

SEXTON

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THE HIGH COURT

BETWEEN:

CHRISTINE SEXTON (OTHERWISE LOONEY)

PETITIONER

AND

JOSEPH LOONEY

RESPONDENT

Judgment of Mr. Justice Murphy delivered the 8th day of July,
1985.

This is a claim by the petitioner for a declaration that her purported marriage to the respondent at Fulham Registry Office London, England, on the 18th November, 1981 was null and void.

The circumstances in which the proceedings arise are somewhat unusual and very unfortunate. The petitioner was born on the 25th of August, 1955. She met the respondent in 1981 at a time when both parties were patients in St. Anne's Hospital Cork. Within a period of some seven weeks from the date of their meeting they went through a form of marriage at Fulham Registry Office, London. The petitioner had not been married previously but the respondent had been. He had intermarried with one Mary Walsh of Mayfield, Cork on the 5th day of November, 1971. That marriage was solemnised at the Roman Catholic Church of our Lady Crowned in the County of Cork. By an Order in the Brentford County Court England made on the 18th day of December, 1978 the marriage between the respondent and the said Mary Looney (otherwise Walsh) was dissolved. In the English proceedings for the divorce the petitioner therein was stated to be resident and domiciled in England and Wales and that the respondent in those proceedings, the above named Joseph Looney, resided in Blackpool, Cork.

On behalf of the petitioner in the present proceedings it is contended that the marriage between the respondent and the said Mary Walsh was a valid subsisting marriage notwithstanding the purported order of dissolution and that accordingly the respondent continued to be married to the said Mary Walsh at the date of the purported marriage to the petitioner herein so that that marriage was invalid or at any rate would not be recognised as valid by the Courts within this jurisdiction even if valid in accordance with the *Lex Loci Celebrationis*.

The respondent did not appear on the hearing of the petition but I was satisfied on the evidence adduced as to the following facts:-

1. That the respondent was validly married to the said Mary Walsh on the 5th of November, 1971.
2. That the said Mary Walsh was alive on and after the 18th November 1981.
3. That at the time of the commencement of the divorce proceedings in the Brentford County Court and at the date of the Order made therein the respondent was both domiciled and resident in the Republic of Ireland.
4. That no Order was made and no proceedings instituted in this jurisdiction declaring the marriage between the respondent and the said Mary Walsh null or void.
5. That the petitioner and the respondent resided in London for some five days prior to their purported marriage at the Fulham Registry Office and for some days thereafter, but that neither party was then or is now domiciled outside the Republic of Ireland.
6. That the petitioner and respondent lived together for some months following their purported marriage and thereafter separated. The immediate reason for the separation was

that the respondent informed the petitioner that the said Mary Walsh was still his wife.

It seems to me that the principles of law applicable to the present case are clearly established by the decisions in Bank of Ireland and Caffin 1971 I.R.123 and Gaffney and Gaffney 1975 I.R.133. The effect of these decisions is summarised by Henchy J. in MTT and NT 1982 I.L.R.M.217 at 220 in the following terms:-

"The net point is still the same: at the time of the divorce was the husband's domicile Irish or British? If it was British, the divorce qualifies for recognition in our Courts; if it was Irish, the divorce was given without jurisdiction and cannot be acted on here; see the decision of this Court in Gaffney .v. Gaffney 1971 IR123."

In passing I should perhaps note that the reference to Gaffney and Gaffney is clearly a mistake. (That reference is appropriate to the Bank of Ireland and Caffin case).

However, even more pertinent is the decision of Miss Justice Carroll in K.E.D. (otherwise K.C.) and M.C. (an unreported decision delivered on the 26th of September, 1984). In that case the learned Judge held and accepted that the Courts here do not recognise decrees of dissolution of marriage pronounced by foreign Courts unless the parties were domiciled within the jurisdiction of the foreign Court in question and further that the capacity to marry is governed by each party's ante-nuptial domicile.

It follows, therefore, that as the respondent in the present case was domiciled within the jurisdiction of this Court and not domiciled in England or Wales at the time of the purported dissolution of his marriage that that Order of dissolution cannot be recognised by the Courts within this jurisdiction. It would then follow that the purported marriage of the respondent to the

petitioner herein - even though taking place in England - would not be recognised by the Irish Courts.

In these circumstances it seems to me that the petitioner is entitled to the decree of nullity sought.

Approved

Francis D. Murphy

2nd Sept '95.