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THE HIGH COURT

Record No. 16M 1986

MATRIMONIAL

BETWEEN

N W

Petitioner

AND

J S

(NEE W ) OTHERWISE W: \_\_\_\_\_

Respondent

Judgment delivered by O'Hanlon J. the 19th day of June, 1987.

The Petitioner seeks a decree of nullity in relation to his marriage to the Respondent, which was solemnised at the Servite Roman Catholic Church, Fulham Road, Kensington, London, on the 21st April, 1979. The basis for the Petition is the allegation made by the Petitioner that the Respondent as of the date when the parties went through that marriage ceremony, was already married to one, C V S, and that that marriage was still valid and subsisting at the time of her purported remarriage to the Petitioner.

The Respondent concedes that she married C V S at Kensington Registry Office on the 1st April, 1963, and that her said husband was still alive at the time of her remarriage to the Petitioner, but she claims that her first marriage was lawfully dissolved by divorce decree of the English Courts on the 29th December 1977, when

a decree nisi obtained on the 11th November, 1977, was made absolute, and she says that in the circumstances of the present case the validity of that foreign divorce should be recognised by the Irish courts.

The Petitioner, however, claims that the parties to those divorce proceedings were not domiciled in England when the divorce was obtained, and that this circumstance prevents the Irish courts from recognising the validity of the dissolution of her first marriage upon which the Respondent relies. Accordingly, the central issue which arises for determination in the present case is the domicile of the Respondent and her husband, C V S, as of the date of institution of the divorce proceedings which commenced in England in the year 1977.

Prior to the enactment of the Domicile and Foreign Divorces Act, 1986, the wife of an Irish husband was regarded as acquiring on marriage the domicile of her husband and as being incapable during the subsistence of the marriage of having any other domicile. It was suggested from time to time that that rule of law was open to challenge on constitutional grounds, but the constitutional issue was never litigated, and I therefore propose to commence by considering what was the domicile of C V S in the year 1977, on the assumption that it was shared by the Respondent at all material times.

C V S was born in Ireland in the year 1939, of Irish parents, and clearly acquired a domicile of origin which was Irish. His father was a civil servant, employed in the Department of Industry and Commerce, but ultimately seconded to the Department of External Affairs,

(as it was then called), and sent to the Irish Embassy in London as an adviser on economic matters. C. V. went to school in Ireland until he was eleven years old, when he and his mother and the other members of the family joined his father in London - the father having left Ireland about two years earlier. Thereafter, C. V. was educated in schools in London - Haberdashers Hall, then a day school, then the Salesian College in Battersea. From there he progressed to the London School of Economics, where he became interested in marketing; he spent some time also as a student of the University of London, and on leaving college he obtained employment successively with the Michelin Company, with International Harvesters of Great Britain, with the Rolls Razor Company, and with the Aer Lingus Office in London.

During this period he met the Respondent and married her in 1963, when he was aged 24, and they lived together in Suffolk for about nine months, then in a flat in Golders Green, and then in a rented house in London. Two children of the marriage were born in England - a son born in 1964, and a daughter born in 1965. After an initial period working in the Aer Lingus London office, C. V. S. was offered a better position in the Dublin office and the couple came to Ireland in or about the year 1967. Within a few years he was offered and accepted the post of marketing manager with the Irish Mist Company, one of the Williams of Tullamore group of companies. This involved a move from Dublin initially to a rented house near Tullamore, and later to a house in Clara Hill, Clonaslea, Co. Laois. A third child of the marriage was born while the family were

living in Ireland.

The marriage ran into difficulties and the husband and wife separated in May 1973. The Respondent had formed a relationship with the Petitioner in the year 1972 and in 1974 she moved into a flat in premises the Petitioner had purchased at Alma Road, Dublin. She has continued to live at that address ever since. The Petitioner went to live with her there in 1978, and they went through a marriage ceremony on the 21st April, 1979. C v. S. remarried on the 14th April, 1978.

After the break-up of his first marriage, C v. S. continued to live in Ireland and to work for the Irish Mist Company until 1981. He then worked for a short period in Caracas, Venezuela, returning to London after about three months, and ever since he has been working with the More O'Ferrall Company in London and has become Managing Director (Outdoor) with responsibility for the company's operations in Great Britain and other countries.

The Respondent, although English by birth, and having all her family ties in England, has hitherto chosen to remain in Ireland and to embark on a career of her own in this country. She continues to be the holder of an English passport, and has at all times since her first coming to Ireland been a frequent visitor to London to visit her family and friends.

C v. S. in evidence said that he left Ireland at age 11 and was never back in Dublin until he took up his post with Aer Lingus at their Irish headquarters. He spent holidays as a student with a sister of his father's in Donegal, and his father, on taking early retirement from the

Civil Service in the mid-1960s, went back to live in Donegal, where he remained until his death in 1977. He himself had continued to visit England frequently after taking up his posting in Ireland - at that time his brother, sisters and their families were all living in London, as were many of his friends. His work with the Williams Group involved extensive travelling in different parts of the world - initially almost half the year would be spent in travelling, and at all stages it involved a minimum of three or four months away from Ireland.

His children were sent to schools in Ireland, and his son eventually joined the Irish army for a period of two years. The children held Irish passports, as did he at all stages - having first acquired one while his father was employed in the Embassy in London.

Asked about his domicile, he said that when he returned to Dublin in 1966/67 he did not intend to reside here permanently, but intended to move on in marketing, and that he was quite career-minded at the time. He said that an international environment was what he wanted but that he always regarded London as his home base. Even after coming to Ireland he continued to retain his membership of the Mill Hill Golf Club near London (of which his father had been a past Captain and a very dedicated member) for as long as he could afford to do so.

"I lived in Ireland for a number of years - I never intended to remain there; the period spent here was longer than it should have been - I should have left about the year 1975. I only intended to stay about five years in Irish Mist, and then carry on with my career ... Leaving the

University I regarded myself as an Irishman in Britain."

He said that he did not intend to absent himself permanently from London. Having been sent there as a child and educated there, it became his home. As far as the concept of domicile was concerned, he frankly admitted that he did not know the legal significance of the term and thought it was synonymous with residence for the time being; this would have been his frame of mind in 1977. Since leaving Ireland he had taken rented accommodation in London and later purchased a house there.

In considering the effect of the evidence given in the case, a number of legal principles have to be borne in mind.

The Petitioner seeking a decree of nullity undertakes a heavy burden of proof. "In all cases of this description it is the duty of the Court to be extremely cautious in pronouncing a marriage, solemnised between two parties, null and void, and to examine the whole of the evidence produced in proof of the nullity with great vigilance and jealousy" - Sir Herbert Jenner in Wright .v. Elwood. Curteis Ecclesiastical Reports, adopted by Haugh J. in Griffith .v. Griffith, (1944) IR 35. Mr. Justice Haugh went on to say, "Where a marriage in fact is proved the presumption of law weighs heavily in favour of its validity, but this presumption can be rebutted by evidence."

The Petitioner in the present case seeks to discharge that heavy onus by satisfying the Court that the Respondent and her first husband were not domiciled in England at the time of the divorce proceedings which took place in 1977.

The evidence as to the domicile of origin of C .

V S is sufficiently strong to establish that he took an Irish domicile of origin from his father who was born in Ireland and was still living there when. C

V was born. This leads on to the consideration of the question whether C V S should be regarded as having acquired a domicile of choice in England after he ceased to be dependent on his father, and if so whether he should be regarded as having abandoned it on coming to live in Ireland as a married man with a wife and family.

I accept that to acquire a domicile of choice, a person must change from his place of residence in the domicile of origin, with the intention of continuing to live in the new country indefinitely. "He must have formed a fixed and settled purpose of making his principal or sole permanent home in the country of residence, or, in effect, must have a deliberate intention to settle there."

(Halsbury, Laws of England, 3rd Edn. Vol 7, Par 31, and cases there cited). Abandonment of a domicile of choice can be established more easily than abandonment of a domicile of origin.

The authorities indicate that considerable caution must be exercised in accepting direct evidence of intention given by the person whose domicile is in question, particularly in relation to past intention, even though no suspicion may be entertained of the truthfulness of the witness. There is also a presumption of law against change of domicile and this must be proved by the person alleging it.

While bearing all these principles in mind, I have come to the conclusion on the evidence that C V

S. must be regarded as having abandoned his domicile of origin on reaching manhood, and as having adopted an English domicile of choice in lieu thereof. He had been brought up in England from age 11 or thereabouts, and had received his education there from that time forward. Of his immediate family, only his father had shown any desire to go back to live in Ireland. On completing his education he had taken up employment in the London area and had married and settled down there. His only contact with Ireland over a period of about fifteen years had been to spend some holidays as a student with his aunt in Donegal. All this factual evidence leads me to believe that it is safe to accept what he said himself in evidence, that during his early years as an adult, at least, he regarded England as his home and intended to remain there indefinitely.

Next, one must consider whether he later abandoned that domicile of choice in favour of his domicile of origin, on moving to Ireland to take up successive appointments with Aer Lingus and with the Williams Group of Tullamore. There is a good deal of evidence which would support such a conclusion. He spent, in all, about 14 or 15 years in Ireland before moving on to Venezuela, and later to England. He rented, and later purchased, a home in Ireland, and lived here with his wife and family of three children. The children were educated in Ireland, and even after the husband and wife separated he opposed her wish to move his son to a school in England. (This, however, could be explicable on grounds of facilitating access, as he was still employed by the Irish Mist Company at that time). He has had an Irish passport at all times and still retains it.



He says, however, that the move to Ireland was at all times regarded by him merely as a stepping-stone in his career in the marketing world, and that he always regarded England as his real home. His family and many of his friends were in England, and he was married to an English wife who would probably have found the move back perfectly acceptable at any time. Both husband and wife were frequent visitors to London and he spent long periods away from Ireland in the course of his work.

Having come to Ireland with his wife and two children, C V S appears to have settled down to live here, first as the holder of an important post with the Aer Lingus organisation, and later as a senior executive with the Williams Group of Tullamore. Having started his family life in Ireland in rented accommodation he later purchased a house, which was indicative of a belief on his part at the time that he would remain in Ireland for a significant period for the future. He expressed himself, in evidence, as dissatisfied with the level of remuneration available to him in the Williams Group, but he persevered with them for many years before seeking other employment.

I am left with the impression that two events precipitated his decision to leave Ireland and seek a new outlet for his talents elsewhere. The first was the break-up of his marriage with the Respondent. Had he continued in a happily married state, with a household of a wife and three dependent children, and having purchased a home in Ireland and sent his children to schools in that country, there would have been strong ties to militate against a move to a different country. Secondly, the

break-up of his marriage was followed by the event of meeting and marrying a new wife of Venezuelan origin, who must have found the move to an Irish provincial environment a rather traumatic experience. Mr. S -- said: "My career was going nowhere in Ireland - badly paid - stayed too long. My wife, with more common sense, said we should leave." This evidence suggests that but for the understandable pressure for a change of environment coming from his new wife, Mr. S -- might well have continued to linger on in Ireland, making the best of his assignment with the Williams Group with whom he had become Marketing Director in the year 1973, or seeking a more remunerative post with some other firm in this country.

The Respondent, with all her family ties in England, and still retaining her English passport, has elected to remain on in Ireland ever since the break-up of her first marriage and the severance of her relationship with the Petitioner in or about the year 1985.

I have come to the conclusion that the circumstantial evidence in the case all tends to suggest that C. - V S came to live in Ireland with his family in the mid-sixties, with the intention at that time, or formed in the course of the years which immediately succeeded it, of remaining indefinitely in Ireland and making his home there. This evidence is of such a character that I find it more convincing than the views now expressed by Mr. S. as to his state of mind during the relevant period. I accept that he now believes that at all relevant times he intended to move on to higher things, not necessarily in England but in some country offering greater scope for his

ambition than Ireland, but this seems to me to be a case of ex post facto thinking.

As of the year 1977, it appears to me on the evidence that Mr. S should be regarded as having been domiciled in Ireland. Whether the Respondent was fixed by law with her husband's domicile or not, does not seem to be material, as the evidence of an Irish domicile in her case based on the circumstantial evidence of long residence and her intention to remain on for the future is as compelling as in the case of her then husband, without having to rely on the rule of law which was regarded as prevailing at the time.

The Respondent in resisting the nullity proceedings also sought to rely on a plea of estoppel as against the Petitioner, claiming that as he had been the moving force in persuading the Respondent to seek and obtain a civil divorce and a canonical annulment of her marriage with C. V S, and in persuading her to go through a marriage ceremony with him (the Petitioner) in London in reliance on the Church annulment and civil divorce previously obtained, he should be precluded from challenging the validity of the civil divorce at this stage.

The evidence established that the Petitioner did, in fact, play a very active role in encouraging the Respondent to seek a civil divorce in England and also an ecclesiastical annulment of her marriage, and did so at a time when the liaison between himself and the Respondent was already well-established. His motive in doing so was to enable a formal marriage ceremony take place between himself and the Respondent. She, for her part, was loath to enter into a second marriage, having regard to her unhappy

experience with regard to her first marriage, and was quite content to live with the Petitioner as man and wife without formalising their relationship in any way, but the petitioner was anxious to satisfy convention in order to assuage the feelings of his family and his employers.

This gives rise to a situation of approbation and reprobation, wherein the Petitioner actively encouraged the Respondent to bring divorce proceedings for reasons material to his own interests at the time, but now challenges the validity of the order made in those proceedings insofar as the status of the Respondent under Irish law is concerned.

For estoppel by conduct to arise, however, it is generally necessary that one party should have "either by words or conduct made to another a representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or (have) so conducted himself that another would, as a reasonable man, understand that a certain representation of fact was intended to be acted on". The other party, in turn, must have acted on the representation and thereby altered his position to his prejudice. (Halsbury, Laws of England, 3rd Edn., Vol. 15 (Estoppel), Par. 338, and cases there cited).

In the present case, while the Petitioner may have been largely instrumental in persuading the Respondent to embark on the divorce proceedings in England, it was not suggested that he made any representation to her as to the effect a divorce decree, if obtained, would have on her status according to Irish law. Nor has it been shown that the Respondent was induced by anything said by the Petitioner to believe that the English divorce decree would

be fully effective for the purpose of enabling her to enter into a new marriage bond which would be recognised by Irish law, nor did she do anything to her prejudice in reliance on any such representation.

For these reasons I am unable to accept the plea of estoppel as an answer to the Petitioner's claim in these proceedings.

My ultimate conclusion on the evidence, therefore, is that C V S should be regarded as having an Irish domicile as of the date when the divorce proceedings were instituted in England. So also should the Respondent. Their divorce, for this reason, cannot receive official recognition for the purposes of Irish law and the Respondent's later marriage to the Petitioner must be regarded as null and void. I therefore make an order of nullity in relation to the marriage of the Petitioner and the Respondent which was solemnised on the 21st April, 1979 on the ground referred to in the Petition, namely, that the Respondent at the date of the said purported marriage was already married and her previous marriage is to be regarded for the purposes of our law as still valid and subsisting at the time of the subsequent marriage ceremony with the Petitioner.

*R J O'Hanlon*

R.J. O'HANLON  
19th June, 1987

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- Griffith .v. Griffith, (1944) IR 35
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