Dissolving the wrong marriage and the implications for personal status in cross-border cases (X v Y)

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Private Client analysis: This analysis explores the decision of the president of the Family Division, Sir Andrew Macfarlane, in X v Y. The case involved an application to rectify a decree of divorce granted many years ago, after it was realised that the divorce had dissolved the 'wrong' marriage—the parties having gone through two ceremonies, firstly in Spain, and a year later in England. Their subsequent divorce purported to dissolve the second (English) marriage, thereby leaving (or at least giving the impression of leaving) the earlier Spanish marriage alive and well. Written by William Tyzack, barrister of Queen Elizabeth Building and Amy Scollan, solicitor, at Hunters Law LLP who represented the successful applicant in the case.

X v Y [2020] EWHC 1116 (Fam), [2020] All ER (D) 194 (Apr) (22 April 2020)

What are the practical implications of this case?

The uncertainty surrounding the status of the first Spanish marriage ceremony raised important implications for the husband—not only did he plan to remarry (and therefore did not want there to be any doubt as to his marital status before marrying his current partner), but his former wife who was living in Spain was asserting that she remained his wife. Notwithstanding the fact that the Principal Registry of the Family Division had in 1997 made orders for financial relief, and the parties had been separated since before then, the former wife was asking for substantial sums by way of further provision on the basis that the parties remained married. It was therefore essential for the client that the divorce decrees be rectified, to make it clear that his Spanish marriage had indeed been dissolved.

In addition, the case serves as a reminder to any couple who have gone through two ceremonies of marriage—perhaps a wedding in a foreign country followed or preceded by a ceremony in the UK—not only to make sure that the divorce petition refers to the correct ceremony which solemnised the marriage, but also what to do, and the relevant procedure, if a mistake is made.

What was the background?

The facts of the case were as follows. The parties had married in a civil ceremony in Madrid in May 1993. However, because their families disapproved of their relationship, they kept the fact of this ceremony, and their marriage, a secret. However, just over a year later, once the views of the families had softened somewhat, they went through a further ceremony attended by their family and friends, this time in the register office in Islington. Despite the fact that the civil marriage in Madrid was a valid Spanish marriage and the registrar in Islington was informed of its existence, the registrar nonetheless registered the English marriage in the civil register. Sadly, the marriage did not last long. In 1996 the husband petitioned for divorce. He informed his English solicitor of the Spanish and the English ceremonies, but, curiously, the decision was made to refer in the petition to the English marriage. The petition was undefended, the marriage was dissolved on that basis, and orders for ancillary relief were also made.

Over 20 years later, the wife, wishing to remarry in Spain, requested that the husband take steps to register the divorce in Spain. However, he was informed that he could not register the divorce, because it did not refer to the earlier Spanish marriage. He therefore took advice in England about what he could do to rectify the divorce, and an application was made which came before the president sitting remotely in April 2020.

What did the court decide?

Key to the court's decision were two propositions:

- firstly, that there can only be one valid ceremony of marriage, to create the status of marriage—that was the Spanish ceremony and the English ceremony had no effect in relation to the parties' marital status
- secondly, that a divorce puts an end to the status of marriage—the fact that the decree had referred to the 'wrong' ceremony was therefore irrelevant to the consequence of the decree absolute, namely that the decree brought an end to the parties' status as a married couple and they had, by consequence, been validly divorced since 1997

References:

Thynne v Thynne [1955] 3 All ER 129

The judge therefore had to consider whether the court had jurisdiction to amend or rectify the decrees, and whether, if it did, it should. The court was referred to a case from the 1950s, *Thynne v Thynne*, which was on very similar facts—a secret wedding followed by a divorce on the basis of a later ceremony. The Court of Appeal in that case held that where a decree of divorce had been granted by a competent court putting an end to the status of marriage between the parties, but the decree gives the wrong date of the effective marriage, the decree was not rendered void by that error and there was a discretion in the court to correct the error, so that the record would refer to the correct date of marriage. The decree of divorce, however, had remained valid from the moment it had been pronounced 25 years earlier, and was not affected by the internal error in the pleading of the date.

The court was therefore satisfied that it had the jurisdiction to amend the decrees and, in the circumstances, that it was appropriate that it should do so. However, the President made the point that the purpose of the order being made was to resolve and put right that which should have been the case all along.

One final point—in relation to procedure, the case of *Thynne* had proceeded under the inherent jurisdiction of the High Court. However, in light of ability of the court to make the necessary amendment pursuant to rules of court, the court did not need to resort to its inherent jurisdiction. The President therefore made the order pursuant to the Family Procedure Rules 2010, SI 2010/2955 4.1(6).

Case details

- Court: High Court of Justice, Family Division
- Judge: Sir Andrew McFarlane
- Date of judgment: 22 April 2020