1938 *Present :* **Koch J.**

MORRIS *v.* MORRIS.

S. C. No. 1—Divorce.

Divorce—Action by wife resident in Ceylon—Husband domiciled in England—Domicil of wife—Requirement of Order in Council, 1936—Indian and Colonial Divorce Jurisdiction Act, 1926, s. 1.

By the Ceylon Divorce Jurisdiction Order in Council, 1936, the provisions of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926, were applied to Ceylon: Under that section, read together with the terms of the Order in Council, the Supreme Court was vested with jurisdiction to grant a divorce where the parties to the marriage are British subjects domiciled in England or Scotland, provided the petitioner resides in Ceylon at the time of presenting the petition, that the place where the parties last resided together was in Ceylon, and that either the marriage was solemnized in Ceylon or the adultery or the crime complained of was committed in Ceylon.

The petitioner asked for a divorce from her husband on the ground of malicious desertion. The petitioner alleged that she was a permanent resident of Ceylon, which was her domicil of origin and that her husband was an Englishman domiciled in England at the time of marriage.

***Held*, that the petitioner by her marriage acquired a new domicil—the domicil of her husband—and that she was therefore a British subject domiciled in England within the meaning of the section.**

THIS was a petition for divorce presented to the Supreme Court under the Ceylon Divorce Jurisdiction Order in Council, 1936, by the petitioner, who was resident in Ceylon, aganist her husband who was an Englishman domiciled in England at the time of her marriage.

N. Nadarajah (with him *O. L. de Kretser, Jr.*), for petitioner.—The Indian and Colonial Jurisdiction Act of 1926 (*16 & 17 Geo. V., C. 40*) confers jurisdiction on Courts in India in certain cases with respect to dissolution of marriages, the parties to which were domiciled in England or Scotland. This Act has been extended to Ceylon by Order of His Majesty in Council published in *Government Gazette* of July 1, 1936, and entitled "The Ceylon Divorce Jurisdiction Order in Council, 1936". This

[1] (*1894*) *A. C. 360.* [2] (*1913*) *17 N. L. R. 195.*

[3] *17 N. L. R. 494.*

Order in Council confers jurisdiction upon the Supreme Court of Ceylon. Special rules have been framed by theLordChancellor in regard to procedure and to the allegations that the petition for divorce should contain. These rules will be found in *Government Gazette* of July 2, 1936: Statutory Rules and Orders No. 742 of 1936. In this case the respondent is an Englishman domiciled in England and is now residing in Surrey. The petitioner is an inhabitant of Ceylon and was married to respondent in Ceylon. By marriage her domicil became English—vide *Dicey, p. 134 of 3rd ed.* Prior to Matrimonial Causes Act of 1937 a divorce in England was allowed only on adultery and desertion. By Act of 1937 operating from January 1, 1937 (*1 Ed. VIII. & 1 Geo. VI., C. 57*) the law has been amended and malicious desertion is made a ground for divorce, *vide* section 2 of the Act. In this case the petitioner alleges desertion without cause for over a period of 3 years. The petition has now been amended to conform to requirements of rules framed by the Lord Chancellor and there is an affidavit of petitioner deposing the facts necessary to obtain a decree of divorce. In the case of *Le Mesurier v. Le Mesurier*[1] it was held that the District Court in Ceylon had no jurisdiction to grant divorce in the case of a married person who had domicil out of Ceylon, *vide* also *Case v. Case*[2]. It was to remedy the hardship caused by this legal situation that the Indian and Colonial Jurisdiction Act of 1926 was passed. This Act has now been extended to Ceylon and the Supreme Court has been granted Original Civil Jurisdiction to make decrees for dissolution of marriages where parties are British subjects domiciled in England or Scotland on grounds on which decree for dissolution of marriage may be granted by the High Court in England according to the law for the time being in force. It is clear law that where a woman marries a man she takes his domicil, vide *Dicey's Conflict of Laws (3rd ed.) p. 134,* therefore the petitioner in this case though resident in Ceylon acquired domicil of husband which was English, vide *Warrender v. Warrender*[3]. The petitioner is therefore entitled to summons on respondent.

Cur. adv. vult.

July 11, 1938. KOCH J.—

Under and by virtue of the terms of an Order in Council named the Ceylon Divorce Jurisdiction Order in Council, 1936, a petition for divorce *a vinculo matrimonii* on the ground of malicious desertion has been presented to this Court by Mary Ethel Helen Morris *née* Spaar of Lady MacCarthy road, Kandy, against her husband Robert Wallace Morris of Lunn House, 46A, Park Road, East Molesey, Surrey, England.

It has been ordered by this Order in Council that on or after July 1, 1936, the provisions of the first section of the Indian and Colonial Divorce Jurisdiction Act, 1926, shall apply to the Island of Ceylon in like manner as they apply to India, and in the Preamble, that it shall be subject to the necessary modifications which are set out. It is further ordered that the Court which has to exercise jurisdiction in respect of a petition so presented under this Order in Council shall be the Supreme Court of Ceylon.

[1] *1 N. L. R. 160.*

[2] *37 Times L. R. 499.*

[3] *(1835) 2 Cl. & F. 488.*

In pursuance of the powers conferred by the Indian and Colonial Divorce Jurisdiction Act, 1926, and by the Ceylon Divorce Jurisdiction Order in Council, 1936, the Secretary of State for the Colonies with the concurrence of the Lord Chancellor made certain Rules which have to be complied with. These rules are described as "The Ceylon (Non-Domiciled Parties) Divorce Rules, 1936", and are dated July 1, 1936. The petition as originally presented was defective in certain particulars as required by these Rules. I, therefore, made order returning the petition for amendment and compliance in respect of those particulars. This has now been done and the petition as amended is before me.

Now, section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926, read side by side with the terms of the Order in Council referred to would give the Supreme Court of Ceylon jurisdiction to make a decree for the dissolution of a marriage where the parties to the marriage are British subjects domiciled in England or Scotland, provided that the petitioner resides in Ceylon at the time of presenting the petition, that the place where the parties last resided together was in Ceylon, and that either the marriage was solemnized in Ceylon or the adultery or crime complained of was commited in Ceylon.

The petition discloses that the petitioner is residing in Ceylon and that the parties last resided together in Ceylon till the year 1932. It also sets out that the marriage took place in Ceylon and that the matrimonial offence complained of was committed in Ceylon. To this extent the petition complies with the requirements of the law. But there remains the fundamental essential as to whether the parties to the marriage are British subjects domiciled in England or in Scotland. So far as the respondent is concerned, the petition sets out the fact that he is an Englishman who has his domicile in England, that that was his domicile at the time of the marriage, and that he is at present residing there. The difficulty arises with regard to the domicile of the petitioner.

The petitioner alleges that she is a "native of Ceylon" and a "permanent resident of Ceylon"; in other words that her domicile of orgin is Ceylon. If that domicile still continues, there can be no question that her petition will have to be rejected on the ground that this Court in that event will have no jurisdiction to entertain it. But has she, by reason of her marriage, acquired a new domicile, that domicile being that of her husband ? If this is the case then this requirement too will have been complied with.

Before dealing with the authorities on this point, I wish to refer to one or two of the Statutory Rules already mentioned.

Rule 6 (1) requires that in the body of the petition shall be stated the place and date of the marriage, and the name, status and domicile of the wife *before the marriage* ; while Rule 6 (2) requires that the status of the husband and his *domicile at the time of the marriage* should be stated. It is significant that while it is necessary to state the domicile of the husband at the time of the marriage, there is no requirement that the domicile of the wife at the time of the marriage should be stated, but only her domicile before the marriage. This presumbly is due to the fact that by her marriage it is possibly contemplated that her domicile might be changed.

In *Warrender v. Warrender*[1], the facts were that a Scotchman domiciled in Scotland was married to an English woman in England. After the marriage, the parties resided first in Scotland and thereafter in England, where a mutual separation took place and the wife went out to reside abroad. The husband continued to be domiciled in Scotland and there raised an action for divorce against her on the ground of adultery alleged to have been committed abroad. It was held by the House of Lords that the wife's legal domicile was in Scotland where the husband was, and that she was amenable to the jurisdiction of the Scotch Court. The importance of this decision is that in spite of the mutual separation and the living abroad her marriage domicile continued.

In *Dalhousie v. M'Donnall*[2], Lord Brougham at page 884 expressed himself thus, "If the domicile was not the same for both parents . . . . we should hold that *that of the father at the time of the marriage* should give the rule". Again at page 886 he said, "My Lords, with respect to the case of *Warrender v. Warrender,* undoubtedly as far as that case goes it is in favour of the legitimacy here because the domicile of the parties was clearly held to be Scotch. An attempt was made to show that Lady Warrender's domicile was not Scotch with a view to another branch of the argument but we all agreed here that *her domicile was the dimicile of the husband* and that both parties had a Scotch domicile".

In *William v. Dormer*[3], it was held that a wife is legally domiciled where the husband was, but this may not apply after a decree of divorce was pronounced.

In *In re Daly*[4], the facts were that the wife, Mrs. Blagrave, was married to an Englishman who had his domicile in England. A few years later she separated from her husband and went to reside in Paris. There was no judicial separation. In considering the validity of a testamentary disposition made in France according to the mode there prevailing, the Master of the Rolls, Sir John Romilley, was of opinion that the disposition was good according to the French law but that raised the question whether Mrs. Blagrave could obtain a domicile in France different from that of her husband. *He was of opinion that she could not.*

In *Dolphin v. Robins*[5], a wife, who was married to her husband in England and whose domicile was England, later sued out in the Scotch Courts a process for the dissolution of her marriage on account of adultery committed by her husband in Scotland and obtained a decree for divorce *a vinculo matrimonii.* She, thereafter, married a Frenchman and went with him to his domicile in France. Nearly two years later, she executed in France a holograph will (valid according to the laws of that country) revoking all previous wills. The question arose whether the holograph will made in France had the effect of revoking a will which she had previously executed in England. This depended on whether

[1] *(1835) 2 Cl. & F. 488—English Reports, vol. 6, page 1239.*
[2] *(1840) 7 Cl. & F. 817.*
[3] *(1852) 2 Rob. Ecc. 505.*
[4] *(1858) 25 Beav. 456.*
[5] *(1859) 7 H. L. Cases 390.*

her domicile was in England or in France. Had she acquired a new domicile in France by reason of her second marriage and her stay in France, the holograph will would have prevailed, but it was held that the Scotch decree of divorce had no effect and therefore she continued to be married to her first husband; that as his domicile continued to be in England and as his domicile was her domicile, she was a domiciled Englishwoman; that the will executed in France, not having been executed in the mode which was required by the English law, had no effect on the will which she had previously executed in England; and that the English will was rightly admitted to probate.

The point in the case is that all the three learned Judges were firmly of opinion that the husband's domicile was the wife's domicile; but the question whether the wife had the power to change her domicile after obtaining a divorce or a judicial separation from her husband was left an open matter.

Dicey, in his work on the "*Conflict of Laws*" (*5th ed., at p. 107*) in dealing with Rules on the Domicile of Natural Persons, sets out Rule 8, sub-rule (2) thus:—

> "The domicil of a married woman is, during coverture, the same as, and changes with, the domicil of her husband."

He refers to several cases some of which I have already dealt with.

Pothier, in his "*Introduction Contra de Mar. No. 552*", says that from the instant of the marriage the domicil of the husband becomes that of the wife.

Burge, in his work on *Colonial Law* (*vol. I.*), *at p. 35,* says that the wife by her marriage, even before she leaves her residence, acquires the domicil of her husband, and no longer retains that of her origin. The wife retains the domicil of her husband even after the relationship is disturbed by the death of her husband, until she makes choice of and establishes another domicil or remarries.

Voet (*vol. I., 95 and 96*) says that the wife by her marriage acquires the domicil of her husband and retains it even after her husband's death until she makes choice of and establishes another domicil or remarries.

In view of the authorities I have referred to, there would be justification at present for my entertaining the petition, but in doing so, as the present proceedings are *ex parte,* I leave it open to the respondent to show cause if so advised as to whether the petition has been rightly entertained and whether the Court had jurisdiction to do so.

I accordingly direct that summons do issue. The summons will be served on the respondent personally. The proctor for the petitioner will within a month from to-day, after correspondence with his solicitor in England, inform this Court as to the mode of service he proposes, and this Court will then decide as to whether such mode meets with its approval. When summons has been served on the respondent, he is directed to enter appearance within two months of the date of such service.