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Case No: SO15D06367
SO16D00440
BU16D15832
EC13D00309
ZC18D00225
ZC18D00224
ZC19D00014
ZC19D00007

IN THE FAMILY COURT
Sitting at the Royal Courts of Justice
(In open court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 April 2019

Before :

SIR JAMES MUNBY (SITTING AS A JUDGE OF THE HIGH COURT)

- -

In the matter of 4 defective divorces

Baron v Baron; Bird v Bird; Checova v Ilyas; Campbell-Anderson v Anderson

- -
- -

Mr Simon P G Murray (instructed by the Government Legal Department) for the Queen's Proctor in all four cases
Mr Saravanak Kumar (instructed by Zoi Bilderberg Law Practice) for the petitioner wife in Checova v Ilyas
None of the other parties were present or represented

Hearing date: 4 April 2019

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

SIR JAMES MUNBY (SITTING AS A JUDGE OF THE HIGH COURT)

This judgment was handed down in open court

Sir James Munby, sitting as a Judge of the High Court :

1. These are applications by the Queen's Proctor for the setting aside of decrees nisi and absolute of divorce in four different cases on the ground that, as the Queen's Proctor asserts, all the decrees are void – nullities – by reason of non-compliance with section 3(1) of the Matrimonial Causes Act 1973. Section 3(1) provides that:

> "No petition for divorce shall be presented to the court before the expiration of the period of one year from the date of the marriage."

The background

2. The background to these applications is set out in some detail in my recent judgment in *M v P, The Queen's Proctor intervening* [2019] EWFC 14, paras 7-19, which I shall take as read. The letter to the Queen's Proctor dated 17 April 2018 which I referred to in *M v P*, para 17, raised five cases for his consideration: one was the case in which I gave judgment in *M v P*; another was what I referred to as 'the Bradford Case', which in the event I sent back for final disposal in the Family Court at Bradford; the other three are three of the four which are now before me. They are *Baron v Baron*, SO15D06367, dealt with by the South West Divorce Unit; *Bird v Bird*, SO16D00440, likewise dealt with by the South West Divorce Unit; and *Checova v Ilyas*, BU16D15832, dealt with by the Bury St Edmunds Divorce Unit. The fourth case now before me came to light after I had written to the Queen's Proctor. It is *Campbell-Anderson v Anderson*, EC13D00309, dealt with initially by the Clerkenwell & Shoreditch County Court and subsequently by the Family Court at Clerkenwell & Shoreditch.

3. Because each of these four cases raises essentially the same points, it is convenient to deal with the law before turning to the facts.

The law

4. In my judgment in *M v P*, paras 47-103, I considered the relevant jurisprudence in very considerable detail, analysing a large number of cases ranging chronologically from *Woolfenden v Woolfenden* [1948] P 27 to *Hermens v Hermens, The Queen's Proctor Intervenor* [2017] EWHC 3742 (Fam). Included in that analysis was, paras 70-72, the decision of Sir Stephen Brown P in *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, which, if correctly decided, is determinative of the present cases. It is convenient to repeat what I said about that in my judgment in *M v P*:

> "70 … This was a case where a decree nisi and decree absolute were granted although the petition had been presented less than one year after the marriage and therefore in non-compliance with section 3 of the Matrimonial Causes Act 1973. Sir Stephen held that the petition was a nullity, which the court had no jurisdiction to entertain, and that the decree nisi and decree absolute were null and void.

71 It is useful to see how Mr James Holman, as he then was, put the argument on behalf of the Queen's Proctor. Sir Stephen summarised it as follows (page 117):

> "Accordingly, submits Mr Holman, by operation of statute rather than as a consequence of the provisions of any rules of court, a petition presented before the expiration of one year from the date of the marriage is null and void and a court therefore has no jurisdiction to entertain it …
>
> By reference to a number of authorities, beginning with *Spawforth v Spawforth* [1946] P 131, *Woolfenden v Woolfenden* [1948] P 27 and to the decision in *Dryden v Dryden* [1973] Fam 217, Mr Holman has felt constrained to argue that in a case where the petition upon which the decree of divorce is founded is one which breaches the provisions of s. 3 of the Matrimonial Causes Act 1973, as amended, there is an inescapable statutory bar which prevents a court from exercising a discretion to alleviate a situation which might nevertheless appear to be one brought about by genuine and honest mistake.
>
> He has also referred to the case of *Nissim v Nissim* [1988] Fam. Law 254 which, whilst not dealing with the same situation, provides an example of a defect arising as a result of a breach of a statutory provision. This shows that although it may be looked upon as being highly technical, nevertheless a breach of a statutory provision is fundamental and, unhappily, has the effect of rendering decrees pronounced in apparent good faith null and void."

72 Sir Stephen continued (pages 117, 118):

> "I am satisfied that Mr Holman has correctly stated the position in law where there is a fundamental breach of the provisions of s. 3(1) of the Matrimonial Causes Act 1973, as amended …
>
> There is unfortunately, as is submitted by the Queen's Proctor, a situation which cannot be put right merely by an order of this court. It cannot render valid a decree which was in fact void by statute and not merely voidable."

5. For reasons which will shortly become apparent, I need to refer to a little more of Sir Stephen's judgment. The parties in the case had married on 8 October 1986. The wife presented her petition on 2 September 1987. On 27 January 1988 her solicitor sent the court a document described as an "amended petition", which was re-dated 4 January 1988. As Sir Stephen observed (page 116):

> "Instead of presenting a fresh petition for divorce in January 1988, the solicitors had amended it."

6. Sir Stephen proceeded (page 118):

> "Mr Lewis [counsel representing the wife] seeks to argue that the court should regard the document which was filed in February 1988 as a fresh, independent petition rather than an amendment of an existing petition.
>
> I have a great deal of sympathy with Mr Lewis's position and that of both his professional client and of his lay client, because as the Queen's Proctor, through Mr Holman, has made abundantly clear, there is no suggestion in this particular case of any want of probity on the part of anybody. There is unfortunately, as is submitted by the Queen's Proctor, a situation which cannot be put right merely by an order of this court. It cannot render valid a decree which was in fact void by statute and not merely voidable.
>
> Mr Lewis argues that although the document is headed amended petition, the addition by the solicitor of the words 'pursuant to MCR12, sub-rule 4' indicated that he was in fact filing a fresh petition and not merely seeking to file an amended petition.
>
> I regret that I am unable to accept that submission. I have sympathy with Mr Lewis, but I regret I cannot accept it. It is clear that unfortunately the position was overlooked that the only petition filed had been filed within 12 months of the celebration of the marriage. The purported amendment made in February 1988 could not constitute a fresh petition. Of course if a fresh petition had been filed at that time, it would not have fallen foul of the provisions of s. 3(1) of the Matrimonial Causes Act of 1973, but that is not the position here. I am satisfied that what occurred was an unfortunate mistake. Nevertheless, no fresh petition was in fact filed."

7. Paragraph 4 of the *President's Guidance (Interim): Defective Divorce Petitions / Decrees* which I had issued on 23 April 2018 and set out in *M v* P, paras 18-19, includes this:

> "It appears from the decision of Sir Stephen Brown P in *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, [1990] FCR 336 … that:
>
> (1) Where a petition has been issued in breach of section 3, it is null and void and the court has no jurisdiction to entertain it; with the consequence that any decree nisi or decree absolute purportedly granted is likewise null and void.
>
> (2) The defect cannot be cured by amendment of the petition.
>
> (3) The court has no power to grant discretionary relief."

Further consideration since April 2018 leaves me clearly of the view that this is, so far as it goes, and within the inevitable limits of compression, an accurate summary of Sir Stephen's decision.

8. The only remaining question is whether Sir Stephen's decision is correct and properly to be followed. That, of course, was *not* a point which arose for decision in *M v P*; it is, in contrast, a point which *does* arise for decision in the present cases.

9. In my judgment, *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114 was correctly decided and I must follow it:

    i) First, and focusing on Sir Stephen's judgment itself, it is clear, compellingly articulated and, in my judgment, plainly correct for the reasons Sir Stephen gave.

    ii) Secondly, that conclusion is reinforced if one locates it within the entire jurisprudence as I analysed it in *M v P*, paras 47-103; Sir Stephen's analysis and conclusions fit very comfortably within the jurisprudence and, in particular, accord with the distinction drawn by Leggatt LJ in *Manchanda v Manchanda* [1995] 2 FLR 590 in the passage (at page 595) which I quoted in *M v P*, para 79.

    iii) Thirdly, and as I noted in *M v P*, para 79, "although Leggatt LJ expressed doubt about the decision in *Batchelor v Batchelor* [1984] FLR 188, he did not question the correctness of the decision in *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114." Nor has anyone else.

    I should add that Mr Saravanak Kumar, who appeared before me on behalf of the petitioner wife in *Checova v Ilyas*, did not seek to argue otherwise.

10. Accordingly, I turn now to consider the facts of each case in the light of the decision and analysis in *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114.

The facts

11. I deal with the cases in turn.

The facts: *Campbell-Anderson v Anderson*

12. The parties were married on 23 August 2012. The petition of the wife, alleging adultery, was received and issued by the Clerkenwell & Shoreditch County Court on 28 May 2013. There were problems with service. On 23 November 2015, by which time the case was proceeding in the Family Court at Clerkenwell & Shoreditch, District Judge Rand ordered service of the petition by way of bailiff service. There were continuing problems and in fact the respondent never filed an acknowledgment of service. On 17 March 2017, Deputy District Judge Gaunt made an "order for deemed service." On 5 June 2017, District Judge Bell ordered that the petition "be amended", in accordance with an "amended" petition dated 18 May 2017 alleging behaviour rather than adultery, and ordered that the "amended Petition and Acknowledgment of Service be served on the Respondent at [address] by the Petitioner's Solicitors and shall be deemed served 2 days after posting." The file was put before Deputy District Judge [name illegible] who on 25 January 2018 completed the Form D30 ("Consideration of applications for

Decree Nisi / Conditional Order"), by ticking the relevant boxes and making the appropriate deletions so as to say "I certify that the Petitioner is entitled to a decree of divorce on the following ground(s): Unreasonable behaviour." On 5 March 2018, Deputy District Judge Swales granted a decree nisi. The decree was made absolute on 7 August 2018.

13. Throughout the whole of this lengthy process, no-one – *no-one*, neither the petitioner's solicitor, nor the court staff nor any of the many District Judges and Deputy District Judges involved – spotted the obvious problem, that the petition, in breach of section 3, had been issued less than one year after the marriage. The problem first came to light when the latest ONS return was circulated on 1 October 2018. Thereafter, the matter was brought to my attention as described in *M v P*.

14. In accordance with directions I gave in an order dated 27 November 2018 the Queen's Proctor filed his Plea on 28 November 2018. After setting out the facts, and referring to *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, the Plea continued:

> "In the premises the said petition, as amended, was presented in breach of section 3(1) of the Matrimonial Causes Act 1973 and is null and void and the Court had no jurisdiction to entertain it."

The relief sought was that:

> "(1) The decree nisi pronounced on 5 March 2018 and the decree absolute made on 7 August 2018 may be set aside as null and void; and
>
> (2) The petition presented on 24 May 2013, as amended, may be dismissed."

15. In accordance with a notice to the parties dated 5 March 2019, the Queen's Proctor's Plea came on for hearing before me on 4 April 2019. Neither of the parties was present or represented. The Queen's Proctor was represented by Mr Simon P G Murray.

16. In the light of *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, the case admits of no possible argument. The petition was presented in breach of section 3(1), with the inevitable consequences spelt out by Sir Stephen Brown P. The Queen's Proctor makes good his plea and is entitled to the relief he seeks. Accordingly I made an order in the terms sought.

The facts: *Checova v Ilyas*

17. The parties were married on 28 May 2015. The petition of the wife, alleging behaviour, was issued by the Bury St Edmunds Divorce Unit on 20 May 2016. The file was put before Deputy District Judge Todd who on 14 October 2016 completed the Form D30 ("Consideration of applications for Decree Nisi / Conditional Order"), by ticking the relevant boxes and making the appropriate deletions so as to say "I certify that the Petitioner is entitled to a decree of divorce on the following ground(s): Unreasonable behaviour." On 8 December 2016, Deputy District Judge Pearce, described as sitting in

the Family Court at Bury St Edmunds, granted a decree nisi. The decree was made absolute on 26 January 2017.

18. Here, again, no-one – neither the petitioner's solicitor, nor the court staff nor the Deputy District Judges – spotted the obvious problem, that the petition, in breach of section 3, had been issued less than one year after the marriage. The problem first came to light in 2018, and the file was referred on 9 March 2018 to Deputy District Judge McHardy, who on 13 March 2018 marked the file "I note it was issued 5 days early but no point has been taken + R filed AOS [illegible]."

19. The matter was subsequently brought to my attention as described in *M v P*.

20. In accordance with directions I gave in an order dated 11 September 2018, following a hearing on 5 July 2018, the Queen's Proctor filed his Plea dated 13 September 2018. In substance it followed the same form and sought, mutatis mutandis, the same relief as the Plea in *Campbell-Anderson v Anderson*. In accordance with a notice to the parties dated 5 March 2019, the Queen's Proctor's Plea came on for hearing before me on 4 April 2019. The Queen's Proctor was represented by Mr Murray. The petitioner, as already noted, was represented by Mr Saravanak Kumar. The respondent was neither present nor represented.

21. In the light of *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, the case admits of no possible argument. The petition was presented in breach of section 3(1), with the inevitable consequences spelt out by Sir Stephen Brown P. The Queen's Proctor makes good his plea and is entitled to the relief he seeks. Accordingly, at the conclusion of the hearing on 4 April 2019 I made an order in the terms sought. As I have already mentioned, Mr Kumar did not seek to argue otherwise.

The facts: *Baron v Baron*

22. The parties were married on 26 July 2014. The petition of the husband, alleging behaviour, and purportedly dated 27 July 2015, was sent to the South West Divorce Unit under cover of a letter dated 17 June 2015 and marked as received by the court on 22 June 2015. On 8 July 2015 the court wrote to the petitioner's representative:

> "The petition submitted is post dated for 27th July 2015 and the date of the marriage is 26th July 2014. As a year and a day has not passed since the date of the marriage and as the petition is post dated we would refuse the petition and return it. However, on this occasion we will hold the petition and process after 28th July 2015.
>
> Please be aware that in future we will return any post dated petitions."

The petition was marked as being issued on 6 August 2015. The file was put before Assistant Justices Clerk [name illegible] who on 8 October 2015 completed the appropriate Form by ticking the relevant boxes, though without bothering to make the appropriate deletions, so as to say "The District Judge / Assistant Justices' Clerk is satisfied that the Petitioner / Respondent is entitled to a decree of divorce by reason of The other party's unreasonable behaviour." On 9 December 2015, District Judge

Stewart, described as sitting in the Family Court at Southampton, granted a decree nisi. The decree was made absolute on 23 February 2016.

23. The problem having been identified, the file was placed before District Judge Simmonds by Hannah Brown, the Delivery Manager of the South West Regional Divorce Team. On 29 September 2016, District Judge Simmonds, described as sitting in the Family Court at South West Divorce Unit, made an order in the following terms:

> "EX PARTE
>
> Upon this file being referred to District Judge Simmonds and the Court noting that the petition was issued less than one year after marriage and therefore contrary to section 3 MCA 1973 and the proceedings are therefore void
>
> AND UPON the Court inviting submissions from the parties before the Court sets aside Decrees already pronounced
>
> IT IS ORDERED THAT:
>
> 1 The parties are invited to urgently contact Hannah Brown on telephone number … or email … to arrange for an urgent telephone hearing with District Judge Simmonds to consider the orders to be made and the ramifications of such order.
>
> 2 If the Court has not heard from the parties by 4pm on Wednesday 12th October 2016 the court will set aside all Decrees."

24. On 4 October 2016 District Judge Simmonds made an order in these terms:

> "UPON HEARING both parties by telephone
>
> AND UPON the Court recording that the Petition issued on 22nd June 2015 was issued before the expiry of one year after their marriage and therefore void
>
> AND UPON a new petition being issued today
>
> AND UPON the Respondent confirming her agreement to the Petition as before and the Court dispensing with service of the new petition on her
>
> BY CONSENT
>
> IT IS ORDERED THAT:
>
> 1 The Decree Nisi dated 9.12.15 and the Decree Absolute dated 23.2.16 set aside forthwith.
>
> 2 The Petition be re-issued forthwith and service on the Respondent dispensed with.

> 3 The Court shall treat the oral application today by the Petitioner as his application for Decree Nisi and shall proceed forthwith with Decree Nisi.
>
> 4 The court having considered the petition the Court certified the petitioner's entitlement for a Decree.
>
> 5 The decree nisi is pronounced forthwith.
>
> 6 The time for application for Decree Absolute is abridged to 7 days. The Respondent consenting to such application.
>
> 7 The Court shall deem the oral application today by the Petitioner for Decree Absolute and the Court shall pronounce Decree Absolute on the expiry of that period"

Accordingly, on 4 October 2016, District Judge Simmonds granted a decree nisi. The decree was made absolute on 11 October 2016.

25. In fact, there was no "new petition" and no petition was "issued today." All that happened was that the original petition, as received on 22 June 2015, was marked "Rec'd 4/10/16 *AMENDED*" at the top of the first page and, at the foot of the last page, there was added "SIGNED AS REQUESTED BY HANNAH BROWN [Signature of petitioner] 4th October 2016". Moreover, it is to be noted that both the decree nisi dated 4 October 2016 and the decree absolute dated 11 October 2016 bore the same number as the original petition, namely SO15D06367.

26. The matter was subsequently brought to my attention as described in *M v P*.

27. In accordance with directions I gave in an order dated 11 September 2018, following a hearing on 5 July 2018, the Queen's Proctor filed his Plea dated 13 September 2018. In substance it followed the same form and sought, mutatis mutandis, the same relief as the Plea in *Campbell-Anderson v Anderson*, the critical assertion being that "In fact no new petition was issued on 4 October 2016." In accordance with a notice to the parties dated 5 March 2019, the Queen's Proctor's Plea came on for hearing before me on 4 April 2019. The Queen's Proctor was represented by Mr Murray. Neither of the parties was present or represented.

28. In the light of *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, the case admits of no possible argument. District Judge Simmonds was correct to treat the petition as having been "presented to the court" within the meaning of section 3(1) on the day when it was received by the court, namely on 22 June 2015. The petition was therefore presented in breach of section 3(1), with the inevitable consequences spelt out by Sir Stephen Brown P. District Judge Simmonds was accordingly correct to set aside both the decree nisi dated 9 December 2015 and the decree absolute dated 23 February 2016. But with all respect to him, District Judge Simmonds was wrong to proceed as he did thereafter. Had there in fact been a new petition, presented and issued in the usual way, there would be no problem: see the passages from the judgment of Sir Stephen Brown P in *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, page 118, set out in paragraph 6 above. But that did not happen. To adopt Sir Stephen's language, there was no "fresh, independent petition"; rather there was the "amendment

of an existing petition." The Queen's Proctor therefore makes good his plea and is entitled to the relief he seeks. Accordingly, at the conclusion of the hearing on 4 April 2019 I made an order in the terms sought.

The facts: *Bird v Bird*

29. The parties were married on 16 January 2015. The petition of the wife, alleging behaviour, was issued by the Family Court at Southampton on 13 January 2016. The petition was purportedly amended, to correct the respondent's address, and re-signed by the petitioner on 3 March 2016. The file was put before Assistant Justices Clerk [name illegible] who on 16 June 2016 completed the appropriate Form by ticking the relevant boxes, though without bothering to make the appropriate deletions, so as to say "The District Judge / Assistant Justices' Clerk is satisfied that the Petitioner / Respondent is entitled to a decree of divorce by reason of the other party's unreasonable behaviour." On 22 July 2016, Deputy District Judge Wiggins granted a decree nisi. The decree was made absolute on 13 September 2016.

30. The problem having been identified, the file was placed before District Judge Simmonds by Hannah Brown, the Delivery Manager. On 27 October 2016, District Judge Simmonds, described as sitting in the Family Court at South West Divorce Unit, made an order in the following terms:

> "EX PARTE
>
> IT IS ORDERED THAT:
>
> Upon this file being referred to DJ Simmonds and the Court noting that the petition was issued less than one year after marriage and therefore contrary to section 3 MCA 1973 and the proceedings are therefore void
>
> AND UPON the Court inviting submissions from the parties before the Court sets aside Decrees already pronounced
>
> ORDER
>
> 1 The parties are invited to urgently contact Hannah Brown on telephone number … to arrange for an urgent telephone hearing with DJ Simmonds to consider the orders to be made and the ramifications of such order.
>
> 2 If the Court has not heard from the parties by 4pm on Friday 4th November 2016 the court will set aside all Decrees."

31. A file note records that on 31 October 2016 Ms Brown "spoke to petitioner's sols – requested fresh application." On 2 November 2016, the petitioner's solicitors wrote to the court enclosing "original Divorce Petition of Susan Bird dated 31st October 2016." The letter and its contents were received by the court on 3 November 2016.

32. On 7 November 2016 District Judge Simmonds made an order which, as amended under the slip rule on 10 November 2016, was in these terms:

> "UPON HEARING both parties by telephone
>
> AND UPON the Court recording that the Petition issued on 13th January 2016 was issued before the expiry of one year after their marriage and therefore void
>
> AND UPON a new petition being issued today
>
> AND UPON the Respondent confirming his agreement to the Petition as before and the Court dispensing with service of the new petition on him
>
> IT IS ORDERED THAT:
>
> 1 The Decree Nisi dated 22.7.16 and the Decree Absolute dated 13.9.16 set aside forthwith.
>
> 2 The Petition be re-issued forthwith and service on the Respondent dispensed with.
>
> 3 The Court shall treat the oral application today by the Petitioner as her application for Decree Nisi and shall proceed forthwith with Decree Nisi.
>
> 4 The court having considered the petition the Court certified the petitioner's entitlement for a Decree.
>
> 5 The decree nisi is pronounced forthwith.
>
> 6 The time for application for Decree Absolute is abridged to 7 days. The Respondent consenting to such application
>
> 7 The Court shall deem the oral application today by the Petitioner for Decree Absolute and the Court shall pronounce Decree Absolute on the expiry of that period."

Accordingly, on 7 November 2016, District Judge Simmonds granted a decree nisi. The decree was made absolute on 14 November 2016.

33. Thereafter, the court dealt with the parties' financial relief. On 7 April 2017, District Judge Simmonds made a final financial remedy order in agreed terms put before the court by consent on 13 March 2017.

34. In fact, there was a mistake by the court office in failing properly to process the fresh petition dated 31 October 2016 which had been sent under cover of the letter dated 2 November 2016. Apart from affixing the court's rubber stamp "SOUTH WEST REGIONAL DIVORCE CENTRE 03 NOV 2016 RECEIVED" to the letter, the court failed to complete the boxes "To be completed by the Court" at the top right-hand corner of the first page of the petition, failed to give the petition a number and, I assume, failed to log it into FamilyMan – which no doubt explains why both the decree nisi dated 7 November 2016 and the decree absolute dated 14 November 2016, as indeed

the financial remedy order dated 7 April 2017, all bore the number of the original petition, SO16D00440.

35. The matter was subsequently brought to my attention as described in *M v P*.

36. In accordance with directions I gave in an order dated 11 September 2018, following a hearing on 5 July 2018, the Queen's Proctor filed his Plea dated 13 September 2018. In substance it followed the same form and sought, mutatis mutandis, the same relief as the Plea in *Campbell-Anderson v Anderson*, the critical assertion being that "In fact no new petition was issued on 7 November 2016." In accordance with a notice to the parties dated 5 March 2019, the Queen's Proctor's Plea came on for hearing before me on 4 April 2019. The Queen's Proctor was represented by Mr Murray. Neither of the parties was present or represented.

37. It will be appreciated that there is a crucial difference between the superficially similar cases of *Baron v Baron* and *Bird v Bird*. In *Baron v Baron* there was, as I have said, no "fresh, independent petition"; rather there was the "amendment of an existing petition." In *Bird v Bird*, in contrast, there *was* a "fresh, independent petition" dated 31 October 2016, which had been sent to the court on 2 November 2016 and received by the court on 3 November 2016, *before* District Judge Simmonds made his order and granted the decree nisi on 7 November 2016. To adopt the language of section 3(1), that petition had been "presented" to the court on 3 November 2016. For District Judge Simmonds to grant a decree nisi on the basis of that fresh petition – which is what he purported to do and plainly thought he was doing – was to do what, in the light of Sir Stephen Brown P's judgment in *Butler v Butler, The Queen's Proctor Intervening* [1990] 1 FLR 114, was plainly permissible and, other things being equal, was *effective*.

38. Is what District Judge Simmonds did to be robbed of all efficacy, are the decree nisi and decree absolute which followed to be treated as nullities, merely because of some administrative oversight in the court office of the kind described in paragraph 34 above? In my judgment, not. I refer to what I said in *M v P*, especially at paras 100 and 103. In my judgment, the decree nisi and decree absolute which followed are not to be treated as nullities; the court's administrative error is no ground for setting them aside; with the consequence that the decree absolute made on 14 November 2016 remains valid and in force. Accordingly, in this case I dismiss the Queen's Proctor's Plea.

New petitions

39. In order to preserve their positions, as best they might, were the decrees to be held nullities and void, the parties in these four cases issued new petitions for divorce, all in the Central Family Court: *Baron v Baron*, ZC18D00225; *North (formerly Bird) v Bird*, ZC18D00224; *Checova v Ilyas*, ZC19D00014; and *Campbell-Anderson v Anderson*, ZC19D00007. I shall deal with these in turn.

New petition: *North (formerly Bird) v Bird*

40. Given my decision, there is no need for the petitioner to proceed with her petition. I shall accordingly strike it out (compare *M v P*, para 113).

New petition: *Baron v Baron*

41. The husband's petition, alleging two years' separation and consent, was issued on 27 September 2018. The wife's acknowledgment of service is dated 18 October 2018. In answer to the question "Do you agree with the statement of the petitioner as to the grounds of jurisdiction set out in the petition?" she answered YES. In answer to the question "Do you intend to defend the case?" she answered NO. In answer to the question "Do you consent to a decree being granted?" she answered YES.

42. In accordance with a notice to the parties dated 5 March 2019, the "hearing of [the] petition" took place before me on 4 April 2019. As I have said, neither of the parties was either present or represented. I granted a decree nisi, abridged the time for decree absolute pursuant to my powers under section 1(5) of the Matrimonial Causes Act 1973 to four days (compare *Solovyev v Solovyeva* [2014] EWFC 20, and see paragraph 7(4) of the *President's Guidance*) and dispensed with the requirement that the petitioner apply for the decree to be made absolute. The decree was subsequently made absolute on 9 April 2019.

New petition: *Checova v Ilyas*

43. The wife's petition, alleging behaviour, was issued on 22 January 2019. The husband has not filed an acknowledgment of service but has been in communication with the wife's solicitor (see below). In accordance with a notice to the parties dated 5 March 2019, the "hearing of [the] petition" took place before me on 4 April 2019. The wife was present in person, represented, as I have said, by Mr Kumar; the respondent husband was neither present nor represented.

44. Mr Kumar was, understandably, anxious that I proceed to hear the petition despite the absence of an acknowledgement of service. In the unusual circumstances I was satisfied that it would be proper for me to do so.

45. The original petition, also alleging behaviour, dated 9 May 2016 and, as I have said, issued on 20 May 2016, had been supported by a detailed statement by the petitioner dated 9 May 2016. The husband's acknowledgment of service was signed by him on 8 September 2016. In answer to the question "Do you agree with the statement of the petitioner as to the grounds of jurisdiction set out in the petition?" he answered AGREE WITH THE STATEMENT. In answer to the question "Do you intend to defend the case?" he answered NO.

46. In the new petition the wife set out, as required by the new form of divorce petition by then in use, the "brief details" of the husband's behaviour she relied on. Those details were in her own handwriting. Although much shorter than her previous statement dated 9 May 2016, those details were, with only one seeming discrepancy, entirely consistent with her previous statement. That discrepancy consisted of an allegation that the respondent "used to bit" the petitioner; there had been no allegation of biting in the previous proceedings.

47. The petitioner's solicitor produced emails passing between her and the respondent husband on various dates between 7 February 2019 and 3 April 2019. An email from the respondent dated 29 March 2019, read in the context of the correspondence as a whole, demonstrates quite clearly that the respondent had received the petition and the acknowledgment of service form. There is nothing to suggest that the respondent was

proposing to defend the petition; on the contrary, both the tone and the content of his emails indicate plainly enough that he was *not* opposing a divorce.

48. The petitioner was sworn and gave brief evidence, confirming the truth of the allegations as set out in the petition and confirming that what she had written as "bit" was meant to be "beat." English is not the petitioner's native tongue and, as was apparent from listening to her evidence, there was not the clear distinction between her pronunciation of the "i" in "bit" and the "ea" in "beat" that one might expect from a native speaker of English. Her evidence was graphically clear, as she gesticulated with her arms to show a beating motion. I have no doubt that the word she intended to use, and thought she was using when she wrote "bit", was in fact "beat." There was, therefore, I was satisfied, no difference between her case as pleaded in her first petition and her case as pleaded in the petition before me.

49. In these circumstances, I granted a decree nisi, abridged the time for decree absolute pursuant to my powers under section 1(5) of the Matrimonial Causes Act 1973 to four days (compare *Solovyev v Solovyeva* [2014] EWFC 20, and see paragraph 7(4) of the *President's Guidance*) and dispensed with the requirement that the petitioner apply for the decree to be made absolute. The decree was subsequently made absolute on 9 April 2019.

50. Mr Kumar raised two further points.

51. The first arose out of the fact that, as he told me, the petitioner has in fact married again. He inquired whether I would be willing in the circumstances to grant a decree of nullity in relation to that "marriage". I declined to do so. I accept that the inevitable corollary of my order setting aside the decree absolute dated 26 January 2017 is that the petitioner's subsequent "marriage" is void: section 11(b) of the Matrimonial Causes Act 1973. But it is fundamental that a court cannot make an order going to a person's status unless that person has been made aware of what is going on, as where an application in appropriate form has been issued and served on that person. I indicated to Mr Kumar that, if he wished, I would be prepared to deal with any such application myself, once it has been issued and served, but beyond that I could not properly go.

52. The other matter related to the legal costs the petitioner has incurred in meeting the Queen's Proctor's Plea and in pursuing her new petition. Mr Kumar did not press any application against the Queen's Proctor – who, after all, had succeeded in his application against his client, though very properly was not seeking any order for costs against her – but submitted that surely, given that his client was the innocent victim of mistakes by the court, she should be able to recover her costs. I can see the force of that point, but so far as I am aware there is in the family justice system no source of central funds such as exists in the criminal justice system. In the circumstances I could only suggest that those instructing him might wish to write to Her Majesty's Courts and Tribunals Service.

New petition: *Campbell-Anderson v Anderson*

53. The wife's petition, alleging five years' separation, was issued on 9 January 2019. The husband has not filed an acknowledgment of service (nor, it will be recalled, did he do so in relation to the original petition). In accordance with a notice to the parties dated 5 March 2019, the "hearing of [the] petition" took place before me on 4 April 2019.

Neither the wife nor the respondent husband was present or represented. Because there were matters I needed to clarify, I was unable to make a decision then and there. Having clarified those matters I was able to communicate my decision on 15 April 2019.

54. The petition, verified by the statement of truth of the petitioner dated 22 December 2018, asserts that she and the respondent stopped "living together as a couple" on 20 March 2013. In her first petition, as originally pleaded, that was the date on which she alleged that the respondent had admitted having an affair with another woman. When that petition was purportedly "amended" to allege behaviour, the breakdown in the relationship was said to be "on or around March 2013". In her statement of truth dated 16 October 2015 in support of her application to dispense with service she gave 8 May 2013 as the date when they "last live[d] together" and the date when she had last seen or heard of him, being the date when he "removed from the matrimonial home." There is, of course, no necessary discrepancy between these dates, for it is perfectly possible that they last lived together "as a couple" on 20 March 2013 although they continued living together under the same roof, though not as a couple, until the respondent removed himself on 8 May 2013. In fact, nothing turns on the point because it is clear on the petitioner's case that more than five years had elapsed between the date when she last saw the respondent (8 May 2013) and the date when her petition was presented (9 January 2019).

55. The petition was sent by the court on 9 January 2019 to the husband at the address referred to in the order for service of the original petition that had been made by District Judge Bell on 5 June 2017 (see paragraph 12 above). That order had been made after the petitioner provided, first under cover of a letter to the court dated 13 March 2017 and then attached to a statement dated 13 May 2017, copies of Facebook pages showing the respondent's acknowledgement (a) that that was indeed his address and (b) that he had received "the divorce papers from the court." Neither the petition sent to the respondent by the court on 9 January 2019 nor either of the notices sent to the respondent by the court on 5 March 2019 (see paragraphs 15 and 53 above) has been returned to the court as undelivered.

56. I am entitled to infer, and I find, that the petition has been served on the respondent. The fact that he has not filed an acknowledgment of service is not that surprising given his lack of engagement throughout the earlier proceedings. And, given the ground now being relied upon by the petitioner, it is hardly as if the respondent could sensibly oppose the petition: compare *Owens v Owens* [2017] EWCA Civ 182, [2018] 1 FLR 1002, para 84. In my judgment the petitioner is entitled to a decree.

57. Accordingly, on 15 April 2019 I granted a decree nisi, abridged the time for decree absolute pursuant to my powers under section 1(5) of the Matrimonial Causes Act 1973 to three weeks and dispensed with the requirement that the petitioner apply for the decree to be made absolute.

Final points

58. I cannot leave these cases without drawing attention to the slapdash approach which, on top of everything else, featured in three of these cases: *Campbell-Anderson v Anderson*, *Baron v Baron* and *Bird v Bird*, the second and third of these being cases proceeding in a Regional Divorce Unit. On three occasions, as I have recorded, it is

impossible to read the name of the Deputy District Judge or Assistant Justices' Clerk who gave the special procedure certificate: the scrawled name is illegible. This is not good enough. Litigants and others have the right to know who it is who makes an order, gives some direction or gives a statutory certificate. As Watkins LJ memorably observed in *R v Felixstowe Justices ex parte Leigh* [1987] QB 582 at 595, "There is … no such person known to the law as the anonymous JP." And that applies equally to anyone, Judge, Justices' Clerk or Legal Adviser, who is exercising a judicial function. Moreover, as I have had to record, on two occasions the Assistant Justices' Clerk was too hard pressed to make the appropriate deletions on the certificate he (or she) was signing. Again, this is simply not good enough. This is an important document which should be completed carefully and properly.

59. It is, unhappily, notorious that some Regional Divorce Units have become bywords for delay and inefficiency, essentially because HMCTS has been unable or unwilling to furnish them with adequate numbers of staff and judges.[1] What is revealed by two of the three of these cases that were handled by Regional Divorce Units are other failings which I cannot help thinking may have been due, at least in part, to the same underlying problem: people under pressure if there are not enough people engaged to do the work are more prone to make error. The sooner the entire process of divorce is made digital from beginning to end the better.

[1] Those who think this a harsh verdict may wish to consider what I said in *Reform and the future of family justice: where is the court modernisation programme heading?* [2018] Fam Law 1426, 1429, ("The introduction of Regional Divorce Centres was … plainly the right thing to do. But it has been marred by the failure of HMCTS to provide adequate numbers of both administrative and judicial personnel, in particular at the largest of the RDCs, at Bury St Edmonds, which serves London and the whole of the South-East. Utterly predictably, and entirely justifiably, these failings have led to strong criticisms from the professions. The reputational damage to HMCTS has been severe.") and what the President has more recently said in his Keynote address to the Resolution Conference on 5 April 2019, *Living in Interesting Times* ("On any view the Regional Divorce Centres have not worked well, indeed, some, particularly Bury St. Edmunds, Liverpool and Bradford have provided a wholly unacceptable service."). The depressing statistics are discussed in an illuminating article in the Daily Telegraph of 11 April 2019 *Couples 'in limbo' as divorce takes longer than a year*.