

1984 July 30

[L. LOIZOU, HADJIANASTASSIOU AND MALACHIOS, JJ]

CREON CONSTANTINOU,

Appellant-Defendant

PAVLOS PANAYIDELIS,

Respondent-Plaintiff

(Civil Appeal No 5240)

husband and wife—Enticement of wife—Cause of action of enticement—Recognised by the common law—And is therefore part of our law by virtue of section 29(1)(c) of the Courts of Justice Law, 1960 (Law 14/60) even though it has been abolished by statute in England

Common Law—Section 29(1)(c) of the Courts of Justice Law, 1960 (Law 14/60)—Incorporates the common law as applicable in England at any one time and not as modified by statute—Enticement part of our law because it was recognised by the common law, even though it has been abolished by statute 5

The sole issue in this appeal was whether the cause of action of enticement was part of our law. It was submitted that enticement ceased to be part of our law because it has been abolished by statute in England, and that it is not expressly included in the Civil Wrongs Law, Cap 148 10

Held, that section 29(1)(c) of the Courts of Justice Law, 1960 (Law 14/60) makes the common law applicable in Cyprus; that what is applicable in Cyprus is the common law, not the common law as it came to be modified by statute in England, that the said section 29(1)(c) incorporates the common law not English Law as applicable in England at any one time, that since enticement was a cause of action recognised by the common law, in fact it is a cause that was recognised as actionable many centuries ago, it is part of our law and as such applicable in Cyprus 15 20

Appeal dismissed. 25

per curiam: That one can argue that the action of enticement is in

some respects outdated but it has not ceased to be part of our law.

Cases referred to:

Place v. Scale [1932] All E.R. (Rep.) 84 at p. 85.

5 Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris, S.D.J.) dated the 26th September, 1973 (Action No. 3781/71) whereby he was ordered to pay to plaintiff the sum of £300.- for enticing away plaintiff's wife.

L. N. Clerides, for the appellant.

B. Vassiliades, for the respondent.

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This is an appeal by the defendant against the judgment of the District Court of Limassol in Action No. 3781/71 whereby he was ordered to pay to the plaintiff the sum of £300.- damages for enticing away the plaintiff's wife. He was also ordered to pay the costs of the action.

It was the allegation of the plaintiff before the trial Court that the defendant for a long time prior to the 29th August, 1971, had been trying to and on that day did manage to wrongfully entice and procure the wife of the plaintiff, namely Niki Panayidou, unlawfully and against his will to depart and remain absent from the house and society of her husband. It was also the allegation of the plaintiff that the defendant wrongfully and against the will of the plaintiff received and has ever since harboured and detained the said Niki Panayidou and refused to deliver her to the plaintiff although requested by the plaintiff to do so.

The defendant in his defence denied both enticing away and harbouring plaintiff's wife. The marriage of the plaintiff with his wife was celebrated in 1954 according to the rites of the Greek Orthodox Church and has never been dissolved nor were divorce proceedings instituted by either spouse till the present day despite the fact that ever since the 29th August, 1971, they

have been living apart. From their marriage the couple had only one child, a son born in 1955. His name is Andrikkos and he was born deaf and dumb. The couple were much worried over this condition of their son and they took him to several doctors in Cyprus as well as abroad but unfortunately it was in vain. The last doctor they took him to, a German doctor in Tel Aviv advised them that it was useless taking him anywhere else as it was a hopeless case and they would only be spending their money. Naturally the couple were in despair. It was at that time that the couple came to be introduced through a certain Angelos Chryssakis to the defendant a spiritualist who was acting as a medium in spiritual seances held at the time in the house of a certain Costakis K. Lanitis of Limassol. 5 10

The first spiritual seance attended by the couple in the house of the said Costakis Lanitis, which was at the same time the first meeting together of the couple and of the defendant, was thus described by the plaintiff in his sworn testimony before the Court. 15

The plaintiff said that he had gone there with his wife and child. During the seance the defendant, who was acting as a medium, told them that the spirit of Professor John Davidson was incarnated in him and he would see the child; in fact he visited the child who was lying in a bed in an adjacent room in the house of Mr. Lanitis, and he examined the child medically. After he had finished his examination, he told them that he was in a position to make the child well, to make him hear and talk like any other normal child. Even high-qualified persons were present he said, but he did not want to mention their names and expose them. When the seance was over it was about 2.30 or 3.00 a.m. and as they had difficulty in finding a taxi to go home they set off on foot. As they approached their house they noticed again some sort of lights and a smell of incense. His wife said something and they both believed, and they went to sleep happy and full of hope that their child would get well. Indeed, this first seance attended by the couple was followed by innumerable others which were being convened in the house of the couple. Finally, the plaintiff said that his wife had blind faith in the defendant and alleged that defendant did overpower his wife's personality. On the contrary, the defendant alleged that when he was visiting the house of the plaintiff, the plaintiff was always present. It is also common ground that during these 20 25 30 35 40

seances the defendant was acting as a medium and was saying that different spirits would get incarnated in him, and among these spirits were those of Professor John Davidson, Father Andronikos, mother Eleni and others

5 The plaintiff and witness Artoulla (P.W. 3) and Neoclis (P.W. 6) alleged that during some of these seances, "Professor John Davidson" incarnated in the defendant, was performing "operations"; but the defendant vehemently denied that he performed any operation during those seances.

10 The year 1971 was full of events, decisive events for both litigants.

At the beginning of 1971, the wife of the defendant died; the defendant continued visiting the house of the plaintiff occasionally as late as the beginning of August, 1971.

15 During summer 1971 the plaintiff had gone to Platres in order to run a hotel there; his wife did not follow him and preferred to stay in their house in Limassol. Round about the 10th August, 1971, according to plaintiff's version, the plaintiff returned to Limassol and having forgotten the key of his house,
20 he rang the bell; his wife opened the door for him and went straight to her room, saying that she was not feeling well. The next day she refused to have sexual intercourse with her husband, she looked at him in a strange way and when her husband asked, "what is wrong with you, you have no regard for me, do you
25 want a divorce?", she simply nodded.

The next day the plaintiff went to the defendant's shop and accused him of being the cause of whatever was happening at home with his wife, and asked him not to go to his house for the sake of the plaintiff's wife who wanted a divorce. Then the
30 defendant replied that he could not close the door to anyone, the plaintiff got angry and said to the defendant "You are a rotten, perverted and wretched man; what would you say if I interfered in your home in the same way."

35 In addition, the plaintiff's wife in giving evidence had alleged that she herself decided to leave the conjugal home and maintained that the main reason for leaving her husband was the fact that for the last two years prior to August, 1971, he became sexually impotent and he was making her suffer. She further

ided that she made her intention to leave known to the plaintiff
rlier.

Plaintiff's wife left the conjugal home on 29.8.71 and is still
vay from same. On leaving she went and stayed alone in a
ouse at Ayios Nicolaos Quarter in Limassol; she stayed there 5
r a short time and then she travelled to Athens in order to find
job, as she alleged. On her return from Athens, about 8 days
ter, she went to the same house again where she stayed for
tother 3 days and then for certain reasons she gave, which
ppear on record and we do not intend to repeat it, she moved 10
o the house of Andreas Zissimos (D.W. 2), the son-in-law of the
efendant where she is still residing. In the aforesaid house the
efendant Zissimos is residing with his family; the house in question
in the same building site where the house of the defendant is
tuated. The two houses are separated by a wire fence. It is 15
e allegation of plaintiff's wife that she herself pays to Andreas
issimos £25 per month, £10 being rent, as she explained and the
alance for her meals.

Plaintiff's wife admitted that her son did not stay in the afore-
aid house with her and stated that ever since November 1972 20
o has been attending a special school in Athens.

Andreas Zissimos, (D.W. 2) testified to the effect that plaintiff's
ife is staying in his house and she is paying £25 for food and
dging.

The trial Court in dealing with the evidence had this to say 25
t pp. 87, 88:-

"The plaintiff's evidence impressed us favourably and we
accept it in toto. We are also satisfied that the witnesses
called by the plaintiff spoke the truth. In connection with
the so called 'operations' performed by the defendant when 30
'Professor John Davidson' was incarnated in him, we are
satisfied that the defendant was pretending to perform
'operations' which were affording to him the opportunity to
get into closer contact with individuals isolated for the
purposes of 'operations' -- the plaintiff's wife or plaintiff's 35
sister-in-law for instance, for whom he had a particular
interest --, and thus he could say or do things which although
supposed to be part of the seance could not be said and done
in the presence of other persons and in particular in the

presence of the plaintiff or his brother. Needless to say the 'operations' in the ordinary sense of the word were never carried out, although it seems that at least Neoclis Agathagelou (P.W. 6) as well as his wife (P.W. 3) believed in the genuineness of these operations; this, their belief, indicates the influence exerted by the defendant on these simple minded persons through spiritualism.

We reject absolutely the evidence of the defendant himself; he attempted to deny almost everything uttered and done during the seances by alleging (a) that whilst in trance he did not know what he was talking about, and (b) that he could do nothing which entailed disjoining of the hands between those taking part in a seance as such disjoining would wake him up. He attempted unsuccessfully to exonerate himself absolutely explaining hypocritically that he had been always acting towards the plaintiff and his latter's wife out of brotherly love."

Then the Court went on to add:

"The evidence of plaintiff's wife impressed us very much favourably and we cannot accept it. She was quite convincing when trying to explain the inexplicable and particular when putting forward the allegation that she deserted the conjugal home after 17 years of married life because, as she alleged, for the last 2 years her husband had become impotent.

From the evidence as we have accepted it, we shall now proceed to consider, (a) whether plaintiff's wife was enticed away by the defendant and (b) whether she was later harboured and maintained by the defendant."

Then the Court in dealing with the enticement had this to say at pp. 88 - 89:-

"Plaintiff's wife left the conjugal home on 29.8.71. In determining the question of whether there was enticement by the defendant we cannot shut our eyes to what took place before that date. We are perfectly entitled to look upon the demeanour of the defendant and plaintiff's wife throughout the years that preceded the desertion and give the true construction upon the facts which resulted in the incident that began on or about the 10th August, 1971, of which

climax was the desertion of the wife from the conjugal home on the 29.8.71.

It is clear to us that through these seances the intimacy of the defendant and plaintiff's wife was becoming more and more close, and the influence of the former over the latter was increasing in parallel.

We need not repeat here the defendant's visits to the house of the plaintiff when the latter was absent, nor the stay of the defendant at some time in the house of the plaintiff according to the directions of 'Father Andronikos' when the defendant quarrelled with his own wife over the holding of the seances. Suffice it to say that the evidence as we have accepted it leads to the safe conclusion that the defendant wrongfully interfered with plaintiff's consortium and induced plaintiff's wife to desert her husband.

Therefore, we find that plaintiff's wife left the conjugal home and consortium of the plaintiff on the 29th August, 1971 as a result of her being enticed away by the defendant.

In connection with the harbouring and maintaining by the defendant of plaintiff's wife, apart from the evidence adduced by the plaintiff, there is no other evidence tending to establish that plaintiff's wife is being harboured and maintained by the defendant. Proof by the plaintiff that his wife was seen on two occasions, over the period of almost one and a half years in the house of the defendant, certainly cannot amount to harbouring.

There is no evidence whatsoever on behalf of the plaintiff that the defendant was maintaining plaintiff's wife during this time. On the contrary, apart from the evidence of plaintiff's wife, there is the evidence of Andreas Zissimos (D.W. 2) which although suspicious, stands uncontradicted to the effect that the wife of the plaintiff was paying to Zissimos £25 per month for food and lodging. In the result the second leg of this action, namely harbouring, fails."

Turning now to the enticement in Clerk & Lindsell on Torts, 13th Ed. para. 842, under the heading "Husband's Action for Enticing or Harbouring Wife", we read inter alia the following:-

"If a wife is _____ enticed or persuaded to leave her husband,

or, if, after having left, she is knowingly harboured and maintained, a Common Law action will lie. That will amount to procuring, enticing or persuading is a question of degree. It is not necessary for a husband to show that
 5 the wife's will has been overborne by the stronger will of the defendant. Mere advice is not sufficient, but it is enough if a wife of equal will with that of the defendant, is persuaded to depart from the consortium of the husband

In *Place v. Searle* [1932] All E.R. Rep, 84, at p. 85, Scrutton,
 10 L.J. stated the law on enticement as follows:

"It seems to me clear, at the present day, that a husband has a right to the consortium of his wife, and the wife to the consortium of her husband, and that either has a cause of action against a third party who without justification destroys that consortium. The old law has been altered
 15 to this extent, that the means of enforcing the right to consortium have been materially weakened. In the old cases there are dicta to the effect that the husband has the dominion and property over the wife; but since the decision in *R. v. Jackson* [1891] 1 Q.B. 671, whatever rights the husband has he cannot enforce them by physical confinement; he cannot seize his wife when she attempts to leave the consortium and lock her up. But there still remain means of enforcing the right of the husband and the right of
 20 the wife. The Court used to make orders for restitution of conjugal rights.....".

The power to enforce by order money payments, and the fact that it is a matrimonial offence to desert, however that term may be defined, rest upon existing rights of consortium both in the
 30 husband and in the wife. There being such a right, it follows, and it has been so decided in numerous cases, that any person who, without justification interferes with that right, is liable to an action in tort. Counsel for the defendant agrees that the statement in *Lush's Husband & Wife* (3rd Edition at p. 3) is correct,
 35 namely, that it "is the duty of the wife to reside and consort with her husband. This is a duty which she owes to him and a person who tempts or entices her to violate this duty, commits a wrong towards the husband for which he is entitled to recover damages; unless the person who harboured her acted from
 40 'principles of humanity' to protect her from her husband's ill

treatment in which case, no action can be maintained, even though it should turn out that the wife's allegation was undoubted".

Only one real issue poses for determination in this appeal. It is this. Whether the cause of action of enticement is part of our law. The submission is that because enticement has been abolished by statute in England it ceased to be part of our law. Also it has been submitted that it is not part of our law because it is not expressly included in the Civil Wrongs Law, Cap. 148. We are of the view that both submissions are ill-founded.

Section 29(1)(c) of the Courts of Justice Law defining the law applicable in this country makes common law applicable. The common law was fashioned over the centuries by the customs of the Agglosaxon as they came to be recognised and applied by judicial decisions. The common law was not moulded by statute but by the customs of the people and judicial precedence. See "The Application of the Common Law and Doctrines of Equity in Cyprus" by G. M. Pikis - 1981, a publication in Greek.

What is applicable in Cyprus is the common law, not the common law as it came to be modified by statute in England. Section 29(1)(c) incorporates the common law (see Law 14/60), not English Law as applicable in England at any one time. The enticement was a cause of action recognised by the common law, in fact it is a cause that was recognised as actionable many centuries ago.

As the Full Court of Limassol acknowledged in its judgment the action of enticement is part of our law and as such applicable in Cyprus. One can argue that the action is in some respect outdated but it has not ceased to be part of our law. Perhaps the low award of damages granted by the trial Court, namely £300.-, is in part explained by the fact that the cause of action is in many respects outdated.

For all the above reasons we sustain the judgment of the trial Court and the appeal is dismissed with costs.

Appeal dismissed with costs.