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

MARGARET POWER, OF LONDON

Appellant (Plaintiff)

v.

OZER BEHA, OF NICOSIA

Respondent (Defendant).

(Civil Appeal No. 4245)

1958
Feb. 24
March 3

MARGARET POWER
v.
OZER BEHA

Jurisdiction—Turkish Family Courts—"Religious matters"—Exclusive jurisdiction of the Turkish Family Courts—The Turkish Family Courts Law, 1954, Section 2 (a) and (b); Sect. 8 (1).

"Betrothal"—Included in the definition of "religious matters" under Sect. 2 (a)—Meaning of "betrothal"—The Turkish Family (Marriage and Divorce) Law, 1951, Section 4—Promise to marry—Promise given outside Cyprus by a Moslem man to marry a non-Moslem woman—Breach of, occurring in Cyprus. Action for breach of promise brought by the woman in the District Court of Nicosia, for (a) damages (b) for money alleged to have been advanced by the Pff. to the Def. on the latter's promise to marry her—The matter is one within the exclusive jurisdiction of the Turkish Family Courts.

The Appellant brought an action in the District Court of Nicosia against the Respondent for damages for breach of promise to marry her. There was also a claim for the return of £100 alleged to have been advanced by the Appellant to the Respondent on the latter's alleged promise to marry her. The Appellant is a woman, Austrian by birth, who became a naturalised British subject and resided and worked in London. She is a non-Moslem. The Respondent is a Turk professing the Moslem faith, born and domiciled in Cyprus. The alleged promise was given outside Cyprus and the alleged breach occurred in Cyprus. Before the trial Court the Respondent took successfully the point that as he was a man professing the Moslem faith the Court had no jurisdiction to entertain the action, which falls within the exclusive jurisdiction of the Turkish Family Courts under the Turkish Family Courts Law, 1954, Section 8 (1) and Sect. 2 (a).

By Section 8 (1) of the Turkish Family Courts Law, 1954 (*see post*) the Turkish Family Courts have exclusive jurisdiction to hear and determine "religious matters". By Section 2 (a) "religious matters" are defined to mean the following concerning persons of the Moslem faith: "betrothal, marriage and divorce and matters incidental thereto".

By Section 8 (1) the Turkish Family Courts have exclusive jurisdiction in the matters referred to, *inter alia*, in Sect. 2 (a) notwithstanding that one of the parties to a betrothal or marriage is a non-moslem woman who has betrothed or married a moslem man. The whole argument advanced for the Appellant was that the word "betrothal" occurring in Section 2 (a), must be given a meaning limited in its scope to betrothals that have been concluded in Cyprus among members of the Turkish Moslem Community. A betrothal between Moslems (or between a Moslem man and a non-Moslem woman) taking place outside Cyprus, for instance in England, and governed by the *lex loci contractus*, could not, in the submission for the Appellant, be a "betrothal" within Section 2 (a) because the Turkish Family Courts could not apply the law of the contract but are confined to the law as provided by Section 10 of the Turkish Family Courts Law, 1954. The Supreme Court affirming the decision of the Court below,

Held: (1) Whether or not it may be thought on the pleading that the intention is disclosed that the marriage should take place in Cyprus, that the marital home was to be here and that the intention of the parties was that Cyprus Law should prevail (see *Hansen* v. *Dixon* (1906) 96 L.T. 32), and as to that we express no opinion, the material provisions governing the jurisdiction are to be found in Section 8 (1) and Section 2 (a) of the Turkish Family Courts Law, 1954. (We would also refer to Section 34 of the Courts of Justice Law, 1953).

(2) "Betrothal" arises where a man and a woman bind themselves with a promise to marry or, as it is put in Section 4 of the Turkish Family (Marriage and Divorce) Law, 1951 "betrothal is the mutual promise of a man and a woman to marry one another"; that is ordinary English usage and there is nothing obscure or peculiar about the use of the word for the purposes of the Turkish Family Courts Law, 1954.

(3) Consequently, the matter in the instant case is "a religious matter" for the determination of which the Turkish Family Courts have been given exclusive jurisdiction under Section 8 (1) of that Law.

(4) It has been argued on behalf of the Appellant that a "betrothal" between Moslems or between a Moslem man and a non-Moslem woman, taking place outside Cyprus and governed by the *lex loci contractus*, as it is suggested in the case here, could not be a "betrothal" within Section 2 (a) because the Turkish Family Court could not apply the law of the contract but is confined to the religious law as provided under Section 10 of the Turkish Family Courts Law, 1954. The argument loses sight of the fact that there may be "betrothals" among Moslems taking place in countries to which Sheri Law would in any way apply. Reference has been made to *Niboyet* v. *Niboyet* (1878—9) 4 P.D.1 and *In re Pearson 61 L.J.Ch. 585* and *In re A.B. and Co.* (1900) 1 Q.B. 541, which we find of no assistance. One recognises that there is a governing principle "that all legislation is *prima facie* territorial, that is to say, that the legislation of any country binds its own subjects, and the subjects of other countries who for the time being bring themselves within the allegiance of the legislating power". (see

In re Pearson supra at p. 588). But in the instant case the Appellant has come to Cyprus, has sought her remedy here, and has instituted proceedings in respect of the alleged breach occurring in Cyprus of a promise to marry her alleged to have been made by the Respondent who is admittedly a person of the Moslem faith. There is no sufficient reason therefore why the word "betrothal" occurring in the Turkish Family Courts Law, 1954, should be given the restricted meaning advanced by counsel for the Appellant i.e. that the word "betrothal" in the Section under consideration must be confined to embrace only betrothals occurring in Cyprus.

(5) As to the claim for £100 alleged to have been advanced by the Plaintiff to the Defendant on the strength of his alleged promise to marry her, it must clearly be regarded as a matter incidental to the alleged "betrothal" within the meaning of Section 2 (a) of the Law, and, therefore, it falls within the exclusive jurisdiction of the Turkish Family Courts.

Appeal dismissed.

Cases referred to :

Niboyet v. *Niboyet* (1878—9) 4 P.D.1 ;

In re Pearson 61 L.J. Ch. 585 ;

In re A.B. and Co. (1900) 1 Q.B. 541 ;

Hansen v. *Dixon* (1906) 96 L.T. 32.

Appeal.

Appeal by the Plaintiff against the order of the District Court of Nicosia (V. Dervish, P.D.C. and O. Feridoun, D.J.) dated the 12th December 1957 (Action No. 492/57) dismissing her action for damages for breach of promise on the ground of want of jurisdiction.

M. A. Triantaphyllides for the Appellant.

Ali Dana for the Respondent.

Cur. Adv. Vult.

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

BOURKE, C.J. : The appellant brought an action for damages for breach of promise to marry against the respondent in the District Court of Nicosia. There was also a claim for the return of £100 alleged to have been advanced by the appellant to the respondent on the strength of the latter's representations concerning his matrimonial intentions. The appellant is a woman

of 27 years of age, Austrian by birth, who became a naturalised British subject and resided and worked in London. She is a non-Moslem. The respondent is a Turk professing the Moslem Faith who was born and is domiciled in Cyprus; he is an Advocate by profession and is aged 23 years. In 1952, when he was a minor of about 18 years of age, he went to England to pursue his legal studies and, according to the statement of claim, in that year he met the appellant and they became engaged to marry. It is averred that the mutual promises to marry each other were reiterated up to January, 1957. In December, 1955, the respondent returned to Cyprus and settled down to the practice of his profession. In paragraph 5 of the statement of claim it is alleged that in 1956 the appellant visited Cyprus and that the parties behaved in all respects as an engaged couple about to marry. According to paragraph 6, "It was agreed before the defendant (respondent) left London that the marriage would be celebrated within a period of about two years from the defendant's return to Cyprus so as to enable defendant to make some headway in life." By paragraph 8 it is alleged that in December, 1956, the respondent decided to break the engagement and in January, 1957, announced his betrothal to a Turkish girl from Cyprus. In February, 1957, the appellant came to Cyprus and it is averred (paragraphs 1 and 10) that she did so in order to settle here and be near the respondent and that she intends to remain here indefinitely. In May, 1957, having, according to the allegation, discovered the respondent's real intentions, she instituted these proceedings in the District Court.

Before the lower Court the respondent successfully took the point that as he was a Turk professing the Moslem Faith the District Court had no jurisdiction to entertain the action, which should have been brought in the Turkish Family Court as the tribunal given exclusive jurisdiction to try such cases under the Turkish Family Courts Law, 1954. The question now arising for determination is whether the decision by the District Court upholding the respondent's objection to the jurisdiction was right. I am in agreement with learned Counsel on each side that in seeking the answer it is not necessary to consider provisions occurring in the

Turkish Family (Marriage and Divorce) Law, 1951. Whether or not on the pleading referred to it may be thought that the intention is disclosed that the marriage should take place in Cyprus, that the marital home was to be here and that the intention of the parties was that Cyprus Law should prevail (see *Hansen v. Dixon* (1906) 96 L.T. 32), and as to that I express no opinion, the material provisions governing the jurisdiction are to be found in sections 8 (1) and 2 (a) of the Turkish Family Courts Law, 1954; I would refer also to section 34 of the Courts of Justice Law, 1953. There really has been no dispute about that as the argument went before this Court, though there is a difference as to the meaning to be given to the word "betrothal" in section 2 (a) of the Turkish Family Courts Law.

Section 8 (1) reads as follows :-

"8 (1) The Turkish Family Courts shall have jurisdiction to hear and determine religious matters and shall, subject to the provisions of section 3, have exclusive jurisdiction in matters referred to in paragraphs (a) and (b) of the definition of "religious matters" in section 2, notwithstanding that one of the parties to a betrothal or marriage is a non-moslem woman who has betrothed or married a moslem man."

By section 2 (a) "religious matters" are defined to mean the following concerning persons of the Moslem Faith —

"(a) betrothal, marriage and divorce and matters incidental thereto."

A betrothal arises where a man and a woman bind themselves with a promise to marry or, as it is put in section 4 of the Turkish Family (Marriage and Divorce) Law, 1951, "the betrothal is the mutual promise of a man and woman to marry one another"; that is ordinary English usage and there is nothing obscure or peculiar about the use of the word for the purposes of the Turkish Family Courts Law, 1954. I say that because the whole argument advanced for the appellant depends on this, that the word occurring in section 2 (a) must be given a special meaning, or rather be limited in its scope to betrothals that have been concluded in Cyprus among members of the Turkish Moslem community. A betrothal between Moslems or between a

Moslem man and a non-Moslem woman taking place outside Cyprus, for instance in England, and governed by the *lex loci contractus*, as it is suggested is the case here, could not, it is submitted, be a "betrothal" within section 2 (a) because the Turkish Family Court could not apply the law of the contract but is confined to the religious law as provided under section 10 of the Turkish Family Courts Law, 1954. To give exclusive jurisdiction in such cases to a Court that is limited as to the law which it can apply cannot, it is submitted, have been intended, and so the word "betrothal" in the section under consideration must be confined to embrace only betrothals occurring in Cyprus. The argument loses sight of the fact that there may be betrothals among Moslems taking place in countries to which the Sheri law would anyway apply. Reference has been made to *Niboyet v. Niboyet* (1878—9) 4 P.D. 1, *In re Pearson* (1892) 61 L.J.Ch. 585 and *In re A.B. & Co.* (1900) 1 Q.B. 541, which I do not find of assistance. One recognises that there is a governing principle "that all legislation is *prima facie* territorial—that is to say, that the legislation of any country binds its own subjects, and the subjects of other countries who for the time being bring themselves within the allegiance of the legislating power" (*In re Pearson, (supra)*. p. 588). But in the instant matter the appellant has come to Cyprus, has sought her remedy here, and has instituted proceedings in respect of the alleged breach occurring in Cyprus of a promise to marry her made by the respondent, the fact being that she is a non-Moslem woman who allegedly betrothed a person who is admitted to be a Moslem man. I can discern no sufficient reason for giving the reading to the Turkish Family Courts Law for which the appellant would contend; in my opinion this is a "religious matter" for the determination of which the Turkish Family Courts have been given exclusive jurisdiction under section 8 (1) of that Law. As to the claim for £100. having regard to the allegations made I consider that it must clearly be regarded as a matter incidental to the alleged betrothal within the meaning of section 2 (a) of the Law.

I would dismiss the appeal with costs.

ZANNETIDES, J.: I concur.

Appeal dismissed with costs.