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KARRIT
*v.*
ROYAL EXCHANGE ASSURANCE

Betts Ag.C.J.

been acceded to. We have the evidence of Dendy, who said: "We approached the various suppliers to the plaintiff to try to substantiate the stock movements." It should be borne in mind that a request had been made for the plaintiff to supply a statement of accounts and he had promised to supply the names of his creditors and debtors.

In spite of the averment in the statement of defence that the defendants have no case to answer, Mr. Hunt, the manager of the Royal Exchange, said in evidence, "We are not disputing the cost at £2,000 for the building. We are disputing the amount of the stock at the time of the fire. I heard the evidence of Halloway. We are not disputing the cost of the furniture." This means that the defendants are willing to accept liability with regard to £3,000, i.e., the cost of the premises and furniture. As far as I understand their case it is that there is so far no sufficient substantiation of the claim of £10,000. I should like to make it clear that the dispute referred to by the defendants arose as a result of this action being brought and not in connection with the negotiations which could have led to arbitration.

In the circumstances already described, I find it impossible to agree with the defendants that they are entitled to disclaim liability because of the grounds stated. I hold that the defendants have not done enough to avail themselves of the provision of condition 11 and that there is sufficient substance submitted by the plaintiff to have this issue determined. I am of opinion to refer this matter to the master and registrar of the Supreme Court to determine: (a) the details which would form a basis of the award with regard to the claim for £10,000; (b) the amount constituting an indemnity of the actual loss in stock to the claimant.

I order accordingly and allow 10 days as from the date of this order for completion of the inquiry. I am to be informed on completion of the findings to enable me to come to a final judgment.

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Freetown
*Dec. 7,*
1962

Bankole Jones J.

[SUPREME COURT]

JOSIAH ELIJAPHAN HARRIS . . . . . *Petitioner*
AND ABIGAIL COLE . . . . . *Party cited*

*v.*

FANNY VICTORIA HARRIS . . . . . *Respondent*
AND JOHN WILLIAMS . . . . . *Co-respondent*

[Div. C. 20/62]

*Husband and Wife—Divorce—Cruelty—Desertion—Adultery—Exercise of discretion by judge—Matrimonial Causes Act* (*Cap.* 102, *Laws of Sierra Leone,* 1960), *s.* 7.

Josiah E. Harris (the husband) petitioned for the dissolution of his marriage to Fanny V. Harris (the wife) on the grounds of cruelty, desertion and adultery. The wife in her answer denied the allegations of cruelty and desertion but confessed adultery with the co-respondent. She cross-petitioned for the dissolution of the marriage on the grounds of the husband's cruelty, desertion and adultery with the party cited, asking the court to exercise its discretion in her favour notwithstanding her adultery. The co-respondent did not defend the suit, while the party cited denied having committed adultery.

The cruelty alleged by the husband was the placing of juju in his bedroom. One day he found hanging from the head of his bed a piece of cloth in which was wrapped a piece of red kola nut with a needle thrust through it. He also found on his pillow another piece of cloth in which were wrapped some horse-hair, finger-nails, needles and a piece of paper on which was written something in Arabic. By the side of his bed he discovered a bottle covered with cowries. When he found these things, he became frightened and his health suffered to such an extent that he had to go to hospital for medical aid. Since this treatment failed to have any effect, he was treated by native doctors for several months.

The cruelty alleged by the wife consisted, inter alia, of a beating, keeping her short of housekeeping money and the burning of noxious substances.

*Held*, for both the petitioner and the respondent, (1) the wife's conduct in placing juju in her husband's bedroom constituted cruelty; and

(2) The husband was entitled to the dissolution of the marriage on the ground of the wife's cruelty and adultery.

The court also exercised its discretion in favour of the wife and granted her a divorce on the ground of the husband's cruelty, notwithstanding her adultery.

Case referred to: *Anstey* v. *Anstey and another* [1962] 1 W.L.R. 358; [1962] 1 All E.R. 741.

*Nathaniel A. P. Buck* for the petitioner.
*Freddie A. Short* for the respondent.
*Samuel Beccles-Davies* for the co-respondent.
*W. S. Marcus-Jones* for the party cited.

BANKOLE JONES J. In this case the husband/petitioner seeks a decree of dissolution of his marriage on the grounds of cruelty, desertion and adultery. The wife/respondent in her answer denies the allegations of cruelty and desertion, confesses adultery with one, John Williams, the co-respondent, but asks the court to exercise its discretion in her favour notwithstanding her adultery. She cross-petitions for the dissolution of the said marriage on the grounds of the husband's cruelty, desertion and adultery with one, Abigail Cole, the party cited. The party cited denies adultery. The co-respondent merely entered appearance and has not sought to defend the suit.

The parties were married in 1943 and there is one son born in 1946 now living with his maternal grandmother. The marriage started off very well and continued so for some years. There were the usual aches and pains as are to be found in most marriages, but whilst they were living together at 96, Campbell Street, it foundered on or about October 12 or 13, 1953, and a separation resulted. Since then neither party has lived with the other as man and wife. The husband commenced divorce proceedings in May, 1962, some nine years after their separation. He never at any time earned very much and is now a lay pastor of the Huntingdon Connexion and has been received as a candidate-in-training for the ministry. I accept his reason for the delay in presenting his petition, namely, that he had not the means to do so before now.

On the question of cruelty, the petitioner relied mainly on an incident which occurred in their married life. One day he found in his bedroom hanging from the head of his bed a piece of cloth in which was wrapped a piece of red kola nut with a needle thrust through the eye of the kola nut. He also retrieved from his pillow another piece of cloth in which he found some horse-hair, finger-nails, needles and a piece of paper on which was written something in

Arabic. Also at the side of his bed he discovered a bottle covered all over with cowries. He became frightened and his health suffered to such an extent that he had to seek medical aid in a hospital. As the treatment given was of no effect, he had to resort to native doctors for several months before he became well again. The respondent denied having been responsible for placing the juju in her husband's bedroom and also denied the fact that her attention was called to them. On the evidence, however, I accept the petitioner's story. I find as a fact that the respondent wilfully placed the juju in her husband's bedroom and although she may not have intended to injure him, yet her conduct was such that it gave rise to a reasonable apprehension of danger and in fact impaired the petitioner's health. Whilst conduct of this nature may not be regarded by an English court as amounting to cruelty, yet our court is bound to take notice of the social background in which the parties live and the superstitious beliefs which, like a cankerworm, can sap the very fabric of even a Christian marriage in an African environment. I, therefore, hold that the respondent by her conduct was guilty of cruelty.

The respondent, on her part, relied on several incidents to found her allegation of cruelty. There is the incident, for example, which she said took place in 1945, when she suffered abortion as a result of the petitioner beating her up and kicking her on her stomach. Exhibit " F," a discharge ticket, shows that she was admitted in hospital between April 14 and 26, 1945, and her illness was diagnosed as " incomplete abortion." Although Exhibit " F " by itself is not evidence against the petitioner, yet on a consideration of the question which of the two persons is to be believed, I would rather accept the evidence of the respondent so far as this incident is concerned.

Other incidents of cruelty are said to be keeping the respondent short of housekeeping money, the petitioner's threat to leave the respondent for the party cited, the photograph of the petitioner and the party cited wrested by force from the respondent, and the burning of noxious substances by the petitioner in order to get rid of the respondent. I accept the respondent's evidence on all these matters and it seems to me that their cumulative force, added to the incident of 1945, clearly to my mind amounts to the matrimonial offence of cruelty on the part of the petitioner.

On the question of desertion, I find that the parties were ad idem regarding the day this occurred. It occurred on or about October 12 or 13, 1953. As to what took place on that day two violently opposed stories have been given by either side. I do not at all find it difficult as to what side to believe. I accept the story of the respondent, namely, that after a quarrel, the petitioner put out all her things and asked her to leave the matrimonial home. She was most reluctant to do so, and although several persons pleaded with the petitioner to take back his wife, including his own cousin, one Prudence Temple, he refused to do so, and the respondent had to sleep with her son on the ground in the room of another tenant in the house. I find that she was shamelessly driven out of her house with the intention on the part of the petitioner of bringing the marriage to an end. I, therefore, find the petitioner guilty of desertion.

On the question of the respondent's adultery, she stands confessed as a guilty adulteress with the co-respondent. As to whether adultery took place between the petitioner and the party cited, Abigail Cole, I find not. There is certainly no evidence that Abigail Cole, as alleged in the respondent's answer, moved into the matrimonial home, at No. 96, Campbell Street, immediately after the

respondent left it. I refuse to believe that Abigail Cole is a woman of such an abandoned and wanton character as to step into the shoes of the respondent on the very day the latter left her home and begin sharing a bed with the petitioner. Unless I am a bad judge of character, I consider her to be a woman of some shame and pride. I accept her evidence that the only relationship which subsisted between herself and the petitioner was that of landlord and tenant and nothing more. I find that neither she nor the petitioner committed adultery each with the other.

I now come to the question of the several prayers sought by each party. On the whole of the evidence, I have come to the conclusion that, because of the cruelty committed by each party, each is entitled to the dissolution of the marriage. I have also come to the conclusion that because of the adultery committed by the respondent, the petitioner is, as well, entitled to a decree on this ground. The respondent has, however, asked the court to exercise its discretion in her favour notwithstanding her adultery. I must say that this was a bad adultery on her part, one which produced three children, the first a little over a year after she had been deserted. The court, in exercising its discretion, has to take into consideration the whole of the circumstances in any particular case, including the discretion statement: see *Anstey* v. *Anstey* [1962] 1 All E.R. 741 at 744. In doing so in the present instance, I will, rather reluctantly, exercise my discretion in favour of the respondent. It follows, therefore, for the reasons given, that I grant the decree sought to either party and I order that the marriage had and solemnised on June 9, 1943, be dissolved by reason first of the cruelty of each party one to the other, and secondly by reason also of the adultery of the respondent in whose favour this court has exercised its discretion notwithstanding such adultery. On the question of the custody of the child of the marriage, only the respondent has prayed for this, and I grant her such custody. Under her prayer for any other relief as may be found just by this court, I order that the petitioner do pay to the respondent a monthly sum of £2 towards the maintenance and education of the child until he attains the age of 21 years, or until such an age as he leaves school, whichever event first occurs. Liberty to apply on the question of such maintenance. The suit against the party cited is dismissed.

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[SUPREME COURT]

Freetown
*Dec.* 14,
1962
Bankole Jones J.

MRS. RAIFE MAHMOUD DARWISH BASMA . . . *Plaintiff*

*v.*

THE OFFICIAL ADMINISTRATOR OF SIERRA LEONE AND MRS. NAJIBI BASMA . . . . . *Defendants*

[C.C. 349/62]

*Administration of Estates—Landlord and tenant—Lease of land in provinces—Buildings erected by non-native tenant on land in provinces—Status of buildings on death of tenant—Whether buildings personalty or realty.*

*Administration of Estates Act* (*Cap.* 45, *Laws of Sierra Leone*, 1960), *ss.* 1, 14, 15, 21, 22—*Provinces Land Act* (*Cap.* 122, *Laws of Sierra Leone*, 1960), *ss.* 2, 11 (*a*)—*Interpretation Act*, 1961 (*No.* 46 *of* 1961), *s.* 3.