

THE HIGH COURT

1985 No. 228

BETWEEN

T. N.

PLAINTIFF

AND

P. J. N.

DEFENDANT

Judgment of Mr. Justice MacKenzie delivered on the 29th day of
July 1987.

The parties were married at the Hammersmith Registry Office in November 1972. The marriage proved to be extremely unhappy.

It is unnecessary to review the evidence in detail.

I accept the testimony of the Plaintiff that for ten years neither she nor her children received any worthwhile financial support from the Defendant, who went so far as to appropriate that part of the unemployment assistance granted to her and her children for his own use and benefit. I mention this as being an incidence of his attitude.

Because of harrassment and humiliations on the part of the Defendant and of a woman friend who described herself as his wife and used his name, the Plaintiff in this case decided using her own words "that she needed a clean break from it all". She wanted to be "free from her husband

and sort out her life once and for all".

This was in February 1982. She left Ireland and has made her home in Devonshire and I accept that it is her intention to reside over there permanently with her children. Financially she is anything but secure, relying mainly on the social services.

On the 6th of March 1984, the Plaintiff appeared in the County Court at Barnstable Devon and having given evidence before presentation of a divorce petition of intention to change domicile the Court

- (a) ruled that she had acquired domicile to enable the Court to exercise its jurisdiction and
- (b) the Court granted her a decree of divorce nisi and
- (c) a Custody Order was granted to the Plaintiff in respect of the children of the marriage.

On the 21st day of May 1984 a decree of divorce absolute was made by the same Court.

The Defendant through Irish lawyers instructed a firm of English solicitors to represent him in the proceedings referred to above and an appearance was entered on his behalf. The Defendant did not personally attend the proceedings and it is not clear to what extent his English solicitors opposed the Plaintiff's applications.

These solicitors ceased in my view to represent him after May 1984.

On the 6th of November 1984 the Maintenance Order which is the subject of these proceedings was made whereby

the same Court granted, inter alia, a capital sum of £50,000.00 sterling with interest thereon to the Plaintiff.

All these proceedings took place before the Domicile and Foreign Divorces Act 1986; Had they taken place after the coming into force of that Act, in my opinion by virtue of Section 5 the Plaintiff's divorce would now be recognised in Ireland.

The Plaintiff maintains that the Maintenance Order and proceedings are entirely separate and distinct from the divorce notwithstanding the use of the same record number. This it is said is for procedural and administrative convenience. The Order it is argued is not ancillary to the divorce but distinct and separate. It could have been obtained by the Plaintiff irrespective of the divorce and separately enforced in England.

Therefore, the case is made on the grounds of public policy, the Maintenance Order should be enforced in Ireland. Arguments for the defence can be summarised.

- (a) Under the law at that time the wife's domicile being that of her husband the divorce cannot be recognised by these Courts as being contrary to public policy to be inferred from the Constitution.
- (b) Following the decision in Mayo-Perrot .v. Mayo-Perrot 1958 Irish Reports the awarding of a lump sum Maintenance Order is indistinguishable from the award of costs and that the Judgment should not be split or disintegrated
- (c) that the Court ought to refuse to ratify or

to recognise what is ancillary to a foreign Judgment which would not be enforced here on the grounds of repugnancy to the Constitution and as being against public policy

- (d) The Plaintiff's divorce having taken place before the passing of the Domicile and Recognition of Foreign Divorces Act 1986 could not be recognised by this Court as being a valid dissolution of marriage
- (e) The enforcement of the Maintenance Order is contrary to public policy as facilitating the effecting of a dissolution of marriage.

Counsel for the Defendant on the following authorities in support of their argument listed one after the other

- 1. Mayo-Perrot .v. Mayo-Perrot
- 2. Bank of Ireland .v. Caffin 1971 IR page 123
- 3. T .v. T IR 1983
- 4. Simmons .v. Simmons 1939 1 KB 490
- 5. Gaffney .v. Gaffney 1975 IR page 339
- 6. Dicey's Conflict of Laws Tenth Edition
- 7. Counihan .v. Counihan Unreported 1973

It was sought to distinguish the Judgments in Sachs .v. Sachs High Court July 1985 Supreme Court July 1986 from the present case on the basis that both the husband and wife in Sachs case were domiciled in England, both parties having common domicile in England.. Jurisdiction to recognise the Ancillary Order flows from the recognition of the Divorce Order. If the main Order falls, they say, so does the Ancillary

Order (Simmons -v- Simmons). It is said the Irish Courts have no jurisdiction to award a lump sum, though I think no point turns on this. It is conceded a Maintenance Order may be considered separate from a divorce, for example, on the break-down of a marriage without divorce.

The Defendant is endeavouring to avoid his obligations to support his wife and children. During the course of the evidence he was questioned as to what provisions he proposed to make for the maintenance of his children apart from his wife. He vaguely suggested the setting up a Trust Fund with a capital sum of £25,000-00. I believe that suggestion was made on the spur of the moment.

The Plaintiff's case is that the situation for the maintenance of a wife and children should be no different case from an Order made on the occasion of a break-down of marriage or separation. The law it is argued has progressed and changed since Simmons -v- Simmons.

In Mahon -v- Mahon Unreported 11th July 1978 it was unreservedly accepted by Hamilton J. that if 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 such recognition or enforcement would be contrary to public policy.

The Maintenance Orders Act 1974 contemplated that the enforcement of such an Order it is argued in this case would not be contrary to public policy.

Reliance was placed on the exhaustive review of the learned Judge with Section of the Act of 1974 and in particular the implications of Section 3 subsection (2). He held that a Maintenance Order was incidental to a decision as to the status of natural persons and therefore its enforcement was not necessarily contrary to public policy.

In Mahon's case a decree in divorce had been made absolute on the 7th of August 1967 and the Maintenance Order the subject of the Action was made on the 23rd of July 1973. Hamilton J. in enforcing and recognising the Maintenance Order held that no recognition or active assistance was given to facilitate in any way the effecting of a dissolution of marriage or to the procuring of divorce. The Order provided for the maintenance of spouses and could not be regarded as contrary to public policy.

In Sachs -v- Sachs (18th May 1986) Barrington J. followed Mahon -v- Mahon holding the arguments put forward to him on behalf of the Defendant husband were in the terms referred to by the Chief Justice on giving Judgment in the husband's appeal in that case (86). The argument for the husband was primarily based on Mayo-Perrot -v- Mayo-Perrot.

It was contrary to public policy it was argued for the Court to grant aid in the execution of Mrs. Sachs' Judgment as being indistinguishable from the Order for Costs in actual divorce proceedings. The Chief Justice observed

"The provision of maintenance arising from the obligation of a spouse in a marriage to a dependant spouse is something recoverable within the law

of this country and something for which ample provision has been made by relatively modern legislation. In these circumstances it seems to me not only should public policy not be deemed to prevent the enforcement of this Judgment but that the requirements of public policy seem clearly to favour it".

I am therefore of opinion that the Plaintiff in this action is entitled to recover the amount claimed.

W. H. M. M. M. M.
17 Dec 1987