

UGANDA / JUDGMENT

Wallington v Wallington and Another (Divorce Cause No. 29 of 1941) [1943] EACA 81 (1 January 1943)

[1943] EACA 81

COURT

East African Court of Appeal

BEFORE

Sheridan CJ

CASE / FILE NUMBER

Divorce Cause No. 29 of 1941

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DIVORCE JURISDICTION

BEFORE SIR JOSEPH SHERIDAN, C. J.

MAJOR JOHN MILDMAY WALLINGTON, Petitioner

v.

GWYNETH FRANCES MARY WALLINGTON, Respondent

and

LIEUTÉNANT-COLONEL PIERREPONTE RODNEY MILLER MUNDY, Co-Respondent

Divorce Cause No. 29 of 1941

- Divorce Jurisdiction—Application for permission to withdraw petition or have it dismissed prior to respondent entering appearance-Consequences of dismissal.
- Held (25-3-43).—Where a petitioner applied for permission to withdraw his petition or have it dismissed with leave to file a new petition in future alleging the same charges together with new matter, and the respondent has not entered an appearance, the order of dismissal does not have the effect of terminating the suit.

Stratton for petitioner.

JUDGMENT.-In this petition the respondent has been served, but has not entered an appearance; the co-respondent has not been served. The petitioner asks for permission to withdraw his petition and/or have it dismissed with leave to file a new petition in future alleging the same charges together with new matter, if any. According to Latey on Divorce, 12th Ed. p. 631, "A petitioner may not have a petition dismissed without notice to the respondent if the latter has entered an appearance". From this I infer that he can have a petition dismissed if the respondent has not entered an appearance. As to the consequences of a dismissal in such circumstances it would seem that the petitioner is at liberty to institute a new suit, making the same allegations, should he be so advised (Hall v. Hall and Richardson (1879) L. J. P. 57), but I do not propose to pronounce. upon the consequences in this judgment. The appropriate time at which to deal with the point is if and when a new petition is instituted. On the authority of the case I have cited the present order of dismissal which I hereby make does not have the effect of terminating the proceedings.

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