husband, which was dismissed as he failed to prove the alleged adultery. Pending that suit, alimony was ordered to be paid to the wife in the sum of £70.— per month, which order was discharged upon the dismissal of that petition.

20 The wife, in the affidavit sworn by her, alleges that as a result of her marriage with the petitioner/husband they have two children, Lucia Stefania, born on the 1st February, 1974 and Zacharias, born on the 18th November, 1978. She further asserts therein, that although the said petition for a decree of
25 divorce was pending she had been meeting with the petitioner/husband and as a result of these meetings she gave birth to the second child.

The wife has no property of any value anywhere and asserts that the husband is doing business in Cyprus. He is the owner
30 of a luxurious villa on the main Nicosia—Troodos road, near Koutraphas. He is a citrus merchant with bank deposits, etc.

The husband alleges in his affidavit, filed together with his opposition to the present application, that since the middle of
35 1971 he had no sexual relations with his wife, that they were living in separate rooms until she left the matrimonial home in the middle of 1973, since when he has not seen or spoken to her. He further contends that the wife gave birth to a child on the 18th November 1978—obviously that is the second of the two

children in respect of which an interim order for maintenance is sought—and that child was registered in the Register of Births kept by the District Officer under the name of Zacharias with the co-respondent in this petition, namely Christakis Adonis, registered as the father of the child. The wife and the said co-respondent signed the relevant registration form and by these they are as stated in the affidavit “admitting and or stating that the child Zacharias was that of the wife and that the father was the said co-respondent.” 5

With regard to his income he states in paragraph 9, thereof, that he has no income in Cyprus, he is the owner of a house and a farm which has not yet given any income and spends yearly five to six thousand pounds on this farm and the income he gets from it is £3,500.— the balance of the costs for running the farm being covered by the capital which he has in England; he further states that he was a shareholder and director in a company in Cyprus which became insolvent, and as a result he suffered a severe financial loss amounting to £30,000.—. 10 15

In the affidavit filed by the applicant/wife in reply she denies to have committed adultery with the co-respondent and that the birth certificate attached to the opposition of the husband and the corresponding declaration in the Register of Births should not be accepted by the Court as proving adultery as the husband had sexual relations with her. She goes on to say that the only facts in respect of the petitioner’s case is the birth certificate which was issued as a result of her husband’s persistent denial to submit the registration form for the birth of the child to the District Officer and she had to register it at all costs, so that a passport would be issued to it for the purpose of travelling with her to England to see her mother. 20 25 30

Regarding her financial position she states therein that she has a working permit but as a bar woman, which does not seem to her to be the kind of a job appropriate for her standing in life.

In the case of *Sonat v. Sonat*, 1961 C.L.R. 164 Josephides J., held that the fact that there was a plea to the jurisdiction of the Court in a matrimonial suit does not affect the power of the Court to grant, in the exercise of its discretion, alimony pendente lite and referred therein to the English authorities. Moreover in the same case in considering whether the Court would exercise 35

its discretion to grant alimony or not took into consideration *inter alia* the fact that it would take some time for the main petition to be determined by the Court.

5 The power of the Court to grant alimony pending suit is well settled. The case of *Sonat (supra)* supports this proposition although it turned on the question of jurisdiction of the Court in general. Moreover, as stated in *Rayden on Divorce*, 8th Edition p. 415:

10 "An order may be made even if it is clear that there has been no valid marriage, or even if the wife admits adultery."

The authority for the latter proposition is the case of *Waller v. Waller* [1956] P. 300; [1956] 2 All E.R. 234, C.A.

Also in *Halsbury's Laws of England*, Third Edition, volume 12 paragraph 744, it is stated:

15 "Since most of the applications for alimony pending suit are made before decree nisi, the Court will not be able to come to any conclusion on the merits of the substantive issue before it in deciding what, if anything, is to be awarded to a wife. Nevertheless, the conduct of the parties is relevant to some extent, and the Court will examine the allegations made by both sides.

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25 Where the parties have been living apart and the wife's means are insufficient to support herself and her children, she is entitled to alimony pendente lite, although the husband not having contributed towards her maintenance, she has maintained herself in a precarious fashion for a considerable period prior to the institution of the suit."

30 In the case of *Bullock v. Bullock and Vargolici* [1942] P. 134; [1942] 2 All E.R. 259, the admission of wife's adultery was withdrawn by her. The parties lived apart by consent, the husband asked for the Court's discretion; alimony was not refused. Since her withdrawn confession was not conclusive and the wife had filed an answer denying adultery and cross-praying for relief.

35 Whilst on this point and with regard, in particular, to an entry in the Register of Births, of the birth of a child, as evidence of adultery reference may be made to *Rayden on Divorce*

(*supra.*) p. 563 where relying on the authority of *Brierley v. Brierley and William* [1918] Vol. 34 Times Law Reports p. 458, it is stated:

“ An entry in a register of births, deaths, and marriages is by statute prima facie, but not conclusive, evidence of all the facts required by statute to be entered therein. Therefore, where a husband, by admissible evidence, has proved the impossibility of access to his wife for a certain period, an entry signed by the wife of the birth of a child during that period is prima facie evidence of the date as well as the fact of the birth, and, inferentially of the wife’s adultery; the Court may, however, require corroboration.”

Regarding the claim for an interim order with respect to the maintenance of the children the Court has also power to make such an interim order.

In *Rayden on Divorce (supra)* at p. 444 it is stated:

“ In any suit for judicial separation, or for nullity or dissolution of marriage, the Court may, at any time after the petition has been served and before its final decree, make interim orders with respect to the custody, maintenance and education of any children ‘the marriage of whose parents is the subject of the proceedings’ ”.

On the strength of the above authorities and bearing in mind all the circumstances of the present case including the allegations of adultery made by the petitioner/husband and their denial by the respondent/wife, as well as the fact that on the evidence before me I do not feel and I do not think it proper to come to any conclusion on the merits of this substantive issue before me now, I have decided to make an order pending suit for alimony for the wife and for the maintenance of the children the marriage of whose parents is the subject of these proceedings.

The mode of assessment of the proper and fair amount to be awarded in such cases is referred to in the *Sonat case (supra)* and the English Authorities mentioned therein. In the instant case, however, there are less clear statements made as to the financial condition of the husband. It transpires, however, from his own statement and from the fact that until recently he was paying £70.— per month to the wife for alimony pending the

already dismissed suit for divorce, that he is in a position to pay an amount of £60.— per month for the wife and £40.— per month for the two children, i.e. £25.— for the eldest and £15.— for the youngest, which amounts, bearing in mind also the
5 social standing of the parties are fair in the circumstances.

I therefore make an order accordingly, the first payment to be made on the 1st August, 1979.

Costs of the application in favour of the applicant.

Application granted with costs.