

THE HIGH COURT

1435/1983

BETWEEN:

LEE SACHS

Plaintiff

and

STANDARD CHARTERED BANK (IRELAND) LIMITED

Defendants

and

LINDA MARGARET SACHS

Claimant

Judgment of Mr. Justice Barrington delivered the 30th day of July 1985

This case originated from matrimonial proceedings between the Plaintiff, Mr. Sachs, and the Claimant, Mrs. Sachs, in the United Kingdom. In those proceedings the wife claimed that the husband who is a man of substance had deserted her sometime in April 1983 and had since refused either to support her or to reveal his whereabouts. The wife originally petitioned for judicial separation but was given leave by the English Court to substitute a petition for divorce. She obtained an absolute decree of divorce a vinculo matrimonii on the 5th of October 1984.

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On the 3rd of January 1985 the Registrar of the Family Division of the English High Court dealt with financial matters arising on the dissolution of the marriage. By his Order he directed the husband to pay to the wife, within seven days of that date, a lump sum of Stg. £35,000. He did not make any Order for the payment of periodical maintenance. I am satisfied that this Registrar's Order is properly referred to as an ancillary Order made in the divorce proceedings.

Meanwhile the divorce Court in England had granted various mareva injunctions restraining the husband from dealing with his assets, and English Banks were given notice of the making of these injunctions. The Standard Chartered Bank (Ireland) Limited is a subsidiary of an English Bank and became aware of the making of these injunctions. The husband had Stg. £75,000 in an account with The Standard Chartered Bank (Ireland) Limited. He sought to withdraw it but the Bank refused to pay fearing it would be in breach of the English injunctions. The husband sued the Bank for the return of his money and Mr. Justice Hamilton refused to make an Order against the Bank saying that it was appropriate that the husband obey the Orders of the Courts of his own country. The husband appealed against this decision to the Supreme Court. Apparently the Supreme Court suggested that the matter should properly be dealt with in fresh proceedings in which the husband would claim the Stg. £75,000 and the Bank would interplead referring to the rival claim of the wife.

It was this suggestion which gave rise to the present proceedings which were instituted on the 16th of June 1983.

By Order dated the 11th of February 1985 made in these proceedings Mr. Justice O'Hanlon accepted the Bank's undertaking

to pay the sum of Stg. £75,000 into Court to the credit of the action and directed an issue between the wife as Claimant and the husband as Respondent as to the ownership of the funds.

The wife on the 27th of March 1985 delivered her Statement of Claim in the issue confining her claim to the sum of Stg £35,000 being the amount awarded to her by the said Registrar's Order of the 3rd of January 1985 made in the English proceedings.

The husband delivered his defence on the 27th of March 1985. The substance of his defence is contained in paragraph 2 which is in the following form -

"The claim of the Claimant arises out of proceedings for a decree of dissolution of marriage a vinculo matrimonii, which decree is contra bonos mores, repugnant to the Constitution, and no relief whatsoever in respect thereof can be entertained by this Honourable Court."

He also pleaded that the claim was frivolous, vexatious and an abuse of the process of the Court.

At the hearing before me Mr. Blayney submitted, on behalf of the husband, that the Order awarding the wife the capital sum of Stg.£35,000 was an ancillary Order made in foreign divorce proceedings and that to enforce it in this country would be contrary to Irish public policy to be gleaned from Article 41 of the Consitution and from the decision of the former Supreme Court in Mayo-Perrott .v. Mayo-Perrott 1958 Irish Reports Page 336. Indeed Mr. Blayney, quite correctly, challenged the use of the term "wife" in relation to the Claimant because, he submitted, that the effect of a decree of divorce in English Law was to change her status so that she was no longer the "wife" of the Plaintiff/Respondent. The effect of the divorce was to alter her status in a way which was contrary to the public policy of Ireland. The Order for the payment of the sum of Stg. £35,000

was an ancillary Order made in a form of proceedings forbidden by the Constitution of Ireland and could not be enforced in Ireland without violating the Constitution or without, at any rate, violating public policy to be gleaned from the Constitution.

Mr. Blayney relied on a passage in the judgment of Mr. Justice Kingsmill Moore in Mayo-Perrott .v. Mayo-Perrott (1958 Irish Reports Page 336). The passage appears at page 350 of the Report and is as follows-

"The general policy of the Article seems to me clear. The Constitution does not favour dissolution of marriage. No laws can be enacted to provide for a grant of dissolution of marriage in this country. No person whose divorced status is not recognised by the law of this country for the time being can contract in this country a valid second marriage. But it does not purport to interfere with the present law that dissolutions of marriage by foreign Courts, where the parties are domiciled within the jurisdiction of those Courts, will be recognised as effective here. Nor does it in any way invalidate the remarriage of such persons. It avoids the anomalous, if not the scandalous, state of affairs stigmatised in the passages which I have already cited whereby legitimacy and criminality could be decided by a flight over St. George's Channel.

But to hold that our law accepts the cardinal principle that questions as to married or unmarried status depends on the law of the domicile of the parties at the time when such status is created or dissolved is not to say that our law will give active assistance to facilitate in any way the effecting of a dissolution of marriage in another

"country where the parties are domiciled. It cannot be doubted that the public policy of this country as reflected in the Constitution does not favour divorce a vinculo, and though the law may recognise the change of status effected by it as an accomplished fact, it would fail to carry out public policy if, by a decree of its own Courts, it gave assistance to the process of divorce by entertaining a suit for the costs of such proceedings. The debt which it is sought to enforce is one created by proceedings of a nature which could not be instituted in this country, proceedings the institution of which our public policy disapproves."

He also referred to a similar passage from the judgment of O'Daly J. (as he then was) at Page 352 of the Report. The passage reads as follows-

"Enforcement by our Courts of the costs of a decree of divorce would clearly offend against a moral principle which the Constitution asserts. The terms of sub-section 2 are reinforced by the pledge which in sub-section 1 the State gives to guard with special care the institution of marriage and to protect it against attack. If there is ever to be a case in which on grounds of repugnancy to public policy the Courts will decline to enforce a foreign judgment this is, it seems to me, one."

Maguire J. expresses a similar view at Page 353 of the Report -

"The problem really is, can a person who cannot obtain a dissolution of marriage here, pursue by legal proceedings up to judgment and execution a person whom he or she has divorced in another country for the costs of the divorce proceedings abroad. It is clearly repugnant to the laws of

"Ireland that the decree of dissolution as a whole could be implemented by a judgment of the Courts of this country founded on a judgment of a foreign court. This seems to me so clear that it needs only to be stated. It is incapable of argument. It has not been sought to argue this. Can this judgment of the English Courts be split up and disintegrated so as to enable the Plaintiff here to maintain an action founded on that part of the judgment which provides only for payment of costs ignoring the major part of such judgment. That is what it is sought to do in this case. In my opinion the Court which has before it an action founded on a foreign judgment must look at that judgment as a whole. If on doing so the Court finds that the gist of that judgment is for something that cannot be enforced here, and is not justiciable here, even though it is not sought to enforce it, then it is the duty of the Court so to determine, and to refuse to entertain a claim for relief which is merely ancillary and insignificant in itself when contrasted with the terms of the judgment as a whole. The terms of this judgment are not severable. To hold otherwise would be to invite and give effect to a serious intrusion, indeed a loophole, on the age-old divorce laws of this country. To implement that part of this English judgment for divorce which deals with costs is repugnant to the Constitution and to the laws of Ireland, and the public policy reflected in those laws over a long period of Irish history."

Mr. Geoghegan, on behalf of the Claimant, does not dispute that an action in this country to recover the costs of foreign divorce proceedings would be contrary to public policy.

But that, he claims, is all that the Mayo-Perrott case decided. He concedes that an Order for costs, made in divorce proceedings, is ancillary to the decree of divorce itself. But he denies that the same applies in substance to Orders making financial provision for one of the parties on the dissolution of a marriage. Such orders, he submits, do not necessarily arise from the divorce decree but from the breakdown of the marriage. He points out that the English divorce Court has the same powers to make provision for the maintenance of the wife and the children in the case of proceedings for judicial separation as it has in proceedings for divorce. In the case of divorce proceedings such Maintenance Order will formally be ancillary to the decree of divorce. In the case of proceedings for judicial separation it will formally be ancillary to the Order granting a judicial separation. But, he submits, that to suggest that they are not dealing with the same problem - to wit the maintenance of wife (or husband) and children on the occasion of the breakdown of a marriage - is to confuse form with substance.

Mr. Geoghegan relies strongly on the Judgment of Mr. Justice Hamilton in Mahon .v. Mahon (unreported, judgment delivered the 11th of July 1978). That was a case concerning the enforcement in Ireland of a Maintenance Order made in England. The Maintenance Order had been made consequent upon the granting of a decree of dissolution of marriage. The Defendant relied unsuccessfully on the decision in Mayo-Perrott .v. Mayo-Perrott as a defence to the action.

In the course of his judgment Mr. Justice Hamilton said (at Page 9) -

"What is sought to be enforced here is a Maintenance Order admittedly made in divorce proceedings and consequent to a grant of dissolution of marriage and the question for

"determination by me is whether the enforcement of such a Maintenance Order would be contrary to public policy.

I accept unreservedly that if the recognition or enforcement of a Maintenance Order would have the effect of giving active assistance to facilitate in any way the effecting of a dissolution of marriage or to give assistance to the process of divorce that such recognition or enforcement would be contrary to public policy.

In the case of Mayo-Perrott .v. Mayo-Perrott the Supreme Court decided that the terms of the judgment which was sought to be enforced were not severable.

In this particular case the Maintenance Order sought to be enforced was made on the 23rd of July 1973 and though made in and consequent to proceedings for a dissolution of marriage, such decree had been granted and made absolute on the 7th day of August 1967.

In enforcing and recognising this Maintenance Order made on the 23rd of July 1973 it cannot be said that such enforcement or recognition is giving active or any assistance to facilitate in any way the effecting of a dissolution of marriage or in giving assistance to the process of divorce. It is merely providing for the maintenance of spouses and as such cannot be regarded as contrary to public policy."

It appears to me that this is the correct approach to the problem. If a marriage breaks down whether the parties look for judicial separation or divorce, problems may arise concerning the custody and maintenance of children or the maintenance of one of the parties to the dissolved marriage. It appears to me that

these are universal problems which arise not from the divorce proceedings as such, but from problems attendant on the breakdown of the marriage.

In Mayo-Perrott .v. Mayo-Perrott the issue was whether an Order for the payment of the costs of the divorce proceedings themselves was enforceable in Ireland. Costs are the sinews of litigation and it is not surprising that the Supreme Court held that the part of the Order of the English Court awarding costs could not be severed from the part granting a dissolution of marriage. But, in the present case, as in the case Mahon .v. Mahc there are two separate Orders, the first granting the divorce and the second dealing with financial matters consequent upon the dissolution of the marriage. There is no evidence that the problems of the Court making the second kind of Order are in any significant way different from the problem which would face a Court in Ireland attempting to make proper financial provision for a wife or children consequent upon the granting of a decree of judicial separation.

Assuming, as appears to be the case, that both husband and wife were domiciled in the United Kingdom at the time of the granting of the decree of divorce in the present case, then it would appear that the Irish Courts would recognise the validity of the divorce on the principles of private international law discussed in the Judgment of Mr. Justice Kingsmill Moore in Mayo-Perrott .v. Mayo-Perrott (1958 Irish Reports Page 306) and followed in Governor and Company of the Bank of Ireland & Anor. .v. Caffin & Anor. (1971 Irish Reports Page 123) and Gaffney .v. Gaffney (1975 Irish Reports Page 133). Yet if Mr. Blayney's submission is correct the Irish Courts, while recognising the validity of the divorce itself, would refuse to enforce the property provisions made consequent upon the divorce although

similar financial provisions could be made in Ireland consequent upon the breakdown of a marriage. A woman's right to have such a financial provision made for her arises not because she was divorced but because she was married and the marriage has broken down. It would be strange if the public policy of Ireland allowed one to recognise the divorce but debarred one from upholding the vestigial rights of the wife.

Mr. Blaney seeks to distinguish the present case from the decision in Mahon .v. Mahon because of the last sentence in the passage quoted from the Judgment of Mr. Justice Hamilton in which he says of the Maintenance Order -

"It is merely providing for the maintenance of spouses and as such cannot be regarded as contrary to public policy."

Mr. Blaney submits that the passage quoted fails to advert to the fact that divorce purports to end the marriage and that the parties are no longer in the contemplation of the law which grants the divorce, husband and wife, and cannot properly be referred to as "spouses". The essence of divorce, Mr. Blaney submits, is that it effects a change in the status of the parties to the marriage and, he submits, that Mr. Justice Hamilton's Judgment fails to advert to this fact. I doubt if this is correct. It appears to me clear from the whole tenor of Mr. Justice Hamilton's judgment that he is dealing with a Maintenance Order made consequent on the granting of a decree of divorce. It appears to me that he used the term "spouses" in the passage quoted merely as a convenient way of referring to the parties to the former marriage.

The Maintenance Orders Act 1974 provides machinery for the enforcement in Ireland of Maintenance Orders made in the

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United Kingdom. Mr. Geoghegan has suggested that many of these Orders must be Orders made consequent upon a decree of divorce a vinculo as distinct from a decree of judicial separation. Section 9 of that Act allows our courts to refuse to enforce a Maintenance Order made in a reciprocating jurisdiction in certain limited circumstances. One of these circumstances is where -

"Recognition or enforcement would be contrary to public policy."

Section 3 deals with the definition of Maintenance Orders. The definition includes an Order which provides for the periodical payment of sums of money towards the maintenance of any person, being a person whom the person liable to make the payments under the Order is, in accordance with the law of the jurisdiction in which the Order was made, liable to maintain. Affiliation Orders are expressly included in the definition. Yet Section 3 sub-section 2 provides that "for the avoidance of doubt" a Maintenance Order is to include -

"Such an Order which is incidental to a decision as to the status of natural persons."

It appears to me that a Maintenance Order made, on the granting of a dissolution of marriage, may be an Order

"incidental to a decision as to the status of natural persons."

It appears to me therefore that the Oireachtas in passing the Maintenance Orders Act 1974 contemplated that the enforcement of such an Order would not necessarily be contrary to public policy.

It is, of course, true that our statute law does not expressly confer upon the Courts power to order one party to a broken

marriage to make a capital payment to the other. But there does not appear to be anything repugnant to our law or Constitution in the making of a capital payment as distinct from periodical payments of income on the occasion of the breakdown of a marriage. The right of the Claimant in the present case to receive the Stg. £35,000 under the Order of the English Court is a property right conferred on her by the law of England. As Mr. Justice Cardozo said in Loucks .v. Standard Oil Company of New York (1918 224 NY Page 99 at Page 111) -

"A right of action is property. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the Plaintiff in getting what belongs to him. We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home The Courts are not free to refuse to enforce a foreign right at the pleasure of the Judges, to suit the individual notion of expediency or fairness. They do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

In my view it is just and proper that the Plaintiff should recover this sum of Stg. £35,000 from her former husband and I see nothing in the public policy of Ireland which precludes me from giving effect to that decision.

Accordingly the Plaintiff is entitled to recover the full amount of her claim.

De Burgh

22/10/85