

1981 October 3

[A. LOIZOU, J.]

LEACH ERZSEBET MOUZOURIS,

*Petitioner,*

v.

MICHALAKIS N. MOUZOURIS,

*Respondent,*

and

SOPHIA PIOTROWSKA,

*Co-respondent.*

(*Matrimonial Petition No. 8/75.*)

*Matrimonial Causes—Divorce—Adultery—Burden of proof—Corroboration—Proof of co-habitation—Excludes necessity of proof of particular facts—Decree nisi granted.*

This was a wife's petition for divorce on the ground of the husband's adultery with the co-respondent. The parties were married in 1952 but the respondent left the conjugal home in 1973. The petitioner and another witness testified that the respondent was living with the co-respondent in the same flat sharing the same bedroom and living together with her as husband and wife making no secret of their adulterous relationship.

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*Held*, that proof of general cohabitation excludes the necessity of proof of particular facts to establish adultery; that the required corroboration of the evidence of the petitioner is to be found in the testimony of her witness and the strong surrounding circumstances of the case; that the evidence of the petitioner, as corroborated by that of her witness has clearly established the alleged adultery; that the burden of proof, which is cast on the person alleging adultery, has been discharged by the petitioner; that this Court is satisfied beyond all reasonable doubt about the adulterous relationship of the respondent with the co-respondent; that, therefore, the case of the petitioner has been proved; and that accordingly a decree nisi will be granted.

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*Decree nisi granted.*

**Matrimonial Petition.**

Wife's petition for dissolution of marriage because of the husband's adultery.

*I. Avraamides*, for the petitioner.

5     *S. Kittis*, for the respondent.

Co-respondent absent. Duly served.

10     A. LOIZOU J. read the following judgment. By the present petition the petitioner-wife prays for the dissolution of her marriage with the respondent on the ground of adultery with the person named in the petition. The latter although  
15     duly served did not enter an appearance. The respondent was represented by counsel who did not, however, contest by cross-examination, the evidence adduced on behalf of the petitioner.

15     The parties to these proceedings were, on the 28th April 1952, married at the Commissioner's Office, Famagusta, under the provisions of the Marriage Law, Cap. 279. After the said marriage the petitioner and the respondent lived together at various addresses and finally at Livadhia street No. 7, Famagusta.

20     In 1973, the respondent left the conjugal home and went and lived with the co-respondent at a flat at Ayios Memnon quarter, Famagusta. When the north coast of Cyprus was invaded by the Turkish forces on the 20th July 1974, the brother of the respondent and his wife, Photoulla Mouzouri and their children,  
25     left their home near the Turkish quarter of the town on account of the incidents taking place there and for safety reasons went and lived with the respondent and co-respondent at the flat they occupied in Ayios Memnon. Photoulla Mouzouri, (P.W.2) who gave evidence for the petitioner testified that the respondent  
30     and the co-respondent were sharing a bed-room and living together as husband and wife making no secret to them of their adulterous relationship.

35     In the middle of August, this witness and her family and the respondent and co-respondent, fled from Famagusta town on seeing the approaching Turkish forces. She moved to Nicosia with her family where at their flat they returned the hospitality to the respondent and co-respondent, who had in the meantime spent some time at Platres. This witness  
40     further testified that once more the respondent and co-respondent were living together as husband and wife. The respondent

and co-respondent then moved to a flat of their own at Onasagorou street No. 31, Nicosia.

As stated in *Raiden on Divorce* 8th edition, para. 106, p. 147 under the heading, "Direct evidence not requisite":

"To succeed on such an issue it is not necessary to prove 5  
the direct fact, or even an act of adultery in time and place;  
or even necessarily the name of the person with whom the  
respondent is alleged to have committed adultery; for if  
it were, in very few cases would that proof be attainable;  
it is rarely indeed that parties are surprised in the direct 10  
act of adultery, and such evidence is looked at carefully;  
in nearly every case the fact is inferred from circumstances  
which lead to it, by fair inference, as a necessary conclusion;  
and, unless this were so held, no protection whatever could  
be given to marital rights. The Court must be satisfied 15  
that there was something more than opportunity before  
it will affix guilt; evidence of a guilty inclination or  
passion is needed in addition. But proof of general  
cohabitation excludes the necessity of proof of particular  
facts to establish adultery. The conjunction of strong 20  
inclination with evidence of opportunity affords strong  
prima facie evidence of adultery, but it is not an irrebuttable  
presumption".

In the present case the evidence of the petitioner, as corroborated by that of her witness has clearly established the alleged 25  
adultery to my satisfaction. The burden of proof, which is  
cast on the person alleging adultery has been discharged by her  
and I am satisfied beyond all reasonable doubt about the adulterous  
relationship of the respondent with the co-respondent  
throughout those years. The required corroboration of the 30  
evidence of the petitioner is to be found in the testimony of  
her witness and the strong surrounding circumstances of the  
case.

I accordingly find that the case for the petitioner has been 35  
proved, that is to say, that the respondent committed adultery  
with the co-respondent and a decree of divorce nisi is granted  
accordingly on that ground. There will be, however, no order  
as to costs as none have been claimed.

*Decree nisi granted.*

*No order as to costs.* 40