Privy Council Appeal No. 50 of 1924.

Marie Tilche Sasson - - - - - - - *Appellant*

v.

Maurice Sasson - - - - - - - - *Respondent*

FROM

HIS BRITANNIC MAJESTY'S SUPREME COURT FOR EGYPT AT ALEXANDRIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1924.

Present at the Hearing:

VISCOUNT CAVE.
LORD DUNEDIN.
LORD CARSON.

[*Delivered by* LORD DUNEDIN.]

The parties to this case, who are domiciled in Egypt, are Jews professing and practising the Jewish religion. They were married in Alexandria on the 5th June, 1905. On the 6th May, 1920, they were divorced by the Grand Rabbinat at Alexandria in accordance with Jewish law. Concurrently with the said divorce, and of even date, an agreement was entered into between them regulating the conditions as to the issue of the marriage and the sum to be paid to the divorced wife. The divorce, proceeding under Levitical law, proceeds on grounds which, according to English law, would not authorise divorce.

The present action, as amended, is brought by the wife to ask for a declaration that the divorce was effectual to dissolve the marriage, and to declare that the agreement in question is valid. The husband has appeared by counsel, who has offered no argument against the judgment desired being granted. The parties are British subjects, and, as such, subject to the jurisdiction of the Supreme Court of Alexandria. At the time the Jewish divorce was granted what regulated the matters in question was the Order of 1910 which, by Article 5, section 2, gives jurisdiction

to the Court as to all personal and proprietary rights of British subjects, but in Article 103 it was provided :—

> " The Supreme Court shall, as far as circumstances admit, have for and within the Ottoman dominions, with respect to British subjects, all such jurisdiction in matrimonial causes, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Court in England."

Article 90 was as follows :—

> " Subject to the provisions of this Order, the civil jurisdiction of every Court acting under this Order shall, as far as circumstances admit, be exercised on the principles of, and in conformity with, English law for the time being in force."
>
> " Provided that in all matters relating to marriage, inheritance or other questions involving religious law or custom, the Court shall, in the case of persons belonging to non-Christian communities, recognize and apply the religious law or custom of the person concerned."

The situation, therefore, was this. The Court had no jurisdiction itself to dissolve a marriage. It had, however, jurisdiction to declare rights and, in matters relating to marriage (which obviously include divorce), it was bound in the case of persons not belonging to Christian communities to recognise and apply the religious law and custom of the persons concerned. It is not necessary to cite the various cases in which the power of Courts to divorce *a vinculo* has been discussed. The case of *Le Mesurier* v. *Le Mesurier and others*, 1895 *App. Cas.* 517, finally settled that the proper and only Court is the Court of the domicile. Now the Court of the domicile here could not grant divorce, but on the other hand it was bound by the words above cited to acknowledge the validity of a divorce good according to the religious law of the non-Christian subject. The situation seems to their Lordships identical with that which has often arisen in India. Divorce by means of the use of the phrase known as " Talak " is not a ground which would be good by English law. None the less, the British Courts have often given effect to Mohammedan divorces, and an instance may be found in the case of *Sarabai* v. *Rabiabai*, I.L.R. 30 *Bombay*, 537. Their Lordships are, therefore, of opinion that the appellant is entitled to the declaration as to the divorce which she seeks. The declaration as to the validity of the agreement following is a corollary and affords in their view a justification for her appeal to the English Court.

Their Lordships must, however, make it clear that this judgment will not cover the situation which might arise in the future. At the time of this divorce the Rabbinat Court was the only Court to which the parties could apply. Now, by an Order of 1921, the words of exception under Article 103 of the Order of 1910 are repealed, and the Court has the same jurisdiction as the High Court in England. Their Lordships indicate no opinion as to what will be in the future the result of the situation so created.

Their Lordships will humbly advise His Majesty to reverse the judgment complained of with costs and to remit the case to the Supreme Court of Alexandria with instructions to grant the declaration as above indicated.

The respondent will pay the costs of the appeal.

In the Privy Council.

MARIE TILCHE SASSON

v.

MAURICE SASSON.

DELIVERED BY LORD DUNEDIN.

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