**ALBERT WEBSTER LAW**

**V**

**JOAN GUSTIN**

FAMILY DIVISION

21ST, 24TH DAY OF MARCH 1975

OTHER CITATIONS

[1976] 1 All ER 113

BEFORE: BAGNALL J

**BETWEEN**

ALBERT WEBSTER LAW – Appellant

AND

JOAN GUSTIN (FORMERLY JOAN LAW) – Respondent

**REPRESENTATION**

Solicitors: Louis Berkson AND Globe, Liverpool.

Phua Kai-Swan Esq   Barrister.

**ISSUES FROM THE CAUSE(S) OF ACTION**

FAMILY LAW – MATRIMONIAL CAUSES:- Nullity – Foreign decree – Recognition – Basis of recognition – Real and substantial connection between petitioner and foreign country – Wife leaving husband to go and live in foreign country with intention of marrying national of that country – Wife obtaining decree of nullity in competent court of foreign country after 12 months’ residence there – Whether decree should be recognised by English court.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The husband and wife were married in England in 1966 and had their only matrimonial home in Lancashire. While living there they met G, a United States serviceman who was a native of Kansas. In due course G returned to Kansas and on 15 December 1967 the wife left home without giving any indication of where she was going. Subsequently the husband received a number of letters from the wife which showed that she had followed G to Kansas, that she intended to stay there and in due course to marry G should she become free to do so. On 18 November 1968 the wife filed a nullity petition in the appropriate Kansas court. The husband was given notice of the proceedings.

DECISION APPEALED AGAINST

On 2 January 1969 a decree of nullity was pronounced by that court based on an allegation that at the time of the marriage the husband had had no intention of consummating it. After the decree the wife married G and they set up home together in Kansas. The husband sought an order declaring that the decree was valid.

DECISION OF THE FAMILY DIVISION

Held – The court would recognise a decree of nullity granted by the competent court of a foreign country or territory in cases where a real and substantial connection was shown between that country or territory and the party who had obtained the decree. Although at the time of the decree the wife had been resident in the state of Kansas for barely 12 months, taking into account all the circumstances both before and after the pronouncement of the decree, in particular the wife’s relationship with G, the proper conclusion was that a real and substantial connection had been shown to exist between the wife and the state of Kansas at the time when the decree was pronounced. A declaration would be granted accordingly (see p 116 a to d and f to j, post).

Merker v Merker [1962] 3 All ER 928, dictum of Lord Wilberforce in Indyka v Indyka [1967] 2 All ER at 727, Blair v Blair and Barlie [1968] 3 All ER 639 and Mayfield v Mayfield [1969] 2 All ER 219 applied.

Notes

For recognition of foreign decrees of nullity, see 8 Halsbury’s Laws (4th Edn) paras 500–502, and for cases on the subject, see 11 Digest (Reissue) 557–560, 1232–1246.

**MAIN JUDGMENT**

Petition

By a petition dated 12 March 1973 the husband, Albert Webster Law, sought a declaration that a decree of nullity granted to the wife, Joan Gustin, formerly Joan Law, by the District Court of Wyandotte County, Kansas, in the United States of America, was valid. On 23 November 1973 the hearing of the petition came before Bagnall J who adjourned the proceedings and invited the Queen’s Proctor to instruct counsel as amicus curiae to argue the question of the validity of the decree obtained by the wife. The facts are set out in the judgment.

24 March 1975.

The following judgment was delivered.

**BAGNALL J.**

By his petition in this case the husband seeks an order declaring to be valid a decree pronounced on 2 January 1969 by the District Court of Wyandotte County, Kansas, in the United States of America. The effect of that decree was to declare null and void the marriage contracted in this country on 4 April 1966 between the husband and the wife, now known as Joan Gustin, formerly, of course, Joan Law.

I have had expert evidence from two separate deponents to affidavits that under the law applicable in the state of Kansas the decree to which I have referred was effective as a decree of nullity of marriage. The question I have to determine is whether that decree ought to be recognised and be declared to be valid by this court.

When the matter first came before me some considerable time ago counsel for the husband frankly admitted that the case might not be straightforward and that doubts existed as to the principles of law which I ought to apply. In those circumstances I took steps to obtain the assistance of the Queen’s Proctor and he instructed counsel to make submissions to me as amicus curiae. I am indebted to him for that service, as I am equally indebted to counsel for the husband for the interesting arguments that have been placed before me. In the end, however, the Queen’s Proctor, through counsel, intimated that he did not feel justified in opposing the relief sought by the husband either on grounds of law or on grounds of fact.

The parties were married, as I have said, on 4 April 1966 in Cheshire and had their only matrimonial home at Newton-le-Willows in Lancashire. While they were there they met a Mr Gustin who was in this country doing what we would call his national service in the United States Air Force. During the same period the wife had employment with that air force and in due course Mr Gustin returned to his native state, that is to say the state of Kansas in the United States of America, and subsequently on 15 December 1967 the wife left home leaving a very short note which gave no indication either of her intended destination or of when she would return. Later it was discovered that she had gone to Kansas, of which Mr Gustin is a native, and in due course she initiated the process which led to the decree pronounced in that state with which I am concerned.

During the intervening period the wife sent a number of letters to the husband from which it was plain, first, that she was staying in Kansas, and secondly that she had no intention of returning either to him or to this country. In September 1968 a draft of the petition to be presented to the court in Kansas was sent to the husband and on 18 November the relevant petition was filed in Kansas supported by an affidavit sworn by the wife. Steps were taken in two ways to bring those proceedings to the notice of the husband. First, a notice was published once a week for three consecutive weeks in a local newspaper circulated in the relevant district in the state of Kansas said to be a newspaper authorised by law to publish legal notices. It is of course wholly unreasonable to suppose that any of those publications came to the actual notice of the husband, but in addition it appears from secondary evidence, though I have not seen the original document, that a letter giving notice of process was sent by attorneys representing the wife.

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The relevant letter was dated 15 November 1968, but was only received by the husband on 22 December. The time limit for him to take the procedural steps open to him to defend the proceedings in Kansas expired on 27 December. In due course, as I have said, the decree was pronounced on 2 January 1969. The basis on which the decree of nullity was founded was an allegation that the marriage ceremony was entered into through fraudulent conduct on the part of the husband, he having no intention to consummate the marriage. I think that is all I need say by way of recital of the relevant facts and documents.

It is clear from the authority of Merker v Merker that this court assumes jurisdiction to recognise and declare the validity of a decree of nullity, just as it does in the case of a decree of divorce. That case was a nullity case and in the course of his judgment Sir Jocelyn Simon P said ([1962] 3 All ER at 934, [1963] P at 296):

‘A decree of nullity of marriage pronounced by a foreign court of competent jurisdiction will, in the absence of fraud or unless contrary to natural justice, be recognised as binding and conclusive by the courts of this country [and having cited authoritya for that proposition Sir Jocelyn Simon P went on:] The first question to determine is, therefore, whether the decree of the [foreign] court is in the international sense the judgment of a court of competent jurisdiction in the matter.’

At that stage the concept of domicile as understood in this country lay at the foundation of the decision whether the foreign court in question was indeed a court of competent jurisdiction, and that authority seems to me to establish the proposition that, as one would expect, the same test was applied, whether the decree of the foreign court was a decree of divorce or a decree of nullity.

Recently the whole of this admittedly difficult field of jurisprudence has been considered in the House of Lords in the well-known case of Indyka v Indyka in relation, at any rate, to recognition of decrees of divorce. In the course of his opinion Lord Wilberforce, after asking himself how far the courts in this country should go in relaxing the long-standing dependence of this jurisdiction on the concept of domicile, went on ([1967] 2 All ER at 727, [1969] 1 AC at 105):

‘In my opinion, it would be in accordance with the developments that I have mentioned and with the trend of legislation—mainly our own but also that of other countries with similar social systems—to recognise divorces given to wives by the courts of their residence wherever a real and substantial connexion is shown between the petitioner and the country, or territory, exercising jurisdiction.’

The facts in Indyka v Indyka were such that other connections, for example that of nationality, could be invoked in order to found the jurisdiction of the foreign court whose decree was there in issue. Speaking for myself I have some doubt whether the principle thus enunciated by Lord Wilberforce could be said to constitute the ratio decidendi of all or even the majority of their Lordships who were concerned in that decision, but so far at any rate as a court of first instance is concerned, the doubts that I should otherwise have expressed and related to an analysis of the opinions in Indyka v Indyka have been resolved for me.

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There are three decisions at first instance, Blair v Blair, Mayfield v Mayfield and Alexander v Alexander. Each of those cases proceeded on the footing that, since the decision in Indyka v Indyka, there was a new ground governing the recognition of foreign decrees, at any rate in relation to divorce, described as a real and substantial connection with the country whose jurisdiction was sought. Those cases are, of course, not binding on me, but I have no doubt that I ought to follow them.

The questions therefore which I have to decide are first, is it now established that when the wife obtained the relevant decree in Kansas she had a real and substantial connection with that state? And secondly, if so, was the relevant decree obtained by a process which recognised those rules of natural justice which are to be found in any civilised system of jurisprudence? Dealing first with the second of those questions I have given anxious consideration to the question whether the relevant rule of such a system of jurisprudence, namely, that the husband had adequate notice of and opportunity to defend the proceedings in Kansas, had been satisfied. With some hesitation I have reached the conclusion that I ought to find that sufficient notice was given and that the decree cannot be criticised on the basis of natural justice.

The question whether there was established a real and substantial connection between the wife and the state of Kansas must be a question of fact, to be decided, as a jury would decide such a question, on a consideration of all the relevant circumstances. The principal difficulty in the way of the husband, to which my attention was properly drawn by both counsel, was the comparatively short period of residence, amounting to perhaps rather less than 12 months, before the Kansas decree was pronounced. But it is plain that Kansas was at all material times the home state of Mr Gustin; it is also clear that no other reason was given for the wife to leave this country and her husband and go to Kansas than that she wished to follow Mr Gustin and in due course, if she was free to do so, to marry him.

As I have said such letters as she wrote all emanating from Kansas showed no intention either of returning to this country or of going anywhere else, either in or outside the United States of America. In due course, the decree having been pronounced, the wife and Mr Gustin did in fact marry and have remained settled in the state of Kansas.

I am, I have no doubt, entitled to consider what has happened subsequently to the pronouncing of the decree in that state in order to guide me to the right answer to the question of fact that I have posed. I understand that the same question has been considered in a number of cases when various characteristics of the relevant parties and of their residence abroad has been weighed in the balance in order to see whether or not they establish real and substantial connection. I have not been referred to the cases and it seems to me that that was a proper course to take. In a question of this nature every case must depend on its own facts and its own circumstances, and to my mind the process of decision in not assisted by a consideration of the conclusions which have been reached in other cases dealing with different people and different circumstances.

Answering the question purely as a question of fact, I have no doubt that the proper conclusion is that the wife had established a real and substantial connection with the state of Kansas at the time the decree was pronounced by the appropriate court in that state.

Accordingly, I am satisfied that I ought to accede to the prayer in the petition and declare that the decree of annulment is valid. That disposes of the whole matter and I simply make that declaration.

Declaration accordingly.

**Cases referred to in judgment**

Alexander v Alexander (1969) 113 Sol Jo 344, 11 Digest (Reissue) 549, 1215.

Blair v Blair and Barlie [1968] 3 All ER 639, [1969] 1 WLR 221, 11 Digest (Reissue) 550, 1221.

Indyka v Indyka [1967] 2 All ER 689, [1969] 1 AC 33, [1967] 3 WLR 510, HL, 11 Digest (Reissue) 551, 1224.

Mayfield v Mayfield [1969] 2 All ER 219, [1969] P 119, [1969] 2 WLR 1002, 11 Digest (Reissue) 550, 1219.

Merker v Merker [1962] 3 All ER 928, [1963] P 283, [1962] 3 WLR 1389, 11 Digest (Reissue) 516, 1048.

Salvesen (or Von Lorang) v Austrian Property Administrator [1927] AC 641, [1927] All ER Rep 78, 96 LJPC 105, 137 LT 571, HL, 11 Digest (Reissue) 541, 1180.

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Bevan and Whitting, Re (1864) 33 Beav 439, 55 ER 438.

Hawkes, Re, Ackerman AND Lockhart [1898] 2 Ch 1, [1895–9] All ER Rep 964, 67 LJCh 284, 78 LT 336, CA, 18 Digest (Reissue) 93, 695.

Hill, Re, ex parte Southall (1848) 17 LJ Bcy 21, 32 Digest (Repl) 290, 341.

Lord v Wormleighton (1822) Jac 580, 37 ER 969.

Chantrey Martin AND Co v Martin [1953] 2 All ER 691, [1953] 2 QB 286, CA.

Crompton (Alfred) Amusement Machines Ltd v Comrs of Customs and Excise [1972] 2 All ER 353, [1972] 2 QB 102, CA.

Faithfull, Re, Re London, Brighton AND South Coast Railway Co (1868) LR 6 Eq 325, 18 LT 502.

Furlong v Howard (1804) 2 Sch AND Lef 115.

Hope v Liddell (1855) 7 De GM AND G 331, 44 ER 129.

Kemp v Kemp (1842) 2 Mood AND R 43.

Rapid Road Transit Co, Re [1909] 1 Ch 96, 78 LJ Ch 132.