

M. J. 857  
18/5

J A M A I C A

IN THE COURT OF APPEAL

C.A.# 2/66

BEFORE:      The Hon. Mr. Justice Duffus, President  
                 The Hon. Mr. Justice Waddington  
                 The Hon. Mr. Justice Shelley (Acting)

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J A N E G A T H E R E R

vs

A L W Y N G A T H E R E R

Mr. R.N.A. Henriques for the Applicant

Mr. D.J.Thompson, Q.C. for the Respondent

21st March, 1966

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DUFFUS, P.,

This is a Motion by Jane Winnifred Gatherer, wife, for leave to appeal out of time against an Order granting a decree nisi made on the 29th of October, 1964, and the decree absolute subsequently granted on the 19th of December, 1964, on her husband's petition for dissolution of their marriage.

The facts very briefly are, that the husband was residing in Jamaica and had his domicile in Jamaica at the time his petition was filed on the 18th of June, 1964. The applicant in this Motion, the wife, was not then residing in Jamaica. The husband obtained an Order for substituted service by way of a notice in an American newspaper, on the presentation of an affidavit in support of his application in which he stated that he had information that his wife was residing in Connecticut in the United States of America, but he did not know her address and was unable to ascertain that

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address in order to effect personal service of the petition and notice on her. Notice of the petition did not come to the attention of the wife and affidavits filed on her behalf show that the husband could have ascertained her address very easily had he been so minded.

Learned Counsel for the respondent in these proceedings, on the matter coming before us today, took a preliminary point that this Court had no jurisdiction to entertain the present Motion. He submitted that the affidavit filed by the husband, Alwyn Fitzgerald Gatherer, disclosed that he had left Jamaica subsequent to the service of the Notice of Motion on him, and was now residing in the Island of St. Vincent, and that he had renounced his former Jamaican domicile and was now domiciled in the Island of St. Vincent, and learned Counsel also submitted that the wife had no domicile in Jamaica and therefore, this Court was not seised of the matter and had no jurisdiction to hear the present Motion.

We have already stated that on consideration of this preliminary point, we were satisfied that the Court was seised of jurisdiction to deal with the matter by virtue of the express provisions of Section 9 of the Judicature (Appellate Jurisdiction) Law, Law 15 of 1962. The Court then proceeded to hear submissions on behalf of the applicant and on behalf of the husband-respondent.

The Court is satisfied that this application has considerable merit in it, and that an appeal can be entertained by the Court under Section 10 - (1) (d). The Court is satisfied that the applicant did not have the time, or the opportunity to appeal from the decree nisi on which the Order for the decree absolute was founded, and that that was the reason why she had not appealed from the

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decree nisi. It seems clear that she was not aware that proceedings for the dissolution of her marriage had in fact been taken, and the fact that an order had been made dissolving the marriage did not come to her attention until some considerable time after that Order had been made.

In these circumstances, the Court orders that the time for appealing and for filing the necessary Notice of Appeal and Documents be enlarged, pursuant to Rule 9 of the Court of Appeal Rules 1962 and the Court of Appeal (Amendment) Rules 1963.

The Court is informed by learned Counsel for the applicant that he will require two weeks from the date hereof in which to file the necessary Notice of Appeal and other documents. The Court accordingly, orders that time be extended for two weeks from today.