

1983 August 9

[A. LOIZOU, J.]

SYLVIE ENOTIADES NEE LALAUURIE,

Petitioner,

v.

CHRISTAKIS CHARALAMBOUS ENOTIADES,

Respondent.

(*Matrimonial Petition No. 12/83*).

Matrimonial Causes—Divorce—Adultery—Burden and standard of proof—Confessions of adultery—Principles applicable—Contracting venereal disease not from the wife or husband, during the marriage, is sufficient evidence of adultery.

5 This was a petition for divorce by the wife on the ground of
her husband's adultery with a woman unknown. The petitioner
having been infected with a venereal disease following sexual
intercourse with her husband, the latter admitted both to the
petitioner and to the doctor who treated her for her complaint
10 that he contracted the infection in question as a result of adultery
committed by him with an unknown woman at Hamburg
between the 1st and the 10th September, 1980.

15 *Held*, that the confessions of adultery have to be carefully
scrutinised, especially when made by a spouse who, as in the
present case, desires to be divorced and the Court should refuse
to act upon such confessions alone unless the surrounding
circumstances indicate that such confessions are true; that in
this case the truth of the confessions is born out by the surround-
ing circumstances; that if a husband or a wife be proved to
20 have contracted a venereal disease (not from the wife or
husband) during the marriage, that is sufficient evidence of
adultery; that the petitioner on whom the burden of proof
lies has proved her case; accordingly a decree nisi will be granted.

Decree nisi granted.

Cases referred to:

Betts v. Betts (1983) 1 C.L.R. 227;

Mouzouris v. Mouzouris (1981) 1 C.L.R. 370 at p. 372.

Matrimonial petition.

Petition by wife for divorce on the ground of the husband's adultery. 5

M. Montanios, for the petitioner.

Respondent absent.

A. LOIZOU J. gave the following judgment. This is a wife's petition for divorce on the ground of her husband's adultery with women unknown. The respondent, though duly served, failed to enter an appearance or contest the proceedings. 10

The petitioner and the respondent were married on the 19th September, 1978, at the Register Office in the City of Westminster, London, England. After their marriage they lived and cohabited at "Morphis" Court, 24 Kyriacos Matsis Street, Ayios Dhometions, Nicosia, where the respondent still resides. There is no issue of the said marriage. For some time now the petitioner, who is a French national, resides at "Le Cruzel", Foulayronnes, 4700 Agen, Lot et Garonne, in France. 15 20

The respondent, a Pharmaceutical Products wholeseller, travelled frequently abroad on business. In September 1980 upon his return from a trip to Hamburg and following sexual intercourse, the petitioner felt, for the first time in her life, certain trouble in her vagina. On the recommendation of the respondent she consulted about it a specialist gynaecologist surgeon in Nicosia who examined her and detected a certain kind of infection of the sexual organs known as *Candida Albicans* and *Trichomonas Vaginalis*. She was treated for this complaint by this specialist whom the respondent approached as a friend, asked him about the condition of the petitioner and to whom the respondent admitted to have had the same complaint for which he was treated by another doctor and which infection he contracted through sexual intercourse with an unknown woman in Hamburg between the 1st and the 6th day of September 1980. 25 30 35

In consequence of the said matters there ensued strong arguments between the parties and the respondent admitted also to

the petitioner that during his trips abroad he had committed adultery with other women, but that he had contracted the infection in question as a result of adultery committed by him during his trip to Hamburg during the aforementioned period.

5 As stated in the case of *Peter William Betts v. Agnes Betts* (1983) 1 C.L.R., p.227, adopting what was said in *Mouzouris v. Mouzouris* (1981) 1 C.L.R., p.370, at p.372, "to succeed on the issue of adultery, it is not necessary to prove the direct fact, for if it were in very few cases would the proof be attainable."

10 In the present case, in addition to the venereal disease which was the outcome of the respondent's adulterous relation with an unknown woman, we have the confessions or admissions of adultery by the respondent-husband made both to his wife and to the doctor that treated her. No doubt such confessions have
15 to be carefully scrutinized, especially if made by a spouse who, as in the present case, desires to be divorced - there being no other explanation for his non contesting the present proceedings - and the Court should refuse to act upon such confessions alone, unless the surrounding circumstances indicate that such con-
20 fessions are true. The truth, however, of these confessions is born out and corroborated by the surrounding circumstances. Moreover, if a husband or a wife be proved to have contracted a venereal disease (not from the wife or husband) during the marriage, that is sufficient evidence of adultery. In our case a
25 charge of adultery based on the contraction of a venereal disease is, as it should be, specifically pleaded. It may be mentioned that a general charge of adultery is insufficient in such cases (see Rayden on Divorce, 8th Ed., p. 155).

The burden of proof is throughout on the person alleging
30 adultery, there being the presumption of innocence. The suit for divorce is a civil and not a criminal proceeding but the same strict proof is required of adultery as is required in a criminal case before an accused person is found guilty, that is, the tribunal must be satisfied on proof beyond all reasonable doubt (see
35 Rayden on Divorce (supra) p.146 and the English authorities therein cited).

On the totality of the evidence before me and as the evidence on the issue of adultery is duly corroborated by ample and

truthful evidence, I am satisfied that the petitioner has proved her case against the respondent about his adulterous relation that took place in September 1980 with a woman unknown. I accordingly grant a decree of divorce nisi on the ground of the respondent's adultery with a woman unknown. There will be, however, no order as to costs as none have been claimed. 5

Decree nisi granted. No order as to costs.