OHOCHUKU v. OHOCHUKU [1]

Once again we are presented with the dismal picture of the morass into which English matrimonial law has floundered in its dealings with the polygamy problem — the treatment of which is invariably highly coloured by the ignorance and prejudice engendered almost a century ago in the notorious case of *Hyde v. Hyde*[2] which is the lynchpin of the common law attitude towards the question of polygamous marriages The facts in *Ohochuku* v. *Ohochuku* present a polygamy problem *primae impressionis* with rather a nice twist.

Mr. and Mrs. Ohochuku were Nigerian Christians who were married in Nigeria but subsequently went through a ceremony of marriage in the St. Pancras register office in London, not because they doubted the validity of the first marriage but because they thought that a marriage certificate would be an asset for practical purposes. As it frequently happens, the matrimonial voyage proved too rough and Mrs. Ohochuku petitioned for a decree of divorce on the ground of her husband's cruelty. The parties were domiciled in Nigeria at all material times and the court could only assume jurisdiction under section 18(1)(*b*) of the Matrimonial Causes Act, 1950, where three years' residence of the wife is sufficient to ground jurisdiction. Wrangham J. resolves the problem into one single question: "The only question is which marriage is to be dissolved?"[3] He decided on the second marriage and granted a decree of dissolution to that effect. This solution created more problems than it solved, and appears to have merely skirted the outer fringes of this highly intractable subject without coming to grips with it.

The line of reasoning adopted by Wrangham J. was that English courts will not assume jurisdiction to dissolve a polygamous marriage even though such marriages may be recognised for other purposes;[4] that the religious tenets of the parties made no difference as Nigerian law would have recognised subsequent marriages. Therefore, the proper marriage to dissolve was the London marriage as it was the only one which the court could take cognizance of. He added:

"I am told that in fact that [the decree of divorce] will be effective by Nigerian law to dissolve the Nigerian marriage but that forms no part of my judgment. That is for someone else to determine and not for me."[5]

In practice then, a limping marriage is avoided. However, the mental process through which the result was arrived at was highly unsatisfactory. Wrangham J. in according effect to the second marriage because of the traditional non-recognition of the potentially polygamous Nigerian marriage appears to have contradicted himself as he admitted that even before the parties went through the ceremony of marriage in England English law would have recognised their status as married persons though it would not have permitted either of them as an incident to that status to apply for

1. [1960] 1 All E.R. 253; [1960] 1 W.L.R. 183.
2. (1866) L.R. 1 P. & D. 130. The case is authority for the proposition that the English courts have no jurisdiction to grant matrimonial relief to a marriage which is polygamous in nature, *e.g.* a Mormon marriage. A *de facto* monogamous but potentially polygamous marriage falls under this category.
3. [1960] 1 W.L.R. 185.
4. For instance, to determine questions of bigamy: *Baindail* v. *Baindail* [1946] P. 122; [1946] 1 All E.R. 342; *Srinivasan* v. *Srinivasan* [1945] 2 All E.R. 21; [1946] P. 67; or legitimacy in relation to a peerage: *The Sinha Peerage Case* [1946] 1 All E.R. 348. In fact Lord Penzance in *Hyde* v. *Hyde* (*supra*), when refusng to recognise the validity of a potentially polygamous marriage, expressly professed not to decide upon rights of succession or legitimacy.
5. [1960] 1 W.L.R. 185.

a divorce in England.[6] Such an admission necessitated a recognition of the Nigerian marriage and thus the second marriage is utterly ineffective inasmuch as the parties are already married. Such being the case, any desire to get rid of the idle London marriage should have been by way of a declaration of nullity, as the court cannot dissolve what is non-existent. This is clearly seen in *Hewett* v. *Hewett*[7] where the parties married secretly in 1918 in a London church and openly again in 1921. In subsequent proceedings, Hill J. was asked to insert a reference to the 1921 marriage in the decree which he refused as the second ceremony was entirely a nullity. Thus if any decree had to be granted at all (and this is not conceded), it would have been more in consonance with Wrangham J.'s reasoning to have chosen a decree of nullity rather than a decree of divorce. However, the grant of a decree of nullity with respect to the English marriage does not cut the Gordian knot; it solves nothing as the Nigerian marriage is still left to be reckoned with.

A far more thorny problem arising from this case is the rather startling statement based on expert evidence made by Wrangham J. that the decree of divorce will be effective by Nigerian law to dissolve the Nigerian marriage. If this is a correct statement of the law of Nigeria, then the English decree of divorce is a decree recognised by the Nigerian courts, and since the latter are the courts of the domicile of the parties, under the rule in *Armitage* v. *A.G.*[8] the dissolution of the Nigerian marriage has to be recognised by the English courts. We have, therefore, the anomalous position of an English court recognizing a decree dissolving a marriage which it is unwilling to recognise because of its potentially polygamous character. Otherwise, it must be taken that the expert evidence was unsound.

It is submitted that the only course open to Wrangham J. which would preserve the elegantia juris in this branch of the law, was to have adopted the traditional approach, i.e. since the Nigerian marriage was potentially polygamous in nature, the court had no jurisdiction to entertain proceedings for matrimonial relief. Such a line though unattractive is amply supported by authorities, and would not have aggravated the shambles which this branch of the law is in.

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6. *Cf. Baindail* v. *Baindail* [1946] P. 122; [1946] 1 All. E.R. 342, where a woman domiciled in England went through a ceremony of marriage in England with a Hindu domiciled in India. She later discovered that he had a wife in India and petitioned for nullity on the ground that the marriage was bigamous and therefore void. By the *lex domicilii* the status of the respondent was that of a married man and the court accorded recognition to the status possessed by the respondent, and the Hindu marriage was regarded as a bar to the subsequent marriage.

7. (1929) 73 S.J. 402. See *Thynne* v. *Thynne* [1955] P. 272; [1955] 3 All. E.R. 129 where a decree dissolving the second marriage was amended to dissolve the first and actual marriage, thus implying the utter ineffectiveness of a second marriage entered into during the subsistence of the first.

8. [1906] P. 136. The case is authority for the proposition that English courts will always recognize decrees of dissolution recognized by the courts of the domicile of the parties.