

1984 March 17

[A. LOIZOU, J.]

JAN MIKAEL SIBIRZEFF,

Petitioner,

v.

TEREZA SIBIRZEFF,

Respondent.

(*Matrimonial Petition No. 37/83*).

Matrimonial Causes—Divorce—Cruelty—Legal cruelty—Wife's persistent refusal to be a wife in the full sense by refusing to husband the chance of child—Well knowing the consequences that her conduct had on his mental and physical health—Amounts to legal cruelty—Decree nisi in favour of the husband.

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This was a husband's petition for divorce on the ground of cruelty. The respondent had since the marriage persistently refused to have children well knowing that her conduct was causing him anxiety and misery with the result of injuring his health.

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Held, that the wife's persistent refusal to be a wife to the husband in the full sense by refusing him the chance of a child well knowing the consequences that her conduct had on the petitioner's mental and physical health amounts to legal cruelty; accordingly a decree nisi will be pronounced in the petitioner's favour.

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Decree nisi granted.

Cases referred to:

Jabbour v. Jabbour (1981) 1 C.L.R. 315;

Joseph v. Joseph (1982) 1 C.L.R. 95;

Forbes v. Forbes [1955] 2 All E.R. 311;

Jamieson v. Jamieson [1952] 1 All E.R. 875;

Cooper v. Cooper [1954] 3 All E.R. 415.

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Matrimonial Petition.

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

G. Nicolaidēs, for the petitioner.

C.L. Clerides with *M. Nicolatos*, for the respondent.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is a husband's petition for divorce on the ground of cruelty. Though the respondent entered an appearance in the proceedings and was represented at the trial by counsel, there has been
10 neither cross-examination on her behalf nor any evidence was called to contest that called by the petitioner.

The petitioner is a Swedish subject and a member of the Protestant Church and the respondent is a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church.
15 Both of them have been residing and are domiciled in Cyprus, hence the jurisdiction of this Court. (See *Rayden on Divorce* 8th edition p. 50). They were married on the 15th November 1980 at the District Office in Larnaca under the provisions of the Marriage Law, Cap. 279.

20 From the evidence before me it is clear that the respondent has since their marriage persistently refused to have children, well knowing that her conduct was causing him anxiety and misery with the result of injuring his health. It has to be examined, therefore, if such conduct of a spouse comes within
25 the well settled definition of legal cruelty accepted by this Court in its Case Law (see *Jabbour v. Jabbour* (1981) 1 C.L.R. 315; *Joseph v. Joseph* (1982) 1 C.L.R. 95), that is to say, conduct by the guilty spouse of such a character as to have caused damage to life limb or health, bodily or mental, or as to give rise to
30 a reasonable apprehension of such danger.

The legal position as regards wife's cruelty through persistent refusal to allow conception of a child by intentional acts was examined at length in the case of *Forbes v. Forbes* [1955] 2 All E.R. p. 311 in which Commissioner Latey Q.C. held "that
35 the wife's conduct in insisting on the use of contraceptives and refusing the husband the chance of a child caused injury to his mental health; her conduct was intentional in that she

pursued it although she knew that her persistence was causing him anxiety and misery. Accordingly she had been guilty of cruelty and the husband was entitled to a decree". This case is also useful for the extensive review of the authorities on the subject and the examination of the question, how far intention should be considered an ingredient of cruelty, which has been discussed by the House of Lords in *Jamieson v. Jamieson* [1952] 1 All E.R. 875 and *Cooper v. Cooper* [1954] 3 All E.R. 415, but I need not be concerned with this aspect of the case in view of my findings of fact and which in the light of the statement of the Law to which reference has already been made, I have come to the conclusion that the wife's persistent refusal to be a wife to him in the full sense by refusing him the chance of a child well knowing the consequences that her conduct had on the petitioner's mental and physical health, amounts to legal cruelty.

Before concluding, however, I would like to quote Commissioner Latey Q.C. from *Forbes* case (supra), who at p. 314 had this to say:

"Quite apart from the exhortation in the solemnization of matrimony that, first, Christian marriage was ordained for the procreation of children, I cannot ignore the fact that it is a natural instinct in most married men to propagate the species and to bear the responsibilities and enjoy the comforts of their own children. If a wife deliberately and consistently refuses to satisfy this natural and legitimate craving, and the deprivation reduces the husband to despair, and affects his mental health, I entertain no doubt that she is guilty of cruelty within the definition on which this Court always acts".

In those circumstances I find that the respondent has been guilty of cruelty to the petitioner and in the exercise of my discretion I pronounce a decree nisi in his favour. There will be, however, no order as to costs as none have been claimed.

Decree nisi granted. No order as to costs.