

1962  
Dec. 1  
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ANGELIKI  
BASTADJIAN  
v.  
KRIKOR  
BASTADJIAN

[VASSILIADIS, J.]

ANGELIKI BASTADJIAN THEN ANGELIKI RIYOU,  
*Petitioner.*

KRIKOR BASTADJIAN

*Respondent.*

(*Matrimonial Petition No. 6/62*).

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*Matrimonial Causes—Petition for dissolution of marriage—Civil marriage between a member of the Armenian Church and a member of the Greek-Orthodox Church—Jurisdiction of the High Court—Articles 111 and 160 of the Constitution—The Courts of Justice Law, 1960 (Law of the Republic No 14 of 1960), section 19(b)—The Courts of Justice Law, Cap 8, section 20(b).*

*Matrimonial Causes—Petition for dissolution of marriage on the ground of cruelty—What is 'legal cruelty'—Isolated acts of physical violence may amount to cruelty—English Law applicable—The Courts of Justice Law, 1960 (supra) sections 19(b) and 29(2) (b)—The Courts of Justice Law, Cap 8 sections 20(b) and 33 (2)—The Matrimonial Causes Act, 1950, section 1(1) (c)*

The husband was an Armenian belonging to the Armenian Church and the wife a Greek belonging to the Greek-Orthodox Church. They were both born in Cyprus and were married at the Commissioner's Office, Limassol, on the 11th October 1954, under the provisions of the Marriage Law, Cap 279.

There was no church celebration of the marriage. The husband deserted the matrimonial home on 1st December, 1960. During the time they lived together the husband ill-treated his wife by beating her and injuriously affecting her health. The High Court found that cruelty was proved and granted a decree of divorce *nisi* to be made absolute within 3 months.

*Held* (1) Following the decisions in *Herta Iasonos v Iasonos*, *Phidias Christodoulou v Katerina Christodoulou*, *Athina Darmannin v Michael Darmanin* and other cases recently decided in this Court, to which I need not specifically refer, I hold that the petitioner is entitled to have recourse to the Matrimonial Jurisdiction of the Court, (conferred by section 19 of the

Courts of Justice Law, 1960) for the cause constituting the subject matter of this petition

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(2) The Law applicable in such cases is "the law relating to matrimonial causes for the time being administered by the High Court of Justice in England", as provided in section 33(2) of the Courts of Justice Law, 1953, (Cap.8), and section 19(b) and 29(2) (b) of the Courts of Justice Law, 1960, (No. 14 of 1960), at present the Matrimonial Causes Act, 1950, as now in force.

(3) The intention behind the conduct complained of (as proved by direct evidence or inferred from the surrounding circumstances), may, I think, be considered together with the effect of such conduct on the life or health of the party alleging cruelty, in deciding the question whether the circumstances of the particular case, entitle such party to a decree for dissolution on the ground of cruelty.

(4) Isolated acts of physical violence by one spouse against the other, which in themselves may not be sufficient to support a petition, may amount to 'legal cruelty' when considered in the background of the matrimonial history of the parties, in the circumstances of a particular case, and I hold that they do so in this case.

(5) I, therefore, come to the conclusion that the petitioner herein, is entitled to a decree nisi on the ground of cruelty, under section 1(1)(c) of the Matrimonial Causes Act; and I grant her that remedy, with costs.

(6) Application for a decree absolute may be made after three months from to-day. Other consequential Orders may be applied for, as provided by the Rules. The petitioner to cause an office-copy of the decree nisi, to be served on the respondent within fourteen days from to-day.

*Decree nisi of dissolution of  
marriage granted.*

Cases referred to:

*Herta Iasonos v. Iasonos*, Matrimonial Petition No. 14/61 decided on 2.3.62, unreported;

*Phidias Christodoulou v. Katerina Christodoulou* reported in this Volunie on p. 68, ante;

*Athina Darmanin v. Michael Darmanin*, reported in this Volume,  
at p 264, ante .

*Fromhold v. Fromhold* (1952) 1 T.L.R. 1522, p. 1525 ;

*Elphinstone v Elphinstone* (1962) 3 W.L.R. 422 .

*Williams v. Williams* (1962) 3 W.L.R. 977, p. 990.

### **Matrimonial Petition.**

Petition by wife for dissolution of her marriage on the ground of cruelty.

*H. Muounis* for the Petitioner.

Respondent absent duly served.

VASSILIADES, J. : This is a wife's petition for dissolution of marriage, on grounds of cruelty.

The parties were married at the Commissioner's Office, Limassol, on the 11th October, 1954, under the provisions of the Marriage Law, Cap. 279. They were both residents of Limassol at the time ; the respondent working as a clerk in the employment of the Military Authorities in that area, and the petitioner living with her parents in the town.

Both were born in Cyprus ; the husband an Armenian belonging to the Armenian Church, and the wife a Greek, belonging to the Greek-Orthodox Church.

There was no church celebration of the marriage in either the Greek-Orthodox or the Armenian Church ; or other Church for that matter.

After the marriage, the parties lived as husband and wife, at Limassol, for about six years, until the 1st of December, 1960, when the respondent left the matrimonial home, and went to live with his parents, who also reside at Limassol. The parties have been living in separation ever since.

During the six years of co-habitation, the parties had two children : a boy, born on 28.2.58 ; and a girl, born on 4.8.59. They are, both, now with their mother.

The cruelty complained of, is the use of physical violence, (ill-treatment and beating) by the husband, during the quarrels between the parties, consequent upon respondent's habit of

frequenting gambling places where, according to the wife, he spends most of his leisure time, neglecting his family ; and where he frequently loses considerable part of his pay, she said, upon which the family depend for their living. This habit of the respondent to frequent gambling places and then ill-treat and often beat his wife in the quarrels which follow, has been going on, according to the wife's evidence, almost ever since the parties were married.

She complains that this sort of treatment on the part of her husband has undermined her health in the past ; and may injuriously affect her health in future. Having seen the petitioner in the box, I can well understand her apprehensions.

Attempts to get the parties together again, after their separation in December, 1960, failed. The respondent definitely declined to consider reconciliation ; he only agreed to pay £12 per month towards the maintenance of his family, which he has been doing for some time now. I have no evidence before me as to these payments, or their adequacy ; and I make no finding thereon, in this judgment.

In support of her allegations for cruelty and violent treatment, the petitioner gave evidence on oath ; and called one of her friends to corroborate her. I have no reason to doubt the substance of petitioner's evidence ; and I find accordingly. She was repeatedly assaulted by her husband during domestic quarrels, when he struck her on the head with his fist causing bruises.

Following the decisions in *Herta Jasonos v. Jasonos* (Matr. Pet. 14/60) ; *Phidias Christodoulou v. Katerina Christodoulou* (Matr. Pet. 15/61) ; *Athina Darmanin v. Michael Darmanin* (Matr. Pet. 13/61) ; and other cases recently decided in this Court, to which I need not specifically refer, I hold that the petitioner is entitled to have recourse to the Matrimonial Jurisdiction of the Court, (conferred by sect. 19 of the Courts of Justice Law, 1960) for the cause constituting the subject matter of this petition.

The law applicable in such cases is "the law relating to matrimonial causes for the time being administered by the High Court of Justice in England", as provided in sect. 33 (2) of The Courts of Justice Law, 1953, (Cap.8), and sect. 19(b) of The Courts of Justice Law, 1960, (No.14 of 1960) ; at present The Matrimonial Causes Act, 1950, as now in force.

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Lord Justice Singleton in *Fronhold v Fronhold* (1952) 1 T L R 1522 dealing with a cruelty case on appeal, is reported at p 1525, to have said :—

“The third complaint upon this appeal is that the Judge misdirected the jury on the issue of cruelty, leaving them with the impression that there must be injury to health even in cases of physical injury. The generally accepted definition of cruelty is set out in *Rayden on Divorce* (5th Ed p. 80) .—

‘Legal cruelty may be defined as conduct of such a character as to have caused danger to life, limb, or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger’.

“The wife’s complaints are that she had been kicked on at least two occasions, so that there were bruises on her legs or on her body, that she had been struck on the eye, so that she had a black eye, that she had been struck on a hand with a knife in a way which caused a wound or wounds on the hand, and if those complaint were found by a jury to be true, I should not have thought that any one could doubt that they were within the definition of cruelty as known to the law”

In *Elphinstone v Elphinstone* (1962) 3 W.L.R. 422 isolated attacks with physical violence by the wife, were considered in the background of the previous history of the matrimonial life of the parties, and in that light were held to constitute, in the circumstances of that marriage, cruelty entitling the husband to a decree nisi for dissolution, on that ground.

In *Williams v. Williams* (1962) 3 W.L.R. 977 Donovan L.J. (at p. 990) after referring to cruelty as a ground for divorce under sect. 1(1)(c) of the Matrimonial Causes Act, 1950, points to the distinction between the subjective and the objective tests of cruelty; the intention behind the conduct amounting to cruelty, and the effect of such conduct on the party seeking dissolution on that ground

I am inclined to think that these distinct tests need not be exclusively applied in dealing with the question whether the cruelty contemplated in sect. 1(1)(c) (*supra*) was, or was not established in a particular case. The intention behind the conduct complained of (as proved by direct evidence or in-

ferred from the surrounding circumstances), may, I think, be considered together with the effect of such conduct on the life or health of the party alleging cruelty, in deciding the question whether the circumstances of the particular case, entitled such party to a decree for dissolution on the ground of cruelty.

I take the view that isolated acts of physical violence by one spouse against the other, which in themselves may not be sufficient to support a petition, may amount to 'legal cruelty' when considered in the background of the matrimonial history of the parties, in the circumstances of a particular case. And I hold that they do so in this case.

I, therefore, come to the conclusion that the petitioner herein is entitled to a decree *nisi* on the ground of cruelty, under sect. 1(1)(c) of the Matrimonial Causes Act; and I grant her that remedy, with costs.

Application for a decree absolute may be made after three months from to-day. Other consequential orders may be applied for, as provided by the rules. The petitioner to cause an office-copy of the decree *nisi*, to be served on the respondent within fourteen days from today.

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*Decree nisi of dissolution of marriage granted.*

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