

ROYAL COURT (MATRIMONIAL CAUSES DIVISION)

5 PAGES  
1978/1

Before: Mr. P.L. Crill, Deputy Bailiff,  
Jurat H.H. Le Quesne,  
Jurat H. Perrée.

Between

C

Petitioner

and

D

Respondent

and

E

Co-respondent

Advocate K.H. Valpy for the petitioner.

Advocate D.E. Le Cornu for the respondent and co-respondent.

In this case the petitioner and the respondent were married in England in 1967. They have four children

They, and the co-respondent and his wife are approximately in the same age bracket. In 1974 the respondent moved from London to Jersey with her husband and family and established a joint home with him, where she remained residing with him until she left the house for good on the 17th June, 1978. She had left previously for one night only in December, 1977. On the 23rd June, she travelled to London with her daughter, in the company of the co-respondent. The party travelled as Mr. and Mrs. C

On the same night the respondent and the co-respondent spent the night alone under the same roof in a two-bedroomed flat of which the

co-respondent

co-respondent had the use through his wife's Godmother. For the nights of the 24th and 25th June they were joined there by (daughter) The respondent and her daughter flew back to Jersey on the 26th June, again using the names of Mrs. E + Miss E

On the 29th June 1978, the petitioner filed a petition alleging adultery between the respondent and co-respondent, firstly in general terms giving the dates between June 1976 and 22nd June 1978, and, secondly, on the 23rd and 24th June [ ]

On the 13th July, 1978, the respondent swore an affidavit in support of her answer and a cross-petition on the ground of cruelty. On the 14th July the answer and cross-petition and an answer by the co-respondent denying adultery were filed. On the same day the respondent and co-respondent met in London and went to the Eton and Harrow Cricket Match together, accompanied by (daughter) and a son of the co-respondent [ ]. That day was also the one on which [ ], the [ ] family doctor had arranged for the petitioner and respondent to meet with him to attempt to effect a reconciliation.

Further and better particulars were filed in due course. On the 14th August, 1978, the respondent was given leave by the Greffier Substitute to amend her answer and to ask for the exercise of the Court's discretion. At the beginning of the hearing Advocate Valpy, for the petitioner, submitted that the proper way to proceed was for the issue of adultery to be decided first and then that of cruelty. Advocate Le Cornu, for the respondent and co-respondent disagreed. He said that, since the issues were very much connected, because the Court would have to decide, in effect, why the respondent left the matrimonial home on the 17th June, 1978, it would be more appropriate

to hear all the evidence together. It seemed to us that the pleadings were such that it would be more convenient to try the issue of adultery first. This is not to say that a finding of adultery by the respondent would rule out a finding of cruelty on the part of the petitioner.

Accordingly, we deal first with the petition. The principles which guide this Court in cases of this nature have been laid down on many occasions and need not be re-stated in detail. However, we should mention two such principles. First, as regards the standard of proof. This Court has always insisted on a high standard of proof before it can be satisfied that adultery has been committed. We have approached the evidence in the present case in the light of that requirement. Secondly, where the parties are not surprised in the direct act of adultery, the Court must be satisfied that there was something more than opportunity before it will find that adultery has been committed. There must be an inclination, or, as it is sometimes called, "a guilty passion". In this case, Mr. Valpy has submitted that, in addition to that requirement, the wife confessed her adultery to the husband. These three proved facts, he urged, raised an irrebuttable presumption of adultery on the part of the wife.

We take these three matters separately and we start with opportunity. It is true that if people are determined to commit adultery they will find the opportunity. Neither the respondent nor the co-respondent denied that had they so wished they could have had the opportunity to commit adultery, but since the measure of that opportunity takes the form of alleging that the co-respondent sought out the respondent on many occasions (which is denied both by the wife and the co-respondent), we must examine to what extent they were, or had the opportunity to be,

in fact, alone together. Here, again, some of the evidence is direct, but much of it is not, and, as regards that evidence, we have been asked to draw the necessary conclusions by fair inference. It is true, of course, that in many cases not all allegations in the pleadings can be sustained when the issues are heard; for example, in the present case, an allegation by the petitioner, in paragraph 15 of his reply, concerning the respondent's own brother could not be persisted in as he was not called. On the respondent's side, also, a number of allegations were not supported by producing the people mentioned in the pleadings; for example, the lady guest, mentioned in the particulars, at a dinner party given by Mr. and Mrs. [ ]. But the Court must be concerned only with what it has before it. Nevertheless, if, in the course of giving their evidence, the parties themselves raise matters which are capable of being supported by witnesses not on the list, but who could be called, although leave to do so is not sought, the Court is entitled to draw certain conclusions, as indeed it may from the absence of other witnesses whose evidence would have assisted the Court. We noted particularly that Mrs. [Correspondent's wife] was not called. Nor, if she declined to testify in the Witness Box was leave applied for to have her evidence given on commission, or even by affidavit, although in that case the weight to be attached to it would be considerably less without her evidence being tested in cross-examination.

The wife and the co-respondent met socially at a party at which the petitioner and the co-respondent's wife were present. It is not clear to us whether this was in 1975 or 1976. We think it was probably late in 1975, or early in 1976, because it was in June, 1976, that the husband and wife were guests on board the co-respondent's

/yacht

yacht in the Mediterranean and both the husband and wife were surprised to have been invited after a comparatively short acquaintance. The petitioner and his wife were also the guests of the co-respondent on his yacht for the Jubilee Fleet Review in 1977. The only other time when the two families were on a joint holiday was in January, 1978, when they went ski-ing.

The evidence of association was supplied by the petitioner, [redacted] (two former employees of the petitioner), [redacted] the petitioner's brother, Advocate R.G. Day and two Enquiry Agents, Mr. Mackay of London and Mr. A. Percy of Jersey. That there was a common bond of interest between the respondent and the co-respondent has never been denied. That bond centred on horse riding. What was disputed was the amount of time the wife and the co-respondent spent alone together, either out riding or at The House, in the absence of the petitioner.

The petitioner became suspicious of the amount of time the co-respondent was spending with D, towards the end of 1976. He felt that his family was seeing more than was usual of the correspondent. He noticed that correspondent's wife seemed to ride less and less. It was true that both Mr. and Mrs. E used to call at the House, but ninety-per-cent of the time E was on his own. [EMPLOYEES] knew the co-respondent by sight. She said he started coming to The House about eighteen months previously. She had seen him there on many occasions, mainly when the petitioner was away. She had noticed the co-respondent's car about half a dozen times. Mr. [EMPLOYEE] told us

/he

he also knew the co-respondent by sight. He had been to The House sometimes when only D was there. He saw E more regularly in the hunting season. Mr. [ ] was employed at The House from June, 1976, until January, 1978. Mr. [

stayed at The House for two months between April and June, 1978. His father was a friend of the petitioner. He had seen the co-respondent at The House some four or five times. He had seen him riding there with his wife, but mostly alone. He remembered that the petitioner was annoyed with the respondent for going riding with the co-respondent in the mornings.

Mr. [ ] is the petitioner's brother. He spent Christmas, 1977, at The House. There he sensed that, although the husband and wife were happy and congenial towards the family, all was not right between them. He was driven to the Airport by Mr. EMPLOYEE. On the way he said that Mr. EMPLOYEE told him that the co-respondent spent a lot of time with Mr. PETITIONER'S BROTHER'S sister-in-law while the petitioner was away. Mr. EMPLOYEE however, did not remember that conversation, but Mr. [PETITIONER'S BROTHER] assured us that it had taken place.

Advocate Day is a friend and legal adviser of the petitioner. He was told by the petitioner, who saw him at his chambers, at some unspecified date before the 17th June, 1978, that his marriage was in difficulties as his wife was showing interest in another man, the co-respondent, and that she had indicated that she would continue to consort with him. The petitioner was distressed at those interviews/ <sup>of which</sup> there were at least three, and, according to Mr. Day, the cause was threefold: the wife's behaviour, her decision to leave and her friendship with E

Mr. Anthony Percy is an Enquiry Agent, who has given evidence in this Court on many occasions. He observed the movements of

M D from Friday 4th August until Tuesday, the 8th August. It was clear that she spent most of the daytime at C J', but that would not be remarkable, as she admitted that from the 4th August, she and the co-respondent had committed adultery.

Lastly, there is the evidence of Mr. Mackay. There is no need to set it out in great detail, because what he saw is admitted by the respondent and the co-respondent. What is in issue is the interpretation to be placed on the facts. He followed D and E the house of a in London from London Airport to the flat in Knightsbridge, then to/friend of Mrs. C where they were accompanied by the daughter; and back to the flat, where, alone they spent some ten hours together from 11.55 p.m. on the 23rd June until 10.47 a.m. the following day. The only evidence of affection he observed was that on the way from the airport, D stroked the co-respondent's cheek with her right forefinger.

There can be no doubt in our mind that the respondent and the co-respondent, throughout the periods when adultery between them is alleged to have occurred, had ample opportunity to do so if they were inclined towards it.

And so we consider the matter of inclination. All that we can do in this respect is to examine the behaviour of the parties to decide whether that factor was present between them. The evidence adduced by the petitioner under this head is as follows. First, the constant telephoning of the respondent by the co-respondent. Second, the regular visiting of The house by the co-respondent in the absence of the petitioner, and thirdly, one particular episode in the garden of The House on the 28th May, 1978. C told us of telephone calls to the house and that when he answered them the caller would ring off. The same thing happened on more than one occasion when Mr. PETITIONER'S Brother answered the telephone while he was staying at The House. On the 7th June there was one call which C remembered vividly.

He had been away and had returned earlier than expected and had paid off the taxi at the end of the drive, because the drive was still in a rough state. The drive was, in fact, tarmacadamed in about October, 1977.

C told us that on the 7th June, 1978, he was walking past an air-vent near the kitchen and from which room D used to make a number of calls to the co-respondent, which he felt were more than necessary, even allowing for their mutual interest in horses and the occasions when E's horses were out to grass at 'The House'. He heard D say: "You sort your end out; I've got someone to get rid of here". He told his wife that he had overheard the conversation and that he supposed that she had been speaking to E, who was in England at the time. D, in her evidence, said that she had been speaking to a Mrs. C about their respective children and that the petitioner had only imagined that she had been speaking to E. If that is so, not only was Mrs. C not called, but that point, and it was a very important one, was not put to the petitioner in cross-examination.

It will be convenient here to mention the matter of the respondent's confession. The petitioner said that thereafter, that is to say immediately following the telephone call of the 7th June, 1978, he and his wife talked about her friendship with the co-respondent. D

admitted having had an affair for some fourteen months but said that she had been trying to stop it. When asked why she had not done so before it became 'physical', she replied: "You know what men are like". Even in 1976 the petitioner had not been happy at the amount of time the respondent spent at the house of the co-respondent. In 1977 he said that Mrs.

E seemed to look neglected and that he mentioned this to the respondent. The respondent said that the reason for her seeing the co-respondent was that he and his wife, with her, liked riding, but the petitioner noticed that Mrs. E appeared to ride less and less and E more and more rode alone with the respondent.

/In



In 1977, after their holiday with the [redacted] 's at the Review of the Fleet, he again taxed the respondent about her association with the co-respondent. She said there was nothing in it and it was only his imagination. She said that she loved him (the petitioner) and asked him to trust her.

At the time of the 7th June telephone call the wife said she was not particularly distressed but, according to the petitioner, he was. He said that, although his wife had promised not to see the co-respondent she continued to do so and to receive telephone calls from him. The petitioner heard her speaking to [redacted] on two or three occasions.

On the 10th June there was a Horse Show. A foal, belonging to the respondent, required shoeing at [redacted], the home of the co-respondent. The petitioner took it and returned to The House to await a telephone call from the co-respondent which he thought would be made. It was, and he asked to see the co-respondent at The House. On this occasion Mrs. [redacted] was staying at the house. The co-respondent went to see the petitioner. There were words and the co-respondent denied any association with the respondent. The petitioner brought Mrs. [redacted] into the conversation. At that time the respondent was shelling crabs for a picnic. She overheard the accusation of her husband to the co-respondent but kept her head down and said nothing. We find it strange that while she was vehement in her denials before us of any improper association until the 4th August, 1978, she refrained from saying anything at that time. It may be that she did not want to air her private affairs in front of Mrs. [redacted] but as they both agreed that they were very old friends, if not the best friend of each, that would be remarkable. At any rate the petitioner asked the co-respondent to keep away from the family. He refused and said he would do whatever he thought. He then

left. The [redacted] family went to the picnic. According to the co-respondent he went back to [redacted] and told his wife of the accusation by the petitioner. It is not clear what the exact sequence of events was at the Horse Show. According to the petitioner the co-respondent thrust himself on the family and also stroked the respondent's knee. According to the respondent, the co-respondent and Mrs. [redacted] was invited by the petitioner to join the party. At any rate, what is clear is that Mrs. [redacted] asked to see the respondent and she went back to [redacted] followed by the petitioner and co-respondent both of whom stayed outside. After a while the respondent came out of the house. She was crying and the petitioner had not seen her in such a state before. The Court saw her in a distressed condition when testifying on her cross-petition relating to an incident in Africa in 1972. We were told by the petitioner that she was in the same condition at [redacted] on the 10th June. The respondent remained at [redacted] and the petitioner went home with his daughter, [redacted]. Later, the respondent returned home and either there, or she may have done so previously at [redacted], gave the impression to the petitioner that whatever had been the relationship with the co-respondent it was now finished. As the petitioner put it to us it was all over. That night they went out to dinner. On the following day they went to Alderney and spent a pleasant time. On their return the petitioner learned that Mrs. [redacted] was leaving her husband. [redacted] said that she did not know what to do and telephoned to the co-respondent. In fact, Mrs. [redacted] did not leave [redacted] until later that month.

On the 17th June, the petitioner overheard his wife talking on the telephone to the co-respondent. She said that he (the petitioner) had 'caught her on the phone'. It was after the conversation with his wife on the 7th June that the petitioner first spoke to his Advocate, so he told us to try to save his marriage. On the evening of the 17th June

the petitioner decided that he could not stand the situation any longer and asked her to pick up the telephone and speak to the co-respondent, in his presence, and tell him that the relationship between them was all over. If she did that he would forgive her. She refused to do so and said that if he could not put up with it she had better leave the house and go to her parents. She added that she hoped that the petitioner was not going to make a scene about the children. This discussion between the petitioner and the respondent took about 10 minutes. The petitioner, rang the respondent's father, and told him why the respondent was leaving. She overheard that conversation, but made no comment. The respondent left the house with the children and went to her parents' house. On the 19th June, the petitioner wrote a letter to the respondent. It is as follows :

"My darling D

I don't seem to be able in speaking to you to get through to express how deeply sorry I am that after more than ten years of being together our marriage has now gone wrong. I can't understand how you think and feel about [ ], I wish I knew earlier what was happening may be I could have done something to stop it. As you said 'I didn't want it to happen it just did' Why?

There seems little I can do at the moment to repair what has happened. If you could make yourself change your mind over your decision to be with him I would like you to come back as I hope and pray for every moment since you went to Mummy & Daddy's

I miss the [Children] terribly the house at the moment feels so empty and sad.

I won't you always to feel you can come to me if things ahead don't make you as happy as you say and think. I want the children to be happy and as you know this is more likely at there age with you and for me to demand or try & prevent would lead to upsets which would make you unhappy and therefore them. I hope and pray [ ] will be kind to them when they are there and not treat them like [ ]].

I would like them to come to The House and know that The House is there as and when they wish, for them. Please come to me in any need try and change your mind I can forgive and forget for you.

I love you

C .

"

It was put to the petitioner that in effect he had concocted that

/letter

letter with Advocate Day. He denied this most strongly. He said that he took it by hand to the respondent at her parent's home. She was in the bath and did not seem disturbed at anything. He spoke to her for 20 minutes; she said she would read it when he had gone. We accept that the letter was a genuine attempt to get his wife back.

During the course of the following week the petitioner learned that the respondent was proposing to go to London with the co-respondent. On the 21st or 22nd June Mrs. E had left [redacted]. There was a suggestion that the petitioner approved of his wife and E going to London, together with [redacted], but this was not put to him explicitly in cross-examination. Moreover, he said that he had approached the co-respondent about the London visit although at first he had denied knowing anything about it. The petitioner called at [redacted] on the 22nd June and saw his wife and the co-respondent. He told her that he disapproved of [redacted] going to London. He was manhandled out of the house by the co-respondent. -- E

[redacted] described his actions as helping the petitioner to leave. The petitioner took legal advice and was told to instruct an Enquiry Agent. He did this personally in London on Friday the 23rd June. It is true, of course, that Mr. and Mrs. [redacted] were told about the visit but believed that D [redacted] were to stay with Mrs. [redacted]. It was the petitioner who found out that the air tickets had been reserved in the names of Mr. and Mrs. E and Miss E. He took the numbers of the air tickets. He ascertained that

D and [redacted] returned to Jersey under the names of Mrs. and Miss E

There is no doubt that thereafter the respondent and co-respondent continued to see a lot of each other, mainly at [redacted], during the day time when the respondent's children were there. We are entitled to have regard to their actions up to the time of the hearing to assist us to determine where the truth lies.

We now deal with the incident of the 28th May, 1978, but before /doing

doing so we should consider one other relevant matter. Mrs. EMPLOYEE said that on one occasion she had observed the respondent and the co-respondent in an embrace. When D noticed her she looked embarrassed. On the 28th May the respondent and the co-respondent were sitting beside the swimming pool at 'The House'. The time was in the afternoon and the co-respondent had been to lunch. The petitioner was away. Aroused by the noise of what seemed to be a car crash Mr. and Mrs. EMPLOYEE came out to see what it was all about. They heard the children playing in the swimming pool and saw the respondent and co-respondent in what Mrs. EMPLOYEE described as a very close embrace on a hammock or garden swing. Mr. EMPLOYEE described E as fondling the respondent on the breasts and buttocks. Whether he was touching her breasts or not, and there is much conflict of evidence on this point, he was showing a great interest in D's abdomen. She was wearing a two-piece bikini. Mrs. EMPLOYEE was sure that E had a hand down the front of the lower portion of the bikini. Mr. EMPLOYEE was not so descriptive; but he was shocked by what he saw because he said it was not right. Mrs. EMPLOYEE did not think she and her husband were witnessing an innocent platonic friendship. Neither she, nor her husband mentioned the matter, until asked by the petitioner if they knew anything about the relationship.

The respondent and co-respondent denied most strongly that any improper association had existed between them until Mrs. E had left C ] for good on the 3rd August, 1978. Both these parties now admit they are in love with each other, but maintain

/that

that it was the mutual difficulties they found themselves in after the respondent had left The House on 17th June, and Mrs.

E had left [ ] a few days later that drew them together. They were not in love on 17th June, 1978, and the separation of Mr. and Mrs. E on the 22nd June, had had nothing to do with the respondent.

The respondent said that she did not see much of the E's until the end of 1977. That is possible, if, as the co-respondent asserted, he was out of the Island a good deal in 1976 and 1977, on business. In the winter of 1977, she and Mr. and Mrs. E often rode together. At that time, Mrs. E was helping her with her riding. This pattern continued until in the Spring of 1978, Mrs. E had to put her horse down and thereafter she rode very little, so that the respondent and the co-respondent rode more together. The reason for the friendship with Mr. and Mrs. E went beyond their interest in horses. She had already taken them into her confidence about her deteriorating marriage. However, the day before Christmas, 1976, she had been lent a horse by the E's and, apart from holidays, when the animal was sent to be looked after by the groom at [ ], she kept it at The House until February, 1978. The petitioner said that he had asked her to return the horse but she had refused. When ever the weather allowed she would get up early to ride without disturbing the petitioner's sleeping habits. As regards any visits by E in the absence of the petitioner these were known and she had nothing to hide. In fact while the petitioner had complained about her friendship with both Mr. and Mrs. E, he did not mention an "affair" with E until about a week before she left in June, 1978.

As already mentioned the respondent's version of the telephone conversation of the 7th June is different from that of the petitioner. According to her it was no more than a laughing conversation with a girl friend. She had not admitted an association with the co-respondent. On the 10th June she agreed that she had spoken to Mrs. E h at [ ]; that the latter was upset because of the accusations of the petitioner; that she, the respondent, had been unhappy because of the unhappiness of Mrs. E, but that having agreed that the allegations were untrue the two of them then talked about their children. However, the respondent said that she and Mrs. E accepted that it would be better if they, that is to say she and Mr. and Mrs. E, did not see each other again.

The respondent said that she did not see either of them between the 10th and the 17th June. On that day she admitted that she was asked by the petitioner to telephone to the correspondent but that she refused because she could not make a promise not to see him again on account of her having one of his horses out to grass at 'The House

After leaving The House she said that it was not until the 22nd June, when the co-respondent telephoned her, that she learnt that Mrs. E had left him. She had not seen the co-respondent between the 17th and the 23rd June, and although it had entered her mind to telephone him, she had not done so. According to her they met on the 23rd June at [ ] and arranged to travel to London together in order for the co-respondent to see his son at school. She had already arranged for herself and [ ] to stay with Mrs. [ ]. It would also be a chance for [ ] to see her own brother as the co-respondent felt she needed a break, but as the petitioner pointed out this was only some days before the end of term when [ ]'s brother would be returning home. She was not aware that she had travelled

under the name of Mrs. E That may have been the case when she went as it was the co-respondent who obtained the tickets. His explanation was so contradictory about how it came about that the tickets were in his name and that of his wife and daughter that we have little doubt that the reason these names were used was a blind.

As we have said the movements of the respondent and the co-respondent in London the the night of the 23rd June are not in dispute. The respondent said that they and [ ] had dinner at Mrs. [ ] Friend's house. [ ] became tired and was put to bed. Later Mrs. [ ] said that there were not enough beds for the respondent to have one and that she would have to sleep on the sofa. Mrs. [ ] could not do so as she had a painful back. This much was obvious to us. Thereupon the co-respondent offered to put up the respondent, as there were two bedrooms there. She had therefore accepted his offer and occupied a separate room; there had not been any sexual intercourse between them. When the enquiry agent had seen

D, ... E and [ ] leaving to go to Mrs. [ ], they had only one small suitcase with them in place of the two with which they came over. When they returned to

at 11.30 p.m. they had no suitcase at all. The respondent said that she had taken what she and [ ] needed in the green case. [ ] joined her and the co-respondent the next day and the three of them stayed in the flat without any incident between her and the co-respondent for the next two nights. Her discretion statement was put to her and she swore that it was true.

She rejected all the evidence of Mr. and Mrs. E First as regards the car. She said that she had been lent the car by E and that it was possible that she had parked it at the top of the drive at least until the drive was surfaced, in October, 1977.

/Mrs.



Mrs. EMPLOYEE might have seen her being kissed and hugged by the co-respondent; that was merely quite normal for him. The events of the 28th May as detailed by Mr. and Mrs. EMPLOYEE were the result of their dirty minds. The co-respondent and she had not been embracing. He had not been fondling her. They had been discussing the stretch marks on her stomach which had resulted from her pregnancies. E

was explaining to her that he knew a doctor in England to whom he would write to see if an operation to remove them could be performed. The EMPLOYEES could not have seen what they described because as soon as the noise of the crash occurred she and E got up to have a look at the same time as the EMPLOYEES. It seems to us that one of these explanations must be wrong. If they got up at the same time as the EMPLOYEES moved to look at the crash the EMPLOYEES could have seen nothing. If on the other hand they remained where they were then the EMPLOYEES saw something.

While the outline as given by the petitioner of the events of the 10th June was correct in some respects she had not come out of the house after talking to Mrs. E nor was she crying. She agreed that she had gone back to the horse show with E

The reason why she had left with the children on the 17th June was due to the husband's bullying and, for the first time, he had said that she could leave and take the children with her. She agreed that it was clear to her that wrong though it was, her husband thought she had been committing adultery with the co-respondent.

Two other matters as regards the petition need be mentioned.

The first concerns some footprints on the carpet of one of the rooms at The House not far from D's bedroom. While we do not attach much importance to this, yet in cross examination

D suggested they were those of PETITIONER'S BROTHER and his girl friend whom he had had sleeping with him, as a maid had told her that she had had to clean up bloodstains in the bed. None of this was put to Mr. [-----]. /The

The second is a letter Mrs. -E wrote to the petitioner on the 3rd July, 1978. It is as follows:

"Dear [ ],

From the stray tags of gossip I have it sounds as though your divorce is going through easily enough.

I know I mean nothing to you but none the less please may I ask you for a favour. Bear with me for a moment and you will understand.

It is my belief that this "thing" between E + D is not of any great permanence. E is not an angel and the wings and halo will probably fall when D is living with him. For this reason I personally do not want a divorce from E. It is my belief that given time and no aggravation it will all pass over and bust up again.

What I am asking you is not to stop your divorce proceedings, of that I approve and wish you luck, but not to prevent E and D living together complete with both your children and mine. In the teeth of opposition E and D will pull together, but in the absence of any pressure and with E still legally married to me I believe it will all DIE A DEATH.

If you decide to pressure them over the children, E will then find a way to divorce me and that I especially do not want to happen.

So what I am asking you please is to let E and D plus both your children and mine "Live" together, but not put E in a position where he insists on divorcing me and marrying D. I am fool enough to both hope and believe that given time and NO MARRIAGE that it will all bust up.

Please [ ], if, having divorced D, you can bear to let them all stew in their own juice, I would be most grateful. Also I think you and I would get what we both seek out of it all.

What a mess, please accept my apologies for being difficult with you, like you I am in a terrible state.

Kindest regards and best wishes for your future.

[ ]

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The respondent denied that she had discussed with the co-respondent the children of the two families living together. She spent the days at [ ] (after she had left) because the co-respondent had kindly offered to make his house available in the daytime for her and her children.

There is little to be gained by referring in detail to the evidence of the co-respondent. It tallies with that of the respondent in those matters which concern the two of them. However we should mention some salient points. As far as he was concerned the C's were no more than good social friends. He would

/have

have had little opportunity for seeing D alone in 1976 and in 1977 as, during those years he was out of the Island for a good deal of the time as well as for two or three months in 1978. It was not until the summer of 1977 that he began to see more of the respondent. His explanation of the situation of the 28th May was that he may have leant forward to show D where a cut could be made on her abdomen during the operation to remove the stretch marks and to indicate that, thereafter, a bikini could be worn without embarrassment. He would not understand how the ~~Emerson~~ could have seen anything at all as he and D had leapt up at once upon hearing the sound of the car crash. He had not thought of the episode since that date. He said he would telephone about the operation and in support of his having done so he produced a letter, dated 17th July, from a doctor in Basingstoke. He was not in Jersey on the 7th June and did not talk to the respondent. He produced a diary which he said he had written up before he left the Island. It was a diary of appointments and not one of record. When he was accused by C on the 10th June, it was a total shock and he became angry. He had not committed adultery with her until the 4th August, 1978, and, indeed with no one else in his married life. He did confirm that later it was agreed at C D between his wife, himself and the respondent that it would be better if D did not see them again for some time to see if it would pass over. However he disclosed that the previous year he and his wife had agreed to a trial separation because, as he said, the spark had gone out of their lives. He ceased having sexual intercourse with his wife about three months before she left on the 20th or 21st June. He did not recall any occasion riding alone with D

/Before

Before June, 1978, he had never kissed [redacted] on the lips. He said that he did not know that Dr. [redacted] was the family doctor. (The inference being that had he known he would have told him the name of his doctor friend in Basingstoke).

He agreed that when asked by the petitioner, on the 10th June, to keep away from his wife, he had refused and he explained that he added that if [redacted] wished to go round to *The House* to see him or his family she would be welcomed. When he had taken [redacted] back to the horse show afterwards he had left his wife alone in the house. When he and his wife separated they did so because there was not much left in the marriage on account of the petitioner's lies and insinuations.

In support of her denial of adultery the respondent called her parents and Mrs. [redacted]. Mr. and Mrs. [redacted] were as honest and helpful to the Court as their extremely limited knowledge of the events in issue allowed them to be because the respondent did not confide much in them. The Petitioner told Mrs. [redacted] about the correspondence only after the respondent had left *The House*

Mr. [redacted] never suspected anything was wrong. When he spoke to the respondent after she had left *The House* she told him that the petitioner had accused her of having an affair with the respondent, [redacted]. He described the respondent as extremely strong willed.

Mrs. [redacted] had known [redacted] for some 22 years and would have regarded any affair as out of character. If there had been anything between her and [redacted] she would have been told. On the 10th June she had been present in the garden when, in the hearing of the respondent the petitioner had said that the respondent was being impossible and that it was all the co-respondents fault. [redacted] kept her head down, as we have already said,

/and

and went on preparing the picnic. [ ] had three bedrooms but one of them was filled with furniture. She said it never occurred to her to think where [ ] was going to sleep that night. She had been asked by the respondent if she minded if he brought [ ] and her round. Later she said that she was told by the petitioner, on the 10th June, that he had had enough and that he was upset with his wife's attitude and fed up. One may well ask why. She agreed that when she saw the respondent in London on the 23rd June she was much happier than she had been in Jersey on the 10th June.

Having considered the evidence adduced in support of the petitioner and having heard the parties and their witnesses we are satisfied that the petitioner has proved the contents of his petition with one reservation. This finding means that we have rejected the evidence of the respondent and the co-respondent and to some extent that of Mrs. [ ]. We have come to what Mr. Valpy called the inescapable conclusion that adultery was committed before the 4th August, 1978. We think however that it is not possible to put a precise date to it except to say that it is more probable that it started, not as alleged in the petition, in June, 1976, but rather some time in mid 1977. And, of course, adultery was committed in London between the 23rd and 26th June, 1978.

We turn now to the cross-petition which alleges cruelty on the part of the petitioner. The law on cruelty as it has evolved in this jurisdiction has followed the pattern of Decisions in English Courts. The Jersey Court of Appeal has cited with approval, in *Urquhart v. Urquhart, J.J.* at page 2484 the four ingredients which must be established. They are -

- "(i) Misconduct must be of a grave and weighty nature; it must be more than mere trivialities, though there may come a point at which the conduct threatens the health of the other spouse, in which event the Court will give relief;
- (ii) It must be proved that there is a real injury to health or a reasonable apprehension of such injury;
- (iii) It must be proved that it is the misconduct of the spouse against whom the complaint is made which has caused the injury to the health of the complainant; and
- (iv) Reviewing the whole of the evidence and taking into account the conduct of one party and the extent to which the complainant may have brought the trouble on himself or herself the Court must be satisfied that the conduct can be properly described as cruelty in the ordinary sense of the term. "

However, as regards the standard of proof, this Court, and it was not overruled at this point, has decided in Knight v. Knight and others, reported in J.J. Vol.2 at page 367, that it may look at the evidence on a balance of probabilities. The Court also referred to Rabet and Rabet J.J. 1568 (to which it might have added the case of Roberts v. Roberts and Cunliffe Owen, J.J. 131) and, because as in this case, the petitioner (here the respondent) relied on a series of events over a period of time, adopted the words of Lord Reid in King v. King (1953) A.C. at page 140 (as had the Court in Rabet v. Rabet) Lord Reid said :

" The question whether the respondent treated the petitioner with cruelty is a single question only to be answered after all the acts alleged and the whole of the matrimonial relations have been taken into consideration. "

We have approached the evidence in this case in the light of these observations. What we have had to do is to a great extent is to decide what went on in the privacy of the parties' home. This

is always difficult particularly in this case where the respondent kept her feelings to herself because, as she told us on more than one occasion in the course of her evidence on the petition and cross petition, she did not want to involve anybody else in her own private affairs. As regards the allegations of adultery made by her husband she said she found these very distasteful and hurtful. As we have said she was in a very emotional state when being cross-examined on the events in Africa which took place in 1972. As far as we could judge the principal reason for this was that she had realised only afterwards that she had been in some danger medically speaking and having to remember it all again recalled this danger vividly.

The allegations in the cross petition centre on paragraph 1(a) of the Particulars. They are that -

" That the Petitioner is a man of uncontrollable temper and intemperate and drunken habits and has habitually without cause and without provocation used violent threatening and obscene language and behaviour towards the Respondent. "

That paragraph should be read in conjunction with the further and better particulars supplied at the request of the petitioner. As regards paragraph 1(a) of the Particulars in the cross petition the following passages are relevant:

" On numerous other occasions too frequent to list incidents of the above nature have taken place."

and -

" The above occurred so frequently that the Respondent is unable to enumerate and state with precision the times and dates of such incidents. "

Throughout the cross petition and further and better particulars there occurs in many places the words "regularly" and "frequently".

Reading the Respondent's case one could be excused for believing the petitioner to be a thoroughly impossible, selfish, drunkard. Indeed the picture painted of the matrimonial home is one of unrelieved tension, the children in a constant state of uproar, the staff at  
/loggerheads

loggerheads with the Petitioner and the Respondent under daily threat of abuse and violence. This case illustrates the need in drawing pleadings not to exaggerate. The Respondent said that she had drawn up the cross petition. We can well believe it. A number of the allegations have not been persisted in as no evidence has been tendered to support them. The reason was, so we were told by the Respondent, was that she did not want to involve her friends. That may well be so, but to bring a number of what could well be damaging assertions in the pleadings and not to adduce any evidence in support of them is not a practice to be commended and casts doubt on whether some of the evidence actually tendered on the other matters can be relied upon. The allegations for which no evidence whatsoever, or very little indeed, exists are:

1. That [ ]'s schooling became so affected that a psychiatrist had to be consulted;
2. that regularly in public the petitioner would shame the respondent before friends and strangers; that whenever the parties were out socially the petitioner would regularly drink to excess and become ill to the respondent's embarrassment and distress;
3. that by going abroad the petitioner left the respondent in a frightened state in a lonely house in the country;
4. the non-payment of bills;
5. the failure to honour obligations to the bank;
6. the threats to sell the house over the respondent's head;
7. the staffing difficulties at The House
8. the dinner party at Mr. [ ]'s;
9. the behaviour to a lady guest at Mrs. [ ]'s



10. the behaviour of the petitioner at the respondent's brother's wedding;

11. the failure to pay fees at [ ] School.

We have set down these matters because they contain some assertions which, if proved, could have cast quite a different light on the respondent's evidence. It is true that in the case of some of them we had the respondent's evidence before us but, for example, why were not the estate agents, the bursar of [ ] the tradesmen, the psychiatrist, the staff who were alleged to have left, six in number and all named, Mr. [ ] the lady at Mrs. [ ]'s or the hostess herself, and the bank, not called by the respondent to support her allegations. We are entitled to conclude that, as regards these matters they would not have done so. This being so should we not then also look at the evidence on the remaining matters with great circumspection? Having said that we now turn to the evidence we did hear.

The first witness in support of the respondent's cross petition was Dr. [ ], who was as we have already noted, the family doctor. His evidence was rendered primarily to show the drinking habits of the petitioner. Although he had seen the petitioner on one or two occasions in a state which he described as "walking drunk" he did not notice unusual behaviour towards the respondent. However as the result of an examination held under arrangements with the B.U.P.A. on the 14th December, 1977 (the petitioner not having objected to the report of that examination being produced) we learnt that the petitioner was suffering at that time from a "mildly abnormal liver function" which, in the opinion of Dr. [ ] was consistent with excessive consumption of alcohol. He had advised the petitioner to restrict his consumption to beers and light wines. On the other hand none of the symptoms associated with a state of alcoholism, for example clubbing of the fingers, spider naevi on the body,

/gradual

gradual mental deterioration, and evidence of heart disease, were present in the petitioner. It was true that C ---- had suffered from chronic gastritis which could cause him to vomit in the mornings and that could be attributed to the consumption of excessive alcohol. He would regard more than half a bottle of spirits a day as heavy drinking. The only thing he said about the way the respondent treated the petitioner was that it was chauvinistic and didactic.

The respondent had relied on some evidence of a nervous complaint which manifested itself in two ways. First by a wringing of her hands. As to this, although her mother said that she had noticed it, she had not consulted the doctor at all for nervous complaints of any type. The other matter was a fungoid (fungal) infection of the nail bed, but/ Dr. [ ] said that it was not an opportunist infection, that is to say one that was more likely to attack persons who were debilitated or in a state of anxiety. Dr. [ ] had known the parties for about three years and had visited the house professionally on some 27 occasions. He had told the petitioner who consulted him after his wife had left, that he felt that he, and the petitioner had spent too much time away. He had learnt of the allegations on both sides after the serving of the petition. --- D had not complained to him about her husband before but he felt that the respondent would put up a front because it was in the nature of her social standing. He had not suspected trouble between the parties and the respondent would have had several opportunities to tell him of her difficulties during consultations. She did not in fact appear nervous to him and he had not detected any evidence of physical or mental injury although he would have expected some signs to appear had the behaviour complained about been going on for seven years, / although it was true that he had known a case where in spite of such behaviour the wife had not shown any

/outward

outward signs for over ten years.

The respondent's evidence fell into two broad categories; that concerning the petitioner's drinking and abuse to her and the other incidental matters which flowed from this general behaviour such as his attention to other women, his constant vomiting in the bedroom and elsewhere, his attitude to money and, apart from the one small incident in Harley Street, which was denied by the petitioner, a single act of near violence in December 1977, when she left the house for one night as we have already mentioned. For two years the marriage was happy. Thereafter the pattern was one of increasing interperance, abuse and behaviour to her and her friends. When in drink he would call her a "cow" or a "bitch" for no apparent reason. Little assistance to us would be served by examining her evidence in detail since it followed general assertions of, as we have said, a constant pattern of behaviour. She had attempted on more than one occasion to get her husband to stop drinking, but although he promised and for a time improved he stated again. He had been frightened by the B.U.P.A. report at the end of 1977 and had cut down a little but had resumed his former ways after three weeks. When asked how often, for example, the petitioner had come to bed very drunk she said that latterly, meaning in the previous year, about once a month. He often used to play the record player until 2 or 3 in the morning knowing that she had to get up early to attend to the children. Matters got even worse in Jersey after he had finished building the house. Thereafter he became bored and drank more. He went to the United Kingdom on shooting and other parties and she was pretty sure how he had behaved there. He made a fuss about her parents coming to the home and this upset her. The incident in December 1977 concerned his mother when he behaved so badly to her that the respondent felt obliged to leave the house. He had been

/attacking

attacking his mother, verbally about money matters; it was the same treatment that he had given to the respondent on occasions. When she ran out of the house the petitioner wrenched the car door open, seized the ignition key and threw it into the swimming pool. She was also pulled out of the car. This, apart from the minor incident in Harley Street, was the only event tendered on direct physical violence in the whole of the seven years. The petitioner also wrenched the telephone out of its socket. In the end she was able to talk to her father who fetched her. She was advised by him to see a solicitor, but she did not. The petitioner also was unstable in his relationship with the children, forgetting promises, shouting at them and staying out till they were in bed. The impression suggested to us was that of an indifferent parent, given to favouritism. This attitude worried the respondent. The petitioner also told the respondent that he had had adulterous relationships with other women; he told her whenever he had done so. He was selfish when it came to helping in the house apart from clearing up after dinner parties and mowing the lawn. This, then in broad outline is what the respondent told us was the relationship between her and the petitioner for some seven years.

One of the events in the marriage which was relied upon to a very great extent to establish the callousness of the petitioner towards the respondent was the occurrence in South Africa during a holiday in 1972. The gist of the respondent's evidence here was that while suffering a sudden heavy bleeding, which was later confirmed by her gynaecologist in London as a miscarriage, she was allowed to remain alone in her hotel bedroom from 6 or 7 p.m. until 2 or 3 the next morning. During this time the petitioner went out to dinner with friends who were sharing the holiday with them and that his only reaction to her problem was to tell her to go to bed. We heard that following the birth of her last child some six

months ago she had not menstruated and that at the time she, and the others, thought that she was having a heavy period.

In cross-examination she was asked why she did not consult the Doctor about her troubles but she said that she was trying to forget about them and was too ashamed to bring them into the open and worry other people. She was shown a number of photographs which were proved by the petitioner as having been taken while the parties were on family holidays during the last few years, and as recently as May 1978, when from what we could see they reflected a happy family enjoying themselves, and said that one posed for such pictures and that they did not reflect the true position. It was true that after the night in the hotel in South Africa she had improved and was able to carry on the holiday although deeply upset; she did not want to spoil it for the others. She admitted that in May, 1978, she wrote a letter to [Son] which we quote in full -

" May 23rd (Approx)

Darling [ ],

How did you get on in your Cricket match, did come to watch you.

We have borrowed a little tricycle from the [ ] for [ ] and she is whizzing around the yard and longing to show it to you at half term. She says to tell you she has finished her 1a and 1b and is now reading 2a.

Ga and Pa are still away in Spain I expect you have had a post card from them by now.

Daddy says to tell you that he may be able to take you sailing when you come home next weekend. [ ] has asked you and Daddy to sail to France on the boat for the night. Daddy went in a yacht race with [ ] on his yacht and also [ ] went too.

Daddy and I spent the whole weekend gardening, so the garden is now looking really neat and tidy and all the little red flowers are in the middle bed.

Looking forward to seeing you very much

Lots and Lots of Love

Daddy and Mummy  
XX XX

"

To the observation from [ ] that that letter did not show the petitioner to be a lazy husband, as far as concerned the garden,

she explained that she did not want to tell the children that he was, in fact, lying in bed recovering from a bout of heavy drinking.

Mrs. <sup>FORMER</sup> [ ] gave evidence of seeing and hearing scenes between the parties. She said these took place many times. However, she got on well with the petitioner. She had worked at The House for some 4 years and stopped when the respondent left. (In fact she was prevented from returning to continue to work at The House by Mrs. [ ]). She said that the petitioner usually had a drink in his hand but she had not seen him drunk. She had noticed evidence of vomit on four or five times. As an employee she had been quite happy at the house.

Another employee, Mrs. [ ] worked at The House from about January, 1973, until October, 1976. She had seen the petitioner shout at the respondent for what, to her, seemed to be no reason. After [ ] was born she had noticed the respondent crying in the bedroom and did not doubt that reason but she could not relate the crying specifically to the petitioner's shouting. At times the respondent seemed to look very grey in the face. The petitioner could hold his drink. She had heard the record player being played when the baby was trying to get to sleep.

The only part of Mrs. [ ]'s evidence which we think we need mention beyond her impressions of her daughter, which we have already referred to, is that on one occasion in 1970 in the garden of her house at <sup>petitioner</sup> ~~the~~/screamed and went beserk. Most of her evidence was related to what she had been told by the respondent but she depended, obviously, on her feelings as the respondent's mother. However on one occasion after the break up in June, 1978, she was talking to the petitioner and he said that he had been cruel to his wife. He added the word "but" which indicated to Mrs. [ ] that as he was the husband she, the respondent, had to put up with it.

The last witness for the respondent, on her cross petition, was Mrs. [redacted]. She was, as we have already said, one of the closest friends of the respondent, having known her for some 22 years. For a time during 1970 she had shared a house in London with the parties. During that time the petitioner used to scream and bellow a lot at the respondent. In the end she used to scream back. When asked about this the respondent said that it was "just [redacted]" and she was not going to discuss it. The petitioner had a drinking problem but she had not seen him in London being ill although she had seen vomit once in the bathroom. There were times when the petitioner was "well over the top" and then he became aggressive. From 1974 until 1976 she visited the parties in Jersey. The petitioner's drinking habits had become worse, so much so that she decided she would discontinue coming to Jersey because being of limited means she did not want to spend her holidays listening to rows between the parties. As regards other women she had seen the petitioner out twice with someone; once in the King's Road and the other time in a restaurant accompanied by Mr. [redacted]. At the time of the horse show episode she noticed that the respondent was shaking like a leaf and she feared she was going to have a nervous breakdown. She spoke to the petitioner about the respondent and he said that he did not know what to do and that he accepted he had been cruel to his wife. At the time respondent left the home ten days later she telephoned to Mrs. [redacted] and said that there had been a terrific fight, that she could stand it no longer and that she had grabbed hold of the children and gone to her parents. The name of the co-respondent was not mentioned. In cross examination she agreed that the petitioner's usual manner of speaking for three quarters of the time was shouting. She had seen him in an uncontrollable temper two or three times.

/She

She had never seen him strike the respondent. During all the arguments between the parties she had never seen the respondent flinch. Whenever there appeared to be a great deal of shouting by the petitioner the respondent would dismiss it to her by saying "Oh dear, I'm afraid it's C '. She suggested that the petitioner had tried to have intercourse with her on two occasions by presenting himself in her bedroom when he had been staying with her. She denied that it was she invited him to do so. She was most vehement on this point.

The petitioner, the Reverend [ ] and Mr. [ ] gave evidence in denial of the allegations in the cross petition. The petitioner's attitude in the box may be summed up by saying that he felt that a good deal of the allegations of the respondent were exaggerated. This was particularly so in the matter of drink. He admitted that from July, 1977, he had been drinking more but he put that down to the respondent's behaviour with the co-respondent and his resultant worry about the marriage. The co-respondent was a constant source of aggravation. By our finding of adultery from about the middle of 1977 we think this was a fair description of the state of affairs from then onwards. He did not agree that his wife normally kept things to herself (except the affair with [ ]) and if anything needed doing she could be, and was, outright [ ] in the matter. Most of the allegations were specifically put to him in cross-examination and he denied them.

When the respondent had left the home on the 17th June, 1978, he had asked her if it was his fault and she had said that it was not. He agreed that when speaking to Mrs. [ ] in Jersey in June of that year he might have said to her that he hoped it was not his fault. He agreed also that, certainly on one occasion when his

/wife



wife had brought a horse down over the newly tarmacadamised drive he did call her a silly cow, but he did not habitually use bad language to his wife. He had omitted to pay the telephone bill once but otherwise, there had been no difficulties over money. The proceeds from the sale of the house in London had been given to him by his wife as a gift. The family had gone on a holiday to Ibitha in May, 1978, and, apart from the question of the co-respondent about whom most of the quarrels had arisen since September, 1977, they had spent a happy time. He produced a photograph of them taken at that time, and unless as was suggested several times by the respondent, she had posed for it, the group appeared very happy and normal. He admitted that he had been warned off a shoot probably for his behaviour there but that was in December, 1977, when things had begun to get worse between his wife and the co-respondent. As regards other women he had never been unfaithful to his wife.

We have left until last that part of the petitioner's testimony which deals with the African holiday since if the evidence tendered by the respondent about this incident is accepted it would indicate a most callous attitude on the part of the petitioner towards her and strengthen her allegations about his general behaviour. The parties went to Africa after planning the holiday for about a year. They were accompanied for part of the time by Mr. and Mrs. [redacted]. Up to the time when they arrived in Durban the respondent appeared to be enjoying the holiday and gave no indication of being pregnant. Her sudden onset of bleeding happened in the hotel dining room during lunch. She was taken to her room by Mrs. [redacted] with whom the petitioner was content to entrust the care of the respondent. She went to bed at about 5 p.m. after lying down for some time. The petitioner went to talk to her while he changed for dinner. He dined with the

] and went to bed and did not leave the hotel. This is in

/direct

direct conflict with the evidence of the respondent. The next day she seemed all right and was swimming in the hotel pool in the front of the hotel. According to the respondent she did not see her husband all night and wanted to go home but, for the sake of the others, continued with the holiday. The next morning, she said, far from going for a swim of her own volition she was chivied up by the petitioner. Again she said she felt ghastly during the rest of the holiday and in fact asked to go home as she was bleeding all the time.

The petitioner described the rest of the journeys. They stayed in the hotel in Durban, which was a first class hotel with a telephone in every bedroom and the respondent did not see a doctor although he offered to call one, for about a <sup>further four to five</sup> / days. Afterwards they visited a number of places and on one occasion had the use of a private aircraft to see the Victoria Falls. In the plane the respondent said she was crying during the flight. The petitioner thought that after leaving Durban she was in good health, and was at least strong enough to sleep in primitive grass huts for a few days in a remote area at the end of the holiday.

Had the evidence closed there we might have been in some doubt about the merits of the defence to the cross petition. But we heard not only Mr. [ ] but Mrs. [ ]. We will <sup>first</sup> take/the evidence of Mr. [ ]. We were impressed with his testimony and felt able to attach to it greater weight than that of Mrs. [ ] or the domestics. As regards Dr. [ ] he was really an independent witness assisting the Court but although what he said tended to support the respondent's allegations of excessive drinking, it went no further. Mr. [ ] was a Science Graduate, a farmer, and a property owner. His evidence covered four matters; the petitioner's behaviour, his temperament, the effect on the marriage of the co-respondent and the African holiday,

/He

He described the allegations in paragraph 1(a) of the Particulars about the petitioner's drinking and temper as a "load of complete rubbish". He had visited the House on about 15 or 16 times, having known the petitioner from the end of 1970 and was the J's Godfather. When he visited the house in late April or May, 1978, he was concerned at the atmosphere and found the petitioner extremely worried about the increasing relationship between his wife and the co-respondent. He believed that the co-respondent had given or lent a horse to the wife in order to be in constant touch with her. Although the petitioner discussed the position with him in July, 1977, he believed that at that time the and the were just good friends. The petitioner raised the matter again with him on frequent occasions. As for drink although he had seen the petitioner with a little too much he had not seen him "legless". He never became violent or abused his wife. He saw no signs whatsoever of the respondent being treated with cruelty. He did not recall when the petitioner started to drink more heavily but he did remember that the petitioner was always being aggravated by continuous telephone calls to his wife from the co-respondent.

His evidence about the South African holiday supported that of the petitioner except that he could not remember the appearing in the swimming pool. Also he thought she was not too well at one stage later on during the remainder of the holiday. When the respondent left the house in June, 1978, he was distressed to hear of it as he had always thought of them as a united family. The only problem in the marriage had been the infiltration of the co-respondent a situation which had gone on for some 2½ years.

The Reverend ( ) the Rector of the Parish had known the parties since the birth of ( ). He considered the family to be a happy one. Neither party had ever made derogatory remarks to him about the other. The general impression about the children also

was that they were happy. In this connection we think it most unlikely that they would pose in photographs to hide any unhappiness they felt and all the photographs we were shown indicate, to the contrary, a natural happiness that was very apparent. The Rector did not detect any domestic trouble and when it came as it did when the petitioner telephoned him to ask him to come round after the respondent had left in June, 1978, it was a bombshell. He did concede that in some cases one could not always see over the wall into the internal troubles of a family. He felt a personal sense of failure in that he should have been able to detect any strains. This was because he saw " " and the children frequently, at Church and in the home; although " " was not such a constant churchgoer at that time but had become one since the separation. He did not believe that "'s apparent behaviour was a front because she was basically a happy person. When he saw the petitioner on the 17th June, 1978, he was in a very distressed state. Mr. {REV. } had not been asked for help at all by the respondent although he felt that she knew that he would always have been happy to have seen her. She told him afterwards that her marriage had ended and that she wanted her freedom. It was true that he had known better and she was a very good mother with a happy home. He was normally able to find out one way or another the level of domestic happiness. He believed the petitioner to be a moderate drinker and had never seen him under the influence. He had used and her children in a tableau which was photographed to support his campaign to retain the Lord's Prayer in the 1662 form and which was sent to all parts of the world. We had a copy shown to us which depicted hearing her children's prayers and giving every outward sign of an united and contented Christian family.

/Mr.

Mr. [REV] did not agree with the description of the petitioner in paragraph 1(a) of the respondent's Particulars. He had gradually come to see that she had fallen in love with another man. He could not think of any other reason which would cause her to leave a fine home, and such children and to claim that life there was intolerable. He did concede that the petitioner could be difficult if pressed but he was basically a good family man and he believed that the respondent could and did handle him, but at times care was needed. She was sufficiently strong to be able to do so. He would not say the petitioner never was drunk nor lost his temper but the break-up of this family came to him as a bolt out of the blue. She had conceived a deep and genuine love for another man.

Having found there was adultery between the respondent and the co-respondent from some time in the middle of 1977 we have little doubt but that her affections for her husband were beginning to change well before that; in fact, as the petitioner alleges, from about the middle of the previous year. This could not but lead to estranged relations between the parties. This is not to say that the husband did not occasionally use opprobrious language, have outbursts of temper and drink more than was good for him. But we think that the real reason for the wife leaving on the 17th June, 1978, was, as she told her husband, that if she did not leave him she would lose her chance of eternal happiness. Of course she meant that this would be with the co-respondent. We think that the friction which developed within the home from at least the middle of 1977 was due as much to the wife's association with the co-respondent. If the husband showed an antagonistic attitude to the wife from 1977, and in our opinion there is insufficient evidence to support the suggestion that that attitude was normal for him and had continued from a time about two years after the marriage, then her behaviour towards the co-respondent was partly responsible for it. The medical evidence is emphatically /against

against her. She suffered no real injury to her health, bodily or mental, nor a reasonable apprehension of such injury; although it is probably true that at times she was unhappy.

As to any actions by the husband, reviewing the credibility of those who testified before us as well as such documentary evidence as was produced, we have no hesitation in rejecting the respondent's charges and in so doing we have placed considerable reliance on the evidence of Mr. [ ] as well as that of Mr. [ ]

The husband has not been guilty of the grave and weighty misconduct which is required to substantiate a charge of cruelty. We did think it highly unlikely that if he had behaved as alleged over a period of seven years that the wife would not have manifested some signs or symptoms readily discernable to others.

The cross petition is dismissed and the petitioner succeeds on his petition, subject to the reservation we have made about the dates.

We wish to be addressed on the ancillary matters.