A-M v A-M (DIVORCE: JURISDICTION: VALIDITY OF MARRIAGE)

Family Division

Hughes J

23 February 2001

Divorce - Jurisdiction - Validity of marriage - Polygamous Islamic marriage - Attempted remarriage in Islamic State - Presumption of marriage

The couple lived as husband and wife for 20 years, and had two children together. Although the couple spent considerable periods in England, the husband was domiciled in Iraq throughout the cohabitation, while the wife was domiciled in either Syria, Saudi Arabia or the Lebanon until 1992, at about which time she acquired a domicile of choice in England. The couple went through two ceremonies of marriage. The first was in London, and was an Islamic service. Both husband and wife were aware at the time of the ceremony that the husband was already married, and that the marriage would be a polygamous one, as permitted under Islamic law. Four years later a second ceremony took place when, acting on legal advice, the husband sought to regularise the status of the wife in English law. The husband had been advised that to obtain English recognition of his marriage to the wife, he would have to obtain an Islamic divorce, followed by a genuine remarriage valid by local law in a country permitting polygamy. He obtained an Islamic divorce in Sharjah, an Islamic country which recognised polygamous marriage. The remarriage, 3 days later, took the form of a revocation of the divorce. Some years later the couple separated, and the wife sought a divorce in England. The husband responded by obtaining a divorce in Sharjah. The husband argued that there was no valid marriage upon which the English court could found jurisdiction to grant a divorce.

Held - finding that there was a valid marriage and that the court had jurisdiction to proceed with the divorce -

(1) Unless a marriage conducted in England and Wales purported to be of the kind contemplated by the Marriage Acts, it was not a marriage for the purposes of the Matrimonial Causes Act 1973, s 11. The first ceremony, the Islamic ceremony conducted in London, did not purport to be a marriage according to the Marriage Acts, and was not, therefore, a valid marriage under English law.

(2) The second ceremony, the purported remarriage, took effect as a revocation of the divorce, or talaq, and was not a remarriage effective in English law, but rather a continuation of the original marriage.

(3) Although neither of the ceremonies described had created a valid marriage under English law, there was an existing marriage upon which to found jurisdiction. The wife was entitled to rely on the rule that cohabitation and reputation of being man and wife together amounted to strong evidence that a lawful marriage had taken place, which only strong and weighty proof that such a marriage had not taken place would rebut. A valid polygamous marriage, recognised by English law, could have been contracted by the parties in an Islamic country without any public ceremony, and even, providing the wife had signed a power of attorney at some stage, in the absence of the wife. The wife did sign documents at the husband's request from time to time, without applying her mind to the nature of the documents, and the husband might have arranged such a marriage at any time between the second ceremony and the wife's acquisition of an English domicile, without the wife's knowledge. There was no clear and weighty evidence that this did not happen and the presumption of marriage applied.

(4) The husband's Sharjah divorce was ineffective in England, and could not be

recognised by the court, as neither party was domiciled in Sharjah, nor habitually resident or a national of Sharjah.

Statutory provisions considered

Marriage Act 1949, ss 25, 44(3), 45(1), 45(A)(3), 46(B)(3), 49, 75(2)(a), Parts II, III
Matrimonial Proceedings (Polygamous Marriages) Act 1972
Matrimonial Causes Act 1973, ss 11, 14, 47
Family Law Act 1986, ss 46, 51
Private International Law (Miscellaneous Provisions) Act 1995

Cases referred to in judgment

Ali v Ali [1968] P 564, [1966] 2 WLR 620, [1966] 1 All ER 664, PDA
Baindail (Otherwise Lawson) v Baindail [1946] P 122, CA
Captain de Thoren v Attorney-General et al (1876) 1 App Cas 686, HL
Cheni (Orse Rodriguez) v Cheni [1965] P 85, [1963] 2 WLR 17, [1962] 3 All ER 873, PDA
Chief Adjudication Officer v Bath [2000] 1 FLR 8 , CA
Gereis v Yagoub [1997] 1 FLR 854 , FD
Hyde v Hyde and Woodmansee (1866) LR 1 P&D 130, P&D
Lee v Lau [1967] P 14, [1964] 3 WLR 750, PDA
Lieutenant C. W. Campbell of the Bengal Cavalry at al v John A. G. Campbell of Glenfalloch (The Breadalbane Case) (1867) LR 1 Sc & Div 182, HL
Maher v Maher [1951] P 342, PDA
Ohochuku v Ohochuku [1960] 1 WLR 183, [1960] 1 All ER 253, PDA
Parkasho v Singh [1968] P 233, [1967] 2 WLR 946, [1967] 1 All ER 737, PDA
Qureshi v Qureshi [1972] Fam 173, [1971] 2 WLR 518, [1971] 1 All ER 325, PDA
Regina v Bham [1966] 1 QB 159, [1965] 3 WLR 696, [1965] 3 All ER 124, CCA
Risk (Otherwise Yerburgh) v Risk [1951] P 50, [1950] 2 All ER 973, PDA
Russ (Orse Geffers) v Russ (Russ Orse De Waele Intervening) [1964] P 315, [1962] 3 WLR 930, [1963] 3 All ER 193, CA
Shephard, Re; George v Thyer [1904] 1 Ch 456, ChD

Cases cited but not referred to in judgment

Bowser v Ricketts (1795) 1 Hag Con 213
Dinizulu v Attorney-General and Others [1958] 1 WLR 1252, [1958] 3 All ER 555, QBD
Hall v Jagger (unreported) 13 August 1999
Peters v Tonclear (1790) 1 Hag Con 136
Rumsey v Stone (1967) 111 SJ 113
Taplin, Re; Watson v Tate [1937] 3 All ER 105

Jeremy Posnansky QC and *David Balcombe* for the petitioner
Barry Singleton QC and *Christopher Pocock* for the respondent

Cur adv vult

HUGHES J: **[1]** This has been the hearing of preliminary issues in proceedings arising from a petition for divorce, alternatively for nullity. The issue is jurisdiction, and specifically whether this court has jurisdiction to pronounce either kind of decree. Although behind that issue there necessarily lies the question whether any marriage between these parties is valid or not, it is convenient to refer to them as 'husband' and 'wife', and I shall do so.

[2] The petition is that of the wife. She alleges that she and the husband

went through two ceremonies of marriage. The first, she says, was in London in 1980. The husband agrees that there was such a ceremony but contends that the court has no jurisdiction to grant either a decree of nullity or of divorce based upon it. That raises a question which is principally one of law.

[3] The second ceremony is alleged by the wife to have taken place in Sharjah in 1984. The husband disputes that there was any such ceremony of marriage. He says that formal proceedings did take place there at that time, but that they were of a quite different nature. These 1984 events give rise to questions which are principally ones of fact.

[4] Next, it is common ground that the parties intended to create a marriage binding on them personally in 1980, and that they thereafter lived together as husband and wife, held themselves out as such, and were treated by all who knew them as such. That continued, despite later unhappiness, for nearly 20 years. They brought up two children together. The wife contends that whether or not there is clear evidence of a marriage in 1984, the law should presume that a marriage has taken place between them from the parties' long cohabitation as husband and wife. That raises a question of mixed fact and law.

[5] Lastly, the husband contended at one stage that if there were ever a valid marriage, then it was dissolved by a divorce obtained by him in Sharjah in 1999 by means of a talaq. The questions relating to that event are principally ones of law.

The early history

[6] The husband was born in Basra, Iraq. There is a curious dispute as to whether that was in 1927, as all formal documents up to about 1985/1986 show, or in 1932, as passports issued since that time say, and as he now asserts. The husband told me that his birth was assumed to be in 1927 until his brother found some old records of their father's at some time in the 1980s. Until then, he said, he had always felt that he was younger than the records suggested, but having no documents to prove it, allowed the records to stand. I regret to say that, having seen and assessed the husband, I do not accept that account. It could easily be true of a man in his sixties, or even in his thirties, that he should be mistaken as to his age by 5 years, but 1927 was a birth date ascribed to him, according to the husband, from earliest times in his family. Plainly in his early years a difference of 5 years would have been quite apparent. Except that it goes, probably marginally, to the husband's credit, the precise date of birth is, however, immaterial.

[7] After studying at a college of law in Baghdad and taking a Master's degree in economics, the husband took employment with the Arab League in Cairo in the 1950s. Later, that work took him to Kuwait for something like 5 years and then back to Egypt for another 4 or so. In 1969 he came to England for the Arab League. He has been based here ever since. In the 1970s he was instrumental in founding the Arab-British Chamber of Commerce, of which organisation he has ever since been Chief Executive and Secretary-General.

[8] Although he has lived here all these years, and owns property here, that has been because his work has kept him here. He is an Arab gentleman, and regards himself as such. He has held Iraqi passports all his life, and at some stages has occupied diplomatic or quasi-diplomatic positions at the

Embassy of that country or of others with whom it had arrangements, to the extent that there was at one stage a claim for diplomatic immunity. He travels very extensively throughout the Arab world, and also Europe. He is a Sunni-Hanafi Muslim. I accept his evidence that he expects and hopes to return to live in an Arab country when he retires, probably Egypt. On that evidence, I find that he has not acquired a domicile of choice in England and Wales. I find that his own evidence that he has already acquired, in anticipation, a domicile in Egypt, overstates the position, although of course he may one day do so. His Iraqi domicile of origin remains his domicile.

[9] If one includes for the moment the present petitioner, the husband has had three wives. First, on a date which has not been mentioned in evidence, he married a lady who was his cousin, it seems in an Islamic country. There is no reason to doubt his evidence that he subsequently divorced her, and I assume for the purposes of what follows that he did so by means of a divorce valid in the place where it occurred and such as would be recognised here. On 17 May 1956, whilst working in Cairo, he there married his second wife, to whom I shall refer as Sawsan. She is 5 years his junior. They married according to the civil law of Egypt, which accorded with Islamic religious law and which permitted polygamy. That marriage would be recognised as a valid polygamous marriage by the law of the husband's domicile, viz Iraq. Sawsan accompanied the husband to Kuwait, back to Cairo, and in due course to England. She and the husband had three daughters, of whom the youngest is now 36. For much of the 1970s this family lived with him in London, although Sawsan and the girls continued to spend some little time in Cairo. There is no reason to doubt the husband's evidence that he has never divorced Sawsan; she says the same.

[10] The wife was born in Aleppo, Syria, on 4 August 1956. Her parents emigrated for political reasons to Beirut when she was 3. She lived there until about the age of 18 or 19, save that she went away to boarding school in France between the ages of about 14 and 18, returning twice per year to Beirut. Her domicile up to the end of this period probably followed that of her father, as to which there is rather sparse evidence, but it must have been Syria, or Saudi Arabia, for which kingdom he was a diplomat, or perhaps the Lebanon, all Islamic countries.

[11] With the onset of civil war in the Lebanon, the wife's father brought his family to London. The exact date is in issue. As will appear, the wife is not a reliable historian, especially on the detail of dates, but probably this was at or near the end of 1975. At all events, the move to London was intended to be a temporary exile from war. The wife was at that time engaged to a Lebanese man who remained there, and she expected to return to marry him.

[12] In London, the husband was a friend of the wife's father; they were of an age. Both the wife and her elder sister were found work at the husband's office, and in time the wife became his assistant PA. By about 1978 or 1979 they had formed an intimate association. There was a considerable difference in age; the husband had been married twice by the year of the wife's birth. He was in his fifties and a man of some influence. She was in her early twenties and with comparatively little experience. I am satisfied that in all worldly or business matters she trusted him and deferred to him. She knew perfectly well that he was a married man with a wife and family. I accept her evidence that she did not know of the first marriage,

although rather later she met the lady in question whom she knew as a cousin. She was sensitive to her position as second wife and would have been the more uncomfortable to learn that she was third, and the husband no doubt saw no reason to mention it.

Events in 1980

[13] The husband and wife agreed to marry. Both were well aware that he had a subsisting marriage to Sawsan. The wife would have preferred it otherwise, but accepted the fact. The husband asserted that as a Muslim he could properly take another wife, and no doubt the wife was well aware that Islam permitted this. The husband made all the arrangements.

[14] The ceremony took place on 5 September 1980 in the flat in London which by now they were sharing. It was conducted by an Islamic Mufti from a London mosque. The husband concedes - now - that this event was intended by all concerned to be a formal marriage by Islamic process. There is, I find, no doubt that this was so. The wife's family objected to the union on the grounds of the very large age difference and the existence of the marriage to Sawsan, which itself shows that it was a marriage which was in contemplation. Further, because the wife held a Saudi Arabian passport and the husband was a non-national the permission of the Government of that country was necessary, and was sought, obtained, and endorsed on the passport. In 1984, the husband formally told the judge of the Sharia court that he had married the wife in this 1980 ceremony. The ceremony involved the exchange of rings and the taking of vows. Friends attended. The husband provided a wedding dress bought in Belgium, together with a hat with veil. A printed document entitled 'Certificate of Marriage' was signed by both parties, expressly as 'bridegroom' and 'bride'.

[15] Thereafter the parties continued to live together. They conducted themselves in public and in private as husband and wife and were treated as such by all who dealt with them. The wife was known to all as 'Mrs Al-Mudaris'. To the very limited extent that the husband had until then been living with Sawsan, he ceased to do so. Before very long that lady returned to Cairo with her daughters, although the husband has properly continued to this day to support them and to maintain a flat in London for their use and they have from time to time occupied it for comparatively brief periods. To all intents and purposes the petitioner was treated as the husband's present wife. In due course two children were born to them, a boy, Waddah, on 27 August 1981 and a girl, Deema, on 10 April 1985. On all the evidence that I have heard I am quite satisfied that, whatever may be the correct formal position in English law, both parties regarded this marriage as one which was binding on their consciences. It occurred to neither of them at the time to wonder what English law would make of it.

Events in 1982 - 1984

[16] The husband's organisation had a London solicitor, Mr Sprawson. In 1982 and 1983 he was investigating, among other matters, the office's pension fund and the provision which it made for widows. He drew the husband's attention to the fact that marriage according to Islamic ceremony without more, if contracted in England, would not be regarded as legally valid. He took some pains to research the position and took counsel's opinion. He wrote a memorandum and two letters which set out the several

different consequences which followed from this invalidity. His advice was not limited to the pension; it extended to the status of wives, the succession to property, and the legitimacy of children. The problem was one which applied to a number of members of the office, but particularly to the husband himself.

[17] As a result of what the husband was told, he became concerned. In particular, he was anxious that his much younger wife should rank as a widow for the pension and that his son, by now about 2 years old, should be legitimate. In Islamic circles, illegitimacy is a very serious stigma. I am satisfied that he had also the more general concern that the lady who was for all practical purposes his wife should have that status. The wife was also concerned. It is unnecessary to resolve the conflict of evidence as to who raised the matter first. When it was raised, the husband assured the wife that he would deal with it, and she, consistently with her reliance upon him, left it to him to do so.

[18] Mr Sprawson advised that the only way the situation could be regularised in English terms was for there to be a fresh marriage conducted in proper form in a country permitting polygamy. He knew, of course, that since the Matrimonial Proceedings (Polygamous Marriages) Act 1972, English law would not only recognise the validity of such a marriage between those whose domiciliary law allowed it, but would grant matrimonial relief. I am satisfied, and indeed the husband concedes, that he resolved to follow this advice.

[19] The first attempt the husband made was to obtain from a Sharia court in Beirut a document which in some way certified the validity in Islamic law of the 1980 ceremony. Before me, the husband denied all knowledge of this, but that he did so is plainly proved by a contemporaneous document which surfaced only during the trial, and I fear that he can only have been deliberately untruthful about it. The Beirut document itself has not been found, but Mr Sprawson advised the husband in writing, plainly correctly, that it could not solve the problem because it did no more than confirm the existence of the 1980 ceremony and did not give it validity in English law. He gave this advice in November 1983. He advised that there would have to be an Islamic divorce, followed by a genuine remarriage valid by local law in a country permitting polygamy.

[20] In consequence, in 1984, further attempts were made in Sharjah to follow this advice. There is a sharp conflict of evidence about what happened.

[21] The wife's evidence is that she and the husband went to Sharjah in December 1984. First, they consulted with a friend of the husband, Mr Mokayed, who was a judge in Sharjah. Then they went to a court, where the husband requested the judge to record his divorce of her by talaq. The judge advised time for reflection, so they came back a few days later. This time the husband pronounced the talaq in front of the judge. Three days or so later, they returned to the same court building for a third time, before a different official, where, she says, what occurred was a new marriage.

[22] The husband's evidence is that nothing of any significance occurred in December 1984, although they were in the Gulf then. What happened occurred, he says, in March 1984. First, the wife signed a power of attorney to a Sharjan lawyer. Secondly, he and the attorney attended the judge and he pronounced a talaq. But afterwards the judge made conversation and

inquired why he was divorcing his wife. He, the husband, explained that it was to protect her position in relation to the pension. The judge thereupon said that this was morally wrong because it would deprive Sawsan of her rightful entitlement, and counselled him to revoke the talaq. The husband says that his conscience was afflicted by this. Accordingly on the next day on which the court was open he returned, with the wife, and revoked the talaq in front of the same judge. Thus there was no remarriage but rather a continuation of the original one of 1980. He produces two Arabic extracts from the records of the Sharjan Sharia court, for 1 and 3 March 1984, which appear to record, in the first instance a divorce, and in the second a revocation of it.

[23] I regret I cannot avoid saying that the evidence of neither husband nor wife was satisfactory. The wife has had a number of unfortunate episodes of depression, leading to two attempts upon her own life. Those experiences may well have affected her recollection. She has an understandable conviction that she has been wronged which leads her to exaggerate her memory. Even allowing for the strain which these proceedings and domestic unhappiness must have placed on both parties, she was inclined to be histrionic and, even if not deliberately untruthful, on several occasions betrayed the clear tendency to provide reconstructed or imagined explanations for difficulties which were exposed in her account. It is impossible to accept her account in some respects. She began these proceedings by asserting positively that the remarriage occurred on 22 December 1988. That has now been modified to the same date in 1984, and might by itself be a simple error. But the latter date is also not possible if the remarriage occurred some days after arrival in the Gulf, as the husband's contemporaneous diary, which was not challenged as to authenticity, shows. At different times she has given contradictory evidence on the significant question whether it was the same or a different judge at the divorce and remarriage. She asserts that a friend of the husband, Dr Ismail, was present, but his evidence satisfies me that he was not. More fundamentally, what she describes would have been ineffective in Islamic law.

[24] I have had the advantage of hearing the evidence of Mr Edge, a member of the English bar whose expertise in Islamic law is acknowledged by both parties and who was jointly instructed. Among other things, his evidence establishes this: a Muslim husband can divorce his wife with or without her consent and with or without her presence, by pronouncing talaq. Such need not occur in any particular place, still less in a court, but it requires two male witnesses. Although some Islamic states (but not Sharjah) now require registration of such a talaq, the absence of registration does not necessarily, even in those states, invalidate the procedure. Although the concept is strange to English ears, a husband is permitted three talaqs in all in respect of any one wife. If he pronounces a single talaq, it is revocable. Revocation may be unilateral, by the husband, or it may be implied from a resumption of marital cohabitation, or it may be undertaken formally, like the talaq itself, in front of a judge or other official. On revocation, a husband would still have two remaining talaqs. The second, if pronounced, is likewise revocable. The third, however, is irrevocable. Once the third talaq has been pronounced, whether on the same or a different occasion as the first two, remarriage between the same two parties is illegal and void, at

least in the absence of the wife having contracted an intervening marriage to someone else.

[25] All talaq divorces are conditional upon a waiting period (the 'idda'), generally of 3 months. The purpose is to ensure that if the wife is pregnant the divorce is further deferred until the birth of the child, thus to reduce debate as to paternity and to provide for the child. During the idda the parties are still married.

[26] The wife's evidence is that the talaq pronounced by the husband in 1984 was a triple talaq. If so, remarriage a few days later would not have been permitted by the court, and if by some subterfuge or accident the court were unaware of the divorce, the remarriage would be void. Moreover, even if the wife's evidence that this was a triple talaq owed more to reconstruction than to memory, the remarriage could still not be valid. The parties would, a few days later, be in the period of idda. Any purported remarriage, even if it took place, would take effect as a revocation of the single talaq. It follows that whether in March 1984 or at any other time the wife cannot have been remarried in law a few days after divorce as she asserts.

[27] The husband's evidence was unsatisfactory for other reasons. I regret to say that in some respects I cannot avoid finding it untruthful. He has clearly set out to conduct this litigation obstructively, and it looks very much as if there has sometimes been contumacious disobedience to orders, but that alone does not make him an untruthful witness. More significant is the fact that although he now concurs in the wife's description of the 1980 ceremony as one intended by both to be binding, this has not been his position until comparatively late. For a long time there was complete silence from him in response to the wife's request, through solicitors, for him to say precisely on which occasions if any they had gone through a ceremony of marriage and for him to produce any certificate. He was at one stage ill, and her solicitors were then asserting a marriage in 1988, as well as a ceremony in 1980, but he had the 1980 certificate in his possession and certainly knew very well that the ceremony had taken place. When, very belatedly, his answer was filed in April 2000, it put the wife to strict proof of the assertion in her petition that there had been a 1980 ceremony and called for the certificate. I make all allowance for the caution of counsel drafting pleadings, but it is difficult to see how the wife could have been required to prove the ceremony and produce the certificate if the husband were then saying that he agreed it took place and was intended to be binding. The wife was not asserting a 1980 marriage valid in English law, nor at that stage was she seeking a decree of nullity, or any other relief, in relation to it. It was only when the wife exhibited in June 2000 photographs of what was unmistakeably a marriage ceremony, that the husband affected to find the 1980 certificate and the answer was amended. I do not believe that the certificate was ever truly lost, and even if it had been, the husband knew perfectly well that the ceremony had taken place and had on any view taken a number of steps subsequently to try to validate it. I have already referred to the denial of the Beirut document and to what standing alone would be the relatively trivial untruth about age. Nor, I am afraid, can the husband have been telling the truth when he asserted that he did not know of the wife's solicitors' clear letter indicating that she was about to launch a divorce petition when he went to Sharjah in 1999 and attempted a pre-emptive divorce there. I found his evidence frequently evasive and at times

contradictory. In particular, I do not accept his account of the Sharia judge engaging in casual conversation and telling him that what he was doing was morally wrong. If asked why he was divorcing his wife, he had only to say that they were unhappy, as the court document records that he did. That court extract also records that the court tried to persuade him not to undertake the divorce (as Mr Edge explains is the practice) but that he was insistent. He knew very well that the court had no power to refuse to register his talaq. Nor was there any occasion for him to say that the object was to prefer the wife to Sawsan. If he had said anything at all about the pension, as to which I have considerable doubts, he would have said that the object was to establish the wife in English law as an equal lawful wife together with Sawsan just as she was in Islamic law. It is clear that he has always discharged his financial obligations to Sawsan and continues to do so now.

[28] The Sharjan court documents from May 1984 admit of slightly differing translations. They are not, however, challenged as other than authentic. They record a talaq on 1 March 1984 and a formal revocation before the same judge on 3 March 1984. The second record shows that the wife was present at the revocation. It is not altogether surprising that she should recall the occasion as a remarriage. It consisted of a formal declaration by the husband to the effect that he restored her as his wife or resumed cohabitation with her, and she was asked to confirm the intention that they restore their married life together. The Arabic words used are capable of being translated as 'marry' or 'remarry'. Even when alive to the issue, the husband in evidence more than once inadvertantly used the word 'remarriage' to describe this procedure, not because he meant to say that it was legally a fresh marriage, but because in his mind, and according to the words used, that was a practical, rather than legal, description of what occurred.

[29] On the balance of probabilities, I find that in March 1984 the husband attempted to follow Mr Sprawson's advice and to divorce the wife by talaq before contracting a fresh valid marriage with her. The attempt failed, not because the judge said it was morally wrong, but because the second stage of the process took effect as, and was recorded as, a revocation of the talaq. What the wife remembers as a remarriage ceremony was in fact that revocation. She was not present at the pronouncement of the talaq. She had signed a power of attorney, probably without truly appreciating the exact purpose for which it was required, and because it was her practice to sign documents at the husband's request without hesitation. Despite the submission of Mr Posnansky QC on her behalf, it is not plausible that what she is describing did indeed occur, but in December, after an abortive attempt in March.

1984 - 1999

[30] Notwithstanding the 1984 events, the relationship continued unaffected. The second child was born in April 1985. Even when the relationship became strained, as it did some time in the early 1990s and they ceased to sleep together, they continued to live together and to regard themselves as husband and wife, and to behave as such to all they dealt with, and towards their children. That continued until the relationship broke down altogether in the summer of 1999, after which first one and then the other consulted solicitors. Thus they cohabited as, behaved as, and were treated as,

husband and wife for getting on for 20 years, albeit unhappy for the latter part.

[31In] 1992 the wife acquired British citizenship, although the husband did not. By now she had been resident in England for something like 16 or 17 years. Her children had been born and brought up here. She no longer had any significant connection with Syria, Saudi Arabia or the Lebanon. She told me that she simply does not know, now, whether she will end her days here or elsewhere on any one of several continents, but I am satisfied that by 1992, although not significantly before, she had acquired a domicile of choice in England and Wales, regarding herself as a citizen of this country, and living here indefinitely.

1999

[32] The husband consulted solicitors in June 1999 and correspondence began. On 9 September 1999, the wife's solicitors wrote to say that they had instructions to commence proceedings for divorce and ancillary relief. I have already referred to the husband's evidence, which I do not accept, that he was unaware of this.

[33] On 29 September 1999, the husband attended the Sharia court in Sharjah and obtained a formal declaration recording the fact that he had divorced the wife by an irrevocable third talaq. The order provided for the payment of the total sum of ú13,000 by way of return of dowry and of maintenance during the idda, which by Sharjan law is the full extent of the husband's responsibility to the wife.

The presumption of marriage

[34] The rule is well established that the law will wherever possible presume a lawful basis for long cohabitation between man and woman in the capacity of husband and wife. The rule is conveniently put in *Rayden and Jackson's Law and Practice in Divorce and Family Matters* (Butterworths, 17th edn, 1997) at 4.11 thus:

> 'Where a man and woman have cohabited for such a length of time and in such circumstances as to have acquired the reputation of being man and wife, a lawful marriage between them will be presumed, though there may be no positive evidence of any marriage having taken place, particularly where the relevant facts have occurred outside the jurisdiction; and this presumption can be rebutted only by strong and weighty evidence to the contrary.'

[35] It is important to observe that this is not a presumption which prevails over positive proof of the contrary. Nor does the cohabitation itself constitute the marriage. Rather, the rule is that cohabitation and reputation of this kind together amount to strong evidence that a lawful marriage has taken place, and only strong and weighty proof that it has not will permit a contrary conclusion. It follows that the presumption will the more readily be applied where the marriage being presumed to have taken place could have occurred with comparatively slight formality. Examples of this are provided by the early Scottish cases such as *Lieutenant C. W. Campbell of the Bengal Cavalry et al v John A. G. Campbell of Glenfalloch (the Breadalbane Case)* (1867) LR 1 Sc & Div 182 and *Captain de Thoren v Attorney-General et al*

(1876) 1 App Cas 686, where what was presumed was the then valid Scottish marriage by mutual agreement between the spouses, with or without any particular ceremony.

[36] In the present case, if lawful marriage is to be presumed between these parties, it must have occurred in an Islamic country, and it must have been a lawful polygamous marriage. It is common ground between the parties, and I so hold, that the presumption must extend to presuming such a marriage, where the domicile of the parties permits it, since the whole rationale of the rule is to find a lawful occasion for the kind of cohabitation in question whenever that can be done. It follows from the evidence of Mr Edge that a valid polygamous marriage could be contracted between these two parties in an Islamic country without any public ceremony, and indeed without the presence of the wife, providing she had at some stage signed a power of attorney, whether knowing exactly what it was, or what it was for, or not. I have accepted her evidence that she did sign documents at the husband's request from time to time and without applying her mind to what they were for.

[37] The strength of the presumption is demonstrated by the fact that it is not limited to such cases of relatively informal marriages. It has frequently been applied where what is presumed is a marriage which would have to have been by formal ceremony. Moreover, it is applied even in cases where there was clear evidence of some ceremony having taken place, which the evidence suggested was not valid, and even if the parties thought that it was. That was the case in *Captain de Thoren v Attorney-General et al* (1876) 1 App Cas 686, where the parties went through a ceremony of marriage in church, believing that the man's divorce from his previous wife was fully effective, when it was not yet so. The same was true in *Re Shephard; George v Thyer* [1904] 1 Ch 456, where Kekewich J assumed for the purposes of his judgment that the French ceremony deposed to by the parties must have been invalid by local law. Very recently, in *Chief Adjudication Officer v Bath* [2000] 1 FLR 8, the majority of the Court of Appeal presumed that there had been a marriage whilst assuming for the purposes of the decision that the ceremony undertaken by the parties in 1953 had been invalid, although believed valid by the parties; the actual decision in that case can, however be supported also on the different basis set out by Evans LJ, namely that there was insufficient evidence that the building was unregistered or that the parties were both implicated in any lack of formality, so that the presumption led to a finding that that ceremony had been valid.

[38] In those cases, there was no suggestion that the parties ever became aware of any deficiency in the ceremony which they had undertaken. It follows that the presumption that there had been a valid marriage is applied even where the known ceremony could not be valid, and there is no evidence to suggest any motive in the parties to undertake another. It applies, it is clear, because the question is not whether there is evidence, independently of the presumption, that the marriage took place, nor whether on the balance of probabilities it took place. Rather, the presumption itself supplies the evidence that it did, and the question is whether that evidence is contradicted by clear and weighty evidence that it did not.

[39] In the present case it is not necessary to go so far as those decisions just referred to. There is clear evidence first that these parties did know that the 1980 ceremony was not valid by the law of the country where they were

living, second that there was an intention to remedy the situation by contracting a marriage which was, and third that active steps were taken with the object of achieving this. I am satisfied, in particular, that the husband wished to achieve it, for the reasons already set out, but has attempted to conceal the extent of his efforts by being untruthful about the Beirut declaratory certificate. I also accept the evidence of Mr Edge that, although the document is not completely certain, on the balance of probabilities when the husband attended in Sharjah in 1999 in an attempt to achieve a divorce which would pre-empt the jurisdiction of this court, he told the court that he was pronouncing a third talaq. The court would then, as Mr Edge explained, have wanted to be satisfied when and where there had been the previous two talaqs. One was clearly in March 1984, but when was the second? When the husband was asked this question in correspondence, the answer he gave was that in the course of an argument in the house in about 1986 or 1987 he became so cross with the wife that he pronounced a talaq there and then. That explanation was repeated in evidence. The wife says this is completely new to her. On the evidence of Mr Edge, however, such an explanation would not in any event have been acceptable to a Shariah court because the talaq could not be valid in the absence of two male witnesses. If, however, the husband had, after the 1984 attempt at divorce and remarriage had failed, repeated the process in the course of one of his many business trips to the Gulf, there would indeed have been a second, and valid, talaq.

[40] If there was a valid marriage by Islamic law in this case, it can only have taken place whilst both were domiciled in countries which permitted a valid polygamous marriage. After 1991/1992, but not before, the wife was domiciled in England and could not contract such a marriage. As a matter of probability, however, never mind the presumption, if the husband did arrange such a marriage, it would have been at some time between 1984 and about the early 1990s. Certainly there is ample time for such a marriage to have occurred and the presumption is not displaced by absence of possible opportunity. Although any such marriage could only have taken place in this approximately 7-year period, it is common ground that in asking whether there is sufficient cohabitation and reputation to raise the presumption it is necessary to look at the whole period in which it obtained. Only one conclusion is possible on that issue. These parties regarded themselves as husband and wife, were regarded by everyone else as such and lived together as such for nearly 20 years; that raises the presumption that they were. Is that presumption proved to be wrong?

[41] If such a marriage took place, it occurred without the knowledge of the wife, who gave evidence that after the events in 1984 there was no further marriage so far as she knew. It is submitted that if the husband had arranged a further marriage he would have had no reason not to tell her. That argument would in any event do no more than tend to show on the balance of probabilities that it did not occur, but in any event I find that he might well not have done so. She was sensitive to the issue of her status. She believed that the 1984 visit to Sharjah, which on any view was a little undignified, had resulted in a lawful marriage. Their relationship was such that he took unilateral responsibility for important affairs; that is wholly consistent with the traditional Islamic perspective of the relative roles of men and women, nevermind with the age difference. It is perfectly possible,

indeed likely, that the husband would leave her in that state of belief and arrange things himself. A weightier objection is that any second talaq and later further marriage by contract would in any event not be effective in Islamic law unless there were an intervening period of 3 months' idda. It is submitted that there could not have been such a period without the wife knowing about it. If the question had to be resolved on the balance of probabilities, this may well be a formidable argument. But it does not. The question which I have to ask is whether there is clear and weighty evidence that this did not happen. There is in fact no evidence at all one way or the other whether these parties were at any material time apart for the necessary 3 months, or estranged from normal cohabitation. What did or did not happen in some Islamic country is, given the conclusions to which I have had to come about the evidence of the parties, to a considerable extent uncertain. Accordingly, I have reached the conclusion that the law requires that the presumption of marriage be applied, and that the state which these parties and all the world believed that they were in did indeed exist.

The 1999 talaq: the law

[42] The recognition of overseas divorces is governed by s 46 of the Family Law Act 1986. The section distinguishes between divorces which are obtained by means of proceedings (s 46(1)) and those which are not (s 46(2)). The distinction is not always an easy one to make. In the present case it is unnecessary to decide which kind of divorce this was, because it is common ground that, whichever it was, it cannot be brought within either s 46(1) or (2). Neither party was at the time domiciled in Sharjah, nor habitually resident there, nor a national of that State. The wife at least, and probably the husband, was habitually resident in England and had been for the preceding year. It is unnecessary to consider the grounds for discretionary refusal of recognition contained in s 51. It is impossible for this 1999 talaq to be recognised in English law as dissolving the marriage between the parties which the law presumes to have taken place.

The 1980 ceremony: the law

[43] The grounds upon which a marriage is void by English law are exhaustively set out in s 11 of the Matrimonial Causes Act 1973:

> 'A marriage celebrated after 31st July 1971 shall be void on the following grounds only, that is to say—
>
> (a) that it is not a valid marriage under the provisions of the Marriage Acts 1949 to 1986 (that is to say where—

(i) the parties are within the prohibited degrees of relationship;
(ii) either party is under the age of sixteen; or
(iii) the parties have intermarried in disregard of certain requirements as to the formation of marriage);

> (b) that at the time of the marriage either party was already lawfully married;
> (c) that the parties are not respectively male and female;
> (d) in the case of a polygamous marriage entered into outside

England and Wales, that either party was at the time of the marriage domiciled in England and Wales.

> For the purposes of paragraph (d) of this subsection a marriage is not polygamous if at its inception neither party has any spouse additional to the other.'

[44] It should be observed that s 14 of the 1973 Act preserves the rules of private international law by which foreign marriages may be judged for validity by reference to foreign law. That section has no application to the 1980 ceremony, which was conducted in London.

[45] At the time of the 1980 ceremony, the husband was already married to Sawsan. That earlier marriage had been contracted in Egypt under a system which permitted polygamy. That latter fact does not prevent him from being 'married' for the purposes of s 11(b). That was explicitly decided in *Baindail (Otherwise Lawson) v Baindail* [1946] P 122 and is not in dispute. It follows that unless this ceremony was altogether outside s 11, this was a marriage void by s 11(b).

[46] The husband's submission is that s 11 has no application to the present case. It is not, he says a 'marriage' for the purposes of that section. That, he says, is first of all because the 1980 ceremony was polygamous. He relies upon the classical statement of principle by Lord Penzance in *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130. In that case a man who had contracted a Mormon marriage whilst domiciled in Utah, under a system which was assumed to permit polygamy, petitioned for divorce having by that time abandoned his Utah domicile. He alleged adultery by his wife, relying on her having married again after being divorced from him according to Mormon customs. Lord Penzance held that an English court could grant no matrimonial relief in respect of a union such as the one between the parties. He gave his decision in terms which have become extremely well known (at 133):

> 'Marriage has been well said to be something more than a contract, either religious or civil - to be an Institution. It creates mutual rights and obligations, as all contracts do, but beyond that it confers a status. The position or status of "husband" and "wife" is recognised throughout Christendom: the laws of all Christian nations throw about that status a variety of legal incidents during the lives of the parties, and induce definite lights upon their offspring. What, then, is the nature of this institution as understood in Christendom? Its incidents vary in different countries, but what are its essential elements and invariable features? If it be of common acceptance and existence, it must needs (however varied in different countries in its minor incidents) have some pervading identity and universal basis. I conceive that marriage, as understood in Christendom, may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others.'

[47] It is significant that Lord Penzance was careful not to lay down any general principle that such a marriage was for all purposes no marriage at all in English law. He confined his rule to the unavailability of matrimonial

relief. At 138 he added:

> 'In conformity with those views the Court must reject the prayer of this petition, but I may take the occasion of here observing that this decision is confined to that object. This Court does not profess to decide upon the rights of succession or legitimacy which it might be proper to accord to the issue of the polygamous unions, nor upon the rights or obligations in relation to third persons which people living under the sanction of such unions may have created for themselves. All that is intended to be here decided is that as between each other they are not entitled to the remedies, the adjudication, or the relief of the matrimonial law of England.'

[48] There are many other statements of the principle underlying this rule in *Hyde v Hyde and Woodmansee* (above). Whilst it stood, it was held to prevent any grant of a decree of nullity in respect of a polygamous marriage - see *Risk (Otherwise Yerburgh) v Risk* [1951] P 50. A decree of nullity is a form of matrimonial relief. The rule never, however, meant that a polygamous union went wholly unrecognised by English courts. Such marriages were, by contrast, recognised as valid for many purposes when valid by the law of the place where they were contracted, and providing that the lex domicilii of each party permitted entry into such unions. What was not permitted was the grant of matrimonial relief. The rule became, however, an impossible principle to maintain a hundred years later in the face of modern freedom of travel, extensive immigration and mid-twentieth century concepts of comity not only between nations but between belief systems and it was eventually abrogated by the Matrimonial Proceedings (Polygamous Marriages) Act 1972. After consolidation, and after amendment by the Private International Law (Miscellaneous Provisions) Act 1995 to remove from the statute the concept of a marriage which is potentially but not actually polygamous, the present rule is to be found in s 47 Matrimonial Causes Act 1973, which provides, so far as material, as follows:

> '(1) A Court in England and Wales shall not be precluded from granting matrimonial relief or making a declaration concerning the validity of a marriage by reason only that either party is, or has during the subsistence of the marriage been, married to more than one person.
>
> (2) In this section "matrimonial relief" means—
>
> (a) any decree under Part I of this Act;
> (b) a financial provision order under section 27 above;
> (c) an order under section 35 above altering a maintenance agreement;
> (d) an order under any provision of this Act which confers a power exercisable in connection with, or in connection with proceedings for *such decree or order* as is mentioned in paragraphs (a) to (c) above;
> (dd) an order under Part III of the Matrimonial and Family

Proceedings Act 1984;

(e) an order under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978.

(3) In this section "a declaration concerning the validity of a marriage" means any declaration under Part III of the Family Law Act 1986 involving a determination as to the validity of a marriage.'

[49] It follows that the fullest forms of matrimonial relief are now available notwithstanding that a marriage is not monogamous and that there is another spouse in existence. The disappearance of the rule in *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130 is underlined by the fact that s 11 (c) requires a decree of nullity in the case of a marriage between two persons of the same sex, although plainly such a marriage could not come within Lord Penzance's definition. So far as polygamous unions were concerned, the purpose was clearly to ameliorate the position of those who had contracted abroad polygamous or (at that time) potentially polygamous marriages which were under *Hyde*denied matrimonial relief. It was and is only abroad that such marriages can be contracted. Mr Singleton for the husband submits that for any marriage conducted in England and Wales the rule in *Hyde*remains and that this 1980 ceremony is therefore not a 'marriage' for the purposes of s 11 because it is polygamous. He further submits that although the husband had a wife already, the same would apply even if he had not had one. Thus the submission is that there exists a category of actually or potentially polygamous unions contracted in England which for that reason are outside s 11.

[50] When a marriage is characterised as monogamous or polygamous it is often, for convenience, referred to as a marriage in monogamous or polygamous form. That does not mean that a marriage derives its character from the contents of the ceremony. Some ceremonies plainly do refer either to the monogamous, or to the polygamous, rules under which they are conducted. A Church of England marriage service will no doubt contain a vow which includes the promise to forsake all others. The particular Egyptian marriage contract in *Risk (Otherwise Yerburgh) v Risk* [1951] P 50 contained an agreement that the husband could take a number of wives. But the marriage ceremony need not refer to the question at all. In the present case there is no evidence one way or the other whether the words used in 1980 incorporated any reference to the husband's ability to hold to his existing wife or to take further ones. The most that can be said is that on the certificate the descriptions of the husband as 'single/divorced/widower' were all struck through, as plainly for accuracy they needed to be. Whatever the position in the present case may have been, the evidence of Mr Edge is that an Islamic marriage is effected by contract between the parties, in the presence of two male witnesses, to take each other as husband and wife. No particular ceremony is required, nor need there be anyone in the role of celebrant. The wife need not be present and may be represented by an authorised proxy. There is no requirement for any particular form of words. In English law, the only words which the Marriage Act 1949 stipulates shall be included in a marriage ceremony are the words of declaration and contract set out in s 44(3) or (3A), which are required in marriages in registry offices and most, but not all, other places by ss 45(1), 45A(3) and

46B(3). They are words by which the parties affirm the absence of impediment to their marriage and take each other as husband and wife, but they say nothing about the monogamous character of the union. What characterises a valid marriage, at any rate at its inception, as monogamous or polygamous is the law of the country in which it is conducted: see *Lee v Lau* [1967] P 14. English law contemplates that a marriage will be monogamous. Hence, among other rules, it contains a law making bigamy a criminal offence, and it holds a marriage void if one of the parties to it is already lawfully married.

[51] A valid English marriage may thus properly be described as monogamous. It may be entered into by persons whose personal laws would allow them to contract polygamous unions, but it remains, if a valid English marriage, a monogamous one: see for example *Ohochuku v Ohochuku* [1960] 1 WLR 183 (where Wrangham J granted the matrimonial relief of divorce in respect of the valid registry office ceremony between domiciled Nigerians, and despite the existence of a prior marriage between them contracted under a legal system which permitted polygamy), *Maher v Maher* [1951] P 342 (where Barnard J held a valid registry office ceremony between domiciled Egyptians to create a monogamous marriage; the decision was overruled by *Russ (Orse Geffers) v Russ (Russ Orse De Waele Intervening)* [1964] P 315 but upon the different point of non-recognition of a subsequent talaq divorce), and *Qureshi v Qureshi* [1972] Fam 173 (where the decision concerned the recognition of a talaq divorce but the judgment proceeded upon the express basis that the marriage, between a husband domiciled in Pakistan and a wife domiciled in India and contracted in an English registry office, was monogamous; this was essential since the power to grant the declaration sought was held to be present only if there was power to grant matrimonial relief, and the case was heard before the rule in *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130 was abrogated).

[52] Conversely, some foreign marriages are entered into under a system of law which permits polygamy and may properly be called polygamous. If valid by local law, and permitted, by the law of the domicile of the parties, they will be recognised by English law. It is necessary to note, but only to touch upon, the English rule that such marriages may also be converted to monogamous ones subsequently, for example by legislation, or by the occurrence of particular events, or by the acquisition of a different domicile: see among other cases *Parkasho v Singh* [1968] P 233, *Cheni (Orse Rodriguez) v Cheni* [1965] P 85 and *Ali v Ali* [1968] P 564.

[53] Because the character of a marriage is determined not by the form of the ceremony but by the law of the country where it takes place, no question of characterising the 1980 ceremony as polygamous in form arises. There is neither room for, nor occasion for, any category of potentially polygamous marriage contracted in England. If there were, s 47 would mean that that characteristic would not prevent the grant of matrimonial relief, but there is not.

[54] The only sense in which any marriage contracted in England and Wales can be described as potentially polygamous is the very limited one expressed by Sir Jocelyn Simon P in *Cheni (Orse Rodriguez) v Cheni* [1965] P 85 (at 90), who there observed that there are no marriages which are not potentially polygamous in the sense that they may be rendered so by a change of domicile and religion on the part of the spouses. If following such

a change of domicile a person were to contract a further marriage in a country permitting polygamy, he or she might create a valid marriage: that would depend on the rules of private international law as to validity and recognition, which are expressly preserved by s 14 of the 1973 Act.

[55] Leaving aside, however, marriages contracted in foreign countries, the question which arises is what is and what is not a 'marriage', when contracted in England and Wales, for the purposes of s 11. Plainly it is not every event to which somebody seeks to apply the label 'marriage' which is within the section, leading to a decree of nullity and the open door to all forms of ancillary relief. Mr Posnansky did not submit otherwise. A clear example of what would be outside it might be a staged dramatic marriage 'ceremony' conducted in a play or in the course of a television soap opera. Another might be the exchange of promises between small children. But the same would apply, as it seems to me, to 'alternative marriage' rites consciously and deliberately conducted altogether outside the Marriage Acts and never intended or believed to create any recognisable marriage.

[56] Mr Posnansky for the wife submits that although it may be difficult to lay down in advance when an event is a 'marriage' for the purposes of s 11 and when it is not, the event presently in question, with its attendant ceremony, can safely be said to be within that expression. If, however, it is, the same would no doubt apply to all manner of self-devised rituals intended to be binding in conscience by those forsaking the civil forms of marriage, as well as to 'marriages' according to foreign religions, and to any other ceremonies which make no attempt to be English marriages within the Marriage Acts.

[57] In *Regina v Bham* [1966] 1 QB 159 an Islamic couple living in England who wished to marry had found that they were unable to do so in the registry office because the man was unable to satisfy the Registrar that he did not already have a wife. They therefore asked the appellant to conduct a ceremony of marriage, purportedly in accordance with Islamic law, in a private flat. No one, 'husband', 'wife' or 'celebrant' thought that this was a marriage such as is provided for by the English Marriage Acts. The appellant was prosecuted under s 75(2)(a) of the Marriage Act 1949 for the offence of knowingly and wilfully solemnising a marriage in a place other than a place permitted to be used for the purpose by that Act. His conviction was quashed by the Court of Criminal Appeal. The mischief which s 75 aimed to punish was clearly, as the court held, the conduct of those who preside over ceremonies which purport to be valid English ceremonies of marriage according to the Marriage Acts. The appellant had not, as the court held, ever intended to effect an English marriage, nor did he purport to do so. The court gave its reasons as follows (at 168):

> 'It seems to us that counsel for the defendant is correct in his submission that the Marriage Act, 1949, is dealing throughout with marriage as known to and permitted by English domestic law It does not seem to the court that the provisions of the Act have any relevance or application to a ceremony which is not and does not purport to be a marriage of the kind allowed by English domestic law But unless the "marriage" purporting to be solemnised under Islamic law is also a marriage of the kind allowed by English law it is not a marriage with which the Marriage Act, 1949, is concerned.'

[58] Although that was strictly a decision upon the Marriage Act 1949 rather than upon the Matrimonial Causes Act 1973, I am satisfied that the reasoning must apply to the latter and to the present case. In England a marriage can only be effected under the Marriage Acts, either according to the rites of the Church of England (Part II of the 1949 Act) or under certificate of the Superintendent Registrar (Part III). A marriage which purports to be conducted under these Acts may nevertheless be void for want of formality. Not every breach of the required formalities has this effect, but some do. They are set out in ss 25 and 49 of the 1949 Act. But unless a marriage purports to be of the kind contemplated by the Marriage Acts, it is not, I hold, a marriage for the purposes of s 11 of the Matrimonial Causes Act 1973. No doubt it is possible to envisage cases where the question whether a particular ceremony or other event does or does not purport to be a marriage of the kind contemplated by the Marriage Acts is a fine one. *Gereis v Yagoub* [1997] 1 FLR 854 was one such, where His Honour Judge Aglionby concluded that but for the absence of notice to the superintendent registrar and the lack of registration of the building the ceremony would have been one valid in English law; the decision may have been a merciful one. It is clear, however, that the present ceremony did not begin to purport to be a marriage according to the Marriage Acts, with or without fatal defects. It was not conducted under the rites of the Church of England, nor was there ever any question of an application for, still less a grant of, a superintendent registrar's certificate, and it was conducted in a flat which was clearly none of the places which were authorised for marriage. The ceremony was consciously an Islamic one rather than such as is contemplated by the Marriage Acts. Just as in *Regina v Bham* [1966] 1 QB 159, nobody purported to conduct or take part in a Marriage Act 1949 ceremony, and the fact that no one applied their mind to how English law would view what they did does not alter that conclusion. It is not any question of polygamy which ipso facto takes this ceremony outside s 11, but the fact that it in no sense purported to be effected according to the Marriage Acts, which provide for the only way of marrying in England. The fact that the husband was known by all concerned to have another existing wife is of course one important reason why this was so. It follows that I hold that the 1980 ceremony is neither a valid marriage in English law nor one in respect of which jurisdiction exists to grant a decree of nullity.

Conclusion

[59] For the foregoing reasons I conclude that there is an existing marriage which the court has jurisdiction to dissolve, if the grounds for doing so are established, but that the 1980 ceremony did not effect a marriage valid in English law, nor one in respect of which there is jurisdiction to pronounce a decree of nullity.

Finding: existing marriage which court has jurisdiction to dissolve. Directions given for future conduct of divorce suit.

Solicitors: *Cooper Whiteman* for the petitioner
Collyer Bristow for the respondent

PHILIPPA JOHNSON
Barrister