29/81

IN THE PRIVY COUNCIL

No. 51 of 1980

ON APPEAL FROM THE BERMUDA
COURT OF APPEAL

Between

JEFFREY CHRISTOPHER ASTWOOD — Appellant

- and -

JOYCE MARGARET ASTWOOD — Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
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IN THE PRIVY COUNCIL No. 51 of 1980

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Between

JEFFREY CHRISTOPHER ASTWOOD Appellant

- and -

JOYCE MARGARET ASTWOOD Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

IN THE PRIVY COUNCIL No. 51 of 1980

ON APPEAL

FROM THE BERMUDA COURT OF APPEAL

BETWEEN:

JEFFREY CHRISTOPHER ASTWOOD Appellant

- and -

JOYCE MARGARET ASTWOOD Respondent

RECORD OF PROCEEDINGS

No. 1

In the Supreme Court

No. 1
Petition

20th December 1978

PETITION
Dated 20th December, 1978

IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION 1978 : No.

The P E T I T I O N of JEFFREY CHRISTOPHER ASTWOOD shows that:

1. On the 15th day of January, 1955 the Petitioner JEFFREY CHRISTOPHER ASTWOOD was lawfully married to JOYCE MARGARET ASTWOOD then JOYCE MARGARET GOMERSALL, spinster (hereafter called "the Respondent") at the Cathedral Church of St. John in Victoria in the Crown Colony of Hong Kong.

2. The Petitioner and the Respondent have cohabited at "Aberfeldy" in Sandys Parish in the Islands of Bermuda.

3. The Petitioner is domiciled in Bermuda; the Petitioner is a Merchant and resides at "Aberfeldy" in Sandys Parish aforesaid, and the Respondent is a Housewife/Retailer and resides separately from the

Petitioner at "Aberfeldy" in Sandys Parish aforesaid.

4. There are four children of the family now living namely:

JEAN MARY ASTWOOD born on the 29th day of September, 1955
MARGARET ANN ASTWOOD born on the 13th day of November, 1956
JEFFREY BRYAN ASTWOOD born on the 14th day of July, 1960
BRIDGET CAROLINE ASTWOOD born on the 5th day of February, 1964.

5. No other child now living has been born to the Respondent during the marriage so far as is known to the Petitioner.

6. There have been no previous proceedings in any Court in Bermuda or elsewhere with reference to the marriage or to any children of the family or between the Petitioner and the Respondent with reference to any property of either or both of them.

7. There are no proceedings continuing in any country outside Bermuda which are in respect of the marriage or are capable of affecting its validity or subsistence.

8. No agreement or arrangement has been made or is proposed to be made between the parties for the support of the Respondent and the said children.

9. The said marriage has broken down irretrievably.

10. The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

P A R T I C U L A R S

1. Following the marriage in January, 1955, the parties travelled back to Bermuda arriving in the month of April, 1955, in accordance with the clear agreement and understanding that had been reached by the parties before the marriage to that effect. The Respondent took an instant dislike to the Island and informed the Petitioner that she wished the parties to return to live in Hong Kong. When the Petitioner advised the Respondent that he did not wish to leave Bermuda, which was his home and where he intended to make his career, the Respondent accepted the position. However, she then proceeded to make life difficult and uncomfortable for the Petitioner. She was rude and demeaning about the friends with whom the Petitioner had grown up, the family and the family business in which the Petitioner was then working. She was only prepared to entertain

and visit rarely, and made it virtually impossible for the Petitioner to entertain or visit with the Respondent any of his former friends by being rude to them and by generally making life uncomfortable for the Petitioner. As a consequence of the Respondent's reaction to his childhood friends, the Petitioner, in an effort to please the Respondent and to make the marriage work made new friends. The Respondent continued her deprecating remarks about the Petitioner's business and family.

2. In or about the year 1956 or 1957, the Respondent passed out, as a consequence of which she underwent a series of medical tests from which it was diagnosed that she suffered from epilepsy. She was prescribed phenobarbitol, which she has taken daily since that diagnosis. It appeared to the Petitioner that the Respondent's personality changed thereafter and, for instance, she became very nervous among crowds of people. The Petitioner immediately employed a full-time housekeeper to run the matrimonial home. It seemed to the Petitioner that the Respondent's dislike of Bermuda increased even further at this time.

3. During the early years of the marriage when the parties were living in an apartment, the Petitioner joined a number of local clubs and organisations to play sport and indulge in other recreational past-times, and generally for both of them to get away from apartment living. The Respondent played golf rarely with the Petitioner but did not participate in any other sport or pasttime with the Petitioner, although the Petitioner wished her to do so and encouraged her to this end.

4. The parties went to Hong Kong in 1959 for the celebration of the Respondent's father's sixtieth birthday. The Respondent informed the Petitioner that she hoped he would remain in Hong Kong and take up employment there. She was deeply disappointed when the Petitioner preferred to return to his native Bermuda, in accordance with the parties' original agreement.

5. In 1959, the Petitioner's uncle left to the Petitioner in his will the property "Aberfeldy" which subsequently became the matrimonial home. The Respondent declined to move to the property, and in 1963 when the Petitioner again asked the Respondent to move to the property, a spacious property ideally suited to bringing up a family, the Respondent refused so to move and demanded that the property be sold. Eventually, in 1965, the Respondent agreed to move for the summer only because her sister and family were to visit, and it was only thereafter that the Respondent consented to stay. When agreeing to stay, the Respondent ordered the removal of the four poster bed in the master bedroom and replaced it with twin beds.

6. By the early 1960s the Petitioner was heavily involved both in his business, community affairs and in politics on the Island. The Petitioner's father had been a Parliamentarian and Member of Executive Council at the time of the marriage and the Respondent was well aware of the Petitioner's intention to become involved in the community, at the time of the marriage. The Petitioner became involved with a number of organisations, many of which required his attendance at social and other functions, very often with the Respondent. The Respondent almost invariably refused to participate on these occasions, or, for example, would attend and then leave after approximately half an hour without the courtesy of a farewell to her host. By this time, the Respondent refused to return virtually all social engagements so that eventually the parties had no social life together whatsoever. By the time of the birth of the last child of the marriage in 1964, the Respondent had withdrawn from life in Bermuda in practically every way, in that she had no social contacts. She delined to read newspapers or listen to news, and so failed to be aware of what was going on in the community, in stark contrast to the Petitioner's own involvements. Neither was the Respondent fully involved with the home, doing little about the house and refusing to involve herself fully with the children of the marriage.

7. From about 1966 onwards, the Respondent, who had independent means, began taking holiday trips abroad on her own, for periods varying from a few days to up to six or eight weeks.

8. During these years, the parties sexual relationship deteriorated, to the extent that sexual intercourse between the parties was infrequent. Since 1966, the parties had not dined together alone in the home and there was no effective communication between them whatsoever, except through the children.

9. By 1970, the parties had no joint life together whatsoever, because of the Respondent's refusal to participate in any such life. The strain of living in this manner took its toll on the Petitioner, and in or about the month of July, 1970, the Petitioner left the matrimonial home. After some nine weeks or so the Petitioner returned to the matrimonial home for the sake of the children and in an effort to preserve the marriage, the Respondent indicating to the Petitioner that it was her wish to preserve the marriage. In fact, she did nothing to help achieve this on the Petitioner's return and behaved no differently than previously.

10. In the early 1970s, the Petitioner with others helped to found the Sandys Rotary Club. The Respondent

was entirely unhelpful, making viscious and dehumanising comments and generally abusing the Petitioner's efforts and declining to assist in the organisation in any way, causing tension and strain for the Petitioner.

11. In 1972, the Petitioner was elected Member of Parliament for Sandys North. He was re-elected in 1976 and the Respondent has yet to congratulate him for either event, or to take any interest in the life resulting from his being a politician.

12. The Petitioner is a member of the Church of England, Chairman of St. James' Church Vestry and a regular Church attender. It has always been his wish to encourage the children of the marriage to attend Church with him, but the Respondent, who is heavily involved in spiritualism has repeatedly dissuaded the children of the marriage from going to Church with the Petitioner, to the Petitioner's distress. In spite of the Petitioner's best efforts to have the children confirmed in the Church of England, the Respondent has blocked every move to this end by the Petitioner, for instance by countermanding instructions given by the Petitioner to one of the children's housemasters with regard to his confirmation. As a consequence, the Petitioner has yet to experience communion with any of his children.

13. During the 1970s, the Respondent's trips abroad increased in frequency and length and she took several six weeks trips to Hong Kong as well as shorter trips to the United States of America and Europe, including a trip on her own immediately following a family holiday to Montreal in 1976.

14. In September, 1977, the Petitioner discovered a letter written by the Respondent to one Bill Coggins, in which she stated that she had had ten years of nothing and that the love she had for her husband had started to die in 1967. The Respondent also declared her love for the said Bill Coggins in the said letter. When the Petitioner taxed her with the relationship, the Respondent merely said that he was an Australian she had met abroad and she enjoyed his company, notwithstanding the terms of the said letter. In or about the month of October, 1978, the Respondent advised the Petitioner that the said Bill Coggins was deceased.

15. That since the discovery of the said letter and the conversation referred to in the preceding paragraph, and as a consequence thereof, the Petitioner has lived separately and apart from the Respondent in the former matrimonial home. He has occupied a separate bedroom, has not had sexual intercourse with the Respondent, and has eaten meals with the Respondent only rarely, in the presence of the children and only for the purpose of

avoiding upsetting the children. All other meals the Petitioner prepares himself and matters such as laundry have been and are looked after by a housekeeper employed by the Petitioner.

THE PETITIONER THEREFORE PRAYS:

(1) That the said marriage may be dissolved.

The name and address of the person who is to be served with this Petition is JOYCE MARGARET ASTWOOD care of Conyers, Dill & Pearman, Rosebank Building, Bermudiana Road, Hamilton, Bermuda, Attorney for the Respondent. 10

The Petitioner's address for service is care of Messrs. Appleby, Spurling & Kempe of Reid House, Church Street, Hamilton, Bermuda, Attorneys for the Petitioner.

Dated this 20th day of December 1978.

(Sgd) APPLEBY, SPURLING & KEMPE
Attorneys for the Petitioner.

No. 2

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN
DATED 20th DECEMBER 1978

IN THE SUPREME COURT OF BERMUDA

(DIVORCE JURISDICTION) 1978 No.

B E T W E E N

JEFFREY CHRISTOPHER ASTWOOD Petitioner

and

JOYCE MARGARET ASTWOOD Respondent

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

The present arrangements for the minor children of the family under 16 and those over 16 who are receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation are as follows:-

(i) Residence: The four children of the family, Jean Mary aged 23 years, Margaret Ann aged 22 years, Jeffrey Bryan aged 18 years and Bridget Caroline aged 14 years, reside with and are cared for by the Petitioner and the Respondent at "Aberfeldy", Sandys Parish in the Islands of Bermuda. The children each have their own bedrooms. No other person save for the Petitioner and the Respondent reside there.

(ii) Education etc.: Jean Mary and Jeffrey Bryan are both in full time employment. Margaret Ann presently attends Bapson College, Boston, Massachusetts, one of the United States of America. Bridget Caroline is presently attending the Bermuda High School for Girls, Pembroke Parish in the said Islands.

(iii) Financial provision: The children are wholly maintained by the Petitioner.

(iv) Access: The Petitioner and the Respondent have continued access to the children of the family.

The arrangements proposed for the children in the event of a decree being granted are as follows:-

(i) Residence: No change is contemplated.

(ii) Education, etc.: No change is contemplated, save it is expected that Bridget Caroline will attend a College or University in due course upon completion of her education at the Bermuda High School for Girls.

In the Supreme Court

No. 2
Statement as to Arrangements for Children 20th December 1978

(continued)

(iii) Financial provision: No change is contemplated.

(iv) Access: By arrangement between the parties.

The said children are not suffering from any serious disability or chronic illness or from the effects of any serious illness.

The said children are not under the care or supervision of the Director of Social Services or other person or organisation.

Dated this 20th day of December 1978

(signed) APPLEBY, SPURLING & KEMPE
Attorneys for the Petitioner

No. 3
Acknowledgment of Service 24th January 1979

No. 3

ACKNOWLEDGMENT OR SERVICE
DATED 26th JANUARY 1979

IN THE SUPREME COURT OF BERMUDA

(DIVORCE JURISDICTION) 1978 No.

B E T W E E N

JEFFREY CHRISTOPHER ASTWOOD — Petitioner

and

JOYCE MARGARET ASTWOOD — Respondent

ACKNOWLEDGMENT OF SERVICE
(Respondent Spouse)

IF YOU INTEND TO INSTRUCT AN ATTORNEY TO ACT FOR YOU, GIVE HIM THIS FORM IMMEDIATELY

1.	Have you received the petition for divorce delivered with this form?	Yes
2.	On what date and at what address did you receive it?	On the 17th day of January 1979 At Rosebank Building Bermudiana Road Hamilton.

3.	Are you the person named as the Respondent in the Petition?	Yes	In the Supreme Court
4.	Do you intend to defend the case?	Yes	No. 3 Acknowledgment of Service 24th January 1979
5.	(In the case of a petition alleging two years' separation coupled with the Respondent's consent to a decree being granted) Do you consent to a Decree being granted?		(continued)
6.	(In the case of a petition asking for divorce and alleging five years' separation) Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances, it would be wrong to dissolve the marriage?		
7.	In the event of a decree nisi being granted on the basis of two years' separation coupled with the Respondent's consent, or five years' separation, do you intend to apply to the Court for it to consider your financial position as it will be after the divorce?		
8.	Even if you do not intend to defend the case, do you wish to be heard on the claims in the petition for		
	(a) costs		
	(b) custody of children		
	(c) maintenance pending suit		

(d) periodical payments

(e) secured periodical payments

(f) lump sum provision

(g) settlement or transfer of property

(h) variation of a settlement

9. Do you wish to make any application on your own account for

(a) access to the children — Yes

(b) custody of the children — Yes

(c) periodical payments or secured periodical payments for the children — Yes

(d) maintenance pending suit — Yes

(e) periodical payments or secured periodical payments for yourself — Yes

(f) lump sum provision — Yes

(g) settlement or transfer of property — Yes

(h) variation of a settlement — Yes

(If possible answer YES or NO against each item in Questions 8 and 9. If you are uncertain, leave a blank).

Dated this 24th day of January 1979.

(If an attorney is instructed, he will sign below on your behalf. (But if the answer to Question 5 is YES, you must also sign here).

Signed: Conyers, Dill & Pearman

Address for Service: Rosebank Building, Bermudiana Road, Hamilton, Bermuda.

(Unless you intend to instruct an attorney, give your place of residence, or if you do not reside in Bermuda, the address of a place in Bermuda to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Registry of the Supreme Court).

We are acting for the Respondent in this matter

(Signed)

Address for service: Rosebank Building, Bermudiana Road, Hamilton, Bermuda.

In the Supreme Court

No. 4
Answer
15th February 1979

No. 4

ANSWER
DATED 11th FEBRUARY 1979

IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION 1978 : No. 292

B E T W E E N

JEFFREY CHRISTOPHER ASTWOOD Petitioner

and

JOYCE MARGARET ASTWOOD Respondent

A N S W E R

1. There is no agreement or arrangement made or proposed to be made between the Respondent and the Petitioner for the support of the Petitioner or the said children.

2. There is no other living child born to the Respondent during the said marriage.

3. The Respondent denies that the marriage has broken down irretrievably and further denies that she is guilty of unreasonable conduct as alleged in the Petition or at all.

The Respondent therefore prays

1. That the prayer of the Petitioner be rejected

2. That the Petitioner be condemned in the courts of this suit.

The Respondent's address for service is care of Messrs. Conyers, Dill & Pearman, Rosebank Building, Bermudiana Road, Hamilton, Bermuda, Attorneys for the Respondent.

Dated the 15th day of February 1979.

No. 5

REQUEST FOR FURTHER AND BETTER PARTICULARS DATED 1st MARCH 1979

IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION 1978 : No. 292

B E T W E E N

JEFFREY CHRISTOPHER ASTWOOD Petitioner

and

JOYCE MARGARET ASTWOOD Respondent

REQUEST FOR FURTHER AND BETTER PARTICULARS of the Petition dated 20th December, 1978 OF PARAGRAPH 10 OF THE PETITION

1. Stating -

(a) each and every one of the Petitioner's former friends referred to, giving their names;

(b) each and every act of rudeness relied upon;

(c) on occasion that there was alleged to be rudeness indicating by name, each and every person present, the occasion, the place, and date of each occasion relied on;

(d) each and every deprecating remark relied on, stating what remark was made about the Petitioner's business, upon what occasion, giving the date, time and place; and likewise about the allegation in respect of the Petitioner's family;

(e) stating whether the said remarks were made in the presence of other persons, and if so, identifying such persons.

2. Of the allegation that the Respondent seemed to dislike Bermuda, stating each and every matter relied on, giving the date, time, place of such matter, whether in the presence of other persons and if so, identifying such persons.

3. Of the allegations in paragraph 4 of the parties original agreement, stating:-

(a) whether the alleged agreement was in writing, if so, identifying the document, or if oral, stating the content of the alleged agreement, the time, date, place and circumstances of the alleged agreement, together with the names, if any, of person present

at the making of the alleged agreement, the time, date, place and circumstances of the alleged agreement, together with the names, if any persons present at the making of the alleged agreement.

4. (i) Of the allegation in paragraph 6 that the Respondent almost invariably refused to participate, stating -

(a) each and every occasion identified by date and activity which the Respondent refused to participate in;

(b) each and every occasion it is alleged that the Respondent left a function early and without saying farewell, giving the date, function and host or hostess involved;

(ii) Of the allegation that the Respondent refused to return virtually all social engagements stating -

(a) the precise circumstances of all alleged refusals;

(b) to whom were the alleged refusals made;

(c) if the said refusals were in writing, identifying the writing; if oral, stating the persons present, the words used, the time, date and place of every incident relied on;

(iii) Of the allegations that the Respondent had withdrawn from life in Bermuda in practically every way, stating -

(a) each and every way it is alleged the Respondent withdrew from life in Bermuda;

(b) each and every occasion complained of.

(iv) (a) Of the allegation that the Respondent declined to read newspapers or listen to the news, stating -

(a) each and every occasion complained of that the Respondent failed to read a newspaper;

(b) each and every occasion complained of that the Respondent failed to listen to the news;

(c) specifying each and every occurrence

complaining of that the Respondent should have known about an event in the community and did not;

(v) Of the allegation that the Respondent was not fully involved with the home, stating -

(a) each and every complaint relied upon as constituting "doing little about the house";

(b) giving the occasions and dates of each and every such occasion relied on:

(vi) Of the allegation that the Respondent refused to involve herself fully with the children stating -

(a) on each and every occasion the Respondent refused, giving the time, date, place and circumstance of each occasion relied on;

(b) the like particulars in respect of each child;

(c) to whom the alleged refusal was made, stating each and every occasion upon which it is alleged a refusal was made, giving the time, date, place, and identifying persons present, if any.

5. Of the allegations in paragraph 10 of the Petition, stating -

(a) each and every occasion upon which the Petitioner requested help and the Respondent refused;

(b) if any requests for help were made, identifying by the time, date, place, the occasion, together with the identity of any persons who were present;

(c) of each vicious comment, stating the words used, the occasion by time, date and place and if in the presence of any other persons, identifying such persons;

(d) of each dehumanizing comment, stating the words used, the occasion by time, date and place and if in the presence of any other person, identifying such persons;

(e) of each and every occasion a request was made to the Respondent, which she declined, stating the words of request and of

declination, identifying each such occasion by time, date, place and identifying any persons present;

(f) of the allegation that the Petitioner suffered tension -

(i) identifying the alleged tension and each and every occasion it was felt;

(ii) whether medical assistance was sought, and if so, identifying each and every occasion and each and every medical person consulted;

(g) of the allegation that the Petitioner suffered strain -

(i) identifying the alleged strain and each and every occasion it was felt;

(ii) whether medical assistance was sought, and if so, identifying each and every occasion and each and every medical person consulted.

6. Of the allegations in paragraph 12 of the Petition that the Respondent blocked every move to have the children confirmed, stating -

(a) each and every occasion relied on, identifying such occasions by time, date, place and if in the presence of other persons, identifying them; if it is alleged that the alleged blocking was in writing, by identifying the document;

(b) identifying which child's housemaster as alleged in paragraph 12, giving the name of the child and the name of the alleged housemaster;

(c) whether the alleged countermanding was oral or in writing, if oral, giving the substance of the countermanding instructions, if in writing identifying the document.

DATED this 1st day of March, 1979

(Sgd) CONYERS, DILL & PEARMAN

SERVED by Messrs. Conyers, Dill & Pearman, Rosebank Building, Bermudiana Road, Hamilton, Attorneys for the Respondent.

No. 6

FURTHER AND BETTER PARTICULARS
DATED 14th MAY 1979

IN THE SUPREME COURT OF BERMUDA
DIVORCE JURISDICTION 1978 No. 90

B E T W E E N

JEFFREY CHRISTOPHER ASTWOOD Petitioner

and

JOYCE MARGARET ASTWOOD Respondent

FURTHER AND BETTER PARTICULARS
of Paragraph 10 of the Petition herein
pursuant to REQUEST dated 1st March, 1979

1. Generally, the matters referred to occurred more than twenty years ago, and the Petitioner is not now able to give the detailed particulars requested, but can say as follows :

(i) Among the former friends referred to are Michael Darling and Nat and Sarah Butterfield

(ii) Examples of the Respondent's rudeness are:

(a) When the said Michael Darling was invited to dinner, the Respondent left the room on his arrival, going into the back bedroom and not re-appearing.

(b)&(c) When Nat and Sarah Butterfield were invited to dinner, the Respondent remained silent throughout the evening, informing the Petitioner at the end of the evening that she did not wish to see them again.

(d) (i) The Respondent regularly referred to the family business as being a "hick town operation". She described the bicycle business as being dirty and demeaning, and stating that she was used to big business, and that the petty business of Bermuda "got to her".

(ii) Likewise, with regard to the Petitioner's family, they were described by the Respondent as being "small time operators", big fish in a little pond" etc. and the Respondent stated that they did not really know what they were doing.

(c) All of these comments were made by the Respondent to the Petitioner directly.

2. The Respondent's dislike of Bermuda stems from the time when the ship, on which she and the Petitioner were travelling first arrived in Bermuda and the Respondent commented, "I don't think I like this place". Thereafter, the Respondent made continual comments indicating a general dislike of Bermuda and a particular dislike of the family business, a dislike of the lack of entertainment, a dislike of Bermuda's black population, and a dislike of the Petitioner's friends. These comments were generally made direct to the Petitioner, but some of them were made in front of Frances Dickinson, a friend of the family, and the Respondent's dislike of Bermuda was evident to the Petitioner's father.

3. (a) The agreement was oral, to the effect that following the marriage the parties would return to live in Bermuda, and the agreement is referred to in paragraph 1 of the Particulars. The agreement was discussed a number of times between the parties prior to the marriage and was not made in the presence of other persons

4.(i)(a) The Petitioner cannot now remember each and every occasion of the Respondent's refusals to participate but the following are examples :

The Petitioner's involvement in the Bermuda Credit Association in 1961.

The Petitioner's involvement in the United Bermuda Party from 1963 onwards.

The Petitioner's involvement in the Chamber of Commerce, particularly during 1968 and 1969.

The Petitioner's involvement in the Sandys Rotary Club, particularly in 1973 and 1974.

In respect of each of these of the Petitioner's activities, a number of social and other functions were involved. The Respondent almost invariably refused to participate.

(b) An example of the Respondent's attending and leaving after approximately half an hour without the courtesy of a farewell to her host was the cocktail party given by the Mamberts, the parties' neighbours at Edgewood in approximately 1969 or 1970.

(ii)(a) The circumstances of the refusals were invariably in conversation between the parties.

(b) The Petitioner.

(c) Oral, to the Petitioner. On the Petitioner's suggestion that they should return a social obligation, the Respondent would say "no way", "I don't like them" and the like comments.

(iii) The matters complained of are sufficiently particularised in the Petition.

(iv) The matters complained of are complaints of a general nature and are examples of the Respondent's withdrawal from life in Bermuda.

(v)(a) Although the Petitioner employed a housekeeper and cleaner, the Respondent never took an interest in matters such as decorating the home, putting out cut flowers and the like.

(b) The matters complained of are examples of a general complaint and are sufficiently particularised in the Petition.

(vi)(a) The Respondent declined to participate in family activities such as playing sports, playing cards together, reading the children stories when they were young or even watching television together. The said matters complained of are by way of example and are sufficiently particularised in the Petition.

(b) The matters complained of apply in respect of each child.

(c) The Respondent's refusal was made orally to the Petitioner and to the children of the family.

5. (a) It was the Respondent's general attitude and her comments which were unhelpful to the Petitioner.

(b) See above.

(c) The Respondent made comments in the following and similar terms. "Why do you want to help that bunch of clods?", "Why are you wasting your time trying to bring the community together?", "You can't do it anyway", "What is it going to achieve?"

(d) The Petitioner contends that the above comments are both vicious and

(e) In view of the Respondent's attitude, no request was made by the Petitioner of her.

(f) (i) The Petitioner suffered tension and

strain generally over the periods in 1973 and 1974.

(ii) No medical assistance was sought by the Petitioner.

(g) See above.

6. (a) So far as the three girls were concerned, the Respondent refused to permit them to be confirmed. The refusals were oral and were made on a number of occasions directly to the Petitioner.

(b)&(c) So far as Jeffrey Bryan was concerned, the Petitioner had arranged that he should attend confirmation classes at his school in England. The Respondent blocked the Petitioner's wishes by telling the boy's Housemaster, Michael Harvey, that she did not wish it. This was done orally at a time, date and place unknown to the Petitioner.

Dated the 4th day of April 1979

(Signed) APPLEBY, SPURLING & KEMPE
Attorneys for the Petitioner

TO: Messrs. Conyers, Dill & Pearman
Attorneys for the Respondent

No. 7

AMENDED FURTHER AND BETTER PARTICULARS
DATED 14th MAY 1979

IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION 1978 No. 292

B E T W E E N

JEFFREY CHRISTOPHER ASTWOOD Petitioner

and

JOYCE MARGARET ASTWOOD Respondent

AMENDED FURTHER AND BETTER PARTICULARS of Paragraph 10 of the Petition pursuant to REQUEST dated 1st March, 1979 and ORDER of Mr. Justice Barcilon dated the 14th May 1979

1. Paragraph 1 of the Further and Better Particulars dated the 4th of April, 1979 is hereby amended by the deletion of the word "Generally".

2. Paragraph 1 (e) of the Further and Better Particulars dated the 4th April, 1979 is amended by the addition of the words "and were not made in the presence of other persons".

3. Paragraph 5 (d) of the Further and Better Particulars dated the 4th April, 1979 is amended by the addition of the words "the said comments were made by the Respondent to the Petitioner directly and were not made in the presence of other persons".

Dated the 14th day of May, 1979

(Signed) APPLEBY, SPURLING & KEMPE
Attorneys for the Petitioner

TO: Messrs. Conyers, Dill & Pearman
Attorneys for the Respondent

In the Supreme Court

No. 8
Judgment of Barcilon P.J. 30th July 1979

No. 8

JUDGMENT OF BARCILON P.J.
DSTED 30th JULY 1979

IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION 1978 No. 292

JEFFREY CHRISTOPHER ASTWOOD — Petitioner

and

JOYCE MARGARET ASTWOOD — Respondent

Appleby, Spurling & Kempe for the Petitioner
Conyers, Dill & Pearman for the Respondent

J U D G M E N T

These proceedings arise out of the Petition of Jeffrey Christopher Astwood ("the husband") seeking the dissolution of his marriage to Joyce Margaret Astwood ("the wife") on the grounds that the marriage has broken down irretrievably and that the wife has behaved in such a way that the husband cannot reasonably be expected to live with her. The particulars go into some four pages of typescript.

The parties were married in Hong Kong on the 15th January, 1955. In the Spring of the same year, they came to Bermuda to take up their residence here. They have had four children, the eldest being now nearly 24 years of age and the youngest is just over 15.

The husband alleges that from the moment of her arrival in Bermuda, the wife took an instant dislike to the place and tried to induce the husband to return to and settle in Hong Kong. When the husband told her that he intended to make his life and career in Bermuda, the wife accepted the position, but proceeded to make life as difficult and uncomfortable for the husband as she could. It is alleged that the wife was unsociable and rude to the husband's friends, and made derogatory remarks about them, and about the husband's business and his family.

It appears that on an occasion in 1956 or 1957, the wife blacked out, and tests disclosed that she suffered from epilepsy. Not unnaturally, this affected the wife's conduct, particularly in crowds. She was obviously nervous that she might suffer a recurrence and pass out in public.

The husband further complains that the wife would not join him in social and sporting activities.

It is alleged that when the parties visited Hong Kong in 1959 to visit the wife's family, the wife again tried to induce the husband to remain there. The wife was deeply disappointed when the husband expressed his preference to return to Bermuda, which was in accordance with the agreement made between the parties when they first got married.

In 1959, the husband inherited the property known as "Aberfeldy" in Somerset. It was then occupied by the husband's grandmother who had a life interest in the property. When the grandmother died in 1963, the husband suggested that he and his family should move into "Aberfeldy" which was ideally suited for bringing up a family, but the wife refused and it was only in 1965, when the wife's sister and her family were coming to Bermuda for a visit that the wife agreed to move into "Aberfeldy", and then consented to reside there.

By the early 1960s, the husband was getting heavily involved in his business, in community affairs and in politics in Bermuda. This necessitated his attendance at a number of social and other functions, but the wife took little or no part in them so that eventually the parties had no social life together. The husband alleges that by 1964 the wife had withdrawn from life in Bermuda in practically every way, taking no interest in what was happening here and in her husband's communal activities.

From 1966 onwards, the wife began to take trips abroad on her own, for periods ranging from a few days to 6-8 weeks. By that time, sexual relations between the parties deteriorated. There appears to have been an absence of communication between the parties, their only point of contact being the children.

By 1970, the situation between the parties had so deteriorated that the husband left the matrimonial home. He returned there some 8-9 weeks later for the sake of the children, on the wife's indication that she wished to preserve the marriage. On his return, the husband found that she did nothing to achieve this.

In 1972, the husband was elected Member of Parliament, and re-elected in 1976. The wife took no interest in the new life on which the husband was embarking.

In matters of religion, the husband was a keen church-goer, particularly after the move to his native Somerset, and became Chairman of the Parish Vestry. The husband wished that the children should also attend

church regularly, but the wife repeatedly dissuaded them from going to church. She also blocked all the husband's efforts to have the children confirmed in the Church of England, and in the case of the boy Brian, who was in England at the time, she countermanded the husband's instructions that the boy should be confirmed.

It appears that the wife was involved in spiritualism, and although she believed in God, she had no particular religion.

The husband alleges that in the 1970s, the wife's trips abroad increased in frequency and in length. She took several trips of six weeks duration to Hong Kong, as well as shorter trips to the United States and to Europe.

In September 1977, the husband discovered a draft of a letter written by the wife to one Bill Coggins. A copy of this document was produced during the hearing and I shall deal with its contents at greater length later in this judgment.

The husband states that since the discovery of that letter, he has lived separately and apart from the wife in the matrimonial home.

By way of answer to the Petition, the wife denies that the marriage has broken down irretrievably and she further denies that she has been quilty of unreasonable conduct as alleged in the Petition or at all.

Both the husband and the wife gave evidence before me. I formed the impression that the husband was trying to tell the truth to the best of his ability, whereas I am completely satisfied that the wife had no respect whatsoever for the oath she had taken to tell the truth, the whole truth and nothing but the truth. I do not propose to give details of the various occasions when she was proved to have told deliberate lies - suffice it to say that in respect of some four or five matters she has made categorical statements which she later had to withdraw. As a result, where the wife's version of any incident or matter is in conflict with that of the husband, I accept the latter's version.

The husband gave evidence in support of the allegations contained in the Petition. He also mentioned that some time in 1978 he and the wife had gone to see Dr. Howard Dickinson, Psychiatrist and marriage counsellor. The doctor's advice was that the marriage had broken down.

The husband was cross-examined at length. He agreed that about 12 years ago, the wife had gone to England for an operation and that he had then written to

her not to come back to Bermuda, "because of the circumstances up to that time". The wife, however, did come back to Bermuda.

Regarding the epileptic fit which the wife had suffered early on in the marriage, the husband agreed that this could be one of the reasons why the wife could not take part in social activity. He said that it had worried her for about 2 years but he would not agree that this was the only reason for the wife's withdrawal.

It was suggested to the husband that his wife wanted him to keep out of politics in order that he should concentrate on the business, but he replied this was not so. What she said to him was "Stay out of politics - you'll never make it anyhow".

The husband also denied the suggestion that the wife was quite prepared to move to Aberfeldy if she could put money into it and if the property could be transferred into their joint names.

Regarding the separation in 1970, the husband agreed to return to the matrimonial home on the wife's undertaking to entertain more and to change her attitude towards their life style in Bermuda.

The husband was questioned about a notation "14th September, 1976" which appears on the copy of the wife's draft letter to Bill Coggins. The husband admitted that this notation was in his handwriting and, according to my note, the husband said,

"It was probably the date I found it."

A few minutes later, he said,

> "I did not say that I probably found the letter on 14th September, 1976. This was some doodling on my part. I found the letter in September 1977. I taxed her with it immediately and moved out of the master-bedroom. I do not agree that I found the letter on 14th September, 1976 and that I did not move out of the bedroom until January 1978."

The husband agreed that in August 1978, when one of the daughters came home, he moved out of her room and back into the master-bedroom, but by then the divorce proceedings had been in the hands of his attorneys and he had made attempts to get the wife to move out of the matrimonial home.

In April 1978, the husband went to Australia on some official convention, and the wife joined him there, uninvited and unannounced. The parties shared a

bedroom in the hotel, and appeared in public together but he said that this was in order not to cause a scene or embarrassment.

In re-examination, the husband said that he could pin his removal out of the master-bedroom by reference to his diary. In September 1977, they had taken their daughter Bridget to school in Boston, and on the October, 1977 a business friend paid a visit to Bermuda. The husband said that he had moved out of the bedroom after the daughter had gone to school and before the business friend had arrived. In any event, the husband said positively that he moved out of the master-bedroom soon after the finding of the letter.

The date of the move out of the bedroom was obviously of great importance to the Defence. If the letter had been found by the husband on 14th September, 1976, and he only moved out of the bedroom over a year later, he could not be heard to say (with any chance of success) that the finding of the letter was the last straw that had broken the back of the marriage.

According to the wife, the husband spoke to her about that letter in November 1976 and she and her husband had continued to share the master-bedroom until January 1978.

Taking into account all the evidence on this issue, I am satisfied that the husband moved out of the matrimonial bedroom soon after the finding of the letter.

Having regard to the very fragile state of the marriage and its past history, it is inconceivable to me that the husband should have continued to share the bedroom with the wife after the finding of that incriminating and revealing piece of evidence.

For that letter reads as follows, in the part that is typed:-

'Dear Bill,

> The boot is certainly on the other foot. You no doubt are emotionally exhausted from your previous attachment and I have ten years of nothing. The love I had for my husband started to die after my operation. I certainly had a great summer but through it all came you. Bill I cannot put my feelings in a letter, the impact is not the same, nor over the telephone. I ache inside, and I know that that means I love you. Please change your mind, and say I can come to Melbourne, with no strings attached, on my way to Hong Kong. I am asking like one of your children, but with a difference, I know the

risk. If Melbourne is not good for you, perhaps Sydney. It is not just the physical that attracts me to you, also the mental. I enjoyed being in your company, and just want to get to know you better. I ask nothing of you nor of anyone else. I just want to give of myself, and I hope you can understand that.

Bill, I love you."

There were other writings on that document, and the wife admits that they are in her handwriting. The P.S. reads as follows:-

"I might just ignore what you said on the phone. Can we not meet on a friendly basis. You know you are not being fair by your refusal. I am not going feel right (illegible). I have seen you, and I suppose that is why I need to see you.

In my view, the inference is irresistible that a sexual relationship had existed between the wife and Mr. Coggins, and it is not surprising that the husband drew the same inference. Apart from the inferential admission of a sexual relationship with another man, there are references to her love for her husband beginning to die after her operation, and,

"I have ten years of nothing."

With the previous absence of common interest between the parties and the wife's conduct towards the husband and his family and friends, it is difficult to accept that the husband would not have seen in that letter the irretrievable breakdown of his marriage.

The husband was also questioned about his relationship with a Denise Gallagher, and he admitted that sexual intercourse had taken place between them. The husband was also shown a slip of paper which he admitted was in his handwriting. This piece of paper contained what could be called the husband's plan of campaign with regard to his matrimonial affairs. There was to be a sale of the house, the wife would move out and he would then move out. Everything was to be sold. The next note just reads "Haitian Divorce" and this suggests that the husband considered the possibility of obtaining a divorce in Haiti. The next four notes relate to the various steps relating to "Denise". She was to move in, and buy Aberfeldy. She was to be introduced to the aunts and to the husband's family, and so on.

The only witness called on behalf of the husband was Miss Frances Dickinson who had been a close friend of the family for many years. Miss Dickinson did not

feel that the wife was as happy here as she would have been elsewhere. Miss Dickinson added,

> "I guess Bermuda was smaller than she had hoped for".

When the parties separated in 1970, Miss Dickinson was rather surprised. She had a chat with the wife who told her that maybe the husband wanted her to entertain more and maybe she had not done enough in that line.

Miss Dickinson spoke of the 1976 elections when the husband was busy canvassing. The wife then made the remark that,

> "it was ridiculous for him to run as he would not get in".

In the summer of 1978 the wife told Miss Dickinson that she had met an Australian in Hong Kong and that she was very fond of him, and as she had no feeling or love for her husband, she felt this was alright.

The wife was the only other person to give evidence in the proceedings. She said that on her arrival she was disappointed in the appearance of Bermuda which had that grey haze caused by the dead cedars. She found Bermuda very different from what she had been used to, and apart from her husband, she knew no-one in the Island. Her attitude changed, she said, after the birth of her first child and when she began to make friends.

The wife denied that she had said that she wanted to return to Hong Kong to live there.

Regarding the husband's friends, the wife would not agree that she had been rude and demaning towards them, but she might have said derogatory things about them out of temper. This might have happened as a result of something the husband had said to her.

The wife said that by nature she was a very shy person and found it difficult to make friends, and this accounted for her withdrawal, but after she had met people and liked them, she would see them from time to time.

Her epileptic fits in 1957 and 1958 put her into a state of depression for about 2 years, but she did try to go out and entertain during this period. She was constantly fighting her depression and her fear of blacking out in public.

The wife said that when her father died in 1960, the husband suggested that he should take over her

father's business in Hong Kong. She said this,

> "because when my father died, he (the husband) sent a cable to the Hong Kong Shanghai Bank asking if he could be of any assistance".

When she was cross-examined about this part of her evidence, the wife embroidered her original version by adding that in the cable to Hong Kong the husband had said,

> "Could he come and help with the business."

When she was reminded of her original evidence, the wife admitted that there was nothing in the cable about coming out to help with the business.

The general tenor of the wife's evidence was that she led a normallife in Bermuda, doing her fair share of entertaining, all this being subject to her innate shyness and her dread of an epileptic fit taking place in public.

Regarding the husband's desire to enter politics, the wife said that her advice to him was that he should not go in for politics, but concentrate on the business, but she did not try to dissuade him. She helped the husband by entertaining. She did not do any canvassing or any work of that sort because of the children.

In cross-examination on this point, the wife said that in 1976 the youngest child was then 11, and she had to agree that the children need not have prevented her from doing some canvassing if she had wanted to. She then added this remarkable statement,

> "The reason why I did not canvass was that I thought only born Bermudians should canvass. Also, I was not asked."

The wife also mentioned the letter which the husband had written to her in 1967 when she was in England having her operation. She said that the husband suggested that she should not come back to Bermuda but he had given no reason. When she was cross-examined on the subject of that letter (there were in fact two letters), the wife said that the husband did give a reason for not wanting her to come back to Bermuda, but she could not now remember what that reason was. The wife was shown two documents and she admitted that they were copies of the two letters which the husband had written to her in 1967.

I do not need to quote extracts from those letters but they run to a total of about 9 pages of manuscript,

and they contain substantially all the grounds of complaint which the husband is now putting forward against the wife. One passage taken from the letter dated the 29th June, 1967 is very revealing as to the state which the marriage had reached at that time :-

> "You must realise by now how completely you have destroyed me and any possibility of making up for what you have done to me. If you do not understand that, it can only be because of your complete unwillingness to do so. It is no good for you to think that you can try and go back to a happier starting point when you have made it abundantly clear on several occasions that you do not love me, or care for me or care for what I stand for. You have done it too often to me through all these wasted years together. In fact I resent even having to spell it out to you this way, for I expect a normal human being to be able to understand that."

With regard to these two letters, the wife conceded that what the husband wrote in them was an expression of his true feelings, and yet later in her evidence, the wife said that when in 1977 she taxed the husband with the writing of the letter, he replied that he had written them as a punishment. One may well ask "Punishment for what? What had the wife done which deserved punishment?", and further, it is not very clear how the writing by the husband of his genuine feelings could operate as a punishment on the wife. The wife's remark about her being punished made such little sense that these questions were left unasked and therefore unanswered.

Regarding the draft letter which she wrote to Mr. Coggins, the wife maintained that in spite of its contents, nothing improper occurred between them. She had this to say about the relationship:-

> "I knew Mr. Coggins for five days in 1976. I did not then tell him that I loved him. We did not talk at all of an intimate relationship as a possibility.
>
> In fact, I did fall in love with him at that time.
>
> It was my wish to see him again in the future.
>
> I did write and type the draft letter, Exhibit 1.
>
> I would agree that anyone reading that letter would infer that there was an imtimate association with the addressee."

The wife also agreed that she had told Sir Jeffrey Astwood, her father-in-law, and Miss Frances Dickinson that she had fallen in love with another man, but she would not agree that it was in 1978 but in 1977 that she had spoken to Miss Dickinson about this matter.

The wife described her feelings for Mr. Coggins as being an infatuation. However she may describe it, the fact remains that she felt sufficiently strongly about him to tell Miss Dickinson some 15 months later (on her own admission) that she was in love with Mr. Coggins, and if she is to be believed, it was some 15 months after an innocent relationship which lasted 5 days in 1976 and the persons concerned had not seen each other since.

With reference to Miss Dickinson's evidence about what the wife had said of the husband's chances of being elected, the wife said:-

> "I have not said that my husband would not get elected if he ran for Parliament.
>
> Miss Dickinson was lying when she gave this evidence yesterday.
>
> I did not have any conversation with her about my husband's prospects. I probably said that he was not right for politics."

It was therefore a matter of intense interest to know what possible motive Miss Dickinson could have for making up this story, and the wife said :-

> "It was after I told her about the interview we had with her brother that Miss Dickinson turned against me.
>
> I would not commit perjury for a reason like that.
>
> I do not think that a reasonable person could commit perjury for such a reason."

And neither do I. I am quite satisfied that Miss Dickinson was telling the truth on this point.

I have covered at length the substance of the evidence given in this case and I am satisfied that from the beginning of the marriage the wife was antagonistic to everything connected with Bermuda, her husband's business, her husband's family and her husband's friends. In an oblique way, the wife has admitted many of the husband's grounds of complaint, but she tried to explain it away by reference to her innate shyness and her dread of having epileptic fits in public. I think the wife has grossly exaggerated these two possible reasons for her conduct. If they had been the real

reason for her conduct, I feel sure that the husband would have had every sympathy for her and he would have made every allowance for her. I am quite satisfied that the wife is trying to put forward an untrue explanation for her conduct.

It must of course have been very difficult for the wife to leave her family in Hong Kong and come to Bermuda where she knew no-one. But that is something that happens in countless marriages, and with a certain amount of goodwill on the part of both husband and wife, they make a new life for themselves, with new friends, new interests and new ambitions. It would certainly seem that in this case the wife made no attempt whatsoever to adjust to her new life, sharing none of her husband's friends and interests and concentrating all her attention on her children, to the exclusion of everything else.

After the move to Aberfeldy in 1965, the husband threw himself more actively into community affairs, and he had a right to expect some support, moral and social, from his wife, and none was forthcoming.

By 1967, the marriage was at such a low ebb that the husband was writing to his wife not to come back to Bermuda. He must have felt very strongly indeed that there was little hope for this marriage if he wrote to his wife along those lines at a time when she was in England undergoing an operation.

The husband's version of the state of the marriage at that time is supported by the two letters he wrote to his wife in June 1967, and in her draft letter to Mr. Coggins the wife was writing that the love she had for her husband started to die after her operation. It seems to me that from then on the parties continued to prop up a broken-down marriage for the sake of the children.

In 1970, the situation again became so unbearable that the husband left his wife for some 9 weeks, and only returned to her on her promise to mend her ways. She seems to have made little attempt to change her attitude to the marriage, and when the husband in 1972 ran for Parliament the wife took no active part to contribute to his success. In fact, she ran down his aspirations and denigrated his attempts.

Most men who succeed in public life are heard to say that they could not have achieved what they did if it had not been for the active support of their wives. In this case, it might be true to say that the husband succeeded in spite of his wife.

How long the situation between the husband and the wife would have continued is a matter for speculation. I am satisfied that between 1970 and 1977, the parties

continued to exist together, their only point of contact being the children. And then in the summer of 1977 comes the discovery of the draft letter addressed by the wife to Mr. Bill Coggins. I am satisfied from that letter that a sexual relationship had existed between the wife and Mr. Coggins and it is not surprising that the husband drew the same inference. Coupled with the reference that her love for her husband had started to die in 1967, this letter must have dealt the death blow to the marriage, and I am satisfied that from the date of the discovery of that letter (and I place that at September 1977) the marriage had irretrievably broken down.

Mr. Gunning submits on behalf of the wife that if such had been the case, the husband would have left the matrimonial home - as a man of means, he could have found other accommodation or even gone to live with his parents at Greenfields. The fact that he did not do so, argues Mr. Gunning, proves that the marriage had not broken down and that the husband could reasonably be expected to live with the wife.

I do not accept that submission. There is no legal obligation on a person to leave the matrimonial home as soon as he considered the marriage at an end. The fact that the husband continued to live under the same roof as his wife does not mean that he continued to live with her. There is authority for saying that husband and wife can be held to be living apart even though they are living in the same house, and in the present case I am satisfied that that is what happened. As soon as it was reasonably practicable after the finding of the letter, the husband moved out of the master-bedroom, and soon after Xmas in 1977, he was putting the matter in the hands of his attorneys, and making attempts to get the wife to leave Aberfeldy.

Regarding the visit to Australia in April 1978, I accept the husband's evidence that the wife arrived there uninvited and unannounced. I do not believe the wife when she said that she had told the husband that she would be coming to Australia nor that the visit was undertaken on the advice of her attorney. It is not unreasonable to suspect that her visit to Australia was not unconnected with Mr. Coggins, and in order to explain the trip, the wife then joined her husband in Sydney.

Mr. Gunning submits that, as in 1967 and 1970, the parties could have made up their differences. He fails, however, to take into account the discovery of the draft letter. This letter introduced into the marriage a new and totally destructive element.

Mr. Gunning submits that the husband has only instituted these proceedings because of his relationship

In the Supreme Court

No. 8
Judgment of Barcilon P.J.
30th July 1979

(continued)

with Denise Gallagher.

There is no evidence before me as to the date when the husband began his intimate relationship with Miss Gallagher.

The wife said that it was in February 1978 that she got the impression that her husband was having an affair with Miss Gallagher. She obtained that impression because after speaking to the girl's mother on the telephone, the husband appeared embarrassed.

In my opinion, if the marriage had irretrievably broken down in September 1977 by reason of the wife's behaviour, then anything that the husband may have done after that date is irrelevant.

In conclusion, my findings are that the marriage between the parties has broken down irretrievably and that the wife has behaved in such a way that the husband cannot reasonably be expected to live with her. I will therefore order a Decree Nisi.

A Statement has been filed by the husband as to the present arrangements for the children of the family, but as the arrangements for the future would depend on the question of custody, I will withhold my certificate until such time as more is known of the future arrangements.

Dated this 30th day of July 1979

(Signed) H. BARCILON
PUISNE JUDGE

No. 9

NOTICE AND GROUNDS OF APPEAL
DATED 9th AUGUST 1979

IN THE COURT OF APPEAL 1979: No. 19

B E T W E E N

JOYCE MARGARET ASTWOOD Appellant

and

JEFFREY CHRISTOPHER ASTWOOD Respondent

NOTICE OF APPEAL

1. TAKE NOTICE that the Appellant being dissatisfied with the Decision of the Supreme Court contained in the Judgment of the Supreme Court dated the 30th July, 1979, DOTH HEREBY APPEAL to the Court of Appeal upon the grounds set out in paragraph 3, and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the name and address of the person directly affected by the appeal are those set out in paragraph 5.

2. PART OF DECISION COMPLAINED OF:

The grant of the Decree Nisi of divorce.

3. GROUNDS OF THE APPEAL

(i) The Learned Judge failed to consider or apply properly or at all, the normal requirement for corroboration of the Respondent's evidence, and failed to give any, or any proper, regard to the absence of corroborative evidence or satisfactory account for such absence;

(ii) The Learned Judge failed to consider adequately, or at all, the submissions that the burden of proof lay upon the Respondent to the extent that the proof had to be clear that the Appellant had behaved in the manner alleged, and that the Respondent could not be reasonably expected to live with the Appellant.

(iii) The Learned Judge failed to apply the proposition that the Court must be satisfied, both as to the behaviour of the other party and that the Respondent cannot

reasonably be expected to live with the Appellant before granting a Decree Nisi;

(iv) The Learned Judge ought to have found upon the evidence, that the Respondent was in desertion unless he could establish just cause;

(v) The Learned Judge ought to have applied the principle that the Husband/Petitioner being in desertion, the conduct to justify his desertion, would have to be of a grave and weighty nature, and that in the instant case there was no evidence of any grave or weighty matters affecting the Respondent or his health, bodily or mentally;

(vi) The Learned Judge made findings of fact which no Tribunal properly directing itself could properly make, and in particular found as a fact that the draft letter written by the Appellant to Coggins was found in September 1977, whereas, the Respondent admitted initially that he had written in his own hand the date upon it as being the date when he found it, namely the 14th September, 1976;

(vii) The Learned Judge ought to have found that the Appellant and the Respondent continued to cohabit for twelve months after the finding of the said letter, and that therefore no reliance could be placed upon an allegation of the Husband/Petitioner that the marriage had broken down by reason of the Appellant's adultery which said adultery was denied. The Learned Judge thereby failed to take account of the effect of Section 6(1) of the Matrimonial Causes Act 1974;

(viii) The Learned Judge failed to give any, or any sufficient, weight to the admitted facts that the Respondent considered to live in the matrimonial home throughout the period, on occasions to share the matrimonial bed, to take meals together, and that such conduct ought to have established that the Respondent found it possible to live with the Appellant, notwithstanding any allegations he may have made;

(ix) The Learned Judge made findings of fact contrary to the interest of the Appellant upon no, or no sufficient, evidence;

(x) The Learned Judge made findings of fact

contrary to the evidence;

(xi) The matters set out in the Petition do not in any event, amount to conduct that ought to satisfy a Court that the Respondent cannot reasonably be expected to live with the Appellant.

4. RELIEF SOUGHT FROM THE COURT OF APPEAL

That the Petition for divorce by the Respondent be dismissed.

5. The person directly affected by this appeal is:

Name	Address
Jeffrey Christopher Astwood	c/o Appleby, Spurling & Kempe Church Street Hamilton.

DATED this 9th day of August, 1979

(Signed) Conyers, Dill & Pearman,
Attorneys for the Appellant
whose address for service is
Rosebank Building
Bermudiana Road
Hamilton.

In the Court of Appeal

No. 10
Judgment of Blair-Kerr P.
28th March 1980

No. 10

JUDGMENT OF BLAIR-KERR P.
DATED 28th MARCH 1980

IN THE COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL NO. 10 of 1979

JOYCE MARGARET ASTWOOD — Appellant (Respondent)

and

JEFFREY CHRISTOPHER ASTWOOD — Respondent (Petitioner)

J U D G M E N T of BLAIR-KERR, P.

I shall refer to the Respondent (Petitioner in the Court below) as "the husband" and to the Appellant as "the wife".

The Petition is dated 20th December 1978. The husband sought dissolution of his marriage on the grounds that the marriage has broken down irretrievably and that the wife has behaved in such a way that he cannot reasonably be expected to live with her. By her Answer, the wife denies that the marriage has broken down irretrievably and further denies that she has been guilty of unreasonable conduct as alleged; and she prays that the Petition be rejected.

The hearing took place on 9th and 10th July 1979. In support of his allegations, the husband gave evidence on oath and called one witness. The wife gave evidence on oath, but she called no witnesses.

The learned judge found that the marriage had broken down irretrievably and that the wife had behaved in such a way that the husband cannot reasonably be expected to live with her. He thereupon made a decree nisi for the dissolution of the marriage. This is an appeal by the wife against that decision.

In giving his decision, the learned judge said:-

"I formed the impression that the husband was trying to tell the truth to the best of his ability whereas I am completely satisfied that the wife had no respect for the oath she had taken to tell

the truth, the whole truth and nothing but the truth. I do not propose to give details of the various occasions when she was proved to have told deliberate lies - suffice it to say that in respect of some four or five matters she has made categorical statements which she later had to withdraw. As a result, where the wife's version of any incident or matter is in conflict with that of the husband, I accept the latter's version."

This is strong language to say the least of it; but, from a reading of the judgment, it is clear that the learned judge did not reject the wife's evidence in toto. Indeed, it would have been surprising if, in the absence of any contrary evidence and in the absence of any cross-examination with respect to a number of statements made by her, he had rejected such statements out of hand. To take a few obvious examples, there wasn't the slightest reason to doubt her evidence to the effect that she was born in China, that she had lived all her life in the Far East before coming to Bermuda, that she came from a wealthy family, that she had been imprisoned by the Japanese in Shanghai during the War, and that her parents were divorced when she was 25 years of age. It would appear that the judge's view was that where the wife's version of any incident or matter was in conflict with that of the husband, the judge accepted the latter's version.

It is common ground that the parties met in Hongkong and they were married there on 15th January 1955. After a 3-month cruise, they arrived in Bermuda in April 1955. There are four children of the marriage, namely:-

Jean Mary, born 29th September 1955, now 24 years old;
Margaret Ann, born 13th September 1956, now 23 years old;
Jeffrey Bryan, born 14th July 1960, now 19 years old; and
Bridget Caroline, born 5th February 1964, now 16 years old.

All four children live with their parents at the matrimonial home ("Aberfeldy") except that Margaret is at present at college abroad, and Jean lives in a cottage at the back of Aberfeldy

The husband inherited Aberfeldy under his grandfather's will. Under the will the husband's grandmother was entitled to live on in Aberfeldy for her lifetime. She died in 1963. After she died, the husband's parents moved into Aberfeldy until their own house ("Greenfields") could be renovated.

From 1961-1965, the parties lived in a house named "Millwood", in Store Hill Road, Smiths; and in 1965 they moved into Aberfeldy where they have lived ever since.

The husband's family business is J.B. Astwood and Son Ltd. It was, according to the husband, "bankrupt" in 1955 and he had to spend a great deal of time getting the company on its feet.

At the time of the marriage, the petitioner's father, Sir James Astwood, was a Parliamentarian and a Member of the Executive Council. By the early 1960s the husband was becoming heavily involved not only in his business but also in community affairs and in politics. In 1972, he was elected Member of Parliament for Sandys North and he was re-elected in 1976.

During the period 1956/58 the wife had several epileptic fits, and since the first attack until now, she has, on medical advice, taken daily a drug named phenobarbital.

In 1967, the wife went to England to have a surgical operation - a mastectomy, which is the medical term for surgical removal of the breast. While she was in England, she received a letter from the husband in which he suggested that she should not return to Bermuda.

In 1970, the husband left the matrimonial home for 9 weeks.

In 1976 or 1977 (I shall return to the question of date presently) the husband found, as he said, "in the rubbish" a draft of a letter partly typed and partly in the handwriting of the wife. It was addressed to a man named Bill Coggins in Australia. She had met him in Hongkong in 1976. The letter was drafted by the wife. So far as decipherable, it reads as follows:-

> "Dear Bill,
> The boot is certainly on the other foot. You no doubt are emotionally exhausted from your previous attachment and I have ten years of nothing (illegible) the love for my children. The love I had for my husband started to die after my operation. I certainly had a great summer as per letter enclosed (illegible) from past experience (illegible) on my (lonely?) bed, but through it all came you. Bill I cannot put my feelings in a letter, the impact is not the same, nor over the telephone. I ache inside, and I know that that means I love you. Please change your mind, and say I can come to Melbourne, with no strings attached on my way to Hongkong. I am asking like one of your children, but with a

difference, I know the risk. If Melbourne is not good for you, perhaps Sydney. It is not just the physical that attracts me to you, also the mental. I enjoyed being in your company, and just want to get to know you better. I ask nothing of you nor of anyone else. I just want to give of myself and I hope you can understand that. Bill, I love you."

Below there are words (some deleted) in the handwriting of the wife, which, so far as decipherable, read:

"The best lawyer is (illegible) (illegible) he asked (deleted and illegible) me for a divorce"

There is a postscript in the wife's handwriting which reads:-

"P.S. I might just ignore what you said on the phone. After all can we not meet on a friendly basis. You know you are not being fair by your refusal. I am not going to feel right (illegible) I have seen you, and I suppose that is why I need to see you. ~~Surely you must understand. --- Please do not apply your ..... ology in this (illegible)~~."

The deletions appear on the draft. Below the postscript there is a date in the handwriting of the husband; namely

"14 Sept. 1976."

Bill Coggins died in September 1978.

The husband has had sexual relations with a Miss Denise Gallagher. He said he met her "in 1978". The wife's evidence, (some of which was referred to by the judge and none of which was challenged) was that she and the husband had known the Gallaghers for about 10 years; that in February 1978 she heard the husband talking to Denise's mother on the telephone; that as a result she suspected the relationship then; and that she found out about it in April 1978. The husband admitted that the wife had talked to him about it.

In April 1978, the wife found a note in the handwriting of the husband. It reads:-

" 1. Court Order
2. Sell House
3. Move out. Her
4. Move out. Self
5. Sell everything
6. Haitian Divorce
7. Denise move in
8. Denise buy Aberfeldy

" 9. Denise Intrd. Aunts
10. Denise Intrd. Family
11. Family Pow Wow
12. Jean - Housekeeper
13. Alternative House
14. (illegible) Hall
15. Father- J.B A.
16. No STTLMNT cash for her if she leaves."

Turning then to the husband's allegations in support of his assertion that the wife behaved in such a way that he cannot reasonably be expected to live with her. His complaints about the wife's behaviour in the early years of the marriage, can really be dealt with quite shortly. The substance of his allegations may be summarised thus:-

> The wife took an instant dislike to Bermuda on arrival saying: "I don't think I am going to like this place." She did not like the place or the people in it. She wanted me to return to Hongkong with her. When I reminded her that she had agreed to live with me here, she seemed to accept the position; but she made derogatory remarks about my friends and family, referring to the latter as "smalltime operators" and "big fish in a little pond", and that they really did not know what they were doing. As regards the family bicycle business, she thought it was demeaning and referred to it as a "bicktown operation". She disliked entertaining in the matrimonial home, and did not behave as a hostess should e.g. remaining silent for long periods, and disappearing to another part of the house. She disliked going out socially and sometimes left a cocktail party before the end and without saying "thank you and good-night" to her host. I felt this keenly as my association with the Bermuda Credit Association, the United Bermuda Party, the Chamber of Commerce and the Sandys Rotary Club involved my attendance at social functions of various kinds. The wife made derogatory remarks about my involvement in politics, using such expressions as "why do you want to help that bunch of clots?" "Why are you wasting your time trying to bring the community together?" "You cannot do it anyway", "What is it going to achieve?" As a result of the wife's attitude, I suffered tension and strain during 1973 and 1974, but this did not involve my seeking medical advice. She was reluctant to move into Aberfeldy from Millwood. About 3 or 4 months after we moved in, the wife replaced the double-bed with two twin beds. As time passed, our relationship deteriorated and intercourse became infrequent. By 1970, our relationship was at a low ebb. The main point of communication between us was through the

children. As a result, in July 1970, I left the house. There were discussions between my father and the wife. The wife undertook to change her attitude and be helpful around the house and in social and community affairs. As a result I returned after 9 weeks. There was an improvement for a short time; but then the wife's previous attitude prevailed. In the field of religion, she has wandered from Catholicism, to the Bahai to Jehovah Witnesses and finally towards spiritualism. I wanted the children to be confirmed in the Anglican communion, but she did her best to prevent this. The wife took frequent trips abroad, generally to Hongkong and Australia. After finding the draft letter to Bill in September 1977, I moved into another bedroom before Christmas 1977 and no intercourse has taken place since I found the letter. We have slept in separate bedrooms except for some time after August 1978 when my daughter came to stay. In April or May 1978, I went to Australia on business. The wife joined me there. I don't know why. While in Australia we shared a room in a hotel. In 1978, I tried to get the wife out of the house. I wanted to sell it.

In cross-examination, the husband modified some of the allegations in his petition. For example, as regards the wife's trips abroad, he agreed that he had heard that such trips were for business reasons in connection with the dress shop which she ran for about 7 years prior to the hearing of the petition. He also admitted that the wife took his parents on holiday to the United Kingdom in 1957, to Austria in 1964, to Mexico in 1976, that she paid the expenses and that his parents had accompanied the parties to Barbados on several occasions. He also admitted that in 1970 the whole family took a world cruise for 8 weeks and that in 1977 she met his parents in Hongkong and showed them around and that when the wife went to England, it was, amongst other things, to visit the children who were at school there. He admitted that, after the first attack of epilepsy the wife's attitude changed, that she could not face crowds or face social gatherings. He agreed that the epilepsy was one of the reasons why the wife would not take part in social activity, but he would not agree that it was the only reason. He agreed that anyone leaving Hongkong would take time to get used to Bermuda; but he added that it was only since the institution of the divorce proceedings that the wife has expressed a desire to live in Bermuda. He admitted that the wife had said that she wishes the family to continue to live at Aberfeldy and for the house to be a meeting place for the children. He admitted that she ordered a cake in celebration of his election victory in 1972. He also admitted that she had contributed to the cost of Millwood and that 4 or 5 years after they

moved to Aberfeldy he paid the wife "her share of Millwood".

It was put to him that in 1965, the twin beds were linked together by a king-size sheet. He would not agree that this was so in 1965, but he agreed that this was the position as from 1970 until he moved to another bedroom.

It was put to him that throughout the marriage, the wife had been consistent in not wanting a divorce. He would not agree. He said that he got the impression in 1976-7-8 that she was quite ready for a divorce. His last answer in cross-examination was:

> "She regarded her commitment to bring up the family as coming first."

The learned judge's rejection of the wife's evidence as regards any matter in respect of which the evidence of the parties conflicted, was, according to the judgment, because the wife in the opinion of the learned judge, told deliberate lies on various occasions when testifying. Reference was made by the judge to one or two instances in which the wife had to modify her evidence when reminded of what she had previously said; and, on the hearing of the appeal, counsel for the husband referred to a number of other instances. I do not think it is necessary to catalogue them here. Speaking for myself, from a study of the record they appear to be the kind of discrepancies one frequently finds when a witness is endeavouring to recall events which occurred some years ago and of course, when pressed in cross-examination to explain something or other. I find it somewhat surprising that they had such a profound effect on the learned judge. A study of the record of the husband's evidence also reveals the fact that he modified in a number of respects the picture drawn by him in his petition.

There are three matters which, in my view, appear to call for particular mention: (1) the wife's epilepsy (2) the husband's absence from the matrimonial home in 1970 and (3) his statement in cross-examination that the 14th September 1976 was probably the date he found the draft letter to Bill Coggins.

As regards the wife's epilepsy, she said that her first epileptic fit was in Hongkong in 1954, that she told the husband about it before their marriage because she did not want to be a burden to him but that he said it did not matter; that she had further attacks in 1957 in Bermuda and further attacks in England in 1958; that these attacks put her into a state of depression for 2 years; that she tried to go out and entertain but that she was afraid she would "black out"; that she was so nervous and kept putting

off going to functions; but that after this two-year period, going out did not affect her so badly because she began to realise that people would not laugh at her.

As I have said, the husband admitted in cross-examination that after her first attack, the wife could not face crowds or any social gatherings and that her epilepsy was one of the reasons why she would not take part in social activity.

In dealing with this part of the evidence, the learned judge said:-

> "In an oblique way, the wife admitted many of the husband's grounds of complaint, but she tried to explain it away by reference to her innate shyness and her dread of having epileptic fits in public. I think the wife has grossly exaggerated these two possible reasons for her conduct. If they had been the real reason for her conduct, I feel sure that the husband would have had every sympathy for her and he would have made every allowance for her. I am quite satisfied that the wife is trying to put forward an untrue explanation for her conduct."

According to the judge, the explanation for the wife's conduct is that "from the beginning of the marriage the wife was antagonistic to everything connected with Bermuda, her husband's business, her husband's family, and her husband's friends." If that is the true explanation, I cannot help wondering why she has remained in Bermuda for so many years, and why she wants the marriage to continue. There is no suggestion that it is maintenance which is the determining factor. The evidence is that she comes from a wealthy family and has independent means. Her love for her children may have been an important factor during their formative years; but they are now no longer children, and we may presume, that, before long, they shall be branching out on their own. Why should she want the marriage to continue merely to enable her to be antagonistic to everything connected with Bermuda, her husband's business, family and friends?

I find it surprising that no medical evidence was called to assist the court as to the nature of epilepsy and as to its probable effect on the behaviour of the sufferer. The court was given no guidance as to whether it is a transient ailment which disappears with the passage of time or whether it is a weakness of the body which remains with one for life. That the latter may be the true position could possibly be inferred from the fact that, according to the husband, the wife has been on medication since her first attack, although there is no evidence that she has had any attacks since 1958.

The wife did not describe the nature of her attacks, she merely said what effect they had on her during the early years of her marriage. But it is common ground that during those early years of the marriage the wife did suffer from epileptic attacks. It is not for this court to inform itself of the symptoms and prognosis of epilepsy; but as the word has found its way into the Shorter Oxford Dictionary, I do not think that we are stepping too far out of line if we look at that definition, which is:

> "A disease of the nervous system characterised by paroxysms, in which the patient falls to the ground unconscious, with foaming at the mouth."

If the court had had some expert guidance as to the nature of the disease and its probable effect on the behaviour of the sufferer, I wonder if the wife's explanation for her fear of social functions and private entertaining would have been so forcibly rejected by the learned judge.

The husband said that in 1970 he left the matrimonial home for 9 weeks because relations between himself and the wife were at a "low ebb"; that discussions took place with his father and the wife; that she undertook to be helpful in the house and in social and community affairs; and that for the sake of the children he returned to his home. In cross-examination he denied that in 1970 he was associating with someone else.

In her examination-in-chief the wife said that she agreed that she would try to do more of what he wanted her to do "like entertaining". She agreed that the husband came back to her because she agreed to do more of what he wanted her to do. But she also said that she spoke to the husband about his "running around" with another girl, and that she told him that this girl was running around with other people.

Towards the end of her examination-in-chief she was asked about her reaction to the husband's association with Denise. She said:

> "I condoned it because I wanted to keep the family together. I also regarded it as an infatuation. I expected him to get tired of it, as he did in 1970."

She was not cross-examined on the latter part of that statement, the effect of which was that in 1970 the husband was associating with another woman, that in her view it was an infatuation and that he got tired of it. This part of the wife's evidence was not dealt with specifically by the learned judge.

The husband wrote "14th Sept. 1976" on the wife's draft letter which he found "in the rubbish". As counsel for the wife said, this letter is the high-water mark of the husband's case. In his petition and in his examination-in-chief he said that he found the letter in September 1977. He was not asked in examination-in-chief to explain the date "14 Sept. 1976". It was half way through his cross-examination that he was asked some question such as "what is the significance of that date". His answer was "It was probably the date I found it". Counsel for the wife then moved on to another subject; but the husband was then asked on what date he moved out of the master bedroom. His answer was "I think it was September 1977". We do not know what the next question was but the husband's answer to it was "I did not say that I probably found the letter on 14th September 1976". Of course, that was precisely what he did say shortly before. We do not know what the next question was; but clearly it was some question such as "Why did you write that date on the letter"; and the husband's answer was "This was some doodling on my part". In re-examination he said: "I cannot explain how the date 14th September 1976 came to be written by me".

In examination-in-chief the wife said that she wrote the draft letter in September 1976 and that in November 1976 the husband spoke to her about it. In cross-examination she was apparently asked again whether she wrote the letter and she said she did; but she was not cross-examined on her statement that she wrote it in September 1976 and that the husband spoke to her about it in November 1976.

I apprehend that most people know the meaning of the word "doodling". The word "doodle" is defined in the Concise Oxford Dictionary as to

> "make an aimless scrawl while one's attention is engaged elsewhere".

Clearly, the date "14 Sept. 1976" is not an aimless scrawl. It is a definite date written distinctly; the abbreviated form of the word September was in capital letters. On a plain reading of the record, it would appear that the husband's immediate reaction to the question "what is the significance of the date 14 September 1976", was to say it was probably the date on which he found the letter. But, upon being reminded that he had said that he moved out of the master bedroom in September 1977, the significance of his remaining in that bedroom for a year after finding the letter, on which he placed so much reliance, struck him. He then tried to wriggle out of it by saying firstly that he did not say that he "probably found the letter on 14th September 1976" and then attempted to explain the

presence of the date by asserting that he was doodling. Without having seen the witness, on a plain reading of this portion of the record, I find it surprising that the learned judge rejected the wife's evidence and accepted the evidence of the husband that he found the letter in September 1977.

The powers of an appellate court when reviewing findings of fact by a judge sitting without a jury are conveniently summarised in Watt v. Thomas (1). Viscount Simon said (p.486):-

> ".....an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution."

And Lord Thankerton said (p.487):-

> "(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion;
> (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence;
> (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question. It will hardly be disputed that consistorial cases form a class in which it is generally most important to see and hear the witnesses, and particularly the spouses themselves, and, further, within that class, cases of alleged cruelty will afford an even stronger example of such an advantage. Normally the cruelty is alleged to have occurred within the family establishment, and the physique, temperament, standard of culture, habits of verbal expression and of action, and the

(1) [1947] A.C. 484

interaction between the spouses in their daily life, cannot be adequately judged except by seeing and hearing them in the witness box. The law has no footnote by which to measure the personalities of the spouses. In cases such as the present, it will be almost invariably found 'that a divided household promotes partisanship', and it is difficult to get unbiased evidence."

Lord Thankerton then referred to the well-known passage from the opinion of Lord Shaw in Clarke v Edinburgh and District Tramways Co.Ltd. (2) which was quoted with approval by Viscount Sankey L.C. in Powell v Streatham Manor Nursing Home (3). I quote from the latter decision (p.250):-

"When a judge sees and hears witnesses and makes a conclusion or inference with regard to what is the weight on balance of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the Judge makes any observation with regard to credibility or not. I can of course quite understand a Court of Appeal that says that it will not interfere in a case in which the Judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them, and does not believe another. But that is not the ordinary case of a cause in a court of justice. In courts of justice in the ordinary case things are much more evenly divided; witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page. What in such circumstances, thus psychologically put, is the duty of an appellate court? In my opinion the duty of an appellate court in such circumstances is for each Judge of it to put to himself, as I now do in this case, the question, Am I, who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the Judge who heard and tried the case - in a position, not having those privileges, to come to a clear conclusion that the Judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the Judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment."

Later, Lord Sankey said (p.251):-

(2) [1919] S.C. (H.L.) 35,37
(3) [1935] A.C. 243,250

"The judge of first instance is not the possessor of infallibility, and, like other tribunals, there may be occasions when he goes wrong on a question of fact, but first and last and all the time, he has the great advantage, which is denied to the Court of Appeal, of seeing the witnesses and watching their demeanour."

Having carefully considered the record of the evidence in this case in the light of the submissions of counsel for the wife and in the light of the House of Lords decisions to which I have referred, I think that this court must accept the learned judge's findings as regards the primary facts.

However, the matter does not end there. Section 5(2) of the Matrimonial Causes Act provides that the court shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of 5 "facts." In this case, the husband relies on paragraph (b) of Section 5(2) and contends that the wife has behaved in such a way that he cannot reasonably be expected to live with her. A simple assertion by him to this effect is not enough. Paragraph (b) requires the court to examine the whole of the evidence and make a value judgment about the behaviour of the respondent and its effect upon the petitioner; and, when reviewing such a judgment, an appellate court is entitled to form an independant opinion, subject only to the weight which should be given to the opinion of the trial judge.

Mr. Gunning cited a number of authorities including Pheasant v Pheasant.(4) In that case, the husband presented a petition for divorce on the ground that the marriage had broken down irretrievably. His contention was that the wife had not been able to give him the spontaneous demonstrative affection which he said that his nature demanded and for which he craved; and that she was not interested in his job or in his leisure activities. In these circumstances he said that it was impossible for him to live with his wife any longer, that in consequence he could not reasonably be expected to live with her, and that therefore the marriage had irretrievably broken down. The husband had left the matrimonial home and, from the report of the case, it would appear that there probably was another woman in the background.

Ormrod J., dismissed the petition. In his judgment he analysed sections 1 and 2 (1) of the Divorce Reform Act, 1969 which were subsequently replaced by section 1 of the Matrimonial Causes Act, 1973. As section 5 of the Bermuda Matrimonial Causes Act, 1974 is in the same terms as section 1 of the English 1973 Act, there are passages in the judgment of Ormrod J. which I found

(4) (1977) Family Division 202.

helpful when considering the record of the evidence in this case in relation to Mr. Gunning's submissions on behalf of the wife.

There is, of course, only one ground now on which a marriage may be dissolved, that is to say that the marriage has broken down irretrievably; and in the Pheasant case, counsel for the petitioning husband submitted that the court was concerned only to consider whether the breakdown of the marriage was irretrievable, the object of the legislation being, in the words of paragraph 15 of the Law Commission's report entitled Reform of the Grounds of Divorce:- (5)

> "(i) to buttress rather than to undermine the stability of marriage; and
>
> (ii) when, regrettably, a marriage has irretrievably broken down, to enable the empty shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation."

The learned judge very properly rjeected that submission. He reminded the parties that Parliament had not yet completely assimilated the law relating to marriage with the law of partnership; and at page 206, he said:

> "The Act itself ..... imposes on the court a species of restriction, almost, if not absolutely, unique which in itself demonstrates that Mr. Trotter's main submission requires modification. Having established by section 1 that the only ground upon which a marriage may be dissolved is that 'the marriage has broken down irretrievably', the Act goes on to provide in section 2 (1) that the court 'shall not hold the marriage to have broken down irretrievably unless the petitioner satisfied the court of one or more of the following facts' .....The question of irretrievable breakdown has not, therefore, been left at large for the court to determine, no doubt because it was realised that, except in the clearest cases, this is not a justiciable issue. Without guide lines the court has no means of judging what one person, let alone two, may decide to do in the future in relation to their marriage if there is any doubt about it.
>
> Section 2 (1) is designed to provide the guide lines and this it does by defining the five essential 'facts' or situations from which alone the court may infer that the breakdown is irretrievable. These five facts fall into two groups. Three of them rest upon separation for periods of years but in the remaining two separation is not an essential element.

(5) Command No. 3123 of November 1966

Paragraphs (c) and (d) demand two years' separation coupled with either desertion or consent to the dissolution of the marriage; paragraph (e) demands five years' separation, simpliciter. On any view these are stringent tests of the irretrievable character of the breakdown, and proof of these 'facts' must inevitably raise a very strong inference of irretrievable breakdown.

Paragraphs (a) and (b) are presumably intended to provide for those spouses who need relief before they have been separated for a period of years. Separation is, undoubtedly, the best evidence of breakdown, and the passing of time the most reliable indication that it is irretrievable. Where these are absent other criteria have to be devised which should be as reliable as possible in the circumstances. In paragraph (a) the criterion is adultery coupled with the assertion that the petitioner finds it intolerable to live with the respondent. This provides a reasonably secure basis for the inference that the breakdown is irretrievable. Each of these four paragraphs establish tests which are essentially objective in character although the element of intolerability in paragraph (a) is recognised to be inescapably subjective ..... Paragraph (b) is quite different. It obviously requires the court to make a value judgment about the behaviour of the respondent and its effect upon the petitioner."

In the Pheasant case, counsel for the husband submitted that the matter should be approached very largely, if not entirely, from the point of view of the petitioner. The learned judge rejected that submission. He said (pp. 207/8) :-

".....this construction ..... places the primary emphasis upon the petitioner and his personal idiosyncrasies, whereas the paragraph clearly places the primary emphasis on the behaviour of the respondent. A respondent whose behaviour is beyond reproach by any standards other than the petitioner's would be liable to be divorced without any possibility of resistance ..... Mr. Trotter faces this and says that under the modern law the court is concerned only to crush empty shells. Had this been the intention of the statute, paragraph (b) need only have provided that a decree could be granted if the court is satisfied that the petitioner finds life with the respondent unbearable. Once again the other four paragraphs would be surplusage and the court would be faced with an untriable issue ..... The test to be applied under paragraph (b) is closely similar to, but not necessarily identical with, that which was formerly used in relation to constructive desertion."

The learned judge said that the test was

> ".....whether it is reasonable to expect this petitioner to put up with the behaviour of this respondent, bearing in mind the characters and the difficulties of each of them, trying to be fair to both of them, and expecting neither heroic virtue nor selfless abnegation from either".

As the learned judge in the Pheasant case said, before deciding whether a wife has behaved in such a way that the husband cannot reasonably be expected to live with her, the court is required to make a value judgment about the behaviour of the wife and its effect upon the husband; and, as regards that, an appellate court is in a **stronger** position than it is when asked to review a trial judge's findings of primary fact.

In this case, on the primary facts as found by the learned judge, the marriage no doubt has broken down; but, as Ormrod J. said in the Pheasant case, Parliament has not yet completely assimilated the law relating to marriage with the law of partnership; and the court is not concerned only "to crush empty shells". The question is, has the marriage broken down irretrievably, the ground of the irretrievability of the breakdown being that the husband cannot reasonably be expected to live with the wife because of the wife's behaviour?

With respect to the learned judge's value judgment on this, I cannot bring myself to agree with it. Without the draft letter to Bill Coggins, in my view, no court could reasonably conclude that the wife has behaved in such a way that the husband cannot reasonably be expected to live with her. The only question is: whether the finding by the husband of the letter to Coggins strengthens the husband's case sufficiently.

I do not think so. Even if it is accepted that the wife committed adultery with Coggins in 1976, or that the husband had reasonable grounds for believing that she did, even if she did not, adultery per se is no longer a ground for divorce. Paragraph (a) of Section 5(2) reads :

> "that the respondent has committed adultery and in consequence the petitioner finds it intolerable to live with the respondent."

Even accepting that the husband found the letter in 1977, and not in 1976 as alleged by the wife (despite the date "14th September 1976" in the husband's handwriting on the letter) the parties have continued to live under the same roof. The learned judge has found that they did so for the sake of the children. The petition was not filed till 20th December, 1978. This is 1980. The husband is still living under the

In the Court of Appeal

No. 10
Judgment of Blair-Kerr P.
28th March 1980

(continued)

same roof as the wife.

I would, myself, allow this appeal with costs here and in the Court below and quash the decree nisi pronounced in the court below.

(Signed) ALASTIAR BLAIR-KERR, P.

DATED 28th March 1980

No. 11
Judgment of Duffus J.A.
28th March 1980

No. 11

JUDGMENT OF DUFFUS J.A.
DATED 28th MARCH 1980

IN THE COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL NO. 19 of 1979

JOYCE MARGARET ASTWOOD — Appellant

and

JEFFREY CHRISTOPHER ASTWOOD — Respondent

J U D G M E N T - DUFFUS, J.A.

The parties were married in Hong Kong on the 15th January, 1955. There were four children of the marriage, three daughters and a son. At the time of the trial in July, 1979, the eldest Jean was 24 years of age and the youngest Bridgett, 15 years.

The husband brought his petition on the 20th December, 1978, he sought a divorce on the grounds that the marriage had broken down irretrievably and in the words of Section 5(2)(a) of the Matrimonial Causes Act, 1974 -

> "That the respondent had behaved in such a way that the petitioner cannot reasonably be expected to live with her".

Both the husband the wife appeared to be comfortably off. The husband is a merchant and a member of

Parliament. The wife, whose father was a merchant in Hong Kong appears to have means of her own.

The husband gave evidence and called a Miss Dickinson, a friend of both parties, to give evidence. He also put in evidence a copy of a draft letter written by the wife to a Bill Coggins. The wife admits she wrote this letter to Mr. Coggins in September 1976. The wife alone gave evidence and in cross-examination she admitted receiving two letters from her husband in 1967. These letters set out the husband's grievances in some detail but were rather cruel especially as they were written whilst she was undergoing medical treatment in England. It appears that after those letters were written the wife returned to Bermuda and she and the husband continued to live together. The relationship was not, however, a happy one and in July 1970, the husband left the home for about nine weeks. The marriage was, however, patched up.

The final break-up happened in 1977, when the husband stated he found the draft letter to Bill Coggins, and that when his wife admitted writing this, he left the matrimonial bedroom and ceased to have any sexual relationship with the wife.

The learned trial Judge had no hesitation in accepting the husband's case. He had the considerable advantage of seeing and hearing the witnesses and he found that the husband had been a truthful witness and accepted his evidence when there was any conflict with the wife's evidence. The Judge summarises the situation thus:

> "I have covered at length the substance of the evidence given in this case and I am satisfied that from the beginning of the marriage the wife was antagonistic to everything connected with Bermuda, her husband's business, her husband's family and her husband's friends. In an oblique way, the wife has admitted many of the husband's grounds of complaint, but she tried to explain it away by reference to her innate shyness and her dread of having epileptic fits in public. I think the wife has grossly exaggerated these two possible reasons for her conduct. If they had been the real reason for her conduct, I feel sure that the husband would have had every sympathy for her and he would have made every allowance for her. I am quite satisfied that the wife is trying to put forward an untrue explanation for her conduct."

The real grounds of the husband's complaint is the wife's affair with the man Bill Coggins. My Lord, the President, has fully dealt with the facts of this

case and has quoted the draft letter from the wife to Coggins written according to the wife in September 1976. Suffice to say that this letter makes it clear that she no longer loves her husband but that she loves Bill Coggins, and appears to be suggesting that she leaves her husband and comes over to Australia to be with Bill Coggins.

The wife admitted she wrote this letter, and the learned Judge referred to the following passages from her evidence on this issue:

> "I knew Mr. Coggins for five days in 1976. I did not then tell him that I loved him. We did not talk at all of an intimate relationship as a possibility.
>
> In fact, I did fall in love with him at that time.
>
> It was my wish to see him again in the future.
>
> I did write and type the draft letter, Exhibit 1.
>
> I would agree that anyone reading that letter would infer that there was an intimate association with the addressee."

The husband's evidence on this issue is vital on the question of whether he had condoned the offence within the meaning of Section 6 of the Act. I would quote from his evidence on this point:

> "Having found it, I read the letter and I assumed that she had formed an adulterous association with "Bill".
>
> I taxed her with it - I told her that after all that had happened in the past, this was the last straw.
>
> Her reply to me was, "It is someone I have met and I am very fond of."
>
> From that moment, I moved out of the master-bedroom.
>
> We have not had sexual relations since that time.
>
> We occasionally had meals together for the sake of the children. We did not have any meals together when the children were not there.
>
> The maid does the house cleaning, the ironing. I understand Respondent now and again throws the laundry in the washer.

As far as I know "Bill" is one Bill Coggins. Respondent had mentioned the name.

I was informed by Respondent that "Bill" died last October.

My move out of the bedroom was entirely due to the finding of the letter.

In my view, there is no possibility of my becoming reconciled with Respondent."

The trial Judge accepts the Husband's evidence, and the wife also corroborates his evidence on the question of their sexual relationship. I quote from her cross-examination, she said:

"Sexual relationship was maintained until the time he left the matrimonial bedroom. I now say that sexual relations continued until September, 1977."

The husband had written the date 14th September, 1976 on the letter. He agreed that he wrote this date and at first said that this was the date he found the letter, and later he corrected this and said he was just doodling as he found the letter in September, 1977 and then after taxing his wife with it, immediately moved out of the matrimonial bedroom. The learned Judge fully considered this issue and said:

"Taking into account all the evidence on this issue, I am satisfied that the husband moved out of the matrimonial bedroom soon after the finding of the letter."

The trial Judge had the considerable advantage of the parties giving their evidence before him. He accepted and believed the evidence of the husband, and I can, with respect, find no reason to differ from this finding.

He found that the parties have, in fact, been living apart since the husband found the draft letter. This would be in September 1977, when the husband states he found the letter and the wife agrees that any sexual relationship between them ceased. On the facts it is patent that the husband does not desire the marriage to continue, and it is also apparent from the wife's letter to Bill Coggins that she also felt that the marriage was over and she, at that time, desired a new life.

There is the issue as to whether the husband can claim "to have lived apart from his wife" if they continued to occupy the same house. I quote from the judgment on this question"

"There is no legal obligation on a person to leave the matrimonial home as soon as he considers the marriage at an end. The fact that the husband continued to live under the same roof as the wife does not mean that he continued to live with her. There is authority for saying that husband and wife can be held to be living apart even though they are living in the same house, and in the present case I am satisfied that that is what happened. As soon as it was reasonably practicable after the finding of the letter, the husband moved out of the master-bedroom, and soon after Xmas in 1977, he was putting the matter in the hands of his attorneys, and making attempts to get the wife to leave Aberfeldy."

With respect, I agree with the learned trial Judge.

In my view the Judge was correct in finding that on the evidence before him that the marriage had broken down irretrievably.

I would dismiss the appeal.

(Signed) WILLIAM DUFFUS, J.A.

DATED: 28th March 1980

No. 12

JUDGMENT OF SUMMERFIELD J.A.
UNDATED

IN THE COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL NO. 19 of 1979

JOYCE MARGARET ASTWOOD — Appellant (Respondent)

and

JEFFREY CHRISTOPHER ASTWOOD — Respondent (Petitioner)

J U D G M E N T - SUMMERFIELD, J.A.

My Lord, the President, has set out the facts in his judgment in detail and with great clarity and it is unnecessary for me to recite them again. I respectfully associate myself with the reasoning in that judgment and have little to add.

There can be little doubt that the marriage has broken down. So far as the husband is concerned, it is beyond repair. The wife, however, is anxious to salvage what is left of it for the sake of the four children of the family. The chances of repairing it unilaterally can be discounted. The issue boils down to whether the husband has satisfactorily established that the wife has behaved in such a way that he cannot reasonably be expected to live with her.

It is apparent that, for the most part, the husband has set his wife rather high standards of selfless devotion towards himself and his ambitions, not always matched in return, and had less than a tolerant approach towards ordinary human weaknesses that led to the unexceptional stresses in this marriage - stresses which no marriage made this side of heaven is without. The catalogue of complaints, with one exception, are characteristic of any marriage where one party is not merely the submissive cypher of the other. When one views some of the complaints from the wife's perspective (for example his pressure to have her entertain on his behalf, or attend functions, against her disinclination to do so stemming from fears which had their foundation in her infirmity - bouts of epilepsy) then the husband's part could be said to be equally "unreasonable". Indeed, one incident, the letter to the wife while she was in England recovering from a mastectomy, can only

be characterized as cruel.

For the most part the real reason for the breakdown of this marriage, which has lasted some twenty-four years, has been mutual intolerance to minor human shortcomings. This has built a wall between them which appears to have become permanent with the husband's attachment to another woman. Some of the complaints against the wife no longer have any foundation - for example her earlier antipathy towards living in Bermuda and the present matrimonial home. Her subsequent conduct has removed the bases for these complaints. She had also agreed to make amends in other directions.

The one exception to the catalogue of what I view as trivial complaints is the finding (in 1976 or 1977) of the copy of a letter sent to one Bill Coggins. This has been fully examined in the learned President's judgment.

There can be no doubt that serious misconduct could be inferred from that letter. It could reasonably lead the husband to conclude that the wife had an illicit relationship with Bill Coggins. It may be noted that the learned President's analysis of the evidence discloses that the wife could have had equal cause for complaint against the husband much earlier in their marriage - in 1970.

The main issue with regard to that letter was the date it came to the husband's notice. The letter has on it the words "14 Sept. 1976" in the husband's handwriting. He claims that he found it "in the rubbish" in September 1977 and then immediately moved out of the matrimonial bedroom, thereafter ceasing to live with her as husband and wife.

If in fact he found the letter in September 1976 then, of course, he can hardly claim that by reason thereof he could not reasonably be expected to live with her; because he did in fact live with her as man and wife for some twelve months after that date.

The wife admitted that she sent the letter in September 1976 and stated that her husband tackled her about it in November of that year.

The learned judge accepted as fact that the husband found it in September 1977 and "soon after" left the matrimonial bedroom. It is with that finding of fact I feel obliged to take serious issue.

In his evidence in chief the husband stated that he found the copy of the letter in September 1977, but gave no explanation of the words in his own handwriting on it. In cross-examination, when asked about the date he said: "It was probably the date I found it".

A little later, presumably when he realised the effect that admission might have, he not only resiled from this explanation but stated falsely: "I did not say that I probably found the letter on 14th September, 1976". Later he unconvincingly tried to explain away the words as doodling on his part. Finally, on re-examination, he said he could not explain how the date 14th September, 1976 came to be written by him.

The approach of an appellate court to findings of fact by a trial judge is well settled. The learned President reviewed the authorities in his judgment. Any such finding deserves great respect. Here, the learned judge reached his finding of fact without any explanation - save that he preferred the evidence of the husband to that of the wife. He gave no reason for accepting that the husband found the letter in September 1977 in the face of his unguarded admission that it was probably in September 1976; his false denial that he had made that admission; his subsequent unconvincing explanation as to the origin of the words on the letter and his final inability to give any explanation at all for the words.

We are not here dealing with a judge's assessment of witnesses - where the truth lies as between one witness and another - where the judge's ringside seat gives him an advantage denied to this court. We are dealing with the resolution of conflicts in the evidence of a witness he finds convincing, where that resolution appears to defy the inherent probabilities, is founded on highly suspect explanations and is unsupported by any reason in the learned judge's judgment.

It seems highly unlikely that the copy of the letter (presumably a draft) would have been found "in the rubbish" after lying around for a year or so. The notation on the copy speaks for itself. What is the obvious explanation for it? In the absence of an acceptable explanation the inference is straightforward enough. The husband's prevarication merely strengthens that inference. The obvious inference accords more closely with the wife's version of events.

In my view it would be wrong for an appellate court to allow a case of this nature to turn on a finding of fact which has such an unsatisfactory basis. What makes a self-serving statement by a convincing witness more worthy of credence than an unguarded admission against interest which is more consonant with the probabilities? Nothing on the record answers this question. The resultant finding of fact made the wife the "guilty" party (to use an archaic concept) in the breakdown of the marriage. It would be unfair that she be so branded on a finding based on such insubstantial grounds - particularly having regard to the other flimsy grounds of complaint and the evidence

In the Court of Appeal

No. 12
Judgment of Summerfield J.A.
Undated
(continued)

as a whole.

There may be grounds on which this empty shell could be crushed. For my part I do not think it would be just to hold that the husband has established the ground he has chosen to rely on.

I would allow the appeal with costs in this court and the court below.

(Signed) JOHN SUMMERFIELD, J.A.

DATED: -

No. 13
Notice of Motion for Leave to Appeal
2nd April 1980

No. 13

NOTICE OF MOTION FOR LEAVE TO APPEAL DATED 2nd APRIL 1980

IN THE COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL 1979 : No. 19

BETWEEN

JOYCE MARGARET ASTWOOD Appellant

- and -

JEFFREY CHRISTOPHER ASTWOOD Respondent

NOTICE OF MOTION FOR LEAVE TO APPEAL

TAKE NOTICE that the Court of Appeal will be moved on Wednesday the 2nd day of April 1980 at 10 o'clock in the forenoon or so soon thereafter as Counsel on behalf of the above-named Respondent can be heard for an Order that the Respondent have leave pursuant to Section 2(c) of the Appeals Act 1911 to appeal from the Judgment of this Honourable Court dated the 28th day of March, 1980 to Her Majesty in Council on the grounds that the question or questions involved in the proposed Appeal are by reason of their great general or public importance, or otherwise, questions which ought to be submitted to Her Majesty in Council for decision and in particular involve questions to be determined by Her Majesty in Council touching upon the law relating to the dissolution of marriages in these Islands and in particular the application of Section 5(2)(b) of the Matrimonial Causes Act 1974

AND for all necessary further and consequential directions including a direction under Section 6 of the Appeals Act 1911, that if this application be allowed, a Judge of the Supreme Court be appointed in the absence of the President of this Honourable Court, to supervise the preparation of the Record, and to provide for costs.

Dated the 31st day of March, 1980

(Signed) APPLEBY, SPURLING & KEMPE,
Attorneys for the Respondent

10

TO: The Appellant or her attorneys,
Messrs. Conyers, Dill & Pearman,
Rosebank Building,
Bermudiana Road,
HAMILTON.
Attorneys for the Appellant.

- and -

TO: The Registrar of the Court,
Sessions House,
20 Parliament Street,
HAMILTON.

No. 14

ORDER GRANTING CONDITIONAL LEAVE DATED 2nd APRIL 1980

IN THE COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL 1979 : No. 19

BETWEEN

JOYCE MARGARET ASTWOOD Appellant

- and -

30 JEFFREY CHRISTOPHER ASTWOOD Respondent

O R D E R

UPON HEARING Counsel for the Respondent and Counsel for the Appellant

AND UPON the hearing of the Respondent's Notice of Motion for Leave to Appeal dated the 31st day of March, 1980

In the Court of Appeal

No. 14
Notice of Motion for Leave to Appeal
2nd April 1980
(continued)

IT IS ORDERED that the Respondent do have leave pursuant to Section 2(c) of the Appeals Act 1911 to appeal the judgment of this Court dated the 28th day of March, 1980 to Her Majesty in Council

AND IT IS FURTHER ORDERED AND DIRECTED pursuant to Section 6 of the Appeals Act 1911 that a Judge of the Supreme Court supervise the preparation of the Record and make such orders and directions as may be necessary under Section 4 of the Appeals Act aforesaid.

Dated this 2nd day of April, 1980.

(Signed) ALASTAIR BLAIR-KERR, P.
(Signed) WILLIAM DUFFUS, J.A.
(Signed) JOHN SUMMERFIELD, J.A.

No. 15
Proceedings
6th November
1980

No. 15

PROCEEDINGS DATED 6th NOVEMBER 1980

IN THE COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL NO. 19 of 1979

JOYCE MARGARET ASTWOOD — Appellant (Respondent)

and

JEFFREY CHRISTOPHER ASTWOOD — Respondent (Petitioner)

10.00 a.m. 2/4/1980

BELL for applicant

GUNNING for respondent

BELL

Application is under The Appeals Act 1911 Section 2(c)

Court's discretion is not restricted to granting leave in case where there is a point of law of general public importance. "Or otherwise. Wide discretion.

But I agree that the point should be one of importance, and the point in this case is of importance to the people of Bermuda. Bermuda does not have legislation which gives wife right to matrimonial home. Wife's right to reside in matrimonial home is a right which depends on decree absolute.

In Bermuda the Courts have perhaps taken note of changing social conditions, and have tended to follow U.K., which has gone further than Bermuda in divorce practice.

In Bermuda, over the last few years, in undefended cases, courts have been less concerned to review contents of divorce petitions, i.e. provided it is undefended. Court does not now require corroboration.

Effect of judgment last week reaffirms the principle of the statute. Matter of public importance is the right of wife to remain in matrimonial home.

So far as unreasonable conduct is concerned, Court's judgment will be a leading case. Consequences are far-reaching. Matter of great public importance.

In exercising discretion, a factor is that there was a dissenting judgment.

GUNNING

I agree with what my friend has said, namely that there is a point of great public importance involved.

COURT: Leave to appeal granted under Section 6 of the Appeals Act 1911. I appoint a judge of the Supreme Court to deal with the matters referred to in that provision, and under Section 4 of the Act. Counsel to prepare a draft Order.

(Signed) SIR ALASTAIR BLAIR-KERR, P.

Certified to be correct

(sgd)
Registrar
of the Court of Appeal Bermuda

6th November, 1980

In the Court of Appeal

No. 16
Order Granting Final Leave to Appeal to H.M. in Council 6th November 1980

No. 16

ORDER GRANTING FINAL LEAVE TO APPEAL TO H.M. IN COUNCIL DATED 6th NOVEMBER 1980

COURT OF APPEAL FOR BERMUDA

CIVIL APPEAL No. 19 of 1979

B E T W E E N

JOYCE MARGARET ASTWOOD — Appellant

and

JEFFREY CHRISTOPHER ASTWOOD — Respondent

O R D E R

UPON HEARING Counsel for the Respondent and by Consent

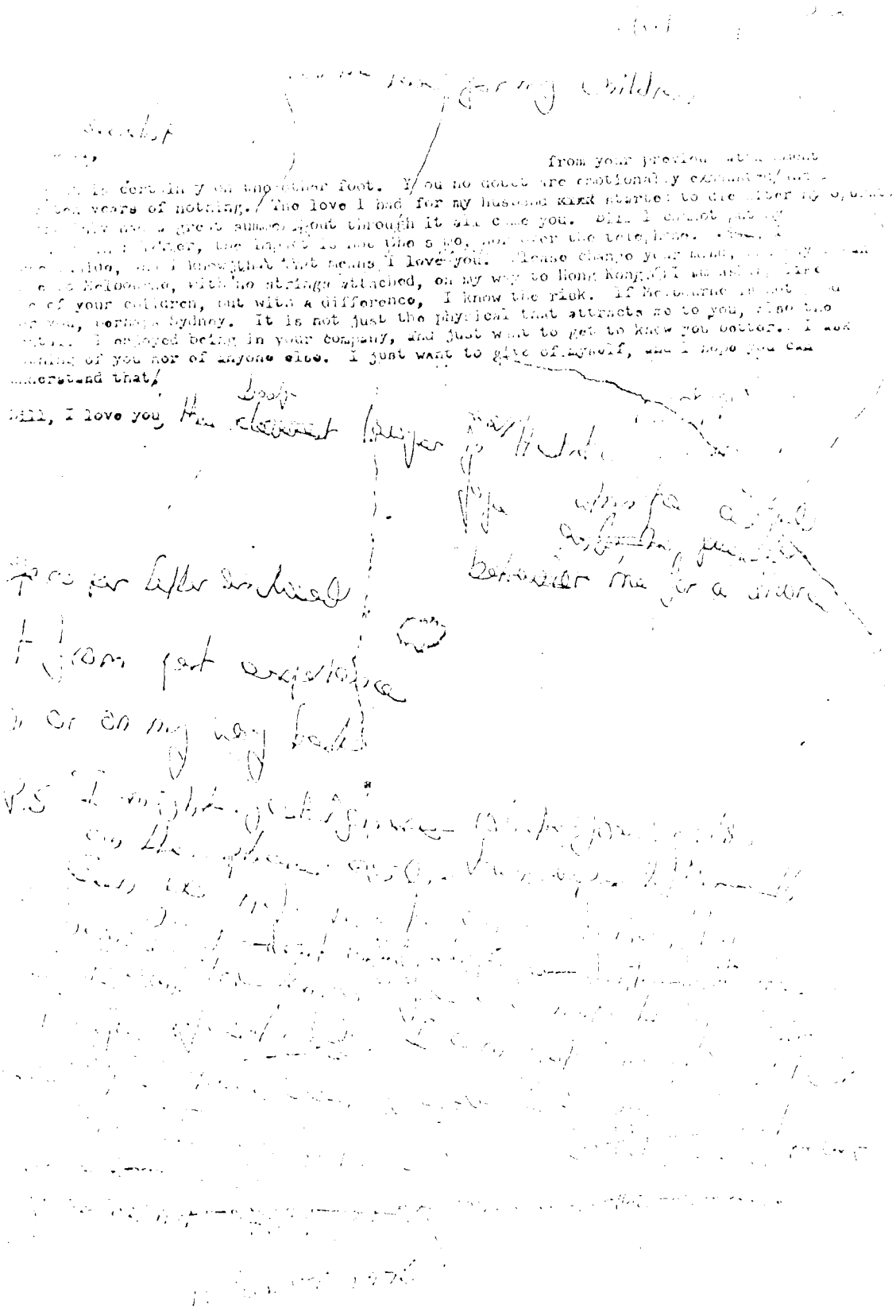
IT IS HEREBY ORDERED that the Respondent does have final leave pursuant to Section 17 of the Appeals Act, 1911, to appeal the Judgment of this Court dated the 28th day of March, 1980, to Her Majesty in Council.

DATED this 6th day of November, 1980

(Signed) HON. MR. JUSTICE MOTYER P.J.

TO: Messrs. Conyers, Dill & Pearman
Attorneys for the Appellant

EXHIBIT 1



from your previous [illegible]
[illegible] is certainly an unfamiliar foot. You no doubt are emotionally exhausted/[illegible]
[illegible] years of nothing. The love I had for my husband started to die after my [illegible]
[illegible] was a great shame [illegible] through it all came you. But I cannot [illegible]
[illegible] letter, the [illegible] is not the same, nor over the telephone. [illegible]
[illegible] Hong Kong, and I know that that means I love you. Please change your mind, [illegible]
[illegible] to Melbourne, with no strings attached, on my way to Hong Kong. If we [illegible] like
[illegible] of your colleagues, but with a difference, I know the risk. If Melbourne is not [illegible]
[illegible] you, perhaps Sydney. It is not just the physical that attracts me to you, [illegible]
[illegible]. I enjoyed being in your company, and just want to get to know you better. I [illegible]
[illegible] of you nor of anyone else. I just want to give of myself, and I hope you can
understand that/

Still, I love you

Exhibit 2

EXHIBIT 2

1. Court Order
2. Sell House
3. Move out. Her
4. Move out. Self
5. Sell everything
6. Haitian Divorce
7. Denise move in
8. Denise buy Aberfeldy
9. Denise Intrd. Aunts
10. Denise Intrd. Family
11. Family Pow Wow
12. Jean - Housekeeper
13. Alternative House
14. (illegible) Hall
15. Father - J.B.A.
16. No STTLMNT cash for her if she leaves.

List produced and on which J.C.A. cross examined

Thursday
15/6/67

Dear Joyce,

Your letter arrived today - I thought it might do, so I went to the P.O. while collecting the kids from school.

You obviously are still not aware how deeply disappointed I am with you and with our relationship. When I said I may as well give you up after the luncheon fiasco I meant it. In December I gave up the R.A.C. because of you - and now I have resigned from an executive position in the Employer's Council. Next week I hope to give up the chair of the U.B.P. in the parish and tomorrow I have arranged to give up P. for the U.B.P. In time I will be shed of some pressures that are now a burden. You may say Why? The answer is simple - it is impossible to keep up my public responsibilities in the atmosphere I have returned to in my own home during all these years, - I feel I have been a fool to give so much of myself to provide a home that will be free from want - that will be free from fear and worry by my public activities - that will be occasionally co-operative so that they, the home, will (illegible) some small contribution.

I have worked so hard during the past twelve years to provide you, and the children with all that you need - to the (illegible) and sometimes open jealousy of our friends and acquaintance in the spheres that I move. This I would put up with if you would provide a home - but no, you still say for me to give - for your future happiness you must learn to give, and then learn what it is like to have it all thrown back in your face or so what.

I have given up a lot to get where we are - maybe that was a big mistake in the eyes of some - even I realize that while most of my friends were playing I have to work - but it saved me from a lot of things. It gave me hope that things at home would work out. It stopped me from turning to booze. It stopped me from taking on mistresses or other women who threw themselves at me. Oh yes, I raped them mentally, but never touched them. All the responsibilities that I had to my family, with politics, community and world affairs put me in the position HAVING to lead a completely blameless life. I finally cracked up under the strain last summer when you left me alone for six weeks. I kept saying to myself - you fool, you stupid fool - why do this for someone you are unable to trust, satisfy and who will at the first opportunity quit; for someone who does not know the meaning of love, except

Exhibit 3

(continued)

self-love; someone who is unable to take an interest in me and my children.

For seven years I have had moments of agonizing thought - subdued by my work. When I cracked last year I became cautious, even wary, and I have left no stone unturned that may throw new light on this situation. I examined all our friends who put self first, even our own family and have come to the conclusion that I have been a fool to do my work and duty to the best of my ability.

I plan therefore, to think of me for a change, because no one else is, and that even goes for my own mother and father as well as your family. A lack of filial piety maybe, but I am in no mood to stop looking at things as they really are. When my affairs are settled to the benefit of those who deserve - I hope to start again. Whether it is in the content of those around me now will be entirely up to them - but my children will certainly be the ones to gain what I think best - first.

The children are in fine spirit, - they are healthy strong, eating well, working hard at their chores and school. They are relaxed, reading books, playing checkers, and being creative in our atmosphere of home with

They are not fools, in fact they are very perceptive children and have a good future before them if they are allowed to develop. Their sense of duty, particularly in Margaret, Bryan and Bridget, is good as is their sense of living with other people. They have had many friends around them in the last weeks and have responded well to their commitments in this light. They can be normal given a chance to settle down.

One of the questions I asked myself was - what happened? The answer kept coming back - I need somebody that I can give body, mind, life and soul; I am rejected at home, I am not respected at home. This feeling I trace back to the time of your reforming the double bed,your illness, your refusal to and your period of heavy criticism of me and P., our hicktown operation in a small-time business, with no future. Conp (illegible) by your flat statement that you leave Bermuda the next time there is a riot. (This is all over Somerset).

On several occasions, and only recently on the phone, you have made the flat statement to the effect that you will "go" to England or "stay" in England. These statements do not help my assessment of you as a responsible person, and even less as a person I can trust. I feel that I have contributed my all

completely and got nothing in return which all adds up to a very bad investment. Exhibit 3 (continued)

How serious is all this with me? I was embarked on a long and full life giving as much as I could everywhere, directly or indirectly. You are successfully killing me off, which has apparently been your wish for a number of years, as I have told you for a number of years. Your lack of understanding has been superb.

This, also is a difficult letter, but at least you now have some of the story to think about. I can no longer go on covering up for you - you must emerge as a person and face life as it is.

All of this at this time is most upsetting because of your condition which I am pleased to hear is s suppressed. The treatments sound effective but are they necessary?

We all bear our cross.

Chris.

EXHIBIT 3a Exhibit 3a

June, 29th
Thursday

Dear Joyce,

You will have my letter mailed on 19th June, by now. I want you to give careful consideration to it and this letter, as I want no misunderstanding on your part about me and the extreme to which I am going to have to make changes.

You must realize by now how completely you have destroyed me and any possibility of making up for what you have done to me. If you do not understand that, it can only be because of your complete unwillingness to do so. It is no good for you to think that you can try and go back to ahappier starting point when you have made it abundantly clear on several occasions that you do not love me, or care for me or care for what I stand for. You have done it too often to me through all these wasted years together. In fact I resent

Exhibit 3a (continued)

even having to spell it out to you this way for I expect a normal human being to be able to understand that.

In an effort to be as clear as possible, you have succeeded in bringing me to a state of mind and body where nothing matters any more as far as we are concerned. If you return to Bermuda it will be to either continue to make our lives miserable here or to pack your bags. You have expressed the desire on several occasions to go, with no feelings about it one way or the other, I suggest therefore you do just that. This is no time to have second thoughts, if there are any.

I, and the children have to set about building new lives for ourselves and the sooner we get on with it the better. There is no point in keeping up something that has not worked for so many years just to please who I do not know, when we both have a full lifetime left ahead of us.

Because of this any position or standing that I have gained in the community by hard work, goes out the window. If you think that this needn't be, don't waste your thoughts, you have put me in that position anyhow. Psychologically I have left no stone unturned to be absolutely sure about this. The trip down the Rhine Good-bye and good-luck. I know exactly how your father must have felt through all those years, thank god he had some happiness before he died. A man needs it when he commits himself to the world (illegible).

I would never have expected this twelve years ago as being remotely possible but here it is and I am convinced it is the right thing to happen after making every effort on my part through the past few years.

Your letter of 25th June arrived in the mail today, which I collected on the way to fetch the children from school.

You have not attempted to answer my letter in depth at all. You say if I am willing to understand you will elaborate. We have been through all that already and when you have some new "angle" there is nothing more to understand. I understand perfectly well all problems that face me from other people. Why should you be different? Write your letter.

You are so right when you say that few marriages are made in heaven, but they can be closer to heaven than hell, you know, therefore I am unable to conjure up in my mind anything that I can say to lighten the burden of having to write such an unpleasant letter to you. However, after what has been said by both of us it is now in black and white. My conscience is now clear.

Chris.

IN THE PRIVY COUNCIL No. 51 of 1980

ON APPEAL FROM THE BERMUDA
COURT OF APPEAL

Between

JEFFREY CHRISTOPHER ASTWOOD Appellant

- and -

JOYCE MARGARET ASTWOOD Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
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Solicitors for the Respondent