

1979 May 5

[A. LOIZOU, J.]

ANDREAS HADJIYIANNIS,

Petitioner,

v.

ALIDA HADJIYIANNIS,

Respondent.

(*Matrimonial Petition No. 1/79*).

*Matrimonial Causes—Jurisdiction—Husband domiciled in Cyprus—
Court has jurisdiction to entertain petition for divorce—Law
applicable.*

5 *Matrimonial Causes—Divorce—Desertion—Meaning—Physical sepa-
ration and animus deserendi—Wife leaving matrimonial home,
without reasonable cause, for a period of three years immediately
preceding presentation of petition and not returning ever since—
And with intention to bring matrimonial consortium to an end—
Guilty of desertion.*

10 This was a husband's petition for divorce on the ground of
desertion. The parties were married at the District Office Fama-
gusta on the 14th June, 1956 under the provisions of the
15 Marriage Law, Cap. 279 and they also went through a religious
ceremony of marriage in a Greek Orthodox Church at Fama-
gusta. The petitioner was a citizen of the United Kingdom, a
member of the Greek Orthodox Church, born and domiciled in
Cyprus. The respondent was of German origin and a member
of the Protestant Church. In support of the prayer in the peti-
20 tion there was evidence from the petitioner, which was corrob-
rated on all material respects by another witness, that the re-
spondent wife left the conjugal home at Larnaca in July 1975
and has been living on her own ever since in Limassol; and that
for some time prior to her leaving the petitioner she started
25 showing complete lack of interest towards him and made no
secret of the fact that she had no feelings for him.

Held, (I) on the question of jurisdiction:

That on the evidence of the petitioner he is domiciled in Cy-

prus and, consequently, this Court has jurisdiction to hear and determine this petition; and that the law applicable is the English Law in force on the day prior to Independence day.

Held, (II) on the merits of the petition:

(After stating the law governing desertion—*vide p. 229 post*). 5
That the element of physical separation cannot be questioned; that from her whole conduct the wife's animus deserendi can safely be inferred; that the wife who left the matrimonial home some time in July 1975 and has not ever since returned, did so 10
intending to bring the matrimonial consortium to an end and that intention must be presumed to continue; that she did so without reasonable cause for a period exceeding three years prior to the presentation of this petition; and that, accordingly, a decree nisi will be granted in favour of the petitioner.

Decree nisi granted. 15

Cases referred to:

Alexandrou v. Andreou (1970) 1 C.L.R. 297.

Matrimonial Petition.

Petition for divorce on the ground of the wife's desertion.

V. Charakis, for the petitioner. 20

Respondent absent, duly served.

A. LOIZOU J. gave the following judgment. This is a husband's petition for divorce on the ground of desertion. The respondent wife was duly served but she failed to enter an appearance or contest the proceedings. 25

The parties were married at the District Office Famagusta on the 14th June, 1956, under the provisions of the Marriage Law, Cap. 116, now Cap. 279. They also went through a religious ceremony of marriage in the Greek Orthodox church of Ayia Zoni, in Famagusta in accordance with the rites and ceremonies of that church. 30

The petitioner is a citizen of the United Kingdom, Great Britain, 53 years of age, a member of the Greek Orthodox Church born and domiciled in Cyprus and works as an officer in the British Sovereign Base area of Dhckelia. The respondent wife is of German origin, 47 years of age and as shown on the 35

marriage certificate she had been previously married and divorced and a member of the Protestant Church. Out of this marriage they acquired two children, a boy called Dimitris, born in 1956 and a girl called Paulina, born in 1960. The children are living with their father who is ready to have them and maintain them. The parties lived in Famagusta until February, 1974, when the respondent left the conjugal home and lived separately until July, 1974, when she went to England and then to Germany, her native land. In September of that year she returned to Cyprus and lived with the petitioner at Larnaca until the beginning of July 1975; she then left the conjugal home took with her all her belongings and has been living on her own ever since in Limassol where she took up employment as a stewardess on board the "SOL FRYNI".

As regards the question of jurisdiction I am satisfied on the evidence of the petitioner that he is domiciled in Cyprus and consequently this Court has jurisdiction to hear and determine the present case, and the Law applicable by the Court on the matter is the English Law in force on the day prior to Independence Day.

The ground upon which the dissolution of this marriage is sought, is continued desertion for over three years immediately preceding the presentation of this petition. As stated in Rayden on Divorce, 8th edition p. 161, "The Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases." But in its essence desertion is the separation of one spouse from the other, with an intention, on the part of the deserting spouse, of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party. Desertion is not a withdrawal from a place, but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may be termed for short, "the home".

As a ground for divorce, desertion must exist for a period of at least three years immediately preceding the presentation of the petition, that is to say, the date on which it is filed.

According to the evidence before me which I accept, the res-

pondent wife for some time prior to her leaving the petitioner started showing complete lack of interest towards him and made no secret of the fact that she had no feelings for him. The element of physical separation cannot be questioned and from her whole conduct the wife's animus deserendi, i.e. the intention to bring the matrimonial consortium to an end can safely be inferred. These two elements have been proved and exist on the side of the deserted petitioner. 5

The evidence of the petitioner was duly corroborated on all material respects by that of another witness. 10

On the totality of the evidence before me and applying the law as I have attempted to state it (see also on the question of desertion the case of *Alexandrou v. Andreou* (1970) 1 C.L.R. 297), I have come to the conclusion that the wife who left the matrimonial home some time in July 1975 and has not ever since returned, did so intending to bring the matrimonial consortium to an end and that intention must be presumed to continue. She did so without reasonable cause for a period exceeding three years prior to the presentation of this petition. 15

I, accordingly, find the case proved and I grant a decree nisi in favour of the petitioner. 20

There will be no order as to costs as none have been claimed.

Decree nisi granted. No order as to costs.