proceedings and the order the respondent was a married woman and therefore could not bring the proceedings. He relied on the case of *Stacey* v. *Lintell* (1) which laid down the proposition that proceedings of this nature could not be brought when the mother has married since the birth of the child and was at the time of the application living with her husband. There is no allegation in the affidavit in question that at the time of the proceedings or order the respondent was living with her husband. Mere allegation or proof of marriage in my view is not sufficient; for as Lush, J. in the above-cited case said, *inter alia* (4 Q.B.D. at 294): "the term 'single woman' is not confined to unmarried women, but may include married women who are reduced to the condition of single women by widowhood or otherwise." [These words do not appear in the report of the case at [1874–80] All E.R. Rep. 1166.]

Taking all the circumstances into consideration I do not think that justice would be done if I granted the application. I accordingly refuse it.

Application dismissed.

DAVIES v. DAVIES

SUPREME COURT (Marke, J.): July 24th, 1964
(Divorce Case No. 25/63)

[1] **Evidence—judicial notice—notorious facts—mental state of pregnant woman:** Judicial notice can be taken of the mental state of a pregnant woman who has been threatened with violence during labour (page 85, lines 6–15).

[2] **Evidence—opinion and belief—opinions of experts—medical evidence—desirable in divorce suit based on cruelty:** Where in a charge of cruelty the alleged injuries are such that a medical practitioner ought to have been consulted, medical evidence is desirable to support the allegation (page 87, line 36—page 88, line 7).

[3] **Family Law—divorce—cruelty—medical evidence desirable to support charges:** See [2] above.

[4] **Family Law—divorce—cruelty—test of cruelty—danger or reasonable apprehension of danger to life or health:** To sustain a petition on the ground of cruelty, the court must be satisfied that there is danger or a reasonable apprehension of danger to the life, limb or health, bodily or mental, of the petitioner (page 87, lines 31–33).

The petitioner petitioned for divorce on the ground of cruelty.

The marriage between the parties was uneventful until on one occasion the respondent, who was pregnant at the time, informed the petitioner that she had heard that the petitioner's relations were planning to kill her during her forthcoming labour. From that time on the relationship between the parties deteriorated rapidly to the extent that they were constantly fighting and abusing one another. The petitioner alleged that on one occasion the respondent had wounded him on the neck and that generally he suffered from insomnia and depression as a result of the respondent's conduct. However, the petitioner failed to consult a medical practitioner for treatment. The respondent adduced evidence which sought to refute the petitioner's contentions.

During for the petitioner;
Miss Wright for the respondent.

MARKE, J.:

This is a husband's petition for dissolution of marriage on the ground of cruelty.

The parties were married on January 19th, 1955. There are three children of the marriage born in 1956, 1958 and 1960 respectively. The marriage was apparently happy until one day in 1960 while the respondent was expecting her third child. According to the respondent, on that day a man who she said was an adherent of the sect of one Adejobe came into her yard uninvited and told her that the petitioner's relations were planning to kill her when she was in labour with the child she was expecting. When the petitioner returned home for his lunch that day, she related the incident to him and the petitioner left the table in disgust without finishing his lunch. From that day unhappiness and differences entered their matrimonial home, which became a scene of constant abuse and violent fighting on one occasion of which an axe was produced.

I must say at once that I do not believe that any follower of Adejobe entered the yard of the matrimonial home unsolicited and volunteered the information which the respondent alleged. According to the respondent, this follower of Adejobe was holding a meeting in the street oposite their matrimonial home. He suddenly left the meeting, rushed into her yard, gave her the disquieting information and then left. I cannot believe such a story. The respondent said that she laughed in his face and treated the matter as a joke when

narrating the incident to her husband at lunchtime. That again I cannot believe. The respondent, having admitted that the petitioner was intelligent enough to appreciate a joke, has yet to explain why the petitioner should have left the lunch table in disgust without finishing his lunch when she was telling him a joke.

In considering this important incident in the matrimonial life of the parties, important because from it started all the unhappy incidents in their married life, I have to take judicial notice of the fact that no average Sierra Leone woman in a state of pregnancy, on being informed that some people were planning to kill her when she was in labour, would take such information as a joke or laugh in the face of her informer. The usual reaction of the pregnant woman on such occasions is fear, foreboding and apprehension for her life, till perhaps her husband succeeds in coaxing her back to a state of normality.

What probably happened was that the respondent, having received this rather disquieting information from some source or having fabricated it herself, believed in it and at the lunch table persisted in attempting to convince the petitioner of the truth of her belief. This seems likely to have disgusted the petitioner and caused him to leave the table without finishing his lunch.

Apart from the evidence of the respondent on the incident to which I have just referred, I observed the demeanour of the respondent in the witness box and how she gave her evidence and my conclusion is that she is not a truthful witness. Her whole evidence manifests a deliberate intention to deceive the court. Sometimes in her intent to deceive the court she forgets what I may call her major premise and ends up with something that does no credit to her common sense.

Here is one such example. The respondent was cross-examined as to her visit to Ekun Macauley after the latter had left the respondent's house: and this is her answer:

> "I went to Ekun Macauley's house to find out why my husband was not eating at home and whether the food was not properly cooked or was served in a dirty dish. My husband was eating at home up to the day Ekun Macauley left. Even after she had left my husband continued to eat at home. The food was prepared by Miss Harris. . . . It is not true I went to Ekun Macauley to retrieve my husband."

Any reasonable person would question the sense in the respondent having made the journey to Ekun Macauley's residence after Ekun

Macauley had left her employment to ask: (a) why the petitioner was not eating food prepared by another domestic help after Ekun Macauley had ceased to be the domestic help of the respondent; (b) whether such food prepared in Ekun Macauley's absence was not properly prepared; and (c) whether such food prepared and served up in Ekun Macauley's absence was served in a dirty dish. As I have said above, some of the excursions of the respondent into the fabrication of evidence to deceive this court do not give credit to her ordinary common sense. Any reasonable person would be shocked at a woman who calls herself a wife having to go out of her home to find out whether food prepared for her husband to eat was not properly prepared or was served in a dirty dish.

The respondent has called another domestic help, Dolly Bishop, to corroborate her evidence. This woman Dolly Bishop was so clumsily partial in her evidence that I find her evidence most unreliable. She was obviously keeping back all the words and actions of the respondent, while she was only too ready to say whatever she thought would damage the petitioner's case. I do not believe she actually witnessed all the incidents about which she gave evidence. She impressed me as a witness who was reciting what she had been taught to say and when, in the witness box, she forgot her lesson, she improvised on it by introducing facts which even the respondent did not allege. For instance, referring to the Easter Day fight, she gave in evidence that the petitioner took off his slippers and hit the respondent on the head till she dropped. They fought till they went into the yard to the respondent's flower garden. This was the first time in this case that the respondent's flower garden was mentioned and it is but natural to infer that if such an incident had at all occurred the respondent would not have kept back or forgotten such detail. Here is another example of Dolly Bishop's mendacity: the petitioner said that the respondent gave him a wound on his neck. The respondent under cross-examination said that she saw a plaster on his cheek the next day and later in cross-examination said that she saw a plaster on his neck the next day. But Dolly Bishop said that she saw no plaster on the petitioner's neck the next day. Dolly Bishop had to admit in cross-examination, however, that she was not pleased when the petitioner said that she should not live in at the Murray Town matrimonial home, but should live out and come to work every morning. I do not believe Dolly Bishop in the material parts of her evidence and find myself unable to rely on her evidence.

Although the evidence of the petitioner contains some exaggerations, I believe his evidence in the main and on the balance of probabilities find that his account of the married life at the material time is more likely to be true than that of the respondent and her witnesses.

Looking at the matrimonial life of the parties as a whole during the material period, that is from June 1960 up to the date of the petition, the conclusion is irresistible that it was a most unhappy home caused mainly by the violent and uncontrollable temper of the respondent which knew no bounds. Not satisfied with fighting her husband in the presence of the children, she even went so far as to collar him when he was driving his car. She admits such an action was not lady-like and she was not justified in behaving in that way. But when her temper was roused, she had no regard for her husband and the children and at the moment threw to the winds any self respect or restraint she may have had. All that seemed to matter with her was to be the dominant figure in the matrimonial home. Her wishes were always to prevail and if she felt they were thwarted, she would resort to violence regardless of the effect such behaviour would have on her reputation in the neighbourhood.

This case, I must confess, has given me no little difficulty in arriving at a decision that would be in the best interests of the parties, their children and of society. In the interests of the parties themselves, their children and society, this union ought not to be allowed to continue.

Though the petitioner in my opinion is deserving of some sympathy, I must nevertheless decide this matter not purely on sympathy but on the principles on which the court has acted in similar cases and by which I am bound.

To succeed on this petition the court must be satisfied that there is danger or a reasonable apprehension of danger to life, limb or health (bodily or mental). Conduct which could normally be described as cruelty will not be classed as cruelty for the purposes of divorce unless such danger or apprehension of danger exists.

The petitioner has given evidence that as the result of the respondent's conduct, he was depressed and could not sleep well. Though it may be urged that when the petitioner began to be depressed and suffered sleeplessness he may not have at that time contemplated a divorce, there can be no reasonable excuse for his failing to consult a medical practitioner when the respondent gave him a wound on his neck with the heel of her shoe. The marriage

had by that time so deteriorated that unless he had decided to endure the violent outbursts of the respondent, he ought to have realised that the marriage could not last much longer. The evidence of a medical practitioner would have been most helpful in deciding whether the depression and sleeplessness were a result of the acts of the respondent and also whether the wound on the neck was reasonably likely to endanger his life or his health.

As I have indicated above, from the evidence of the happenings during the material period, this is a marriage that ought to be dissolved, but I am precluded from doing so because the evidence of the legal cruelty alleged does not come up to the required standard.

In the circumstances, and not without regret, this petition must be dismissed.

Petition dismissed.

ZABIAN *v.* NEW INDIA ASSURANCE COMPANY LIMITED

SUPREME COURT (Bankole Jones, C.J.): July 28th, 1964
(Case No. C.C. 403/63)

[1] **Agency — insurance agent—canvassing agent—agent of proposer—implied agency:** Where a canvassing agent for an insurer receives information from or completes a proposal form for an illiterate proposer, he does so as an agent of the proposer and not as an agent of the insurer, since he is not employed by the insurer as an agent for these purposes (page 95, lines 32–37).

[2] **Agency—insurance agent—agent of insurer—imputation to principal of agent's knowledge:** Where an agent of an insurance company becomes aware of material facts concerning a proposal, which ought to be disclosed, and informs a senior official of his company, the policy is not invalidated by the omission from the proposal form of any reference to the material facts: the knowledge of the agent or the senior official is the knowledge of the company (page 96, lines 20–30).

[3] **Estoppel — representation — insurance — insurer's approval of policyholder's accounting system—estoppel from relying on book-keeping endorsement to policy:** Approval by an insurer of the way in which a policyholder conducts his accounting system estops the insurer from relying on a book-keeping endorsement to the policy requiring the policyholder to keep certain records as a condition precedent to the right to recover under the policy (page 97, line 24—page 98, line 28).