

1968
Feb. 19, 26
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ERICA META
WRIGHT
THEN ERICA
META BECHTEL
v.
JOSEPH WRIGHT

[JOSEPHIDES, J.]

ERICA META WRIGHT THEN ERICA META
BECHTEL,

Petitioner,

v.

JOSEPH WRIGHT,

Respondent.

(*Matrimonial Petition No. 3/67*).

Matrimonial Causes—Divorce—Jurisdiction—Domicile—Residence—Wife’s petition on ground of desertion—Marriage celebrated in Germany in accordance with the rites and ceremonies of the Church of England pursuant to section 22 of the English Foreign Marriage Act, 1892—Husband domiciled in England—Wife at the time of the marriage a German national and domiciled in Germany—Wife’s residence in Cyprus for more than three years—English Matrimonial Causes Act, 1950, section 18(1) (b) applicable in Cyprus by virtue of section 19(b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960)—“... if the wife is resident in England (read: in Cyprus) and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings.....”—The Court, in considering the question of the wife’s residence, whatever her nationality or previous domicile may be, has to inquire into the quality of such residence—Having done so, the Court came to the conclusion that in the present case the petitioner wife satisfied the requirements of the statutes regarding residence—And that, therefore it has jurisdiction to entertain the suit—And, eventually, the Court granted a decree nisi—See, also, herebelow.

Matrimonial Causes—Jurisdiction—The Court under the provisions of section 19(b) of the Courts of Justice Law, 1960 (supra) has jurisdiction to try matrimonial causes except cases which come within the provisions of Article 111 of the Constitution—And are cognizable by an ecclesiastical tribunal or a communal Court—Obviously the present case is not one of those cases.

Statutes—Construction—See immediately below.

Words and Phrases—“..... if the wife is resident in England and has been ordinarily resident there for a period of three

1968
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—
ERICA META
WRIGHT
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META BECHTEL
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JOSEPH WRIGHT

years immediately preceding the commencement of the proceedings”—Section 18(1)(b) of the English Matrimonial Causes Act, 1950 —Meaning of the words and their effect—The quality of the residence has to be looked into.

Resident—Ordinary resident—Meaning of the words in section 18(1)(b) of the English Matrimonial Causes Act, 1950—See, also, above.

Desertion—See above.

Divorce—See above.

This a wife's petition for divorce on the ground of desertion. The parties were married on the 30th October, 1948, in Germany according to the rites and ceremonies of the Church of England and in accordance with section 22 of the English Foreign Marriage Act, 1892. The husband was and still is domiciled in England. He is a member of the Church of England. At the time of the marriage the wife was a German national and she was domiciled in Germany. In the circumstances set out in the judgment (*post*) the wife came to Cyprus with the child of the marriage in July 1955, where she has lived ever since. She was employed for a time by the British Army as a telephone operator, and recently she has been a tourist guide. She has not left Cyprus for the last 12 1/2 years and she stated in evidence that, if she obtains her divorce, it is her intention to continue living permanently in Cyprus. Apparently the husband deserted the petitioner some time in July, 1952.

In granting a decree nisi, the Court:-

Held, I. As to the question of jurisdiction :-

(1) Under the provisions of section 19(b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 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 an ecclesiastical tribunal or a communal Court. Obviously this is not one of those cases.

(2) In the exercise of its matrimonial jurisdiction this Court is empowered to apply the English Law on the point which was in force when Cyprus became Independent (*i.e.* on the 16th August, 1960). In English law the basis

1968
Feb. 19, 26
—
ERICA META
WRIGHT
THEN ERICA
META BECHTEL
v.
JOSEPH WRIGHT

of the Court's jurisdiction in suits for dissolution has long been the husband's domicile. But this basis was broadened by section 18(1)(b) of the English Matrimonial Causes Act, 1950, which introduced three years' residence in England by the wife as a basis for jurisdiction (Note: The material parts of section 18(1)(b) are set out *post* in the judgment). Needless to say that in applying this provision in Cyprus the three year's residence of the wife must be in Cyprus.

(3)(a) As the husband in the present case is domiciled in England, the wife will have to prove that she is resident in Cyprus, and has been ordinarily resident for a period of at least three years prior to the filing of the petition, in order to found jurisdiction in this Court.

(b) Odd as it may appear, it would seem that there is no decided case, either in Cyprus or in England, on the question whether a wife may sue for divorce after three years' residence whatever her nationality or previous domicile may be.

(c) In considering the question of the wife's residence the Court has to inquire into the quality of such residence. In doing so the Court should put to itself the questions "does the wife appear to have any present intention of leaving the country in which the divorce has been obtained? Can the wife fairly be described as having 'resorted' to the respective court as traveller or as so-journer in the country concerned? Or, is the wife normally habitually resident in the country at the time of proceedings?"

Dicta in Indyka v. Indyka [1967] 3 W.L.R. 510 H.L., at p. 519 per Lord Reid, at p. 556 per Lord Wilberforce, at pp. 563-564, per Lord Pearson, *considered*.

(4)(a) Having given the matter my best consideration in construing section 18(1)(b) (*supra*), I hold that the three years' habitual residence of a foreign wife in Cyprus after desertion, such desertion in fact took place in Cyprus, are sufficient to found jurisdiction on this Court to entertain a suit for divorce.

(b) Considering that the petitioner wife in this case has been living in Cyprus uninterruptedly for the past 12 1/2 years and that she has made her per-

manent home here, I hold that she is resident in Cyprus and has been ordinarily resident here for a period exceeding three years immediately preceding the commencement of the proceedings within the meaning of the statute, and that, therefore, this Court has jurisdiction to hear and determine the present petition.

1968
Feb. 19, 26
—
ERICA META
WRIGHT
THEN ERICA
META BECHTEL
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JOSEPH WRIGHT

Held, II. On the issue of desertion:-

(1) Having regard to the facts of this case I find that the husband deserted the wife in July 1952 in Cyprus, without any reasonable cause, and that the desertion has continued up to the present day.

(2) For these reasons I grant a decree nisi to the wife with costs.

*Decree nisi granted
with costs.*

Cases referred to:

Indyka v. Indyka [1967] 3 W.L.R. 510 H.L., at 519 per Lord Reid, at p. 556 per Lord Wilberforce, at pp. 563 and 564, per Lord Pearson, *considered*.

Matrimonial Petition.

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

C.E. Glykys with *G.J. Pelaghias*, for the petitioner.

Respondent, absent. Not represented.

The following judgment was delivered by:—

JOSEPHIDES, J.: This is a wife's petition for divorce on the ground of desertion. The parties were married on the 30th October, 1948, in the St. Nicholas Garrison Church Luneburg (Germany), according to the rites and ceremonies of the Church of England, and in accordance with section 22 of the English Foreign Marriage Act, 1892. At the time of the marriage the husband was a private in the British Army of the Rhine serving in Germany. He was and still is domiciled in England. He was born in England and he has always lived there excepting the periods that he has been serving with the British Army abroad until 1961 when he was demobilised. He is a member of the Church of England.

1968
Feb. 19, 26
—
ERICA META
WRIGHT
THEN ERICA
META BECHTEL
v.
JOSEPH WRIGHT

At the time of the marriage the wife was a German national and she was domiciled in Germany. Prior to the marriage, she had given birth to a child, named Joseph, on the 14th March, 1947, whose paternity the respondent admitted.

After the marriage the parties lived together in Germany from the 30th October, 1948 until 1949 and then they moved to England where they lived in the house of the husband's mother 36, Howard Road, Banbury, Oxford, from 1949 to 1950. In 1950 the husband was posted in Cyprus and they moved to Nicosia where they lived together for about two years from June 1950 to July 1952. It was during that time that *their domestic troubles started, and on the evidence I am satisfied that the husband was drinking heavily, that he insulted the wife and that he was the cause of the breakdown of the marriage.* Nevertheless, they lived under the same roof but not as spouses, and the petitioner continued receiving the Army wife's allowance until 1961 when the respondent was demobilised from the Army.

In July 1952, when the husband was transferred to the United Kingdom, he told the wife that he did not want her to follow him or go and live with him in his mother's house in Banbury, Oxford. The wife followed the respondent in two weeks' time but she went and lived with friends in Bournemouth, where she worked until March 1955, when she wrote to the husband informing him that she intended coming to Cyprus to live permanently for health reasons of the child. The respondent replied saying "do as you wish". In fact, it is obvious that he was not interested either in the wife or the child or in maintaining the marriage.

In those circumstances the wife came to Cyprus with the child in July 1955 where she has lived ever since. She was employed for a time by the British Army as a telephone operator, and recently she has been a tourist guide. She has not left Cyprus for the last 12 1/2 years and she stated in evidence that, if she obtains her divorce, it is her intention to continue living permanently in Cyprus. After July 1952, when the husband was transferred to England, he was again re-transferred to Cyprus for about a year in 1958 and he was posted in Dhekelia, but during that time he did not see the wife nor did he try to get in touch with her. In fact, in 1961 he wrote once promising to send the sum of £100 on his demobilization but he never kept his promise.

1968
Feb. 19, 26

ERICA META
WRIGHT
THEN ERICA
META BECHTEL
v.
JOSEPH WRIGHT

These are the material facts of the case as I find them on the evidence before me. I have now to decide two questions: (a) the question of the jurisdiction of the court to entertain the present proceedings, and (b) whether the wife has proved that the husband is guilty of desertion.

First, the question of jurisdiction: 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 an ecclesiastical tribunal or a communal court. Obviously this is not one of those cases.

In the exercise of its matrimonial jurisdiction this Court is empowered to apply the English law on the point which was in force when Cyprus became Independent. In English law the basis of the court's jurisdiction in suits for dissolution has long been the husband's domicile. But this basis was broadened by section 18(1)(b) of the English Matrimonial Causes Act, 1950, which introduced three years' residence in England by the wife as a basis for jurisdiction. Section 18(1)(b) reads as follows:

"18.(1) Without prejudice to any jurisdiction exercisable by the court apart from this section, the court shall by virtue of this section have jurisdiction to entertain proceedings by a wife in any of the following cases, notwithstanding that the husband is not domiciled in England, that is to say:—

"(a)

"(b) in the case of proceedings for divorce or nullity of marriage, if the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings"

Needless to say that in applying this provision in Cyprus the three years' residence of the wife must be in Cyprus.

As the husband in the present case is domiciled in England, the wife will have to prove that she is resident in Cyprus, and has been ordinarily resident for a period of three years prior to the filing of the petition, in order to found jurisdiction in this court.

Odd as it may appear, it would seem that there is no

1968
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THEN ERICA
META BECHTEL
v.
JOSEPH WRIGHT

decided case, either in Cyprus or in England, on the question whether a wife may sue for divorce after three years' residence whatever her nationality or previous domicile may be. In considering the question of the wife's residence the Court has to inquire into the quality of such residence. In doing so the Court should put to itself the questions "does the wife appear to have any present intention of leaving the country in which the divorce has been obtained? Can the wife fairly be described as having 'resorted' to the respective court as traveller or as so-journer in the country concerned? Or, is the wife normally habitually resident in the country at the time of the proceedings?" I said that there is no decided case on the point in England but I should add that there are certain dicta in a recent case decided by the House of Lords, which are helpful in deciding this case. I am referring to *Indyka v. Indyka* [1967] 3 W.L.R. 510, where Lord Reid says (at page 519):—

"To adopt this doctrine with regard to the Act of 1949 would, in my view, lead to very undesirable consequences. The Act of 1949 entitles any wife who has resided here for three years to sue for divorce. An Italian or a citizen of the Republic of Ireland may come to this country accompanied by his wife to take up a three or four years' appointment, there being no question of their acquiring an English domicile or even making their home here. If the husband commits a matrimonial offence the wife can petition for divorce as soon as she has resided here for three years. Probably Parliament never really intended such a result but it is the necessary result of the terms of the Act".

It should be noted that the Act of 1949 preceded the Act of 1950 with regard to the wife's three years' residence.

Then, at page 556, Lord Wilberforce says:

"It is to be noted that there is no requirement either that the wife should be a British subject, or that she should previously have been domiciled in England, so that the jurisdiction can be invoked by foreigners on the basis of three years' residence only, whatever the purposes or circumstances of that residence may be".

With regard to the considerations which have to be borne in mind in deciding to assume jurisdiction, the following

observations in Lord Pearson's speech are extremely helpful (at page 563):—

“In the words of my noble and learned friend Lord Wilberforce, there must be a real and substantial connection between the petitioner and the country or territory exercising jurisdiction. In the words of my noble and learned friend Lord Pearce, the court must be not ‘simply purveying divorce to foreigners who wish to buy it.’ In the words of Mr. Commissioner Lately, Q.C., the courts must not be used ‘for the convenience of birds of passage’ (*Arnold v. Arnold* [1957] P. 237, 253). An alleged domicile can be fictitious: The petitioner may have declared his intention to settle permanently in the country concerned, but the evidence may show that he was only resorting there temporarily in order to obtain a divorce. Similarly a nationality might be acquired temporarily for the purpose of obtaining a divorce. Also nationality might perhaps in some circumstances be regarded as insufficient to found jurisdiction, if there was no longer any real and substantial connection between the petitioner and the country of his or her nationality”.

And, finally, at page 564, Lord Pearson says:—

“There is, however, the second of the enactments referred to above, the one now contained in section 40(1)(b) of the Act of 1965 (this is the act which replaced the 1950 Act in England) which enables a wife after three years' residence in England to sue for divorce, whatever may be the nationality or domicile of her husband and herself or either of them”.

As I said earlier, the above are dicta from the *Indyka* case, said *obiter*; because that was a case concerning the recognition of a foreign decree of divorce, and not on the construction of section 18(1)(b) of the Matrimonial Causes Act, 1950.

Having given the matter my best consideration in construing section 18(1)(b) I hold that three years' habitual residence of a foreign wife in Cyprus after desertion, which desertion in fact took place in Cyprus, are sufficient to found jurisdiction on this court to entertain a suit for divorce. Considering that the wife in this case has been living in

1968
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—
ERICA META
WRIGHT
THEN ERICA
META BECHTEL
V.
JOSEPH WRIGHT

1968
Feb. 19, 26
—
ERICA META
WRIGHT
THEN ERICA
META BECHTEL
v.
JOSEPH WRIGHT

Cyprus uninterruptedly for the past 12 1/2 years and that she has made her permanent home here, I hold that she is resident in Cyprus and has been ordinarily resident here for a period exceeding three years immediately preceding the commencement of the proceedings within the meaning of the statute, and that, therefore, this court has jurisdiction to hear and determine the present petition.

On the issue of desertion, having regard to the facts of this case I find that the husband deserted the wife in July 1952 in Cyprus, without any reasonable cause, and that the desertion has continued up to the present day.

For these reasons I grant a decree nisi to the wife with costs.

Decree nisi granted with costs.