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QUESTION

1. **Explain the term "limping marriage". Identify the ways, at common law, by which the incidence of limping marriage have been reduced.**

The term “limping marriage” refers to a situation where a court in one country does not recognize the decree of annulment or dissolution, whereas it is recognized in the foreign country where it was granted. **In Pires Vs Pries AIR 1967,** It was referred to as situations where a couple was considered married in one country and divorced in another. In this case the court tried to lay down certain principles of Private International Law to be applicable as it interpreted **S.13 of the Civil Procedure Code (CPC) 1908.**

The facts of Pires Vs. Pires were as follows :

A divorce decree was secured by the husband from the High Court of Uganda against his wife living in Goa with respect of his Roman Catholic marriage solemnized in Goa. The record shows that the divorce was sought and secured on the ground that the wife Joequina had been living in adultery. Joequina opposed the prayer for confirmation of the decree based on foreign judgement on two grounds. First, she pleaded that she had not been given proper notice of the proceedings

instituted against her in the High Court at Kampala and second that she and her husband Pires, being Roman Catholics and their marriage having been solemnized in a church at Goa where the law was and continued to be that such marriages or indissoluble, the decree obtained from Kaurpala could not be recognized in India. There can be no doubt that the limping marriage is a very unfortunate phenomenon as it may may lead to unreasonable and sometimes disastrous results not only for the parties themselves but also for the other person, for instance their children. However, limping marriages are only one, although presumably the most unfortunate, example of the wider concept of limping legal relationships.

Ways, at common law, by which the incidence of limping marriage have been reduced.

However, in order to avoid the problem of limping marriages, the House of Lords, in the case of **INDYKA VS INDYKA,** came up with the test of real and substantial connection. Thus, for a foreign decree to be recognized, the parties were only required to show a real and substantial connection with the foreign country in question and the strict rules on domicile were relaxed.

Apparently, in Indyka.

Here H married W1 in Czechoslovakia in 1938, both being Czech citizens. H left Czechoslovakia at the beginning of the war and, after war service in the Polish Army, eventually came to England in 1946, where he acquired a domicile of choice. It was decided that as WI refused to live with H she had deserted him, In January 1959 W1 obtained a divorce in Czechoslovakia on the ground of ‘‘deep disruption of marital relations,” and though the Czech court, acting on different evidence, took the view that H had deserted W1, there was no doubt that the decree was good by Czech In 1959, H went through a ceremony of marriage

in England with W2, who petitioned for divorce in the present English proceedings on the grounds of H's cruelty. H alleged that his marriage to W2 was void for bigamy in that the Czech decree dissolving his marriage to W1 should not be recognised in England, and so H cross-petitioned for a decree of nullity.

The basic issue raised by the case is as to whether the English court would recognise the Czech decree. There was no doubt that the Czech court had jurisdiction in the Czech sense, but it was not wholly clear from the judgments whether the Czech court had exercised jurisdiction on the basis of nationality or on the ground .that the petitioner was resident in Czechoslovakia. On what jurisdictional basis, known to English domestic law, could the Czech court have acted in granting W1 a decree of divorce? It could clearly not have been domicile, in the English sense, because H and, therefore, W1 were domiciled in England in 1949. As W1 was considered to have deserted H there was no jurisdictional ground similar to that under **section 40 (1) (a) of the Matrimonial Causes Act.** W1 had, however, been resident in Czechoslovakia for at least three years preceding her petition and therefore appeared to fall within the English jurisdictional rule provided, now, by the **Matrimonial Causes Act 1965, S. 40 (1) (b)**, and, at first sight, on the application of **Truvers v. Holley,** the Czech decree deserved recognition. The problem with this jurisdictional basis was that Wl's decree was granted and effective by February 1949, whereas English jurisdiction based on a wife's three years' residence was not introduced until December 1949, by the Law Reform (Miscel- laneous Provisions) Act 1949, s. 1. Should an English court recognise a foreign decree granted in circumstances which, at the time of the later English proceedings, gave rise to jurisdiction under English law but which did not do so at the date of the foreign decree ?

2. Explain succintly, Mutation or Conversion of Marriage in Conflict of Laws.

Mutation of marriage or conversion of marriage is the transfiguration of a polygamous marriage to a monogamous marriage by getting a claim for matrimonial relief. As a general rule, the English Court will not grant matrimonial relief in polygamous and potentially polygamous unions- Parkasho v Singh 1967 2 W.LR. 946 Likewise, whether or not a marriage will be deemed polygamous is determined by the law of the place where the marriage was celebrated. There are however instances where the character of a marriage may be changed from polygamous to monogamous.

Ever since the decision in *Hyde* v. *Hyde2* (now more than a century old) English and Australian Courts have declined to grant matrimonial relief in respect of a polygamous marriage. When is a marriage polygamous? Until recently it was generally thought that the nature or character of a marriage is immutably determined by the law of the place of celebration. In recent years it has been conceded that the character of a marriage may be changed from polygamous to monogamous. In cases where such a mutation was recognised as in *Cheni* v. *Cheni* the change was in accordance with the law of the place of celebration itself.

In *Ali* v. *Ali the husband was born in India. At the age of 24 he came to England, obtaining a job and living permanently there. Four years later he returned to India where he married an Indian wife chosen by his father. The ceremony took place according to the rites of the Muslim faith which was the religion of both parties. By Muslim law the husband was permitted to take further wives. The marriage was therefore ~ o t e n t i a l lp~olygamous at its inception. The husband left for England shortly after the marriage and resumed his employment there. The learned judge (Gumming-Bruce, J.) decided that by the middle of 1961 he had acquired a domicile of*

choice in England. The wife followed and cohabited with her husband in England. In 1959 the husband applied for British nationality and in the same year a child was born to the parties, Shortly thereafter the wife left the matrimonial home with the child and returned to India. In 1960 the husband obtained a British passport, continuing to live ~ e r m a n e n t lin~ England. In 1964 he began living with a woman and a child was born of this relationship. In 1963 the husband petitioned for divorce on the ground of desertion. The wife denied desertion and alleged cruelty. She also alleged that the Court had no jurisdiction on the ground that the marriage was polygamous.

In 1964, when the husband committed adultery, the wife cross-petitioned for a dissolution of the marriage on this ground.

The suits were heard by Cumming-Bruce, J. who held that the Court could not exercise jurisdiction in respect of the offences of desertion and cruelty because they took place, if at all, at a time when the marriage was still polygamous. However, the learned judge granted the wife a decree nisi on the ground of adultery as this offence took place after the character of the marriage had been rendered monogamous by the acquisition of an English domicile of choice by the husband.

In reaching this conclusion, Cumming-Bruce, J. first considered the legal characteristics of the type of marriage over which English courts exercise juris- diction to pronounce a decree of divorce. His Lordship referred to Dicey Rule 38: and concluded that the vital characteristic required is that of an exclusive voluntary union of one man and one woman for life. Secondly, his Lordship decided that a marriage potentially polygamous at its inception may be subsequently impressed with a monogamous character so as to found the jurisdiction of an English court. *Cheni* v, *Cheni6* was relied on in support.

Next Cumming-Bruce, J. investigated the precise effect of the acquisition of an English domicile by the husband. His Lordship concluded thus: "He has, by operation of the personal law which he has made his own, precluded himself from polygamous marriage to a second wife although he has not changed his religi~n."~

On the assumption that the law of England does not permit a domiciled Englishman to contract a valid polygamous marriage, Ali had by acquiring an English domicile lost the capacity to contract fresh marriages. The validity of this view is connected with Dicey's interpretation of *Re Bethell,8* which will be discussed later.

Cumming-Bruce, J. went on to consider the important question of whether the acquisition of an English domicile had the effect of impressing a mono- gamous character on the potentially polygamous marriage. His Lordship relied on the dictum of Sir Jocelyn Simon, P. in *Chni* v. *CheniQ*to the effect that change of domicile may be effective to alter the nature of a union. "The chief difficulty" felt by the learned judge was to determine whether change of domicile did more than merely "frustrate one of the features of the potentially polygamous union".lQ

His Lordship indicated that there had been no active assertion of mono- gamous intent and that it could not be said that the acquisition of an English