

1979 April 9

[A. LOIZOU, J.]

ROSEMARY TEREZOPOULOU,

Petitioner.

v.

CHRISTAKIS TEREZOPOULOS,

Respondent.

(*Matrimonial Petition No. 15/78.*)

Matrimonial causes—Jurisdiction—Wife residing in Cyprus for more than three years immediately preceding the commencement of the proceedings—Court has jurisdiction to entertain the petition—Section 18(1)(b) of the English Matrimonial Causes Act, 1950.

5 *Matrimonial causes—Divorce—Cruelty—“Legal cruelty”—Husband repeatedly using physical violence on wife resulting in injuries to her body—And causing danger to life, limb or health, bodily or mental, and giving rise to a reasonable apprehension of such danger—Totality of circumstances amounting to persistent cruelty*
10 *—Wife should in no circumstances be asked to endure such conduct which was in no way excusable—Decree nisi granted.*

15 *Matrimonial causes—Practice—Decree nisi with order for custody of children—Arrangements regarding their care and upbringing left to be considered with the application for the making of the decree absolute—Section 2 of the English Matrimonial Proceedings Children's Act, 1958.*

This was an undefended wife's petition for divorce on the ground of cruelty. The wife gave evidence of repeated use of physical violence by the husband with the result of injuries to her body. Her evidence was corroborated by two witnesses, whose credibility could not be doubted, who both witnessed the injuries received by the petitioner.

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25 The wife has been resident in Cyprus for a period of three years immediately preceding the commencement of the proceedings. There were three issues of the marriage and they

were living with the petitioner who was looking after their maintenance and support.

Held, (1) that the Court has jurisdiction to entertain this petition on the basis of section 18(1)(b) of the English Matrimonial Causes Act, 1950, which introduced three years residence of the wife as a basis for jurisdiction. 5

(2) That the brutality complained of, frequently repeated, has caused danger to life, limb or health, bodily or mental, and in fact has given rise to a reasonable apprehension of such danger; that on the evidence this Court has come to the conclusion that legal cruelty has been established; that the totality of the circumstances amounts to a persistent cruelty on the part of the respondent and the petitioner should in no circumstances be asked to endure such conduct which was in no way excusable; 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 three children of the marriage with the husband having reasonable access to them. (*Peratikos v. Peratikos* (1979) 1 C.L.R. 41 followed). 10 15

(3) That the question of the children and the arrangements that have been made or are to be made for their care and upbringing will be considered with the application for the making of this decree absolute. 20

Decree nisi granted. Custody of the children to the petitioner. 25

Cases referred to:

Wright v. Wright (1968) 1 C.L.R. 34;

Peratikos v. Peratikos (1979) 1 C.L.R. 41.

Matrimonial Petition. 30

Petition by wife for dissolution of marriage because of the husband's cruelty.

L. Papaphilippou, 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. 35

The respondent, although duly served, failed to put in an appearance or defend the proceedings.

The petitioner is a member of the Roman Catholic Church and the respondent is a member of the Greek Orthodox Church of Cyprus. They were married on the 21st day of March, 1963, under the provisions of the Marriage Law, Cap. 279, in the office of the District Officer of Nicosia, and on the 5th May, 1963, they went through a religious ceremony of marriage in accordance with the rites of the Greek Orthodox Church. After their marriage they lived together in Nicosia, except for a period of about a year between the summer of 1974 and the summer of 1975, when they moved to Piraeus, Greece when they returned again to Cyprus and lived once more here until the respondent left his home and stayed for a while in "Savila" hotel, Glyfada, Greece, at which address the present petition was served on him.

There are three issues of this marriage a girl Olga born in 1966, Steven Tibor, born in May, 1967 and Christina, born in July, 1969, who have been living with the mother and who looks after their maintenance and support, being herself a working woman employed by the Cypius Airways.

Leaving aside any considerations of the husband's domicile, in the absence of any evidence to the contrary, he may be treated as being domiciled here—the Court has jurisdiction to entertain this petition on the basis of section 18(1)(b) of the English Matrimonial Causes Act, 1950, which introduced three years residence of the wife as a basis for jurisdiction. No doubt the wife has been resident here for much more time than the required three years period, immediately preceeding the commencement of the proceedings, (see *inter alia* *Wright v. Wright* (1968) 1 C.L.R. p. 34).

The cruelty complained of was the repeated use of physical violence by the husband with the result of injuries to her body. No doubt this brutality, frequently repeated has caused danger to life, limb or health, bodily or mental, and in fact has given rise to a reasonable apprehension of such danger.

I need not refer to the authorities on the question of legal cruelty as I had the opportunity of reviewing them recently in the case of *Peratikos v. Peratikos* (1979) 1 C.L.R. p. 41.

On the evidence before me, which consists of that of the petitioner herself and two other witnesses, whose credibility could not be doubted, I have come to the conclusion that legal cruelty has been established and the petitioner's evidence was duly corroborated by that of these two witnesses. They both witnessed the injuries received by the petitioner and to one of them, who as a friend intervened on more than one occasions the husband tried to justify his said behaviour. 5

The totality of circumstances amounts to a persistent cruelty on the part of the respondent and the petitioner should in no circumstances be asked to endure such conduct which was in no way excusable. 10

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 three children of the marriage with the husband having reasonable access to them. This question, however, of the children and the arrangements that have been made or are to be made for their care and upbringing will be considered (see section 2 of the Matrimonial Proceedings Children's Act 1958) with the application for the making of this decree absolute. 15 20

There will be no order as to costs for these proceedings as none is claimed.

Decree nisi granted.