

MISCELLANEOUS CIVIL.

1917

February, 12*Before Mr. Justice Walsh.*ANGELINA REIFFSTECK (PETITIONER) v. JOSEPH GEORGE
REIFFSTECK (RESPONDENT) **Civil Procedure Code (1908), section 83—Suit for judicial separation—
Right of an alien enemy to sue in a British Court.*

In this case the court granted an application for an order directing the summons together with a copy of the petition filed by the petitioner for a judicial separation to be sent to the Probate, Divorce and Admiralty Division of the High Court in England for transmission to the Foreign office for service on the respondent, the petitioner being the wife of a German living in Germany, but herself residing in British India, apparently with the permission of the Government of India.

THE facts of this case, so far as they are necessary for the purpose of this report, appear from the order of the Court.

Mr. C. Sandford Oehme, for the applicant.

WALSH, J. — This is an application for an order directing the summons together with a copy of the petition, which has been filed by the petitioner for judicial separation, to be sent to the Divorce and Admiralty Division of the High Court of Judicature, England, for transmission to the Foreign office for service upon the respondent. The parties are Germans. They were married at Lucknow, and in 1908 the respondent, who is a German by nationality, is alleged to have deserted the petitioner and is now said to be in Germany at Oberschaffolsheim bei Strassburg. The petitioner is of course a German by reason of her marriage. I had some doubt as to whether I ought to make an order in her favour, she being the subject of a state at war with Great Britain. But it would appear from decisions in England that an alien enemy residing in a country at war with the enemy with the permission, express or implied, of that country will not be denied a hearing by the English Courts. That rule appears to have been incorporated in the Civil Procedure Code by section 83 of Act V of 1908, which provides that alien enemies residing in British India with the permission of the Governor General in Council may sue in the Courts of British India. The petitioner is carrying on business on her own account in Lucknow in the name of her husband, and I think I am entitled to take judicial

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notice of the fact that she has not been interned and is therefore residing in Lucknow with the permission of the Government of India. At any rate her counsel has satisfied me that she has *prima facie* a right to be heard, although I am deciding nothing finally at this moment. The question will remain to be determined when the suit comes on for final disposal. I do not think I ought to refuse her application merely on the ground that she is the subject of a country at war with Great Britain.

The petition is one for judicial separation on the ground of cruelty and desertion. I have pointed out to her counsel that inasmuch as the husband is now in Germany and is not likely to be able to get out as long as the war lasts, the petitioner will not be in any better position even although she gets judicial separation than she is at the present moment. But she, having considered the matter, desires to bring her suit, and she has a right to decide for herself. I think I have no right to refuse her application on that ground either, although it is difficult to see of what service a decree can be to her under present circumstances.

It further appears on the face of the petition that the respondent was in 1908 declared to be a lunatic, and if he is still a lunatic he could not be a party to this suit unless properly represented, and this order of service upon him would be an idle form. But it also appears that since that date he has sufficiently recovered to have appointed a special attorney to sell the business which he owned in Lucknow, and he is reported by the German Foreign office to the Embassy of the United States in November, 1916, to be residing at Oberschaffolsheim bei Strassburg in Germany. I do not think I am entitled to assume that he is necessarily still a lunatic, and therefore I ought not to refuse the application on that ground either. I therefore direct that the petition be forwarded as prayed to the Probate, Divorce and Admiralty Division of the High Court of Judicature, London, England, for transmission to the Foreign office for such service on the respondent in Germany as can be effected.

There is a further prayer that I should fix the amount of the costs to be deposited by the applicant as security for the expense of carrying out this order. I fix the amount at Rs. 20.

Application allowed.