

1984 July 3

[A. LOIZOU, J.]

POLYVIOS TOULEKKI,

Petitioner.

v.

PAMELA LAURICELLA,

Respondent.

(*Matrimonial Petition No. 3/84*).

*Matrimonial causes—Divorce—Desertion—Constructive desertion—
Wife throwing husband's belongings out of the house and refusing
to have any contact with him although he repeatedly tried to get
back to the conjugal home—Guilty of constructive desertion.*

5 This was a husband's petition for divorce on the ground of
desertion by the wife. In 1980 the respondent threw the
husband's belongings out of the house and has ever since
refused to have any contact with him although he tried repeatedly
to get back to the conjugal home.

10 *Held*, that this is an instance of constructive desertion, as
desertion does not only exist when a party leaves the matrimonial
home first; that one can be guilty of desertion if the other
spouse is forced by his or her conduct to leave home, in which
15 case the spouse responsible for driving out the other is considered
in Law to be the guilty one; that there exists, in this case, on
behalf of the respondent-wife the intention to desert and that
such intention continues and has been accompanied by conduct
which amounts in fact to expulsion; and that, therefore, the
petitioner has established the ground of constructive desertion;
20 and that, accordingly, a decree nisi must be granted to her on
that ground.

Decree nisi granted.

Matrimonial petition.

Petition by the husband for divorce on the ground of desertion.

25 *E. Lemonaris*, for the petitioner.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is a hus-
band's petition for divorce on the ground of desertion by the

respondent-wife, who though duly served failed to enter an appearance and defend the proceedings. The parties were lawfully married at the Cityhall of the Borough of Manhattan of the City of New York State of New York. After their marriage they lived and cohabited for a period of about three years. There is no issue of the said marriage. 5

In 1980 the respondent threw his belongings out of the house and refused to have any contact with him, although he tried repeatedly to get back to the conjugal home. He stayed on for another two years in New York with his nephew Costas Chrysanthou, who has been called as a witness and who helped the petitioner in his efforts to resume cohabitation, but without success. He then returned to Cyprus where he has been living ever since. 10

In these circumstances this is an instance of constructive desertion, as desertion does not only exist when a party leaves the matrimonial home first. One can be guilty of desertion if the other spouse is forced by his or her conduct to leave home, in which case the spouse responsible for driving out the other is considered in Law to be the guilty one. 15 20

As pointed out in *Raiden on Divorce* 8th edition p. 170, paragraph 129:

“There is no substantial difference between the case of a man who intends to cease cohabitation and leaves his wife and the case of a man who compels his wife by his conduct with the same intention to leave him.” 25

It is apparent from the evidence before me, that there exists, in this case, on behalf of the respondent-wife the intention to desert and that such intention continues and has been accompanied by conduct which amounts in fact to expulsion. 30

For all the above reasons I have come to the conclusion that the petitioner has established the ground of constructive desertion and in the circumstances I grant him a decree of divorce nisi on that ground. There will be, however, no order as to costs, as none have been claimed. 35

Decree nisi granted with no order as to costs.