25th April 1985

85/40

ROYAL COURT (MATRIMONIAL CAUSES DIVISION)

Before: Sir Frank Ereaut, Bailiff
Jurat G.N.Simon, T.D.
Jurat P.F. Misson

BETWEEN

L — Petitioner

AND

J — Respondent

Advocate P.R. Le Cras for the Petitioner
Advocate R.A. Falle for the Respondent

In this suit the Petitioner, the wife, seeks the dissolution of her marriage with the Respondent, the husband, on the grounds that he has treated her with cruelty since the celebration of the marriage.

The husband denies that he has treated the wife with cruelty. He further submits that if the Court should find that he has behaved as alleged, then the wife, by her behaviour, caused or contributed to the behaviour of the husband. He therefore asks that the petition be dismissed. He does not cross-petition. A submission that the wife had condoned any cruelty which might be proved was withdrawn during the hearing.

In order to fulfil our duty under Article 9 of the Matrimonial Causes (Jersey) Law, 1949 (hereinafter called "The Law"), we must ask ourselves these three questions. First, has the Petitioner proved her case?. Secondly, did her behaviour cause or contribute to the behaviour of the husband?. And, thirdly, has there been any collusion between the parties?. We dispose of the third question at once by saying that both parties denied collusion and there was no evidence to suggest it.

The four ingredients of the matrimonial offence of cruelty were re-stated by the Jersey Court of Appeal in Urquhart -v- Urquhart (1973) J.J. 2483 at 2484, and we adopt them. They may be summarised as follows:-

"(i) Misconduct must be of a grave and weighty nature; it must be more than mere trivialities, though there may come a point at which the conduct threatens the health of the other spouse,

in which event the Court will give relief:

(ii) It must be proved that there is a real injury to health or a reasonable apprehension of such injury;

(iii) It must be proved that it is the misconduct of the spouse against whom the complaint is made which has caused the injury to the health of the complainant; and

(iv) Reviewing the whole of the evidence and taking into account the conduct of one party and the extent to which the complainant may have brought the trouble on himself or herself the Court must be satisfied that the conduct can be properly described as cruelty in the ordinary sense of the term."

There are two preliminary matters which require mentioning before we consider the evidence.

First the question as to what standard of proof is necessary to satisfy the Court as required by Article 9 of the Law. This question was considered by the Royal Court at length in Knight -v- Knight (1976) J.J. 367 at pages 369-73, and the Court there concluded that it was entitled to find a petition alleging cruelty proved by a preponderance of probability. The parties in the present case did not dissent from that conclusion, but counsel for the respondent did refer us to the words of Lord Denning in Blyth -v- Blyth (1966) 1 All E.R. 536, where he said -

> "In short it comes to this: so far as the grounds for divorce are concerned the case, like any civil case, may be proved by a preponderance of probability, but the degree of probability depends on the subject matter. In proportion as the offence is grave, so ought the proof to be clear."

We agree that an allegation of cruelty is a serious matter, and that in such a case as this, therefore, the degree of probability should be substantial.

The second preliminary matter is this. In the present case the Petitioner relies on a series of events continuing over a period of time. Taken individually it might be possible to argue that each would not in itself constitute cruelty.

But the proper test in such cases was described by Lord Reid in King -v- King (1953) A.C. 140 -

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

The parties, both from middle-class families, married in London in 1962. The Petitioner was aged 21 and the Respondent was nine years older. They have two children, D born in 1962, and M , born in 1964. Until 1967 the parties lived in England. The Respondent, as the eldest son, joined his family firm of paper manufacturers in London and was appointed a director on his merits. By all accounts he was in his element in specialising in the industrial relations side of the business. He expected in due course to succeed his father as Chairman of the Company. To his utter dismay his father sold out the Company without consulting him first, and although the new owners invited him to stay on he refused to do so because he felt that his father had betrayed him, and he resigned. He still refers to his father as a crook with a small c. We have no doubt that that experience left him with a sense of considerable bitterness, for, as he said, the job was his life.

He thus found himself in 1967, when he was aged 36, without a job. He looked for positions in the paper manufacturing business without success. He thought of emigrating to Australia but eventually he and his wife and family came to Jersey, in 1967, and bought a property St. John, where they have resided ever since, and still reside.

The Respondent then sought further business opportunities and for the first three years he had interests in England which required him to spend two to three days there every fortnight. Thereafter, however, he relinquished those interests and has spent his subsequent years at home, doing a considerable part of the house work and garden maintenance, and concentrating on seeking to improve his personal finances for the benefit of his wife and children.

The marriage was happy until about 1976 when a pattern of behaviour on the part of the Respondent began to develop which increasingly disturbed

the Petitioner. The relationship between them reached a watershed with an incident on 21st July, 1980, to which we shall refer later. The Petitioner realised fully for the first time, so she told us, that her marriage was assuming a bad pattern, and that the marriage was beginning to disintegrate. The physical relationship ended in September 1980, although the parties continued to occupy twin beds in the same bedroom. In February 1981, the Petitioner began keeping a diary describing the conduct of the Respondent on certain days, and in July 1981, she first consulted a lawyer. In September 1983, she instituted these proceedings. She remained under the same roof as the Respondent but moved to a wing of the house.

It is not easy to separate the Petitioner's complaints into groups, because any attempt to do so must result in some over-lapping, but we will consider her complaints under four main headings. First, the Respondent's excessive rigidity and love of routine, which amounted to operating a strict regime in the home and bullying the Petitioner if she did not conform. Secondly, his selfishness, insensitivity and rude behaviour. Thirdly, his meanness. Fourthly, his strange conduct and threats to commit suicide.

We now deal with the first main complaint. We are in no doubt at all that the Respondent is a man of strong principles and self-discipline with rigid ideas and a love of routine which has been carried to excess. The Petitioner complained that he ran the home like a factory. He denied that, saying that he was open to compromise, but we thought it of significance that when he conceded that he kept complete records of each purchase of petrol for his cars and of the mileage showing on each occasion he explained that he thought that it was a very natural thing to do and that in factories full progress reports were kept of all machinery and in the Army full records were kept of all vehicles. His love of detail and of routine was aggravated for the Petitioner by the fact that the Respondent was, from about 1971 onwards, always at home.

We give examples of his conduct under this heading. Firstly, meals had to be prepared by the Petitioner for a precise time, and there was a row if any were late. Secondly, nothing was permitted to interfere with meals being ready on time and being eaten when ready. The Respondent was extremely abusive to the Petitioner, and to any third party, if anyone telephoned at that time. Mr. RL and Mrs. JS corroborated that. Mrs. S gave evidence of hearing the Respondent shouting at the Petitioner for his tea.

Secondly, although there was a milk disc for the milkman, the Petitioner was not allowed to alter it if she wanted more milk on a particular day, as that would result in lack of conformity. The Respondent preferred to go to a nearby shop to buy more milk.

Thirdly, the petitioner had to comply with a routine which, in effect, required her to report to the Respondent before leaving the house, and to report to him on her return. This was, in our view, not just the observance of a courtesy, as the Respondent claimed, but a routine the non-observance of which resulted in abuse and anger. Furthermore, if she came back earlier or later than the time which she had stated (as she was required to do) on leaving home she was expected to explain why.

Fourthly, the Petitioner frequently retired earlier than the Respondent in order to have a bath before going to bed. She was required to come down-stairs after her bath to report to the Respondent that she was about to go to bed. Again, any non-observance resulted in abusive words.

Fifthly, we refer to the incident of 21st July, 1980. The Petitioner and M left home to go to England for a few days. The Petitioner carried her own suitcase down the stairs on leaving home. The Respondent felt very slighted because he considered that it was his right and duty to carry down the suitcase. The Petitioner left home in an atmosphere of anger. The same day the Respondent wrote to the Petitioner a very sarcastic letter, and he included the complaint that she had left him no money for food. Before she received that letter the Petitioner, while driving through the New Forest, suddenly remembered that because of the unpleasant atmosphere in which

she had left home she had forgotten to follow her usual custom of leaving £15 in cash on the kitchen table for the Respondent's food whilst she was away, and she at once stopped, bought an envelope and posted the money. We find this incident significant, first, because the Respondent thought fit to complain that no money had been left, despite the fact that he had money of his own in the house, and secondly, because the Petitioner had clearly been so conditioned by the Respondent's strict regime that she felt the need to briefly interrupt her holiday to send him the money.

Other examples of the Respondent's conduct under this heading were given, but we do not think it necessary to include them, because despite the Respondent's denials, we are satisfied that there was a strict and unreasonable regime imposed by the Respondent to which the Petitioner unwillingly submitted and which increasingly took its toll of her. There was, however, one further incident which we think was perhaps the most significant of all. In November 1983, after the service of the petition for divorce, the Petitioner was invited alone to a dinner party given by Mrs. JS. The Respondent was annoyed that Mrs. JS should have invited the Petitioner and that she should have accepted, because he felt that they were conspiring against him. Late in the evening he telephoned Mrs. JS's house in order to speak to the Petitioner to demand that she return home. The dinner had started late and at the time of the call the guests were eating the second course of the dinner. The call was taken by the caterer, a Miss Reay, who told us that the caller was extremely rude. The Petitioner was informed and she asked Miss Reay to inform the Respondent that she would be back at the time she had said. Miss Reay did so and the Respondent was again rude to her. Although the Respondent told us that the Petitioner did not return for at least an hour after that, we are quite satisfied from the evidence that in fact the Petitioner left the dinner party within a few minutes to return home.

Mrs. JS gave evidence that the Petitioner was clearly embarrassed at feeling that she had to leave in the middle of the dinner party. We consider this incident to be highly significant for two reasons: first, because it provides independent evidence of the Respondent's abusive conduct towards the Petitioner, and secondly, because it shows that even after the petition had been served, not only did the Respondent still expect compliance with the regime which he had instituted, but compliance and submission were so ingrained in the Petitioner that she felt compelled to leave the dinner party, if only to avoid unpleasant rows.

The second main heading of complaint concerned the Respondent's selfishness, insensitivity and rude behaviour. Disparate examples were given. We are satisfied that, although he is basically a shy man, he made very little effort to assist the Petitioner, who was not shy, to have a reasonable social life, and he did little to support her in her horse-riding activities. On one occasion, when reluctantly hammering in posts at a horse show he accompanied each blow with the exclamation: "bloody horses", to the embarrassment of the Respondent and the surprise of her friends present. His explanation that he was merely expelling breath in the same way that Jimmy Connors did at Wimbledon when hitting a ball was, in our view, a rather pathetic falsehood. We also accept the Petitioner's account of the Respondent's boorish behaviour during an evening at St. Ouen's Manor, and of his insensitivity and selfishness in refusing to buy a meal for them both after a cocktail party at Williams & Glynn's Bank.

We are satisfied that he periodically made remarks such as "the con-trick of marriage"; "the sacrifice at the altar"; "God is surely a female" and "spermicidal accidents". He agreed that he could have made these remarks, but claimed that they were the produce of a satirical sense of humour and did not cause offence. We are satisfied that they were made in anger and were bound to cause distress when repeated, as they were. In a similar category we place the Respondent's scribblings on the daily newspaper in the knowledge that the Petitioner would see them. The Respondent explained that these

were also a product of his sense of humour and were designed to provoke his wife to discuss the news. We consider this to be very odd behaviour which, when repeated over a period, was calculated to cause distress, as it did.

It may have been the Respondent's attitude to women generally (he told us that he did not dislike them but that he could not understand them) which was the real cause of his failing to discuss with the Petitioner his rather bleak financial position between 1976 and 1979. It was certainly that attitude, on his own admission, which caused him not to tell her how much allowance he gave to each of his children. He told us that he did not tell her because it was a matter between him and each of them, and not a matter between him and her.

Allegations were made by the Petitioner of the Respondent's use of abusive words towards her personally, and about members of her family. He replied that any such words were used only very rarely in the course of rows, but we think that this was regular behaviour on his part.

We are also satisfied that from time to time he threatened to disinherit the Petitioner (and his children) in a manner calculated to distress her.

The third main complaint was the Respondent's meanness.

We wish to make it clear that we accept that the Respondent was genuinely concerned to provide adequately for his wife and family, and indeed much of his time was devoted to increasing the family assets and income and he eventually succeeded by careful planning. Having said that, however, we believe that the marriage was soured by his totally unreasonable meanness, especially as regards the use of electricity, which was the only form of heating in the house.

Following the Suez crisis and the subsequent steep rises in the price of oil and therefore of electricity, the Respondent commenced an austerity regime in the use of energy, partly, he explained, as a patriotic duty in response to Government appeals to save energy, and partly because his finances up to 1980 were not good. We accept that, but it is all a matter of degree: We think that he became obsessed with saving energy, that it became an

article of faith, a question of philosophy, so that his conduct was totally unreasonable and distressing for the Petitioner.

He took a reading of the meter every day, kept graphs, and complained if one day's consumption exceeded that of the previous day. After hearing much evidence on the point, we are satisfied that the heating in the house was almost entirely controlled by him and that it was kept at an unreasonably low level so that the Petitioner had to wear a dressing-gown or similar garment over her day clothes when sitting in the living room or study in the evening. In the middle of winter when the Petitioner was ill in bed the Respondent restricted the amount of heating that she could have. He appears to have taken the view that if a winter sun was coming in the windows no artificial heat was necessary. In the children's bedrooms he set the radiator thermostat at a low level and then removed the switches so that the temperature could not be increased. When in 1980 the Petitioner began a secretarial course at Highlands College, one of her reasons was to get into a warm environment. We are also satisfied that the Respondent did complain, for the reason that a room would have to be heated, when it was suggested that M should have music lessons at home, and that he also did complain for the same reason when it was suggested that the Petitioner would do some of her studies at home instead of at Highlands College.

Whatever might be said about such restrictions during a time of financial stringency, the fact is that when his financial position greatly improved from 1980 onwards the Respondent maintained those restrictions. The original need for economy was elevated into an obsession which was totally unreasonable and often made life in the home extremely unpleasant, not to say unbearable at times.

The fourth and final main complaint was the Respondent's strange emotional conduct, including threats to commit suicide, which caused the Petitioner

distress and some fear. These threats, which began in 1981, are described in diary entries made by the Petitioner between February 1981 and Easter 1982, and again between October 1983 and September 1984. The Respondent agreed that he was suffering from dejection during the first period and from depression during the second, but he described many of the entries as either totally untrue or exaggerated. We believe that the entries are an accurate record of life at the matrimonial home on the days mentioned. It is true that the diary entries cover only a small percentage of the total number of days in the periods concerned, and that the Petitioner said that the entries were in respect of the "bad" days, and that the other days were "bright", but the entries, when taken with the other heads of complaint, present, in our view, a grim picture of married life. As to the threats to commit suicide (and the requests to the Petitioner to assist in that purpose) it was argued that she knew that there was no risk of his carrying out his threats. We do not accept that she could be sure of that, especially as he would not consult a doctor, for a variety of reasons: he did not particularly like doctors, he did not think that any doctor could help him, and in any event he was, in our view, not prepared to accept that there was anything really wrong with him which needed medical advice.

Reverting now to the four ingredients of the matrimonial offence of cruelty referred to at the beginning of this judgment, we are in no doubt at all that, looking at the whole of the matrimonial relations, the misconduct of the Respondent complained of was of a grave and weighty nature and now requires relief.

The second ingredient is the requirement of proof that there was a real injury to the Petitioner's health or a reasonable apprehension of such injury.

The Petitioner told us that she had tried to put up with the pressures of her marriage and home situation for several years without complaining to anyone, but that she finally became anxious and depressed and felt that she could no longer continue to withstand these pressures and she was alarmed

at the Respondent's conduct. She therefore confided in Dr. Falla, the family doctor, on 10th September, 1983.

Dr. Falla described her as depressed and subdued. He prescribed valium for her headaches and tension. She told Dr. Falla of what she had to put up with at home and, in effect, asked him whether she should have to go on enduring such conduct and pressures. She also showed Dr. Falla her diaries and other documentary evidence. Dr. Falla formed the view, from what he was told and what he read, that the Respondent seemed to be unbalanced, and that such conduct and pressures as recounted to him, if continued over a period, would cause the Petitioner to break down and to become depressed and ill. He also considered, first, that she was not a hypochondriac, and secondly, that she could not tolerate any more behaviour of that sort.

Her two brothers both thought that their sister had considerably changed and become withdrawn, introverted, worried and distressed. Mrs. JS shared that view, but also said that since the proceedings had begun the Petitioner seemed more relaxed and relieved, a change also expressed by the Petitioner herself.

Counsel for the Respondent argued that there was no evidence of change in the Petitioner's health, and Dr. Falla had no clinical basis for his opinion, which was grounded purely on what she told him, as he had not seen the Respondent as a patient.

We have no doubt that this ingredient of the offence is fully proved. It is not necessary for injury to health to have already occurred, although all the relevant evidence leads us to conclude that considerable injury had already occurred by September 1983. What is clear to us, as it was to Dr. Falla, is that no normal person in the position of the Petitioner could have continued to endure the Respondent's conduct, as we have found it to be, without inevitably suffering a real injury to health. We think that she had genuinely tried to bear the marital situation for as long as she possibly could, that divorce was a very undesirable concept to her, and that it was only when she could endure the position no longer that she went to a doctor and

asked for legal proceedings to commence.

We are satisfied that the third ingredient of the matrimonial offence is proved, and we therefore go on to consider the fourth and last ingredient.

The Respondent conceded that between 1980 and 1983 he was dejected, because he had several problems to contend with, such as the needs of his elderly mother in England, the career prospects of his children, and money worries. His dejection was increased by what he claimed to be a withdrawal of love and support by the Petitioner. He conceded also that after the service of the petition, which coincided with the Petitioner having reneged on a promise to enter into a legal arrangement which was designed to enable him to extend his interests at Lloyds in London, he became very depressed, because he still loved his wife and believed that a reconciliation was still possible.

The Petitioner agreed that she had lost her love for the Respondent in 1980, and that he would probably have realised this, but she claimed that the Respondent's conduct was to blame for this, and that she continued until 1983 to give him her support. She felt that his feelings for her also changed at that time. We have said that his letter to her dated 21st July, 1980, was later regarded by her as a watershed. One of the reasons was that for the first time he addressed her as "Dear L " instead of "Darling L ".

We accept that much of the strange conduct of the Respondent in the period since September 1983, has been due to the divorce proceedings. However, we seriously doubt whether he is genuinely still in love with the Petitioner, as he claims. We think that his conduct has resulted from a combination of causes - a dislike of the allegation of cruelty, a desire to protect his property, and a failure to see that he has done anything wrong (although for form's sake he does sometimes make a few admissions). One must have some sympathy with anyone who suffers from depression, but we have a duty to say that we think that his admitted conduct since September 1983 tends to confirm the Petitioner's account of his conduct during the earlier years.

As to his state of dejection between 1980 and 1983, it may in part have been due to a realisation that the Petitioner had fallen out of love with him,

but, if so, we have no doubt that it was his previous conduct, already described, which had caused that situation to come about.

The Respondent made much of the fact that the Petitioner did not discuss with him the deteriorating state of the marriage, nor her intention to start divorce proceedings, which came as a complete surprise to him. The Petitioner replied that the Respondent often told her (and sometimes her children) to go back to her mother, and she regarded that as an "open invitation" to take steps to end the marriage. We think that she did not discuss the disintegrating marriage with him because he dominated her, he would not have accepted that it was his fault, he would not have changed, and any discussion would have led to more unpleasantness. She regarded the situation as becoming more hopeless every day and when she could endure it no more she sought, in effect, the protection and relief of the Court.

It was argued on behalf of the Respondent that this was a case of a married woman approaching middle age, with a shy and retiring husband, who had become disenchanted with her marriage, who envied the life-style of friends wealthier than her husband, and who for selfish reasons wanted to put an end to her marriage.

We can only say, after hearing a large volume of evidence and having had the advantage of seeing the parties over a period of many days, that this is not our view at all. We believe that the Petitioner wanted to make the marriage successful and did her best to make it work. The distress which she suffered is obvious from the diary entries, and it is of interest that the Respondent apparently never inquired of her what was causing her that distress.

We are entirely satisfied that the Petitioner did not bring the trouble on herself and that the conduct of the Respondent complained of did amount to cruelty in the ordinary sense of the term.

We therefore grant the prayer of the petition that the marriage be dissolved on the ground of the Respondent's cruelty.