

18 ta' Ottubru, 1963.

Inchallin:

S.T.O. Prof. Sir Anthony J. Mamo, O.B.E., C.St.J., Q.C.,
B.A., LL.D., President.
Onor. W. Harding, C.B.E., K.M., B.Litt., LL.D.
Onor. T. Gouder, LL.D.

Dottor Edward Fenech Adami, Advocate noe.

versus

Worwick John Freebody Beattie.

**Registrazzjoni ta' Sentenza Estera fi-Qrati Maltin —
Degriet dwar Divorzju**

F'dan il-kaz ir-rikorrent kien talab li tigi registrata f'wahda mill-Qrati Superjuri degriet moghti f'Edinburgh dwar divorzju bejn il-partijiet. Dan ir-rikors sar taht il-"British Judge-

ments (Reciprocal Enforcement) Act" — Kapitolu 86.

Il-Qorti tal-appell baħdet it-talba għax fit-termini tal-art 3 (2) huma esklużi mir-registrazzjoni "any judgment which was in respect of a cause of action which for reasons of public policy or for some other reason could not have been entertained" minn dik il-Qorti.

L-istitut tad-divorzju ma kienx rikonoxxut fis-sistema legali Malti u għalhekk dak id-degriet ma selax jiġi registrat.

L-anqas setgħet tiġi registrata dik il-parti tad-degriet dwar l-alimenti, għax din ma kienetx hliet konsegwenza tad-degriet tad-divorzju.

This is an application made by Advocate Doctor Edward Fenech Adami as the special attorney of Irene Maxwell Park or Scott or Beattie (hereinafter referred to as "the applicant") praying for the registration in one of Her Majesty's Superior Courts of Malta for a Decree given in Edinburgh on the 17th day of May, 1962 in the Summons and Action instituted by the applicant before the Lords of Council and Session against Warwick John Freebody Beattie (hereinafter referred to as "the defendant").

By that Decree divorce was pronounced between the applicant and the defendant on the ground of wilful desertion of the applicant by the defendant for a period of not less than three years; custody was given to the applicant of Paul John Alexander Scott Beattie the child of the marriage under sixteen years of age, and the defendant was ordered to pay to the applicant the sum of five pounds per week as alimony for the said child while in the custody of the applicant and unable to earn a livelihood, leave being reserved to the applicant and the defendant to apply to the Court in the process until the 24th day of June 1970 for any further order that may be required for custody and maintenance.

In his reply to the application the defendant submitted that the Decree in question is not registrable in as much as he neither carried on business nor was ordinarily resident within the jurisdiction of the original Court not had voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of that Court.

In the course of the hearing of the application before this Court counsel for the defendant raised other objections to the registration. Indeed following the production by the applicant of a number of letters written by the defendant to herself and of other letters sent to applicant's Solicitors by Doctor Edwin Busuttill on the instructions of the defendant, whereby the defendant had insistently pressed for divorce proceedings to be instituted against himself on the grounds of desertion and mental cruelty, volunteering confirmation (with a view, evidently, to founding jurisdiction on the part of the Courts in Scotland) of his Scottish domicile of origin which, the defendant insisted, he had never relinquished and still retained, counsel for the defendant did not really press at all his plea to the jurisdiction of the original Court: and this Court does not propose to concern itself with that plea any further. Counsel, however did very strongly urge two other objections to the registration, namely that the Decree in question, being in terms a 'Decree of Divorce' is not a judgement, within the statutory definition, to which Chapter 86 of the Laws of Malta applies; alternatively, that that Decree is in respect of a cause of action which for reasons of public policy or similar reasons could not have been entertained by the Maltese Courts.

It is common ground that the application for registration was made under the British Judgements (Reciprocal

Enforcement) Act — Chapter 86 of the Revised Edition of the Laws of Malta. Subsection (1) of section 3 of that Act lays down that:—

“Where a judgement has been obtained in a superior Court in the United Kingdom, the judgement creditor may apply to Her Majesty’s Court of Appeal, at any time within twelve months after the date of the judgement, or such longer period as may be allowed by the said Court of Appeal, to have the judgement registered in one of the Superior Courts of these Islands: and, on any such applications, the Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgement should be enforced in these Islands, and subject to the provisions of this section, order the judgement to be registered accordingly.”

By section 2 of the said Act “judgement” means “any judgement or order given or made by a Court in any civil or commercial proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award. . . .”

The Maltese Act is, of course, the Counter part of the Administration of Justice Act, 1920 of the United Kingdom which was enacted to facilitate the reciprocal enforcement of judgements and awards between the United Kingdom and other parts of Her Majesty’s Dominions and Territories under Her Majesty’s protection.

Now concerning the first of the two objections above mentioned raised by the defendant, his counsel argued that the Decree in question is one dealing with status and must be regarded wholly as such. The orders for the custody of the child and for his maintenance are purely incidental to

its main object and are inseparable from it. These orders arise out of the same "cause of action" as the divorce and since divorce is not recognized by the law of Malta and is, indeed repugnant to the concept of the indissolubility of marriage accepted in this country, that decree "in toto" cannot be registered and enforced in these Islands. Moreover, — regarding the second objection — maintenance being a periodical payment the amount of which may be varied from time to time, it cannot be said that the maintenance order is a "judgement whereby a sum of money" (that is, in Counsel's submission, a definite and finally ascertained amount) "is made payable."

In reply Counsel for the applicant submitted that the Decree in question is severable. In seeking registration the applicant is not interested at all in that part of the Decree which deals with the divorce: what she desires to have registered and eventually enforced in Malta is the maintenance order. This, although made in the same Decree, does not stem from the same "cause of action" i.e. the grounds of divorce: it stems from the natural and legal obligation of the defendant to maintain his child or, so long as the child is in the custody of the applicant, to pay for his maintenance. Obviously there is nothing against the public policy or the law of Malta in recognising and enforcing that obligation against the defendant. In regard to the second objection Counsel for the applicant argued that the maintenance order, in the sense that it can be enforced so long as it remains unvaried by a competent Court, is a "final" judgement for a definite sum of money and therefore falls within the judgements to which the Act applies: In any event the Maltese Act as well as the Administration of Justice Act, 1920, unlike the Foreign Judgements (Reciprocal Enforcement) Act, 1933 of the United Kingdom, does not expressly require that, to be capable of registration, the foreign judgement

must be final and conclusive as between the parties.

The Court having fully considered the whole matter does not find it necessary to make any pronouncement concerning the second objection. It has come to the conclusion that the application fails on the first objection.

By subsection (1) of section 3 of the Act, above quoted, this Court is generally given a discretion to order the registration of any judgement to which the Act applies "if in all the circumstances of the case it thinks it is just and convenient that the judgement should be enforced in these Islands." But that discretion is given subject to the other provisions of the same section. Now subsection 2, in mandatory terms, excludes from registration any judgement, among others, which "was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained" by this Court.

Concerning the identical wording of section 9 (2) (f) of the Administration of Justice Act, 1920 it is stated in Dicey's Conflict of Laws (7th Ed. P. 1005) that the words underlined "are perhaps wide enough to exclude the registration of a foreign judgement given in respect of a cause of action which the English Courts do not know."

The Decree now sought to be registered is a "Decree of Divorce" as it is expressly described in the official extract. This Court thinks it is clear that the order for maintenance is merely ancillary to the main order. It could be made, in those proceedings, only if the original Court decreed the divorce. If for any reason the prayer for divorce had been refused the order for maintenance, in those proceedings, could not have been made. The order for maintenance is in the nature of ancillary relief given to the applicant. For such

circumstances — the Court thinks that the order for maintenance cannot be severed from the main order to which it is ancillary and on which it is inherently dependant.

Now divorce is a status of a type unknown to Maltese Law and the incidents that it involves cannot be recognised for the purpose of direct enforcement in these Islands, apart from statute. Counsel for the applicant referred the Court to "Low vs. Low" (Law Reports Vol. XIII p. 244). But what happened in that case, as this Court understands that judgement, was in effect only that the foreign decree of divorce pronounced on the grounds of adultery was accepted, and given effect to, as evidence of the fact of the adultery. What is sought here is, instead, the direct enforcement of the decree, for the purpose of one part of it, as if it were a judgement originally made by a Maltese Court (sec. 3 (3) (a) Chapter 86). But no Maltese Court could, under Maltese Law, have given the order sought to be registered as an incident in proceedings for divorce which, as already stated, are not known to Maltese Law.

The Court certainly recognised and indeed wishes to stress the natural obligation of the defendant to provide for the maintenance of his legitimate child — an obligation which rests upon the clearest principles of universal acceptance — and hopes that the defendant will meet that obligation although at the moment he is outside the jurisdiction of the Court which made the order against him. But it finds itself unable to extricate that order from the order of divorce and to assign to it, in the context of the proceedings in which it was made, a separate and independent "cause of action".

It has already been mentioned that the application has been made under Chapter 86 and must consequently be

governed by the provisions of that law. This is not, thus, a proceeding under the Maintenance Orders (Facilities for Enforcement) Ordinance (Chapter 76) combined with the Maintenance Orders (Facilities for Enforcement) Act, 1920 of the British Parliament which, for some reason that is not clear, does not apply to Scotland.

For the foregoing reasons the Court disallows the application, but, in view of the circumstances of the case makes no order as to costs between the parties.
