

85/115

14th November, 1985
(Matrimonial Causes Division)

BETWEEN	Mr G	PETITIONER
AND	Mrs G	RESPONDENT
AND	Mr H	CO-RESPONDENT
AND	Mrs S	PARTY CITED

DEPUTY BAILIFF: The parties in this case were married in 1964. They were both then aged 20, they are now aged 42. After some years they lived in Jersey and the United Kingdom and finally settled in Jersey shortly before the birth of their second child, L, who was born in June, 1972. They had in fact had the first child, K, who was born in November, 1965, in Jersey but she returned with them to England. It is not important as to where they actually lived because it is not in issue as to the movement of the parties to various homes except in passing, let me say that it was not at the wish of Mrs. G that Mr. G finally brought the family over to Jersey for the last time to settle in Apsley Road. Let me say at the beginning that the Court is very conscious of the difficulties facing parties where there a breakdown of relations between them due in part to psychological difficulty on the part of one of the spouses in relation to the sex act and a lack of understanding of what that psychological difficulty is on the part of the other. The Court is also aware that throughout the course of the marriage, the husband was actuated by the highest motives as regards looking after his family in the material light - he worked extremely hard in England - and he told us and we accept this that the only reason he brought the family over to Jersey was that in fact, he was not getting anywhere in England, he did not feel he could earn sufficient to support them in the manner which he quite fairly thought they were entitled to and which he, as a caring father of the family wanted to do.

On the other side of the picture is the wife's general attitude to the marriage and her husband's work and we have heard nothing from the husband to suggest that she was not a good wife in the sense that she cooked, cared for his house and went out to work to assist the family finances and assisted his social activities when his work required it. He told us that he had, in addition to his work here and building up his business in Jersey, volunteered - for which we commend him because

indeed without volunteers the Honorary system of Jersey as we know it, would collapse - volunteered as I say for service in the Honorary Police of his parish. He rose from a Constable's Officer to a Vingtenier and then to a Centenier and it is something of which we can take judicial notice that the work of the Centenier is very demanding even though he is actually only a Duty Centenier for one particular week in eight, I think it was he told us. He is of course, in theory and very often in practise, on duty 24 hours a day and the demands on the time of a person who is a volunteer in addition to running his own business and having a home can be very great and we have no doubt that Mr. G was working - and let me put it this way - flat out, both as regards his business and as regards his Honorary Service and that of course may have had some effect on his physical and mental well-being.

However, it is not that side of the picture which we really have to concern ourselves with. Unfortunately, the parties separated in the way in which I shall describe in a moment, and the marriage is admitted on both sides to be at an end. Because of our existing law they are perfectly entitled to bring and indeed have brought a petition and cross-petition alleging in each case what is still known under our law or that part of the law which applies to these allegations as a matrimonial offence.

What is now left of the petition and cross-petition is that there is an admitted adultery by Mrs. G in 1980 with a Mr. H, the co-respondent; an admitted adultery commencing in May, 1984, with the party cited, Mrs. S but both parties now say that their adultery was conducted to by the behaviour of the other. The question of condonation has been abandoned and therefore we are left with the decision, which has not been easy to decide as to whose conduct conducted, if it did, to whose adultery and in whose favour, if it can be said that anyone is going to have a judgment in favour in the sense that they are going to be totally exonerated from everything - in the case of this nature it is difficult to say - but we have to decide in whose favour we should exercise our discretion and grant a decree. As I have said, the marriage is at an end and it would not be right that we should exercise our judicial ingenuity to keep something together which is clearly finished and we have no intention of doing so and indeed neither counsel have urged us to the contrary. That being so the question is who should have a decree? It is apparent to us that the wife's main difficulty was that of her sexual life. It is perfectly true that there were other allegations by both sides as regards their social life and activities but these were peripheral in

the opinion of the Court - they of course added to the general difficulties - but we have no doubt that the centre of the problem between these unhappy parties and we call them that because it grieves us that both parties have come to this pass in this particular case. Of course, they had the possibilities of a happy marriage which went astray but now both parties have come to us to determine who should have the decree.

There are a number of admitted facts which have enabled us to exercise our discretion as we are going to do in a moment. Now Mr. G , as I have said, the petitioner, is a very busy, hardworking man giving a lot of devoted Honorary Service but he has admitted that because his wife would not do as he wanted on one or two occasions - once when she would not come home immediately after work or very early in the morning after leaving her hotel work where she was working within 10 minutes or so of the hotel closing down, he slapped her and on another occasion he slapped her. So if he admits during the course of the marriage, two slaps, it has to be said clearly that this Court does not look with favour on physical violence given by a man to a woman under any circumstances - there has to be the most extreme provocation before the Court will even consider such a slap to be excusable and we cannot find that that extreme provocation was present in this case. So there were, in our view, two unjustifiable slaps. But there were some other things in the peripheral area which I have referred to. The husband has admitted that he knew the wife was fond of animals - she herself has said that she was brought up with them - they kept a dog and some cats. On one occasion the dog was ill and through no fault of its own was defaecating to the great annoyance of the husband - defaecating in the house and we can understand how annoying that could be - but he made it clear that if it did not recover then it would have to be put down which of course, caused some distress to the wife but more importantly he behaved over the cats in a manner that could well have been described as cruel to the cat let alone the reactions which his behaviour could induce in his wife. On one occasion he threw the cat across a small yard, the reason, he said, was because the cat had been walking over the dinner table and been touching his food. Again, we can understand his annoyance, but merely putting it outside might well have been enough but on another occasion as Mr. Pallot for the wife has pointed out, he put the cat in his car and threatened to set off and leave the cat deserted, thrown out of the car in some area of the Island where it was hoped, he said, that the cat could easily find another home. We cannot share his sanguine

belief. To us if that had been done that would have been a cruel act to the cat but we are not concerned with that. What we are concerned about is the effect such a threat had on the wife. In our opinion it clearly had a deleterious effect and upset her very much and it was an unkind thing to have done.

When I turn to the question of sex which I have said was the central trouble in this marriage, there are two observations which I wish to make. The first is that the Court must take judicial knowledge of certain social and sexual 'mores' of today and these are two, I think. It is now accepted - contrary to the Victorian belief - that a woman is as entitled to sexual satisfaction from her marriage as her husband and secondly, on some occasions, it is now accepted in certain quarters that it follows from the first example that I have given of changed social values, that the wife may or a woman may herself take the lead in sexual matters as indeed has been admitted in evidence both by the wife when it came to her having an affair with the co-respondent and both, very openly, by Mrs. S when she got to know Mr. G. So we have a case here in which both these women took the lead in securing sexual relations with a man with whom they wanted to have them. I do not make any criticism of that, I merely state it as a sociological fact of which the Court is bound to take notice as reflecting changed views of the roles of husband and wife and men and women.

The real problem which faced this marriage in sexual matters was that the wife, very unhappily, had had, she told us, a sexual experience before marriage, which quite frankly, though she did not use these words I have no hesitation in doing, which scarred her, it scarred her psychologically as regards having sex for many years to come. It is perfectly true that at the beginning of the marriage things were not too bad but her difficulties manifested themselves fairly soon afterwards and with hindsight of course, it is a pity that she did not make known these problems to her husband before they married and both of them had not taken proper advice before they entered upon the matrimonial scene. However, they did manifest themselves soon after the marriage and we had evidence and we can accept it from both sides that apart from relatively short periods when both of them wanted to have children and were actively trying for the wife to conceive in the case of K in 1965 and in the case of L in 1972, their sexual relationships were difficult.

One of the reasons that Mrs. G gave for the difficulties was not just the simple act itself ...(indistinct)...to do them, but can and

in this case certainly did cause great distress to the wife and made her even more reluctant and more difficult for her to have normal sexual relations with him. The husband was quite frank, he said he asked her, he knew she did not like them but he tried, that is he physically tried, I think we interpret him to mean and he stopped when she would not let him and as I say, we find that clearly there were difficulties there of his own making. It is one thing to have sex in the accepted manner, it is another, we think, to foist onto an unwilling wife if you can, practices which she finds repugnant whether the repugnance stems from a psychological difficulty or merely dislike of the practice. So the question is whilst we do not and cannot blame the wife for the condition she found herself in due to a pre-marital experience and we can understand and sympathise to some extent to the husband's reaction - he was a frustrated man, which led, we think, inevitably to some excessive display of authority towards his family and let me say here that in the way he gave his evidence, we have little doubt that he was, whilst we have said a caring husband, he was an authoritative husband and expected to be the head of the family. He used the words on one or two occasions - certain things he would or would not permit - in connection in particular with the time the wife would come back from her work. No doubt the wife would have preferred not to work so late at night but again it was something which he expected her to be back from at a particular time and it was a time after which he would not permit her to return. It was an attitude which perhaps permeated his evidence to us as regards his reactions. But having said that, what we had to ask ourselves was, given this very difficult problem between the parties for which we have great sympathy - for both parties - what did they do to try and improve it? Now we have reached the conclusion from the evidence we have heard that it was the wife who did all she could to try to improve it. Whilst they were in England, she sought psychiatric help and she suggested as well that the parties should attend the Marriage Guidance Clinic or Marriage Guidance Counsellor but the husband would not do so. We are satisfied that the wife did all she could in her power to try and remedy the psychological difficulties which, due to no fault of her own, she found herself in during the course of the marriage. Unfortunately, in the course of 1980, she found herself in the position of living with a man whom she has found was more and more becoming assertive and authoritative and was not showing her the kind of affection which she wanted and equally, of course, it is sad to say, the husband told us he was not getting the kind of affection that

he wanted. So the parties were, so to speak, at arms length. In these circumstances, Mrs. G got to know the co-respondent, Mr. H , as a result of their common service in the Sea Rangers, I think, and they had a short and brief affair. She said that they had sexual relations on some four or five occasions. She said she stopped it because she wanted the family life of her own to continue - on the other hand, she did admit in cross-examination that she stopped it because she was starting to have problems sexually with Mr. H which she had not had at the beginning of their relationship. There was a slight inconsistency there, we cannot explain that and she was not able to do so either. But nevertheless, on balance, we think it is more than likely that she is right that the psychological difficulties manifested themselves towards the end of that relationship - that is not important. What is important is for us to decide whether that adultery and it is admitted adultery, was conducted to by the actions of Mr. G but I come to that in a moment.

The history of the marriage then continued, very creakily, we fear, with the same problems and the same difficulties until it came to a head towards Christmas in 1983. Mrs. G told us that she was thinking of leaving some time before Christmas but the last straw was the Christmas festivities. Now she told us that the husband would not have any members of the family for Christmas day but insisted on just having their immediate family - that is to say, herself, her husband and the two children and it is admitted that they had a good Christmas inasmuch as that the material things were provided but there were difficulties because Mrs. G wanted to go out on New Year's Eve and Mr. G did not. He took the view that he had spent all he could, that he had provided - and this is not disputed - properly, materially, for Christmas day for the family. Plenty of presents and food and so on. They were not particularly drinking people so that the question of drink did not enter into it but such as there was, he provided, and he would not go. Thereupon, Mrs. G accepted an invitation. She was, amongst other things, a Citizen Band Radio fan and she accepted an invitation from some Citizen Band friends in Guernsey to spend New Year's Eve with them. I interpose here to say that in addition to her Citizen Band's interest, she of course was interested in cats and dogs and she belonged to two clubs concerning these animals and she tried on one occasion to interest the husband in the dog club but neither, in fact, when they went to this meeting or, it was a dinner, were particularly happy because to use the adjective which I suggested to her was the position, that body was rather 'clannish' and she

had not been a member for very long and the husband did not want to go back. Well, it is perfectly clear - it appears to us that he did not make a real effort to interest himself in her other activities, which a wife is entitled to have, provided of course, that it does not interfere with her general marital duties and we are satisfied that such outside interests as she had, would not and did not do so. I diversified a moment to make that point clear. Well, now, Mrs. G went to Guernsey; when she came back, to her amazement - she said she was livid - we can understand this - she found that the family, that is to say, her husband and the daughter and the son, had gone on New Year's Eve, in spite of the fact that Mr. G had said that he was not going out, to the home of a colleague Centenier where they spent not a very long time but they spent some time there. Whereupon Mrs. G was determined to leave and she finally left on the 10th February, 1984. After that, Mr. G told us that he attempted a reconciliation by seeing his lawyer to suggest a meeting but that was of no effect and so Mrs. G stayed away living in Guernsey where she still is.

Not very long afterwards and in the light of the circumstances of this marriage and the time pattern, I think we are entitled to make that comment, it was not long afterwards, Mr. G made the acquaintance of his firm's Portsmouth secretary - the party cited, Mrs. S - in April, which is only two months after Mrs. G had left and they began living together in May and as I have said it is admitted from then onwards they had committed adultery and on the side of Mr. G it is said that Mrs. G's behaviour conduced to that adultery. So we are faced with the decision to decide who should get a decree and whose conduct conduced, if it did, to whose adultery. Now after she had left, Mrs. G in fact still appeared to have loved the husband because she wrote one letter in May which was a loving letter and another one in December, but she appears to have accepted the fact that by December the marriage had ended completely. A letter in May indicated that she still loved her husband but as it happened she wrote it some two days after Mrs. S had moved in. Now as regards the question of conduct conducing, the Law is quite clear, for the conduct to be conducing - and it is a discretionary bar which the Court has power to use if it so wishes - the conduct has to be the causa causans and not the sine qua non. In other words it has to be the direct cause and not as an indirect result of the behaviour, and as regards the proof, again, that is a balance of probabilities.

We have been particularly struck by the evidence of Mrs. J, who is an SRN and is the sister of Mrs. G. She gave her evidence quite clearly and it showed two things, first, that during the course of the latter part of

the marriage during which she was seeing her sister fairly frequently but not everyday, Mrs. G was often in tears and clearly the way the marriage was going was having a deleterious effect on her. Secondly, Mrs. J while she liked her brother-in-law in the beginning, noticed later a change in his attitude, this may have been due of course - we have some sympathy - to sheer sexual frustration. We think it probably was but nevertheless there was a change and she noticed it and finally described him in very unflattering terms but quite clear terms that he became 'bombastic, overbearing and tyrannical'. If that is so then it would make life very difficult for a wife in a household with an authoritative husband behaving in that way and as I have said we have paid attention to Mrs. J's evidence and she gave it quite clearly and sincerely, as indeed all the witnesses did, but it does indicate to us a state of affairs which was very difficult for Mrs. G. She told us as regards Mr. H, that she was looking for somebody to treat her not just as a 'chattel' but as a human being or a loving wife if you like, and she turned her affection to him. Alternatively, the suggestion is that she was using Mr. H as a kind of do-it-yourself therapy - those are not the words of counsel, they are my words - to see whether her sexual hang-ups in relation to her husband were something peculiar to him or something which she felt about any man wanting to have sexual relations with her. If we accept her evidence that things were alright to start with but that they deteriorated even with Mr. H because she began to experience the same sexual difficulties then there is some justification for our holding that that could have been, in addition to the other reason concerning her husband, one of the reasons which led her to have this short affair. We have to the conclusion that Mr. G's conduct in the course of the marriage indeed did conduce to his wife's adultery in 1980 and therefore we have come to that decision. That of course, is not the end of it, we have to decide whether her leaving the home in February 1984 and staying away in a 'de facto' desertion was sufficient, so to speak, to allow Mr. G to commit adultery with Mrs. S and to plead as he has that her leaving the home plus her behaviour in the home was conduct conducing to that adultery. We had produced to us in that connection the leading case of Richards -v- Richards which is referred to in Volume 1, 1952 All England Law Reports at page 1384. In the course of his judgment and one must remember of course, that the law in England at that time was the same as our law here still is in relation to conduct conducing whereas I say under, on page 1386, Denning L.J. as he then was has this to say at (b): "In the present case, therefore, the first question is whether the husband's conduct conduced to the wife's adultery. Conduct only conduces to adultery when

it is such conduct "as is proved to have brought about the adultery": see per Sir Boyd Merriman, P. (ibid., 729) in Herod -v- Herod. There must be conduct which is closely and directly connected with the adultery, such as exposing a wife to known and obvious dangers". Well, I stop there. Of course, if Mrs. S - I put it rather loosely - had been 'hanging' around the house in December, 1983 and knowing that Mrs. G had left her husband with that threat - I put it like that - there, that could amount to being 'conduct conducing' but this is not the position here and now I continue. "Applying this test, I am clearly of opinion that desertion by itself is not conduct conducing to adultery."

It is therefore, clear that if we are satisfied that there was no other conduct in addition to the actual leaving which could have conduced to Mr. G's own adultery, we should find that the fact of leaving did not per se, conduce indeed, to his adultery and since we have found in effect that the wife during the marriage did all she could within her psychological difficulties to put those right and in the view of what we have found about the husband's behaviour, we cannot link her leaving and the adultery of the husband in such a way as to entitle us to say that she conduced to her husband's adultery and therefore, exercising our discretion in favour of the wife, we grant her a decree nisi. The wife will have her taxed costs.

