

Divorce

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IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
(CIVIL)
A.D. 1990

2/11/90

NO: 362 of 1990

BETWEEN:

CECELIA OINTA CORDICE	PETITIONER
AND	
PEDRO MARC ANTHONY CORDICE	RESPONDENT

Miss R. Baptiste for Petitioner
Mr. M. Williams for Respondent.

1990: October and
November 1.

JUDGMENT

MATTHEW J.

By a notice of motion filed in this Court on October 22, 1990 and which came up for hearing on October 24, 1990 learned Counsel for the Petitioner applied for an order that the petition be heard in the absence of the Petitioner and that the Judge pronounce the decree nisi.

The notice of motion was supported by an affidavit made by the Petitioner in Canada. In the supporting affidavit the Petitioner stated that she fled from the matrimonial home in fear and due to the mental stress and anguish which the Respondent had repeatedly caused her she is afraid to return to Saint Vincent for the hearing of the petition. She also stated that by reason of other circumstances she finds it impracticable to return to Saint Vincent and also because of the distance to travel and the expense involved. She also stated that her physician has advised against returning and giving evidence at the hearing.

She tendered a medical certificate dated July 28, 1990 indicating that she is under the doctor's care for acute illness and is not able to travel at this time.

In her submission in support of the motion Counsel referred to Rayden on Divorce, 14th Edition, Volume I pages 577/578 and in particular to the

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portion of page 578 which states:

"Notification of the date, time and place fixed for the pronouncement of the decree will be sent to the parties. Attendance for the pronouncement of the decree is not necessary unless costs were asked for and the Registrar, instead of certifying that the Petitioner is entitled to them, has referred the question of costs to the Judge."

Counsel on record for the Respondent was absent and I reserved the matter for consideration.

Pages 577-581 of Rayden on Divorce 14th Edition Volume I describes a method of disposing of cause lists by hearing or trial. This is referred to as a new procedure in "The Special Procedure List." I have identified three features of this new procedure as follows:

(a) Directions for Trial. Pages 577-578 "In lieu of the normal application for directions for trial, when the requirements of Rule 33(1) have been complied with the Petitioner or his/her Solicitor should lodge a request for directions for trial in the special form together with an affidavit of evidence by the Petitioner in Form (7a), (7b), (7c), (7d) or (7e) whichever is or are appropriate.

(b) Registrar's Certificate. Page 578 states:

"The Registrar will give directions for trial by entering the cause in the Special Procedure List, and will thereafter consider the evidence filed by the Petitioner. If the Registrar is satisfied that the Petitioner has sufficiently proved the contents of the Petition and is entitled to the decree sought and any costs prayed for, he will make and file a certificate to this effect.

(c) Pronouncement of the Decree: Page 578 is as follows:

"Notification of the date, time and place fixed for the pronouncement of the decree will be sent to the parties. Attendance for the pronouncement of the decree is not necessary unless costs were asked for and the Registrar, instead of certifying that the Petitioner is entitled to them, has referred the question of costs to the Judge."

It is clear that from the features mentioned above the Registrar has to exercise certain functions. Page 579 states:

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"If the Registrar is not satisfied with the evidence filed by the Petitioner on the application for directions for trial, that is, the form 7 (a) - (e) as appropriate and any supporting documents, he may either give the Petitioner an opportunity to file further evidence or remove the cause from the Special Procedure List and direct that it be heard in open court."

The practice in relation to the pronouncement by the Judge is revealing. Page 580 states:

"Cases will be called on in a group, and if no cause is shown to the contrary, the Judge will pronounce decrees and make any consequential orders as to costs and ancilliary relief in the terms set out in the respective Registrar's certificates."

Further down the learned author states:

"Under this procedure the process of adjudication has been transferred from the Judge to the Registrar. Rule 48(1) requires the Registrar to consider the evidence filed by the Petitioner and if he is satisfied that the Petitioner has sufficiently proved the contents of the petition and is entitled to a decree and any costs for which he prays to make and file a certificate to that effect.
.....

It is, accordingly, impossible to regard the pronouncement of the decree by the Judge as anything more than a formality, and it is difficult to see how he can have jurisdiction to do anything but make the pronouncement, save possibly to postpone it until a later date to give time for other steps to be taken, e.g. to apply to stay or set aside the Registrar's certificate."

Section II of the Eastern Caribbean Supreme Court (Saint Vincent) Act is as follows:

"The jurisdiction vested in the High Court in Civil proceedings, and in Probate, Divorce and Matrimonial causes, should be exercised in accordance with the provisions of this Act and any other law in operation in Saint Vincent and rules of Court and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with

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the law and practice administered for the time being in the High Court of Justice in England."

I draw attention to the words "as nearly as may be". They suggest that there might be difficulty in the exercise of jurisdiction in Saint Vincent in total conformity with the law and practice administered in the High Court of Justice in England. The application of the United Kingdom Matrimonial Causes Rules 1973 by virtue of Section 73 of the Matrimonial Causes Act 1989 No. 58 of 1989 does not detract from the above statement.

The Petitioner finds herself in a quandry. She begins these proceedings by motion. But no where does the description of the new procedure call for a motion. What the procedure envisages is that after the Registrar has acted "notification of the date, time and place fixed for the pronouncement of the decree will be sent to the parties." Herein lies one of the dangers of wholesale incorporation by reference of some other legislation made to suit a particular situation into one's legislation which is exercisable in a very different situation. But this method of commencement may not be crucial.

It is further to be noticed that when the special procedure is applicable Rule 33(1) of the Matrimonial Causes Rules is not used but in lieu of that rule a request for directions for trial in the special form. In this case far from ^{today} a request for directions in the Special form, Rule 33(1) of the ~~Natural~~ ^{Natural} Causes Rules is applied and the Registrar's certificate to this effect given on September 18, 1990. That defect too may not be so crucial.

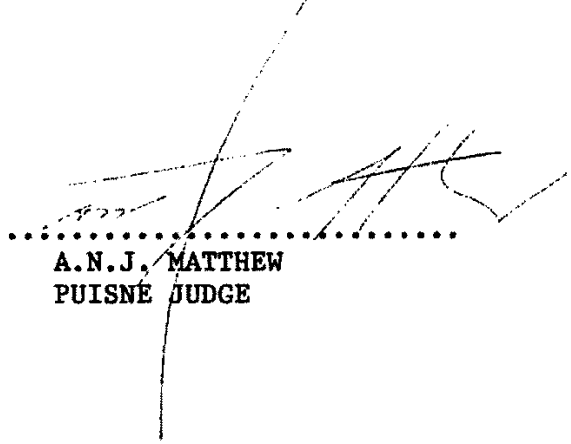
The Special Procedure requires the Registrar to give directions for trial by entering the cause in the Special Procedure List. There is no evidence that this has been complied with. But again this defect may not be so crucial.

But what about the Registrar's certificate? Where has he functioned as required by the Special Procedure? There is no indication that the Registrar has been satisfied that the Petitioner has sufficiently proved the contents of the petition and is entitled to the decree sought. Is the motion asking the Judge to perform both functions of Registrar and Judge? The Special Procedure does not envisage that for it states specifically that under this procedure the process of adjudication has been transferred from the Judge to the Registrar.

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The Registrar has not complied with the provisions of the Special Procedure which the Petitioner is asking the Court to apply.

I am not sure that the role envisaged by the Special Procedure for the Registrar of the High Court of Saint Vincent is one which he should adopt but in any event he has not exercised that role in this case and the motion is accordingly dismissed.



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A.N.J. MATTHEW
PUISNE JUDGE