

## PARKER v. PARKER.

1905. July 20. FAWKES and WARD, J.J.

*Husband and wife.—Domicile.—Divorce.*

A wife sued her husband for restitution of conjugal rights failing which for divorce on the ground of malicious desertion. The husband had been sued edictally but did not appear, and his whereabouts were unknown. It appeared that his domicile of origin was the Cape Colony, but he had lived for a little while both before and after the war in this colony. *Held*, that he had not acquired any domicile here and consequently the wife was not entitled to bring her action in this Court.

This was an action by the wife for restitution of conjugal rights failing which for divorce, on the ground of malicious desertion.

The husband, whose whereabouts were unknown, had been sued by edictal citation but had not appeared. The evidence on behalf of the plaintiff was to the effect that the parties were married on the 7th December, 1896, at the English church at Booyens, a suburb of Johannesburg. After the marriage they resided for three or four months on the farm Helvetia, in the Lydenburg district, and then returned to Johannesburg, where they lived for some six months. A visit was paid to some friends in Colesberg, which lasted another six or seven months. On their return to Johannesburg they lived in the Masonic hotel, but had to leave after four months because the husband could not meet his hotel account. They then lived in a house lent them by a friend, when the plaintiff supported both her husband and herself by doing fancy work. Some time after the plaintiff left of her own accord and without obtaining her husband's permission, and took up her abode with her parents at Winburg. Shortly before the outbreak of the late war plaintiff sent for her husband to come to Winburg; he came, and after some six weeks joined the Winburg commando and went  
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to the front. Subsequently he was captured and sent to Ceylon as a prisoner of war. On his return from Ceylon he joined the plaintiff at Winburg, where she was then living and earning a livelihood by dressmaking. After three weeks had elapsed plaintiff gave him some money to go to Johannesburg in search of employment. Defendant was a prospector; his parents lived in Johannesburg but originally they came from Colesberg in the Cape Colony. The husband stayed away for eight months and then returned to Winburg when the parties had some disagreement and defendant left again, as he said, for Johannesburg. Some two years had now elapsed and plaintiff had not heard from him since he left Winburg. Before the war the plaintiff and defendant were living on a farm belonging to plaintiff's father in the Winburg district, for which defendant paid about £12 per annum.

*Borckenhagen*, for the plaintiff.

Defendant in default.

FAWKES, J.: The plaintiff is only entitled to bring her action in this Court if her husband was domiciled here. Now the husband's domicile of origin seems to have been the Cape Colony. He may have acquired a domicile of choice in the Transvaal, but I am satisfied upon the evidence that he never acquired one here. The Court has to be careful in these cases, because the courts of the country where the husband is really domiciled might refuse to recognise the proceedings before this Court, and much as the Court may sympathise with the plaintiff it has no option but to refuse to grant the order asked for on the ground that it has no jurisdiction.

WARD, J.: I concur.

Plaintiff's Attorney: *J. Craig*.