[BOURKE, C.J., ZEKIA, J., and ZANNETIDES, J.]

In the matter of the Illegitimate Children Law No. 15/55

and

In the matter of MARGARET M. POWER of Nicosia

Appellant - Applicant,

and

OZER BEHA of Nicosia

Respondent.

(Civil Appeal No. 1248.)

1958
March 28,
April, 30

MARGARET M. POWER
v.
OZER BEHA

Illegitimate Children—Affiliation Order—The Illegitimate Children Law, 1955, Section 2, and Section 8—Child born abroad of a mother domiciled abroad—Jurisdiction—Whether the Cyprus Courts have jurisdiction to entertain applications for an affiliation order in the case of an illegitimate child as aforesaid.

Residence—Ordinary residence—Section 2.

English Judicial decisions—How far English judicial decisions construing English or Imperial or Colonial Statutes are binding upon the Cyprus Courts having to construe like local enactments.

The Appellant applied to the District Court of Nicosia for an affiliation order of her alleged illegitimate child, under the Illegitimate Children Law, 1955, Section 2 and Section 8 (a) (i). A summons was duly issued and served on the Respondent, as the alleged father, under Section 8 (b). The relevant part of Section 2 reads as follows :

Section 2. "In this Law, unless the context otherwise requires —

....

"Court" means a judicial officer of the District Court of competent jurisdiction of the District where the child "has his ordinary residence.".

The relevant part of Section 8 reads as follows :

Section 8. "Subject to any Rules of Court—

(a) (i) the mother
(ii) .....
may apply to the Court for an affiliation order :—

.....

(b) if the Court is satisfied that there is a prima facie case for the alleged father to answer, the Court shall issue a summons to him to appear before the Court on a date fixed in the summons and shall cause such summons to be served on him."

The child was born in Austria and the mother - Appellant was at all material times domiciled abroad. The Respondent was domiciled in Cyprus, ordinarily residing at the time of the proceedings in Nicosia. The point was taken before the trial Court by the Respondent that the Nicosia District Court has no local jurisdiction to entertain the Application in view of the definition of "Court" in Section 2, because the child did not have at the time of the institution of the proceedings her ordinary residence in the Nicosia District. In fact the Appellant - mother came with the child to Cyprus and particularly to Nicosia only a short time before the application for the affiliation order was instituted, the period of residence of the child in the Nicosia District in between not exceeding about two weeks.

A further point taken by the Respondent was that, in any event, the Cyprus Courts in general have no jurisdiction to entertain the application on the ground that the child was born abroad and the mother was at all material times domiciled abroad. Reliance was placed in support of this argument on *R.* v. *Blane* (*post*) and the line of authorities approving that decision (*post*). The proceedings were dismissed by the Lower Court on the broad ground that, because the child Susan was born abroad of a mother domiciled abroad, the Cyprus Courts in general have no jurisdiction to entertain the application for an affiliation order. Having taken that view, the District Court did not proceed to inquire whether the child had, at the time of the institution of the proceedings, her ordinary residence either in Cyprus or within the local jurisdiction of the Court. The learned President who tried the case based his conclusion on the law as settled in England following *R.* v. *Blane* and the line of authorities affirming that decision. (*v. post*). On appeal by the Applicant - mother the Supreme Court, reversing the decision of the District Court of Nicosia, —

Held : (1) (a) *Per Bourke, C.J. :* The word "Court" as defined in Section 2 of the Illegitimate Children Law, 1955, applies to the local jurisdiction of the Courts as between the various Districts in Cyprus and not as between Courts here and elsewhere outside Cyprus.

(b) *Per Zannetides, J. :* The word "Court" in Section 2 (*ante*) was only meant to distinguish between the various District Courts within Cyprus locally.

(c) *Per Zekia, J. :* The fact that the requirement of the ordinary residence of the child is included in the definition of the word "Court" (v. Section 2 *ante*) and not in the words "illegitimate child" supports the view that the primary object of the definition of "Court" is to determine the territorial jurisdiction of a particular District Court in relation to the other Courts of the Island. This need not be however the sole object of the definition in question. This requirement might have to be considered not only in relation to other Courts but also

independently as a prerequisite before the assistance of any Court is invoked in an application for legitimation or for an affiliation order.

(2) The Courts in Cyprus, however, within their respective local jurisdictions as defined in Section 2 of the Illegitimate Children Law, 1955, have jurisdiction to entertain application for an order of affiliation of an illegitimate child born abroad of a mother domiciled abroad. The relevant provisions of the Illegitimate Children Law, 1955, should not be construed in the same way as legislation providing for affiliation orders in England, which legislation, regard being had to its special historical background, has been construed by the English Courts as limiting their jurisdiction only to cases of illegitimate children born in some parish in England. *R.* v. *Blane* (1849) 13 Q.B. 769 ; 111 E.R. 1458, and the English cases (*post*) deciding that *R.* v. *Blane* is good law, *not applied.*

(3) *Per Bourke, C.J. : R.* v. *Blane* (*supra*) turned upon the old system concerned with the birth of bastard children in parishes and the object to relieve parishes from financial burden. That foundation was carried on in the subsequent statutes; so that Courts in England were impelled to conclude that the legislature was obviously dealing with bastards born in some parish. This line of reasoning cannot be applied in Cyprus; a "District" here cannot be regarded as equivalent to "parish" in England. I do not think that merely because difficulties may arise in establishing that a child born abroad was born out of wedlock, such can constitute a valid ground for giving the same restricted effect to the Illegitimate Children Law as has been done in the case of the English statutes. Difficulties can be surmounted and it rests with an applicant to provide the necessary proof or fail to obtain the relief sought. If this was a valid ground for construing the Law to exclude the making of an affiliation order in the case of a child born out of Cyprus, there would seem to be no good reason for adopting a different interpretation in respect of a legitimation order applied for under the same Law where the child is born abroad; but no one suggests, and I do not think could reasonably suggest, that an order of legitimation under s. 6 of the Illegitimate Children Law cannot be made in a case where the child was delivered outside this country.

(4) *Per Zekia, J. :* (a) The English decisions construing English or Imperial or Colonial Statutes are authoritative for the Cyprus Courts where they have to construe like enactments, provided the enactments are in *pari materia,* and always due regard being had to the *ratio decidendi* of such decisions.

Trimble v. *Hill* (1879) 5 App. Cas. 342;

Chettiar v. *Mahatmee* (1950) A.C. 481, at p. 492 per *Sir John Baumont*;

Queen v. *Haralambos Herodotou,* 19 C.L.R. 144, at p. 146, *considered.*

(b) The argument that the English Bastardy Acts and our Illegiti-

mate Children Law, 1955, are *in pari materia,* is considerably weakened because there exists a striking dissimilarity in the working of the Acts and the Cyprus Law in a material respect. One is bound to come to this conclusion when *R.* v. *Blane* (*supra*) is read with some care.

All three Judges sitting in that case were of opinion that the word "bastard" occurring in the relevant Act referred clearly to the children born out of wedlock in some parish in England. Taking into account the historical backround of the Bastardy Acts which formed already a system before the passing of the Poor Law Amendment Act, 1844, the word "bastard" has acquired an additional qualification to its primary meaning and referred only to an illegitimate child born in a parish in England But even assuming that our law and the English Acts are *in pari materia,* still the English cases *R.* v. *Blane* and the other cases approving it (*post*) are not binding regard being had to their *ratio decidendi.* The *ratio decidendi* in those cases appears to be threefold

In the case of *R* v *Blane* (*supra*) the paramount reason for the decision appears to be the additional restrictive meaning attached to the word "bastard" in the light of the history of the statutes dealing with the bastardy provisions and the second reason is the fact that the Bastardy Acts were intended to relieve parishes from the burden of maintenance of children born out of wedlock which burden was cast on them This is clearly stated in the judgments of Lord Deman, C J , and Coleridge, L.J., (*ibid*). The third reason given by Coleridge, L.J , alone is the inconvenience to be occasioned if the word "bastard" was to comprehend any bastard born in any part of the world which would necessitate (in his own words) "an immense field of inquiry to be traversed respecting the status of children according to the different laws of different countries"

In *Tetau* v *O'Dea* (*post*) it appears that the Court in following *Blane's* case relied on the first two chief reasons given in the said case. In *R.* v. *Wilson* (*post*) it was found that the case was not distinguishable from the previous one, namely *Tetau* v *O'Dea* (*post*) In *R.* v *Humphreys* (*post*) the majority of the Court (Bankes and Lush, J J., Avory, J., dissenting) held the 3rd ground given by Lord Coleridge in *R.* v. *Blane* (*supra*) as to the inconvenience to ascertain a foreign law regulating the status of a child born abroad to be the governing principle in that case The weight of authorities however seems to indicate that the first two grounds constitute the *ratio decidendi* in *R* v. *Blane* (*supra*)

The first two reasons in *R* v. *Blane* cannot properly be employed in the construction of the Illegitimate Children Law, 1955; as we said, there is no historical background similar to the one obtaining in England where the word "bastard" occurring in the English statutes bears a restrictive meaning which is not the case with the word "illegitimate child" mentioned in the Cyprus Law and the administration here is not legally bound to maintain children born out of wedlock.

Inconvenience was the only ground left for adhering to the English authorities Indeed the difficulty of embarking into inquiries of the

foreign law governing the status of a child and also to the events (including the alleged intimate relations of the parties taking place abroad) is common in the application of both the Bastardy Acts and the Illegitimate Children Law; but such inconvenience, when nothing can help from within the statute to ascertain intention and no other source to depend on, should not reach the degree of intolerableness so as to lead one to the conclusion that the legislative authority could not have intended the application of the law to the case of a child born abroad from a mother domiciled in a foreign country. On the ascertainment of the intent of the legislature Lord Goddard, C.J., in *Tetau* v. *O'Dea* (*post*), said on p. 698 :

> "The matter which impresses me is that the legislature which must be presumed to have had knowledge of the decision in *R.* v. *Blane*, passed the Bastardy Laws Amendment Act, 1872, but did not in any way purport to overrule the decision in *R.* v. *Blane* or to make any provision that would have the effect of enabling the courts to distinguish R. v. Blane."

The presumption referred to by Lord Goddard, however, cannot be relied upon in respect of colonial legislation.

Dictum of Sir John Beaumont in Chettiar v. *Mahatmee* (1950) A.C. 481 at pp. 491—2, *followed.*

(5) *Per Zannetides, J. :* The illegitimate Children Law, 1955 should not be given the narrow construction placed upon the English Statutes by the English cases and applies to all illegitimate children wherever born provided the other requirements of our Law are present. One of these requirements is the presence of the alleged father within the jurisdiction; this can be easily deduced particularly from Sections 8 and 12 of Part III of the Law; the alleged father must be within the jurisdiction for the Court to be able to make an effective order, that is to say, an order to which, if called upon, the Court would be able to give effect and sanction it.

(6) (*Zekia J., dissenting*) :

There was sufficient evidence before the trial Court to the effect that at the time of the institution of those affiliation proceedings in the District Court of Nicosia, the child had her ordinary residence in the District of Nicosia. Consequently the trial Court had local jurisdiction to entertain the application.

(7) *Per Bourke C.J. :* Domicil has here nothing to do with the meaning of "ordinary residence"; nor is it a matter of enquiry as to whether the child can be said to have been "ordinarily resident" in Cyprus, as distinct from the United Kingdom where she had been living with the appellant, in the sense given to those words in England for the purpose of Bankruptcy and Income Tax Laws. "Residence" has a variety of meanings according to the statute (or document) in which it is used (per Erle C.J., *Naef* v. *Mutter,* 31 L.J. C.P. 359), and a man can have two or more residences in two or more different

countries. It is of interest to note that as regards a bastardy application in England under the Bastardy Laws Amendment Act, 1872, s. 3, a woman may "reside" in the petty sessional division to which she, for convenience and without improper motive, goes temporarily to reside for the purpose of making the application: *R.* v. *Hughes,* 26 L.J. M.C. 133. There is no history in Cyprus of District authorities being chargeable for the support of illegitimate children as in the case of parishes in England, and I do not think that there is any peculiar significance to be attached to the words "ordinary residence" in the definition of "Court" in section 2 of the Illegitimate Children Law. I have no doubt that the intention was to provide for the convenient and most appropriate place for the trial of applications for orders of legitimation and affiliation. One must look to the District Court of that District where the child has his ordinary residence, that is to say, in my opinion, the District where the child has his usual home or place of abode as between the various Districts in one or other of which he may have resided for a particular purpose or on a visit of a temporary nature. No doubt the test as between the Districts is that of usual residence. In the instant case it is an established and undisputed fact that the child lived with its mother in Nicosia and there is no suggestion that she was ever taken to live in any other District. I do not think it matters that the child was residing in Nicosia for only the brief space of about two weeks before the application was brought, and in determining the question I opine that it is not necessary to contrast her period of residence in Cyprus with that during which she had lived in England or elsewhere out of Cyprus. At the time the application was filed the District where the child Susan Power had her ordinary or usual residence was the Nicosia District to the exclusion of any other District in Cyprus, and therefore the correct and proper tribunal was approached to determine the application, that is, a Court constituted by a judicial officer of the District Court of Nicosia.

Appeal allowed.
The Order of the President of the District Court of Nicosia set aside and case remitted back to him to be dealt with according to law.

Cases referred to :

R. v. *Blane* (1849) 13 Q.B. 769; 116 E.R. 1458.
Tetau v. *O'Dea* (1950) 2 All E.R. 695;
R. v. *Wilson* (1952) 2 All E.R. 706;
Naef v. *Mutter* 31 L.J. C.P. 359;
R. v. *Hughes* 26 L.J. M.C. 133;
Hampton v. *Rickard* (1874) 43 L.J. M.C. 133;
R. v. *Humphreys, Ex parte* Ward (1915) 84 L.J. K.B. 187. (1914) 3 K.B. 237;
Trimble v. *Hill* (1879) 5 App. Cas. 342;
Chettiar v. *Mahatmee* (1950) A.C. 481;
R. v. *Haralambos Herodotou* 19 C.L.R. 144.

1958
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—

MARGARET
M. POWER
V.
OZER BEHA

Appeal.

Appeal by the Applicant against the order of the District Court of Nicosia (V. Dervish, President D.C.) dated the 12th December 1957 (in Application No. 9/57) dismissing her application for an affiliation order for want of jurisdiction. The President was sitting as a Court under Section 2 of the Illegitimate Children Law, 1955.

M. A. Triantaphyllides for the Appellant.

Ali Dana for the Respondent.

Cur. Adv. Vult.

The facts sufficiently appear in the judgments delivered.

BOURKE, C.J.: This is an appeal from the dismissal of an application for an affiliation order by the President of the District Court at Nicosia, sitting as a Court under the Illegitimate Children Law, 1955. By section 2. a "Court" for the purposes of that Law means —

> "a judicial officer of the District Court of competent jurisdiction of the District where the child has his ordinary residence.".

The application was made by the mother of an alleged illegitimate child under section 8 (a) (i) of the Law and a summons was duly issued to the respondent as the alleged father under section 8 (b). The proceedings were dismissed on the ground that in the circumstances of the case there was no jurisdiction to make the order. The learned President based his conclusion on the law as settled in England following *R. v. Blane*, (1849) 13 Q.B. 769 and the later authorities affirming that decision, *Tetau v. O'Dea*, (1959) 2 All E.R. 695 and *R. v. Wilson*, (1952) 2 All E.R. 706. Under the legislation until recently applicable in England it was well-established that an affiliation order could not be made in respect of a child born abroad of a mother domiciled abroad. Whether that position still obtains having regard to the Affiliation Proceedings Act, 1957, which came into force on 1st April, 1958, it is not necessary to consider; throughout this judgment I am dealing with the old Bastardy Acts upon which *R. v. Blane* (*supra*) came to be decided and which was applied by the Lower Court.

The appellant was born in Austria where she lived until she was 19 years old. She then settled in England where she had employment and it appears that she obtained British nationality. The respondent resides in his native country, which is Cyprus, and went to England to pursue his studies. While there, according to the allegation, he met the appellant and as a result of their relations the appellant gave birth to the child in respect of whom the order was sought. The child was born in Austria in August, 1956. It appears that the appellant came to Cyprus for about 14 days in September, 1956, and again with the child on the 5th February, 1957: it does not seem to be in dispute that they have lived in Nicosia since that date. The application was filed on the 19th February, 1957, when they had been in Nicosia for some two weeks.

This is, then, a case of a child born abroad of a mother domiciled abroad and the question arising for determination on this appeal is whether the learned President was right in his conclusion that the Cyprus legislation governing the making of affiliation orders must be interpreted in the same way as the Bastardy Acts in England, under which, having regard to the cases cited and relied upon by the Court below, an order could not be made where the child was born abroad of a mother domiciled abroad.

Before I come to that, it is as well for the purpose of avoiding any confusion to refer to another aspect of the matter. The point was taken before the trial Court that the Court for the Nicosia District had no local jurisdiction to entertain the application in view of the definition of "Court" in section 2, which has been quoted above, and because, as was submitted, the child did not have her "ordinary residence" in the Nicosia District at the time of the lodging of the application. It was not suggested that the matter lay within the competency of a Court having territorial jurisdiction in any other District: but it was urged that there was no "ordinary residence" in Nicosia enabling the President or any other judicial officer of the District Court of that District to try the matter. After some discussion the learned President gave a "ruling" and intimated that opportunity would be given to the parties to produce evidence going to this question. He said—

"The issue to be tried will be limited at this stage to the question of whether the child had her ordinary residence in Cyprus when these proceedings were instituted. After hearing both sides on this issue and after reading from affidavits or listening to any further evidence which they may wish to call on this point, I shall make a ruling as to whether this Court has jurisdiction to deal further with this matter.".

Evidence was led and the Court was addressed further upon the point. The Court then proceeded to judgment and dismissed the proceedings on the ground that no Court in Cyprus had jurisdiction to make the order because the child was born abroad of a mother domiciled abroad. There was no reasoning or any express decision upon the preliminary point of residence and as to whether the appellant was entitled at all to bring the application in the Court of the Nicosia District. The fact is that the learned Judge did entertain the application to this extent—he arrived at findings as to the birth of the child and domicile at that time of the mother and applied the law as he saw it. In doing so he adjudicated upon the question whether any Court in Cyprus could in the circumstances make an affiliation order. In short he accepted, at least impliedly, that sitting as a Court of limited territorial jurisdiction he was competent to try the more general issue as to whether on the facts disclosed an affiliation order could be made under the Illegitimate Children Law. In the course of considering this issue the learned Judge expressed the view in his judgment that the definition of "Court" in section 2 did not help in its determination and went on to say—

"I believe that the interpretation of the word "Court" in that section applies to the local jurisdiction of the Courts as between the various Districts in Cyprus and not as between Courts here and elsewhere out of Cyprus."

With respect, I agree. But it seems to me that the matter must first be approached with a view to ascertaining whether there was local jurisdiction in the Nicosia Court to try the application. That depends upon where the child has her "ordinary residence" within the meaning of definition. If there was no "ordinary residence" in Nicosia then the

learned President was not competent to hear evidence going outside that particular issue or to give the judgment he did. As I say, I think that the Lower Court must be taken to have accepted that it had jurisdiction as the competent "local" Court of the District of ordinary residence and that this is anyway open to review by this Court. The essential facts are upon the record and I do not think that they are seriously in dispute. For the appellant it is naturally argued that she was before a competent Court and the advocate for the respondent has submitted here that in any event there was no ordinary residence in Nicosia, or for that matter in Cyprus, because the appellant and her child came to Nicosia a short time before she applied for the relief, and so for this reason the Nicosia Court could not adjudicate upon the application. It is unfortunate that the learned President, though he found relevant facts, did not expressly deal with the question; but no one has suggested that the judgment appealed from should be set aside as being premature to a decision as to whether the Court at Nicosia was the Court of competent territorial jurisdiction and the matter be sent back for reasoned determination of that issue with probable increase of costs. I think, as I have said, that since sufficient material is afforded, this Court can enquire as to whether there was valid resort to the Lower Court as a tribunal of limited territorial jurisdiction.

For myself, I do not find that the resolution of this preliminary question involves any particular difficulty; judging by the course of the arguments below and the references made here, there seems to have been a good deal of confused thinking on the subject. Domicil has here nothing to do with the meaning of "ordinary residence"; nor is it a matter of enquiry as to whether the child can be said to have been "ordinarily resident" in Cyprus, as distinct from the United Kingdom where she had been living with the appellant, in the sense given to those words in England for the purpose of Bankruptcy and Income Tax Laws. "Residence" has a variety of meanings according to the statute (or document) in which it is used (per Erle C.J., *Naef* v. *Mutter*, 31 L.J. C.P. 359); and a man can have two or more residences in two or more different countries. It is of interest to note that as regards a bastardy application in England under the Bastardy Laws Amendment Act, 1872, s. 3, a woman may

"reside" in the petty sessional division to which she, for convenience and without improper motive, goes temporarily to reside for the purpose of making the application: *R.* v. *Hughes*, 26 L.J. M.C. 133. There is no history in Cyprus of District Authorities being chargeable for the support of illegitimate children as in the case of parishes in England, and I do not think that there is any peculiar significance to be attached to the words "ordinary residence" in the definition of "Court" in section 2 of the Illegitimate Children Law. I have no doubt that the intention was to provide for the convenient and most appropriate place for the trial of applications for orders of legitimation and affiliation. One must look to the District Court of that District where the child has his ordinary residence, that is to say, in my opinion, the District where the child has his usual home or place of abode as between the various Districts in one or other of which he may have resided for a particular purpose or on a visit of a temporary nature. No doubt the test as between the Districts is that of usual residence. In the instant case it is an established and undisputed fact that the child lived with its mother in Nicosia and there is no suggestion that she was ever taken to live in any other District. I do not think it matters that the child was residing in Nicosia for only the brief space of about two weeks before the application was brought, and in determining the question I opine that it is not necessary to contrast her period of residence in Cyprus with that during which she had lived in England or elsewhere out of Cyprus. At the time the application was filed the District where the child Susan Power had her ordinary or usual residence was the Nicosia District to the exclusion of any other District in Cyprus, and therefore the correct and proper tribunal was approached to determine the application, that is, a Court constituted by a judicial officer of the District Court of Nicosia.

I pass to the problem raised by the decision of the lower Court, that is, whether the relevant provisions of our Illegitimate Children Law, 1955, are to be construed in the same way as the legislation providing for affiliation orders in England, having regard to *R.* v. *Blane* (*supra*) and the line of cases deciding that that old case was still good law. In an enquiry of this kind it is to be remembered that we have not only differences in the respective enactments but also

a wholly differing historical background to the law. Indeed it is putting it too high to suggest that there is any such background so far as the law in Cyprus is concerned, because until the Illegitimate Children Law was passed in 1955 there was no statutory provision enabling the making of affiliation orders. There was the Wills and Succession Law, Cap. 220, which provided in Part IV for legitimation of illegitimate children, and I accept it from learned counsel that the practice pursued to secure maintenance from the father in respect of an illegitimate child was to obtain a legitimation order within twelve months of the birth of the child (s. 54 (2) (b) Cap. 220) and then institute penal proceedings against him for failure to maintain his child. This very unhappy state of affairs was sought to be remedied by the introduction in 1955 of the Illegitimate Children Law, which provided for both legitimation and affiliation. For the purposes of that law an "illegitimate child" is defined (section 2) to mean "a child born out of lawful wedlock" and in part III covering affiliation the word "bastard", which has a special significance in connection with the application of the English Acts, is not employed. At this stage it is appropriate to refer to the English cases. In *Hampton* v. *Rickard*. (1874) 43 L.J. M.C. 133, Cockburn C.J. said—

> "The Bastardy Acts were passed with the object of preventing parishes from being burdened with the support of illegitimate children."

Going further back to the all-important case of *R.* v. *Blanc*. (1849) 116 E.R., 1458, the judgment of Coleridge, J. was as follows :—

> "The provisions in stat. 7 & 8 Vict. c. 101, respecting bastardy have, certainly, modified the old law on the subject in many important particulars; but the foundation of the former system remains. The burden cast upon parishes by the birth of bastard children was the foundation of that system; and the object was to relieve parishes from that burden. The bastardy provisions in the earlier statutes to which I referred during the argument are referable to the birth in some parish; and when it is said, in the 71st section of stat. 4 & 5 W. 4, c. 76, "That every child which shall be born a bastard after the passing of

this Act shall have and follow the settlement of the mother of such child, until such child shall attain the age of sixteen," there is a clear reference to the former system. The Legislature in all these statutes is obviously dealing with bastards born in some parish; that is, in this country. The word "bastard", therefore, has always been used by the Legislature in a sense known to our law, and as denoting all the incidents which belong to the status of bastardy according to our law. If the word "bastard" is, on the other hand, to comprehend any bastard born in any part of the world, an immense field of inquiry must be traversed respecting the status of children according to the different laws of different countries. On this ground, I am of opinion that this order is bad. There may be two sides to the question of policy and humanity which have been touched on in the argument; but I have yet to learn that it is the duty of Courts of Law to enter upon such an inquiry."

And in the same case Erle, J. said :—

"It is our duty to quash these orders. It is quite clear that our statutes relating to bastardy never contemplated the case of a child born a bastard in a foreign country."

The statute in force at the time of the decision in *R.* v. *Blane* (*supra*) was the Poor Law Amendment Act, 1844 (s. 2). Then came *R.* v. *Humphreys, Ex parte Ward,* (1915) 84 L.J. K.B. 187, in which the application was made under the similarly worded s. 3 of the Bastardy Laws Amendment Act, 1872. In that case the majority of the Court considered that if the applicant was an English subject and was domiciled in England, she could obtain a bastardy order notwithstanding that she was actually delivered of the child out of the country. In his dissenting judgment Avory, J. said this :—

"If this case were *res integra,* I should unhesitatingly come to the same conclusion as that which my brother (Bankes J.) has already expressed, particularly in view of the fact that this statute contemplates that the application may be made by the woman before the birth of the child."

The learned Judge however came to the conclusion that *R.* v. *Blane* (*supra*) did not permit any extension or widening

of the rule and he quotes that very important sentence occurring in the passage from the judgment of Coleridge J. given above—"The legislature in all these statutes is obviously 'dealing with bastards born in some parish; that is in this country." In *Tetau* v. *O'Dea*, (1950 2 All E.R. 695 *R.* v. *Blane* (*supra*) was held to be still good law; the following is taken from the judgment of Goddard C.J. :—

> "The matter which impresses me is that the legislature, which must be presumed to have had knowledge of the decision in *R.* v. *Blane*, passed the Bastardy Laws Amendment Act, 1872, but did not in any way purport to overrule the decision in *R.* v. *Blane* or to make any provision that would have the effect of enabling the courts to distinguish *R.* v. *Blane*..... In my opinion *R.* v. *Blane* must be regarded as good law. It has never been reversed. The grounds on which it was distinguished in *R.* v. *Humphreys, Ex parte Ward*, do not exist in this case. Some day it may have to be considered whether the grounds on which it was distinguished are correct, and if so, which line of authority the court should follow, but that does not arise in the present case because the grounds on which the court distinguished *R.* v. *Humphreys, Ex parte Ward*, from *R.* v. *Blane* do not exist here."

R. v. *Wilson*, (1952) 2 All E.R. 706 is another case in which *R.* v. *Blane* was followed. Some three months subsequent to the decision in *Tetau* v. *O'Dea* (*supra*) the Maintenance Orders Act, 1950, was passed and, as appears from the quotation from Lushington's Law of Affiliation and Bastardy, 7th ed. (1951) p. 187, given in the editorial note to the report of *R.* v. *Wilson* under reference, it was apparently thought in some quarters that the purpose and effect of s. 27 (2) of that Act was to overrule the decision in *R.* v. *Blane*. *R.* v. *Wilson* however decided that this was not so, though in his judgment McNair J. said that he "was at first disposed to think that the law might have been changed by s. 27 (2) of the Maintenance Orders Act, 1950."

This present case falling to be decided under the Cyprus Law is *res integra* and it remains to be adjudged whether there is any good and compelling reason why that Law should be given a construction based on *R.* v. *Blane*. In the Illegitimate Children Law, 1955, as has already been noted, the word

"bastard" is not employed. The Law was not passed with the object of preventing parishes from being burdened with the support of illegitimate children. The "parish" of England is unknown to Cyprus and it cannot be said, to revert to the judgment of Coleridge J. in *R.* v. *Blane,* that there are or were any provisions in the Cyprus Law "referable to the birth in some parish" or that our Law "is obviously dealing with bastards born in some parish; that is in this country" (Cyprus). There are no complications rooted in the history of the legislation in this Colony; as has been observed, affiliation orders only came into being as a result of the Law passed in 1955 and section 8 of that law differs in many respects from the sections enabling the making of such orders in the Bastardy Acts in England. There is the common provision that the mother of an illegitimate child may apply at any time before the birth of the child; she may also apply at any time within five years from the birth. And "when the mother is dead the person having the custody of the child, or where the child is a charge on public funds a welfare officer, at any time within five years from the birth of the child may apply for an order": (s. 8 (a) (ii)). It strikes me as very odd if this had to be construed so that, for instance, a welfare officer would be barred from obtaining an order because the child was born out of Cyprus. Had the intention been to exclude children born out of Cyprus it would have been very easy to legislate and give effect to such purpose, but the definition in s. 2 of "illegitimate child" is simply "a child born out of lawful wedlock." The learned President in coming to the decision he did was plainly exercised by the consideration of the difficulties that could arise where it is sought to establish the status of a child born in a country abroad. It is true that this was the subject of comment by Coleridge, J. in *R.* v. *Blane* (*supra*) and was again adverted to by Lush, J. in *R. v. Humphreys, Ex parte Ward* (*ibid.* 191); but I do not think that this was the reason for the decision in *R.* v. *Blane* (*supra*) which turned upon the old system concerned with the birth of bastard children in parishes and the object to relieve parishes from financial burden. As Coleridge J. said in that case, the foundation of the former system remained and the earlier statutes are referable to the birth in some parish; that foundation was carried on in the statute of 1844 (7 & 8 Vict.

c. 101 s. 2)—and the statute of 1872 (35 & 36 Vict. c. 65 s. 3)—so that the Court was impelled to conclude that the Legislature was "obviously dealing with bastards born in some parish; that is in this country" (per Coleridge J., *ibid* p. 1459). This line of reasoning cannot be applied in Cyprus; a "District" here cannot be regarded as equivalent to a "parish" in England. I do not think that merely because difficulties may arise in establishing that a child born abroad was born out of wedlock, such can constitute a valid ground for giving the same restricted effect to the Illegitimate Children Law as has been done in the case of the English statutes. Difficulties can be surmounted and it rests with an applicant to provide the necessary proof or fail to obtain the relief sought. If this was a valid ground for construing the Law to exclude the making of an affiliation order in the case of a child born out of Cyprus, there would seem to be no good reason for adopting a different interpretation in respect of a legitimation order applied for under the same Law where the child is born abroad; but no one suggests, and I do not think could reasonably suggest, that an order of legitimation under s. 6 of the Illegitimate Children Law cannot be made in a case where the child was delivered outside this country.

In my opinion the English cases do not apply and the decision of the Court below that there is no jurisdiction is wrong.

I would allow the appeal with costs, set aside the judgment of the Lower Court and remit the matter for trial in accordance with law.

ZEKIA, J.: The appellant in this case, an Austrian by birth, after attaining the age of 19 went to England and settled there. She came to own a house in that country which became her domicil of choice. She acquired British nationality and lived there for 7—8 years until the beginning of 1957 when she left for Cyprus and arrived here on the 5th February, 1957, with her child, Suzan, who was born in Austria on the 25th August, 1956. She alleges that she had sexual relations with the respondent who was pursuing his legal studies in England at the time of the conception of the said child and that the respondent was the father of the said child.

On the 19th February, 1957, that is a fortnight after her arrival in Cyprus, she filed an application for an affiliation order under section 8 of the Illegitimate Children Law, 1955. A preliminary objection was taken by the respondent as to the jurisdiction of the Court to deal with the subject matter of this application. It was contended that the child Suzan was not ordinarily resident in this country within the definition of section 2 of the said law and therefore the District Court of Nicosia and indeed the Courts in this country were not of competent jurisdiction to deal with the application. It seems that the arguments in the early stage of the proceedings in the Court below were directed to the issue whether the child involved had her ordinary residence within the District of Nicosia, but later the point in issue was amplified and the main issue turned to be whether a child born abroad of a mother domiciled abroad could institute such proceedings in a Court of the Colony at all, irrespectively of the child being or becoming ordinarily resident of a particular District in this Island. The learned President of the District Court of Nicosia gave judgment on this issue and only incidentally touched the question of ordinary residence.

The great part of the arguments therefore before this Court was directed to the main issue and we have been invited to say whether the judicial interpretation placed on the Bastardy Laws Amendment Act, 1872, and the earlier Act on the same subject, the Poor Law Amendment Act, 1844, in respect of the affiliation of children born out of wedlock outside England from a mother domiciled abroad should also apply to the relevant sections of the Illegitimate Children Law, 1955.

R. v. *Blane* (1), followed in *Tetau* v. *O'Dea* (2) and *R.* v. *Wilson* and others (3) authoritatively established that an affiliation order cannot be issued against a putative father where the child is born outside England of a mother domiciled abroad. If these authorities can be said that either in law or in practice are binding on the Courts of the Island or these Courts could properly be guided by them, then the decision of the learned President has to be sustained. How far our

(1) 116 English Reports, 1458
(2) (1950) 2 All E.R., 695
(3) (1952) 2 All E.R., 706

Courts should consider themselves bound either in law or in practice by English judicial decisions can be gathered from the following authorities. In *Trimble* v. *Hill* (1) it was held that where a Colonial legislature has passed an Act in the same terms as an Imperial Statute and the latter has been authoritatively construed by a Court of Appeal in England such construction should be adopted by the Courts of the Colony. Sir Montague stated the view of the Committe in the following words:

"Their Lordships think the Court in the Colony might well have taken this decision as an authoritative construction of the statute. It is the judgment of the Court of Appeal, by which all the Courts in England are bound, until a contrary determination has been arrived at by the House of Lords. Their Lordships think that in colonies where a like enactment has been passed by the legislature, the Colonial Courts should also govern themselves by it."

In *Chettiar* v. *Mahatmee* (2) the Judicial Committee approved *Trimble* v. *Hill*. Sir John Beaumont who delivered judgment on behalf of the Committee after citing the part we quoted from the judgment in Trimble added: "This, in their Lordships' view, is a sound rule, though there may be in any particular case local conditions which make it inappropriate."

This Court after referring to *Wallace Johnson* v. *R.* (3), *Akerele* v. *R.* (4), and *Kwaku* v. *Mensah* (5) in *Queen* v. *Haralambos Herodotou* (6) made the following statement on this point:

"However, in our opinion, the Courts of the Colony are bound to follow the decisions of the Privy Council, the House of Lords and the Court of Appeal and the Court of Criminal Appeal in England when deciding matters in which the Law of Cyprus and the Law of England are the same; and the Courts of unlimited jurisdiction in the Colony should in such matters give to the decision of the High Court of Justice in England the same comity as is given to Courts of concurrent jurisdiction. This has

(1) (1879) 5 App. Cas. 342.
(2) (1950) A.C. 481, at 492.
(3) (1940) 1 All E.R., 241.
(4) (1943) 112 L.J.P.C. 26.
(5) (1946) A.C. 83.
(6) 19 C.L.R. 144, at p. 116.

long been the practice of the Courts in the Colonial territories. When cases are heard in the Privy Council on appeal from colonial courts and relate to a matter upon which the Law of England and the Law of the Colony is in all material respects the same, the English authorities are cited and relied upon. Two such cases have been referred to by the Attorney-General, *Kwaku Mensah* v. *The King* (1946) A.C. 83; and *Akerele* v. *Rex* (1943) 112 L.J.P.C. 26. These cases came from the Gold Coast and Nigeria respectively; they were criminal cases and the Criminal Code of each colony expressly provides that no person shall be punished except in accordance with the Code and not under the common law. Each appellant was convicted of an offence under the criminal code of his colony but, since the offence charged under the code was the same in all material respects with the English law, the English cases were treated as authoritative.".

The answer to the main issue therefore depends on this: Is the Illegitimate Children Law, 1955, and the Bastardy Law Amendment Act, 1872, in *pari materia?* Is the *ratio decidendi* in *R.* v. *Blane* (*supra*), the leading case on the point under review, applicable for the construction of the part of the Illegitimate Children Law, 1955, dealing with affiliation orders? If so, I am of opinion that the judicial interpretation placed on the Act by the authoritative English Courts should be followed in this country.

The predominating object of both legislations is the same, namely, making provision for the maintenance of a child born out of wedlock by the putative father. The sphere of operation of both the Act and the Law appears on the face of it to be the same. In both enactments there is no reference to the case of a child born outside the country. In one mention is made of the residence of the mother and in the other of the ordinary residence of the child. The words "Bastard", "Illegitimate Child" and "Natural Child" are in their primary meaning synonyms. But if the word "bastard" employed in the relevant Acts in England acquired a connotation limiting its primary meaning and thus the word was rendered distinct for the purpose of the Acts from words illegitimate and natural child, then the contention that the Acts and the Law dealing with the same subject-matter are in *pari materia* in material respects

is weakened considerably because there exists a striking dissimilarity in the wording of the Act and the law in question in a material respect. One is bound to come to this conclusion when *R. v. Blane* is read with some care. All three judges sitting in that case (Lord Denman, C.J., Coleridge, L.J., and Early, L.J.) were of opinion that the word "bastard" occurring in the relevant Act referred clearly to children born out of wedlock in some parish in England. Taking into account the historical background of the Bastardy Acts which formed already a system before the passing of the Poor Law Amendment Act, 1844, the Court was of opinion that the word "bastard" has acquired an additional qualification to its primary meaning and referred only to an illegitimate child born in a parish in England.

We have no history of affiliation orders before the enactment in 1955. A child born out of wedlock might have been legitimated under the provisions of the repealed Wills and Succession Law and a child after acquiring the status of a legitimate child might incidentally acquire the right to maintenance from his lawful father.

Coleridge, L.J., clearly referred to the earlier Acts in ascertaining the meaning of the word "bastard" occurring in the Poor Law Amendment Act and Early, L.J., stated (in his own words): "it is quite clear that our statute relating to bastardy never contemplated the case of a child born a bastard in a foreign country". Assuming that the Act and the Law in question are in *pari materia* we have further to consider the *ratio decidendi* of the cases relied upon because in considering the binding effect of English authorities or indeed of the earlier judicial decisions of our Courts of authority we should examine the reasons and principles which constitute the *ratio decidendi* of those decisions as it is the *ratio decidendi* which binds the lower courts or the courts of concurrent jurisdiction. If the reasons and principles on which an authoritative Court's decision is founded are inapplicable to a case under review the former decision cannot serve as an authority for the latter. I read from Halsbury's Laws of England (Vol. 19, 2nd Ed., 251):

> "It may be laid down as a general rule that that part alone of a decision of a Court of law is binding upon Courts of co-ordinate jurisdiction and inferior Courts

which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined.".

In the case of *R. v. Blane* (*supra*) the paramount reason for the decision appears to be the additional restrictive meaning attached to the word "bastard" in the light of the history of the statutes dealing with the bastardy provisions and the second reason is the fact that the Bastardy Acts were intended to relieve parishes from the burden of maintenance of children born out of wedlock which burden was cast on them. This is clearly stated in the judgments of Lord Denman, C.J. and Coleridge, L.J. (*ibid.*). The third reason given by Coleridge, L.J., alone, is the inconvenience to be occasioned if the word "bastard" was to comprehend any bastard born in any part of the world which would necessitate (in his own words) "an immense field of inquiry to be traversed respecting the status of children according to the different laws of different countries".

In *Tetau v. O'Dea* it appears that the Court in following *Blane's* case relied on the first two chief reasons given in the said case. In *R. v. Wilson* (*supra*) it was found that the case was not distinguishable from the previous one, namely *Tetau v. O'Dea* (*supra*). In *R. v. Humphreys* (1) the majority of the Court (Bankes and Lush, J.J., Avory, J., dissenting) held the 3rd ground given by Lord Coleridge in *R. v. Blane* as to the inconvenience to ascertain a foreign law regulating the status of a child born abroad to be the governing principle in that case. The weight of authorities however seems to indicate that the first two grounds constitute the *ratio decidendi* in *R. v. Blane.*

The firsst two reasons in *R. v. Blane* cannot properly be employed in the construction of the Illegitimate Children Law, 1955; as we said, there is no historical background similar to the one obtaining in England where the word "bastard" occurring in the English statutes bears a restrictive meaning which is not the case with the word "illegitimate child" mentioned in the Cyprus Law and the administration here is not legally bound to maintain children born out of wedlock.

(1) (1914) 3 K.B. 237.

The first legislative step taken here in this direction is the Children Law, 1956, where by section 3 the Director of the Welfare Services is empowered to receive into his care a child under 16 under certain conditions for maintenance and up-bringing. But the assumption of parental rights and maintenance of this class of children by the Director is quite discretionary and is not in the nature of a duty imposed on him. Inconvenience was the only ground left for adhering to the English authorities. Indeed the difficulty of embarking into inquiries of the foreign law governing the status of a child and also to the events (including the alleged intimate relations of the parties taking place abroad) is common in the application of both the Bastardy Acts and the Illegitimate Children Law; but such inconvenience, when nothing can help from within the statute to ascertain intention and no other source to depend on, should not reach the degree of intolerableness so as to lead one to the conclusion that the legislative authority could not have intended the application of the law to the case of a child born abroad from a mother domiciled in a foreign country. On the ascertainment of the intent of the legislature Lord Goddard, C.J., in *Tetau* v. *O'Dea* (*supra*) said on p. 698 :

> "The matter which impresses me is that the legislature which must be presumed to have had knowledge of the decision in *R.* v. *Blane*, passed the Bastardy Laws Amendment Act, 1872, but did not in any way purport to overrule the decision in *R.* v. *Blane*, or to make any provision that would have the effect of enabling the courts to distinguish R. v. Blane."

The presumption referred to by Lord Goddard, however, cannot be relied upon in respect of colonial legislation. In *Chettiar* v. *Mahatmee* (cited earlier) Sir John Beaumont said (p. 491 - 2) :

> "It is, however, one thing to presume that a local legislature, when re-enacting a former statute, intends to accept the interpretation placed on that statute by local courts of competent jurisdiction with whose decision the legislature must be taken to be familiar; it is quite another thing to presume that a legislature, when it incorporates in a local Act the terms of a foreign statute, intends to accept the interpretation placed on those terms by the

courts of the foreign country with which the local legislature may or may not be familiar. There is no presumption that the people of Ceylon know the Law of England, and in the absence of any evidence to show that the legislature of Ceylon at the relevant date knew, or must be taken to have known, decisions of the English courts under the Money-lenders Act, there is no basis for imputing to the legislature an intention to accept those decisions.".

For this reason I respectfully agree with the learned Chief Justice that the Cyprus Courts are competent to deal with the case of illegitimate children born outside the Colony provided the conditions prescribed under the Law are complied with.

The second point relates to the requirement of ordinary residence of the child in a particular district before proceedings can be entertained by a Court of the country. This point was not clearly decided by the learned President though he expressed his opinion in his judgment that the requirement of ordinary residence relates only to the determination of local jurisdiction.

The fact that the requirement of the ordinary residence of the child is included in the definition of the word "Court" and not in the words "illegitimate child" supports the view that the primary object of the definition of "Court" is to determine the territorial jurisdiction of a particular District Court in relation to the other Courts of the Island. This need not be however the sole object of the definition in question. This requirement might have to be considered not only in relation to other Courts but also independently as a prerequisite before the assistance of any Court is invoked in an application for legitimation or for an affiliation order. There might be some element of duration implied in the words "ordinary residence" which has to be determined in some way or other on some principle. Whether the requirement for ordinary residence in the particular district has been fulfilled before the institution of the present proceedings is a point that has not been fully argued before us; and indeed the learned counsel of the appellant submitted that after the decision on the major issue the question of "ordinary residence" should go back to the trial Court. Elucidation of further facts and findings on such facts might

be of some use for a decision on this matter and I prefer therefore to reserve my opinion on this. The majority of this Court having determined this point also no doubt their decision should prevail.

ZANNETIDES, J.: The points for consideration and decision in this appeal are two:

(a) The general point of the extent of the application of Part III of our Illegitimate Children Law, 1955, which deals with affiliation applications for illegitimate children, and

(b) the question of the local jurisdiction of the various District Courts in Cyprus and more particularly of the Nicosia District Court to deal with such applications.

As to the first point, *i.e.*, the question of the extent of the application of Part III of our Law, it was argued by the respondent that that part of the law ought to receive the same construction which was given to the corresponding English statutes by the various English decisions to which we were referred. The corresponding English statutes are, or rather were—because they now have been all consolidated in the Affiliation Proceedings Act, 1957, which came into operation on the 1st April, 1958—the Poor Law Amendment Act, 1844, section 2, and the Bastardy Laws Amendment Act, 1872, section 3.

The English decisions which interpreted these statutes started with *R.* v. *Blane* (*supra*) the leading case, which was decided in 1849 and is reported in 116 English Reports p. 1458 and which was followed in *Tetau* v. *O'Dea* decided in 1950 and reported in (1950) 2 All E.R., 695 and more recently in *R.* v. *Wilson* decided in 1952 and reported in (1952) 2 All E.R., 706 which decided that *R.* v. *Blane*, the leading case, was still good law. The interpretation given by *Blane* and which was followed by the other cases was, as far as we are concerned here, that the statutes applied only to bastards born in the country and not abroad.

I had the opportunity of reading the judgments of both the Hon. the Chief Justice and Hon. Mr. Justice Zekia on this point and I am in agreement with both judgments that our law, for the reasons given in both judgments, should

not be given the narrow construction placed upon the English statutes by the English cases and that our law applies to all illegitimate children wherever born provided the other requirements of our Law are present.

While on this point I would like to mention that one of these requirements is the presence of the alleged father within the jurisdiction; this can be easily deduced particularly from sections 8 and 12 of Part III of the Law; the alleged father must be within the jurisdiction for the Court to be able to make an effective order, that is to say, an order to which, if called upon, the Court would be able to give effect and sanction it.

As to the second point, i.e., whether the District Court of Nicosia or rather a judicial officer of this Court had jurisdiction to entertain the application, the question turns on the interpretation of the word "Court" in section 2, the definition section, of our Law which gives jurisdiction to a judicial officer of the District Court of the District where the infant has its ordinary residence. Evidence was led regarding the residence of the infant, Suzan, and the President of the District Court of Nicosia who tried the case intimated during the course of the case that he would make a ruling on this point in due course. However, in his judgment although he expressed the opinion that the word "Court" was only meant to distinguish between the various District Courts within Cyprus locally, with which opinion I fully agree, he failed to make a finding that the infant was ordinarily a resident in the District of Nicosia. It may be as the Hon. the Chief Justice says in his judgment that having already expressed his opinion about the interpretation of the word "Court" he impliedly accepted that he had jurisdiction, or very probably the point may have been lost sight of due to the importance of the other issue and his decision on it. Be that as it may, I am of the opinion that there is sufficient evidence that the infant was an ordinary resident in the District of Nicosia in relation to the other Districts and that it will serve no useful purpose if the case were sent back for the Judge to try this issue, and I think this is a case in which use may be made of Rule 8 of Order 35 of the Civil Procedure Rules, which empowers this Court to draw its own inferences of fact, and I am of opinion, as I said,

that there is sufficient evidence of residence and that the President of the District Court of Nicosia who tried the case had jurisdiction and I agree with the judgment of the Hon. the Chief Justice that the appeal should be allowed with costs and the judgment of the Court below be set aside and the case be remitted for trial in accordance with the law.

Appeal allowed with costs. The order of the President of the District Court of Nicosia set aside and case remitted back to him to be dealt with according to Law.