

1979 February 9

[A. LOIZOU, J.]

KRYSTYNA PERATIKOS, THEN KRYSTYNA DE KEPINSKA,
Petitioner,

v.

KLEON PERATIKOS,
Respondent.

(*Matrimonial Petition No. 14/78*).

Matrimonial Causes—Jurisdiction—Petition for dissolution of marriage—Husband domiciled in Cyprus—Wife acquiring, on account of her marriage and has during its existence, the domicile of husband—Court vested with jurisdiction to entertain petition as both parties were domiciled in Cyprus at commencement of proceedings—Matrimonial Causes Act, 1950.

Matrimonial Causes—Divorce—Cruelty—“Legal cruelty”—Definition—Repeated acts of physical violence by respondent consisting of kicking and beating with his fists or a heavy stick—They amount to persistent cruelty on his part and fall within the definition of “legal cruelty”—Petitioner should in no circumstances be asked to endure the respondent’s conduct—Decree nisi granted.

The parties to this petition were married in the office of the District Officer Famagusta on the 6th June, 1974, under the provisions of the Marriage Law, Cap. 279. The petitioner was a British national at the time of the marriage and a member of the Roman Catholic Church. The respondent was a member of the Greek Orthodox Church; he was born and brought up in Cyprus and with the exception of the years between 1955–1972, when he lived abroad, he has been living and working in Cyprus. Their marriage was not celebrated in accordance with the rights of the Greek Orthodox Church or any other Church and they have been living in Cyprus ever since the marriage. The only issue of the marriage was a boy of three years of age, living with the petitioner.

The wife petitioned the Court for divorce on the ground of

cruelty and gave evidence of repeated use of physical violence of the husband, consisting of beating her with his fists or a heavy stick, and kicking her, with all the consequences of serious injury to her body and health that such brutality entails. The evidence of the petitioner was corroborated in all material respects by the evidence of two other witnesses whose evidence was accepted in full by the Court. 5

Held, (1) that for all intents and purposes the respondent is domiciled in Cyprus, which is his domicile of origin; that the petitioner has acquired, on account of her marriage and has during its existence, the domicile of her husband; and that as both parties are domiciled in Cyprus, at the commencement of these proceedings, this Court has jurisdiction to entertain this petition for the dissolution of their marriage under the Matrimonial Causes Act, 1950. 10 15

(2) (*After setting out the definition of "legal cruelty"—vide p. 44 post*) That the facts as duly proved amount to a persistent cruelty on the part of the respondent and no doubt they fall within the definition of "legal cruelty", as hereinabove set out, which forms part of our Law on the subject; that the petitioner should in no circumstances be asked to endure respondent's conduct, which is not excusable by any means; and that, accordingly, a decree nisi on the ground of cruelty is granted to the wife, who is also given, at present, the custody of the only child of the marriage with the husband having reasonable access to it. 20 25

Decree nisi granted with costs.

Cases referred to:

- Winans v. A.G.* [1904] A.C. 287 at p. 290;
Udny v. Udny [1869] L. R. 1 Sc. & Div. 441; 30
Nammour v. Nammour (1978) 1 C.L.R. 539;
Fromhold v. Fromhold [1952] 1 T.L.R. 1522 at p. 1525;
Bastadjian v. Bastadjian, 1962 C.L.R. 308 at p. 312.

Matrimonial Petition.

Petition for dissolution of marriage on the ground of the husband's cruelty. 35

G. Arestis for *G. Cacoyiannis*, for the petitioner.
 Respondent absent; duly served.

A. LOIZOU J. gave the following judgment. This is an undefended wife's petition for divorce on the ground of cruelty. The respondent although duly served failed to put in an appearance or defend the proceedings. The parties were married
5 under the provisions of the Marriage Law, Cap. 279, in the office of the District Officer of Famagusta on the 6th June, 1974. After their said marriage they lived together in Famagusta until 1974 when the town was occupied by the Turkish invading forces and they moved to Larnaca and from there to
10 Limassol where they have been living ever since.

The petitioner was a British national at the time of her marriage. The respondent was born and brought up in Cyprus and with the exception of the years between 1955-1972, when he lived abroad, he has been living and working in Cyprus.

15 For all intents and purposes and on the material before me I have no difficulty in concluding that the respondent is domiciled in Cyprus, which is his domicile of origin, and as such as stated by Lord Macnaghten in *Winans v. A.G.* [1904] A.C. 287 at p. 290 "its character is more enduring, its hold stronger
20 and less easily shaken off". Moreover the domicile of origin which might have been displaced as a result of the acquisition of a domicile of choice or placed in abeyance for the time being as the Rule of English Law is "remains in the background ever ready to revive and to fasten upon the propositus immediately he abandons his domicile of choice". (See *Cheshire's Private International Law 8th Ed. p. 174 and Udny v. Udny* [1869]
25 L.R. 1 Sc. & Div. 441).

The petitioner has acquired on account of her marriage and has during its existence the domicile of her husband. As both
30 parties therefore are domiciled in Cyprus, at the commencement of these proceedings, this Court has jurisdiction to entertain this petition for the dissolution of their marriage under the *Matrimonial Causes Act 1950*. (See *Nammour v. Nammour* (1978) 1 C.L.R. p. 539).

35 The only issue of this marriage is a boy of three years of age, now living with the petitioner. The petitioner is a member of the Roman Catholic Church, whilst the respondent is a member of the Greek Orthodox Church, and their marriage has never been celebrated in accordance with the rights of the

Greek Orthodox Church or any other Church, either here or abroad.

The cruelty complained of was the repeated use of physical violence by the husband, consisting of beating her with his fists or heavy stick, and kicking her, with all the consequences of serious injury to her body and health that such brutality inevitably entails. No doubt this brutality, persistently used for many years, was connected with the practice of the respondent of having relations with other women as well. This cruelty has caused danger to the life, limb and health of the petitioner and having seen her in the witness-box I could easily appreciate her apprehension for such dangers if she goes on cohabiting with the respondent.

Lord Justice Singleton in *Fromhold v. Fromhold* [1952] 1 T.L.R. 1522 dealing with a cruelty case on appeal—quoted with approval in the case of *Bastadjian v. Bastadjian*, (1962) C.L.R. 308 at p. 312—had this to say at p. 1525:—

“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 complaints 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.”

I find the facts as duly proved. They are corroborated in all material respects by the evidence of Dr. Laura Papantoniou,

and Police Constable 2194 Yiannakis Ioannides, who gave evidence before me and whose testimony I accept in full. They amount to a persistent cruelty on the part of the respondent and no doubt they fall within the definition of "legal cruelty" as hereinabove set out and which forms part of our Law on the subject. The petitioner should in no circumstances be asked to endure the respondent's conduct, which is not excusable by any means.

In the result a decree nisi on the ground of cruelty is granted to the wife, petitioner, who is also given at present the custody of the only child of the marriage, with the husband having reasonable access to it. This question, however, of the child, and the arrangements that have been or are to be made for its care and upbringing will be considered (see section 2 of the *Matrimonial Proceedings Children Act, 1958*) with the application for the making of this decree absolute.

The respondent is ordered also to pay the costs of these proceedings.

Decree nisi granted with costs.