

Hui Shiu Wing - - - - - *Petitioner*

v.

Cheung Yuk Lin alias Loretta Cheung - - - - - *Respondent*

FROM

THE SUPREME COURT OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1968

Present at the Hearing :

LORD PEARCE

LORD WILBERFORCE

LORD PEARSON

[*Delivered by* LORD PEARCE]

The petitioner is a husband who seeks to appeal against a decree of divorce pronounced in favour of his wife by the Supreme Court of Hong Kong on the ground of his desertion. That Court held that he had no appeal to the Privy Council as of right and also refused leave to appeal under its discretionary power. The husband claims that the Supreme Court erred in that he was entitled to appeal as of right. He petitions the Board for special leave to appeal against the Supreme Court's refusal of leave or to appeal against the substantive decision on the ground that the case merits consideration by the Board.

The wife admittedly left the matrimonial home. The judge of first instance held that the wife had no just cause for leaving. He therefore pronounced a decree *nisi* in favour of the husband. The Supreme Court on appeal took a different view of the cumulative effect of the evidence, held that the husband's conduct constituted reasonable cause for the wife to leave, discharged the decree *nisi* in his favour, and pronounced a decree *nisi* in favour of the wife on her cross-petition on the ground of constructive desertion.

Appeal as of right to the Privy Council from Hong Kong is regulated by an Order in Council made on the 10th August 1909.

"2. Subject to the provisions of these rules an appeal shall lie:

(a) as of right from any final judgment of the Court where the matter in dispute on the appeal amounts to or is of the value of \$5,000 " amended in 1957 to \$15,000 " or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$5,000 " (\$15,000) " or upwards: ".

It is conceded by counsel for the wife that the effect of the Supreme Court's order pronouncing a decree in favour of the wife in place of the husband, will result in an increase in maintenance (whether by way of an order for a lump sum payment or an order for instalments) to an extent which is upwards of \$15,000 in value. The husband is a very wealthy man.

On the other hand it is conceded by counsel for the husband, that if he is right in arguing that the value of consequential orders for maintenance gives a right of appeal in respect of a decree of divorce, there will be a large proportion of divorces or separations in the Supreme Court where an appeal as of right will lie to the Privy Council, notwithstanding the fact that they have no element of public or legal importance.

The wife has a right (whether a decree is pronounced in her favour or in her husband's favour) to apply for maintenance and the Court may order such maintenance as is just. It seems very doubtful whether a decree *nisi* can be said to "involve directly or indirectly" any *right* of the husband or wife in cases where one or other will get a decree. It is true that it will affect the *amount* of the maintenance order in an upwards or downwards direction. But the strict *rights* of the parties in respect of maintenance remain unaltered. In the present case for instance the wife would clearly get a substantial order for maintenance even if the decree given by the Court of first instance were to stand. It is not, however, necessary to go further into this difficult question, since in their Lordships' view the matter is concluded on broader lines by an earlier decision of the Board.

In 1844 the case of *D'Orliac* (4 Moore's P.C. Cases p. 374) concerned an appeal from a divorce *a vinculo* in Mauritius. The right to appeal was regulated by a charter whose relevant words were precisely similar to those which regulate the present case: "Where the sentence shall involve directly or indirectly any claim, demand or question to, or respecting property, or any civil right amounting to or of the value of £1,000 sterling." Lord Brougham giving the Judgment of the Board there said: "Surely the validity of marriage, title to dower, or a question of legitimacy, are all civil rights. And were there no other remedy it would be quite monstrous to say, that you might appeal for £1,000, and not for a case where legitimacy is involved. But the charter, we think, has omitted cases of divorce, and the *Cour d'Appel* was, therefore, wrong in granting the Appeal. There should have been a special application here, for leave to appeal under the general powers reserved by the Charter to the Crown, which may, if it think fit, grant leave to appeal."

In 1845 in the case of *Shire* (5 Moore's P.C. 81) it was sought to say that since "pecuniary rights, viz., the liability to maintain the wife and children" of the marriage were involved, the case of *D'Orliac* should be distinguished. Nevertheless the Board again took the same line, and dismissed the appeal which was sought as of right, but gave special leave.

These decisions have never been questioned. They were, no doubt, well known to those who drew up the Order in Council of 1909. The same words which had been the subject of those decisions were deliberately chosen. One must assume that the Order in Council intended them to bear the meaning which had been given to them for over half a century. When the value was increased by the amendment in 1957, the other words were left unaltered.

An appeal as of right would give rise to difficulties some of which have been lightly adumbrated above. Their Lordships' general power to grant special leave, however, can allow any matrimonial dispute to come to the Board if there seems to be sufficient reason.

In this case therefore there was no appeal as of right.

In spite of the able arguments put forward by the counsel for the husband their Lordships were not persuaded that this is a case where special leave should be granted.

Their Lordships will therefore humbly advise Her Majesty that the petition should be dismissed.

The petitioner must pay the respondent's costs.

In the Privy Council

HUI SHIU WING

v.

**CHEUNG YUK LIN alias LORETTA
CHEUNG**

DELIVERED BY
LORD PEARCE