

THE HIGH COURT
(MATRIMONIAL)

BETWEEN:

M. K.

PETITIONER

AND

A. K.

RESPONDENT

Judgment of Mr. Justice MacKenzie delivered the 13th day of
May 1988.

In this case the Petitioner seeks a divorce a mensa et thoro against the Respondent on the grounds of cruelty and desertion.

The Respondent in his answer denies the Petitioner's allegations of physical or mental cruelty and brings a counter petition for divorce a mensa et thoro on his own behalf on the grounds which are elaborated in great detail in his Answer.

The facts here have been recorded by the Court stenographer during the hearing of the action which took approximately 11 days.

After the third day of the hearing the Petitioner's Counsel withdrew from the case and I believe that that was at her request.

Being matrimonial proceedings the Petitioner advanced many other allegations of a most serious nature against the husband which although they were not specifically pleaded or relied upon in the petition I allowed her to lay as additional grounds. They were relevant in the context of the Respondent's answer. The facts here have been recorded by the Court stenographer and I propose merely to summarise the evidence.

The marriage took place on the 2nd of January 1977. There are three children of the marriage. Both are highly qualified professional people.

The Respondent admits that prior to his marriage and up to one year afterwards he was a heavy drinker.

It is my view also that the wife drank heavily but to a lesser extent than her husband.

Two incidents happened in the first year of the marriage both of which occurred as a result of drink. The Petitioner disgraced herself on her honeymoon for which she was contrite and forgiven by the Respondent. After the birth of the first child on a social occasion in drink the Respondent brutally assaulted the Petitioner. This was in June 1978. The Petitioner forgave the Respondent but to use her own words she did not forget. After that occasion in his shame the Respondent said that he ceased drinking and only on a few occasions since, for example in times of severe emotional stress, has he taken drink. A psychiatrist has diagnosed him as not being an alcoholic. The marriage was reasonably harmonious and happy until the year 1985.

At that stage the Petitioner's allegations against the Respondent really commenced.

(a) She maintains that he transmitted to and infected her with venereal disease early in January 1985 when the husband who was working away returned for the weekend with bilateral conjunctivitis.

In March the Petitioner developed a vaginal discharge and later internal pain in the abdomen. She wrote to Doctor Freedman stating that she believed her husband was having extra marital sex for at least a year and that another doctor had told her that he suspected she was now suffering from venereal disease. She asked Doctor Freedman to test her husband. All tests were carried out by the doctor who wrote on the 19th of November 1985 to the husband stating

"I am fully able to reassure you that you are free from infection. The conjunctivitis from which you suffered earlier in the year has no connection with a sexually transmitted disease."

The husband submitted himself to these tests to allay his wife's fears. The abdominal pain from which the Petitioner still complains is due to a large dilated varicose vein between the side wall of the womb and the pelvis. An abdominal hysterectomy was advised. The Petitioner did not inform the gynaecologists of Doctor Freedman's tests. There was no evidence according to this doctor of pelvic inflammatory disease, the only thing he found was a large varicose vein in the pelvis.

Notwithstanding I believe to this day the Petitioner is of the view that her husband transmitted venereal disease to her.

(b) The Petitioner alleges that the Respondent is a homosexual.

Although the Respondent maintains that there was previous intimacy the parties first slept together in the Autumn of 1975. After the opera at the Wexford Festival when both had a considerable amount of drink they slept together. A further incident occurred which is of no relevance here. What the Petitioner insists on is that the husband was present at the festival with a homosexual friend. This person was subsequently the husband's best man. Apart from the fact that the friend looked effeminate there is nothing to suggest that he was a deviant. On that occasion he was with a woman friend and was booked into the same room with her.

Secondly, a friend of her husband stayed in her flat on one occasion and told her he was a transvestite and tried on her clothes.

She described an incident when both were drinking one night in a public house near the Strawberry Beds. Her husband, she said, got into animated and excited conversation with a young man ignoring her entirely. On leaving the public house at closing time she walked ahead of her husband and looked back and saw the two men in a passionate embrace.

The husband emphatically denied this and said it was mere drunken back-slapping. I find the husband's evidence much more reliable and I accept his version.

His love-making she said was homosexual. He took her from behind not I hasten to say involving anal intercourse. He

said it was she preferred this method. To my mind this is not indicative of a homosexual practice.

She made a broad statement that he attended homosexual parties, referring however to only one such occasion or perhaps two where known homosexuals hosted a perfectly ordinary festive occasion.

I reject this allegation.

(c) The Petitioner alleges that he was promiscuous.

This charge against the husband must be considered in the light of the evidence of Professor Noel Walsh an eminent professor of clinical psychiatry who became very much involved with the Petitioner when she studied a post-graduate course for a degree in psychotherapy known as a mastership of medical science.

That course was conducted by Professor Walsh in a practical manner in that the student was required to conduct a course of practical psychotherapy and to learn by personal experience. This was carried out between October 1984 and November 1985 by Professor Walsh with the Petitioner personally. During this course the Professor said he became aware of the tendency of the Petitioner to have what is called in psychiatry a morbid jealousy syndrome and he felt that the Petitioner was unwell. Morbid jealousy he said was a condition in which a spouse becomes suspicious and looks for evidence of suspicion against her partner, although to him she was not able to make any statement which suggested that these suspicions or allegations were true. Morbid jealousy can turn a happy normal home into a hell on earth. A sufferer has lack of insight and do not understand that they have a problem nor are they open to rational argument.

In May 1985 Professor Walsh saw the Respondent and saw nothing in his make up to suggest that any of the allegations with which I shall shortly deal were correct. There was nothing to support the allegations. The Petitioner then about that time ceased to go to Professor Walsh who suggested that she be examined by a Doctor Fitzgerald which she refused. She then either saw or had arranged to see Doctors McGrath and Tubridy both eminent psychiatrists but she rejected any assistance from them saying to Professor Walsh that this was a legal profession manipulation. Professor Walsh told the Petitioner it was in her interest to get help. It is to be noted particularly that a husband such as the Respondent suffering from constant accusations of promiscuity, fornication and adultery would in Professor Walsh's view be under tremendous provocation.

In view of the evidence of Professor Walsh which I accept I will now briefly review the allegations under this heading made by the Petitioner against her husband.

It is said that the delusion is usually sudden in onset though on closer examination the history of a few months increasing suspicion is often elicited.

In 1980 when the parties were house-hunting they viewed a dwelling where a lady previously known to the Respondent resided. To his astonishment he was accused of knowing this lady extremely well if not being intimate with her, her presence being a reason why he might want to live in the neighbourhood.

In 1981 on a holiday in Crete he was accused to his amazement of flirting with a woman on a bus outing. A similar outing next day was abandoned because that woman might be on

the same bus. This stunned the husband who didn't understand it he says at the time. Suspicions he said became more frequent. These were incomprehensible to him and he felt that perhaps all women were like that. Then he said he began waiting for the next time. In 1984 while on a holiday in Majorca with the children during a cloudburst they ran into a cafe and grabbed the first chairs and table that were available.

After this he was accused of deliberately going to that table because of the presence of a good-looking young woman close by. On the same time the Petitioner wanted to buy a certain article in the town. The husband was not interested in shopping and brought the children down to the hotel swimming pool. After that the Petitioner accused her husband of fornicating with one of the female pool attendants who were "sluts and trollops". These allegations increased as time went by.

Again in 1985 with the Petitioner's father and the children they took a holiday in Portugal. The wife because the husband had brought with him a contraceptive different from that usually used by them said that this was evidence of an affair with a woman in a particular country town. She erupted one night shortly after the beginning of the holiday. According to the husband the wife went wild. She ranted, raved, threw all the crockery at him, broke everything of that nature in the flat and stubbed a cigarette onto his arm and thigh. She attacked him with a carving knife and he grabbed her wrist and held her down. The abuse continued all through the holiday, the husband saying that the intervening periods between the embroiled accusation were a hellish ghastly strain and a silence. The husband said that he had to leave the

apartment and walk onto the beach during the night. The language he described used to him and the tone of voice could not be believed unless it had been confirmed by taperecording of the type of abuse which the husband said he was subjected to and which taperecording was produced in Court from the custody of the Petitioner. It is not necessary to deal with all the allegations of infidelity and the constant tirades of abuse and insults to which the husband was subjected to including following him into places where he had to work. On one occasion in a car which was borrowed from a friend, the timing of his business arrangements, one hour to get to town, one hour for business and one hour back if not adhered to, violent suspicions were aroused.

On one occasion in 1985 the husband was working downstairs when the wife commenced a torrent of abuse. It was not the habit of the husband to respond, he left the room and went to bed.

He was followed upstairs and there abused. He says the Petitioner attacked him and to ward her off he held her hands. She screamed at him and said she was going to ring her solicitor. He went into his study, she followed and there was tussle for the book where telephone numbers were kept. The Petitioner says that she was pushed and her elbow went through the glass of a book-case. The husband denied this and said that in the struggle, the room being narrow, with bookcases on each side her elbow went accidentally through the bookcase where she sustained a cut. The narrowness of the room was confirmed by a member of the Guards. The injury which the Petitioner sustained was described by the local doctor as a small abrasion with bleeding meaning that a small portion of the skin had

been removed. The wrists were bruised and there was a haematoma of the lower forearm. This was in September 1985.

This instance features in a series of events which the defence argue is conclusive evidence of morbid jealousy.

In September 1985 a lady who was a colleague of the Respondent attended a wedding at which the parties herein were also guests.

The wife said that this lady, seated at a table near where she was with her husband, was the subject of constant admiring glances by the husband and he subsequently joined her and had with her an animated conversation.

The young lady who gave evidence said there was no conversation of any significance.

Subsequently business of a professional nature had to be arranged between this lady and the husband. She wrote a letter to him making an appointment to see him on a certain Friday. The wife saw that letter and made a copy of it. It has been produced. Great importance by the wife is attached to this document. It expresses a hope that the writer will be able to meet the husband on this particular Friday so that he could deal with some business that she wished him to deal with, this business being of a professional nature. The letter in itself is as innocent as the handkerchief which Iago showed to Othello. The wife telephoned the husband's place of work and being unable to find him concluded and said so in a vague way that they must have been having a liason somewhere together.

In October of that year the husband having business in Tralee and intending to travel there the wife insisted on accompanying him. She expected, as was the fact, that the young lady referred to would have like business at that

place. She drove down with him abusing him all the time he says and I accept this. They went to stay at his sister's house a short distance from the town where all night long there was the same abuse and accusations so much so that the husband's sister said if this were true you should separate and the young lady's husband should be informed. The Respondent went to the town to look after his affairs which were disposed of quickly. He visited his brother's office where the wife arrived, she having spent most of the morning in a car watching the building where the husband's business was transacted. The husband had to return there. The wife went with him where the young lady was passing by and in a civilised way was introduced by the husband. According to her the wife when introduced demanded "Have you any children", to which she answered "two" and the wife said you should be ashamed, showing her her wrist. Something very strange was going on the young lady said in evidence. She hardly knew the husband even very much as a colleague and any connection she had was so insignificant as hardly to be recalled.

Nevertheless to the day of the hearing the Petitioner in this present case persists in her allegations of a liason between her husband and this young woman. In 1987 the wife was convinced that the young lady referred to above was present also at a professional dinner at a Hotel in Mallow. She telephoned the hotel twice during that evening cruelly informing her husband that their son had met with a serious accident and was calling for his father. The husband left the dinner and drove home from Mallow arriving back in County Dublin after 1 o'clock in the morning to find that he had been subjected to an appalling mistruth. Incidentally the lady was not present at the dinner.

Another incident which should be mentioned is that when the husband on business stayed in a hotel in Kilrush the wife was convinced and is still convinced that he was there with this young woman or perhaps another. Through her father she got the Guards to investigate this and indeed it was subject to quite an amount of scrutiny, proving nothing but the husband's innocence.

These are some of the factors which I believe must have been present in the mind of Professor Noel Walsh of morbid jealousy. Indeed as he said to Doctor Henry the worst case of morbid jealousy that he had every known, a condition based on suspicions without any statements or evidence which suggest that the allegations are true. In anticipation probably of Professor Walsh's evidence the Petitioner called Doctor McCaffrey a psychiatrist. She had worked with him as a trainee psychiatrist in St. Brendan's Hospital. He also knew her socially. He was present in Court during a great deal of her evidence. He conceded that the Petitioner was jealous and suspicious of her husband. Whether it amounts to morbid jealousy he said "I am not certain". His evidence was limited. He said that if the Othello syndrome, as it is also known, existed it would be an extremely serious condition. He concluded "I can't say that I am fully convinced she has this". Further, in cross-examination he said and I quote "I am not satisfied from all that I have heard that I could say she has morbid jealousy". He concluded by saying that his opinion was based on a limited amount of evidence. He said also that he felt the Petitioner would need psychiatric help and that no husband could co-operate more in dispelling the wife's dillusions than the husband in this case. The Petitioner's

principal witness was Doctor Cormac Gallagher, a psychologist with high qualifications. He is in addition a Jesuit priest and for nine years rector of Gonzaga college. He referred to the course the Petitioner began in 1984 and finished in 1986. As we have been told each person on that course did their own personal therapy. The trainees had to be interviewed and talk about their own personal difficulties as well as their examinations. The degree is now a recognised master of medical science which the Petitioner in this case has. In May 1985 he took over because of her distress when Professor Walsh considered her mentally ill. Since October 1985 he has had over 200 sessions with the Petitioner, incidentally costing the Respondent over £5,000. He gives a very firm opinion that the Petitioner does not suffer from morbid jealousy nor is she psychotic. He regards the Petitioner in her stories as being reasonable and coherent and being in contact with reality. Her reaction he said was that of a temperate and proud woman wanting to keep her marriage together not wanting to separate for the sake of her children, for whom she had given up a job for ten years to look after.

Apparently he made no enquiries or requested details from Professor Walsh who told him that the Petitioner was not "well at all" and that he, Professor Walsh, did not know how to quote "it was going to work out". No consultation took place between him and Professor Walsh although he acknowledged the expertise and high qualifications of the latter. She informed him her husband was a homosexual which he agreed was deeply hurtfull and provocative. Doctor Gallagher was to my mind unable to explain why he was continuing treating the Petitioner. Suspicions of unfaithfulness were voiced to him

and the husband's alleged drinking had become a problem.

I am much more impressed with the evidence of Professor Noel Walsh.

The Petitioner called Doctor Judith Hickey who knew the Petitioner in 1970 saying that she then was a confident attractive girl, good in her work and personally reliable. She never really examined the Petitioner, however saying that she never saw any evidence of morbid jealousy. When certain parts of the evidence were put to her by Mr. Maguire, she conceded that what he suggested could be a strong indication of that condition.

Doctor Lelia Ryan worked with the Petitioner in 1970 and met her again in 1986 when they were doing the Master's Degree but gave no evidence of any detailed examination or investigation of the Petitioner. A mutual doctor friend was also called who again neither treated or examined either of the parties but did advise the Petitioner that she should certainly take a rest and look for some treatment. This happened at the Petitioner's father's house.

I accept the diagnosis of the Professor Noel Walsh.

The allegation of alcoholism

The husband before marriage was a heavy drinker and up to the incident in their marriage when he assaulted the Petitioner cutting her face with a tumbler continued to be a heavy drinker. The husband consulted Doctor Dermot Walsh, clinical director of St. Loman's Hospital, specialising in the problems related to alcohol. He found that the Respondent was not an alcoholic. Nevertheless, the Respondent ceased drinking alcohol and up to the present time on a few occasions and only on a few occasions did he drink to excess.

A number of witnesses who were professional colleagues of the Respondent were called to give evidence and I accept what they say entirely. The Respondent's drink was known to be "Seven Up" and even on the occasion when he was summonsed on the pretext of his son's accident they remembered that that was his drink on that occasion. The husband says that he was so devastated and ashamed of the incident when he cut his wife's face which was in 1978 he did not drink until late 1982 or 1983 when his brother was dying of cancer. He was very close to this brother and got drunk saying that very little at that time would affect him. He got drunk on another occasion when his family home was sold. "Even she" he said "went easy on me that night". At the end of business which he had transacted for a particular client for over three months on being entertained by them he got drunk. This was in 1985. On another occasion after a very bad row in August 1985 having arrived late home after business and getting an aggressive welcome as he said he left the house and went to his father-in-law for the night. I believe he had drink on that occasion. He has an occasional glass of wine in a temperate way, as he said.

The Petitioner's evidence of drink contradicts her husband entirely. She says that he was on many occasions drunk. She instanced one in particular where she says and this would be in the later part of the marriage he arrived on her doorstep drunk at 9.30 a.m. in the morning. She said he could hardly talk or walk. The husband's version of this is that, she had been absent from home with her children at a holiday house near the sea in Waterford and he was distraught looking for his family. Before meeting her at 9.30 a.m. he had been to the school and had interviewed the teachers to find out that

the children had not returned to school after that particular holiday. After 9.30 a.m. that morning he went into his place of business, conducting same and having a long consultation in the early afternoon with his legal advisers. I am not satisfied that this was an example of drunkenness.

The Petitioner called a witness, Mr. Coleman, who was an old family friend, who visited her in their seaside home in August 1986. He arrived at the house at 7 o'clock and had some drinks. The husband arrived home at 11.30 p.m. Mr. Coleman said very drunk and unsteady on his feet. The explanation given by the Respondent is that he had to go to Dublin driving over 120 miles early that morning, do a day's work and drive back arriving at 11.30 p.m. in the evening and he was quite exhausted. He could only think of getting to bed. I am doubtful about this incident.

The Petitioner called her father to give evidence of her husband's drinking. Undoubtedly he had drink on one occasion in that house and I have referred to this above. I am not satisfied with the Petitioner's father's evidence having regard to the blundering investigations he made at the behest of his daughter into the allegation that his son-in-law spent the night while on business in Kilrush in a hotel with another woman.

Physical violence and mental cruelty

It is admitted by the Respondent that on some occasions he used violence to the Petitioner. This he said was done under enormous provocation an instinctive reaction to being called as he instanced a homosexual, created a pervert by his mother, a pig, a F-ing queer, an adulterer and a F-ing fornicator and so on, these allegations being screamed at him

over a prolonged period. To stop these tirades he said he often had to throw water or milk over the Petitioner to shock her into ceasing or to prevent a violent attack on himself to grasp her around the wrists. It seems to me that from the evidence, the Respondent was subjected to a great deal of mental cruelty of a serious nature.

I deal first of all with the bookcase incident. He had, as I have pointed out, left the room where he was working, gone to bed and she went up to the bedroom to continue charges made throughout the evening against him. In this incident the statement she made in October 1985 to Guard Shanley referred to the assault which was made seven years ago with a glass. She said that at about 10.20 she went into his room. He was in bed and "I accused him of his infidelity". It can well be imagined how these accusations were made. She said to the Guard that during the struggle for the notebook on his desk he pushed her, caught her by the wrist and pushed her against the bookcase and her left arm went through the glass. I am not satisfied that this was a deliberate assault. I think in the fracas her elbow went through the glass in the narrow room.

The second serious incident occurred in Cappoquin on the way home from a relative's funeral. The husband said that she was drunk at the time having gone back to the old family home and there consumed a lot of drink. When the Guards investigated the incident they did not say that she was socially drunk. The husband maintained that throughout the journey (and it should be remembered that the three children were in the back of the car), she all the time abused him for the same matters to which I have already referred but in highly obscene terms. He had to stop her he said and therefore he

pulled up the car in a lighted portion just outside the village of Cappelquin where he proceeded to strike her. Guards were passing in a squad car at the time and witnessed the incident. He regretted the incident very much but said the provocation was such that he could not bear any more. He had turned up the radio as loud as he could in order to prevent her screams of abuse being heard by the children. I am satisfied that before striking her he begged her to desist.

There was the allegation of a kick in the thigh which is denied by the Respondent who said that happened when the Petitioner bruised her thigh off a table. A photograph was produced but not the photographer. I am not satisfied about this incident.

On the 31st of January 1986 there is an allegation that the Respondent struck the Petitioner on the left cheek and her jaw was sore. Doctor McNulty did notice the bruise on her head. This was on the 31st of January 1986. In her statement to the Guards, she said she invited the husband to discuss the matter about collecting their son from school. He had been working in the study and she invited him to come to the sitting-room and discuss it further. He said, according to her statement, he wouldn't as they would only start fighting. He then went to ring her solicitor and came in and hit her with his open fist on the left cheek. "I hit him back and then he hit me twice more on the same cheek". His account of the incident is that she threw broken glass at him having persisted in charging him with the old complaint of having been infected with V.D. from him. He said he slapped her first and eventually he had to pour a kettle of cold water over her to bring her to her senses. This was provoked by abuse about his

father and mother. A further allegation is of an assault which took place in the bathroom in the family home when she was hit in the face and an appalling scene took place in front of the children. The husband's version is that he was kneeling down bathing the two smaller ones and she tipped his shoulder and finally pushed him. She struck him and then screamed at their son aged nine or ten to hit his father. All the other children were screaming and the boy kept kicking his father. This prompted the husband to leave the house.

She says the husband was cruel to her in his inattention when she was ill and in endeavouring to prove her mad subjecting her to great tension by reason of his infidelities and drunkenness.

I find that the Petitioner has not made out her case and I dismiss her petition.

As for the cross-petition by the husband I grant this. The husband has had a miserable marriage. Since the Portugal holiday in 1985 he has endeavoured to keep the marriage together. I believe he loves his children. I believe his practice and business have suffered. He cannot attend to it. He cannot accept business and he has suffered more than any man is obliged to.

To be constantly taunted with an allegation of homosexuality, to have insults levelled at his parents, to be accused of transmitting venereal disease to a wife, to be harassed about infidelities, all done in the tone of voice which we have heard on the recorder and no doubt in the language which has been used by the Respondent in describing the method of her address to him.

I am satisfied that his life is shattered and his home

to a hell on earth and accordingly I grant him by way of
recreation a decree mensa et thoro.

J. H. MaKer

13th May 88