

3rd September 1986.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Matrimonial Causes Division

Before: P.L. Crill, Esq., C.B.E.

Jurat J.H. Vint

Jurat J.J. Orchard

Between:	<u>H</u>	Petitioner
And:	N	Respondent
And:	B	Co-Respondent

Advocate R. J. Michel for the Respondent

Advocate J.C.K.H. Valpy for the Petitioner

This is an unusual case inasmuch as the parties have been married twice. The first marriage was in 1964. There are 2 children of the marriage, A aged 20 and C aged 16. It was a happy one and no allegations have been made between the parties about their relationships until in mid 1972, the Respondent (the wife), committed one or more acts of adultery with a Mr. T, who was employed from time to time by the parties to show a hack at horse shows. Confronted by the Petitioner (the husband) she confessed to one act of adultery. Shortly afterward she amended that to two acts. The husband accepted her admissions and condoned the adultery. Later, however, upon hearing that the wife and Mr. T were still seeing each other and, indeed committing adultery in motels, he was shattered and started divorce proceedings in early 1973.

At the time he instructed his Solicitors in late 1972, the parties were living at a substantial property in Shropshire. At first the wife did not defend the Petition but eventually sought and obtained leave to file an Answer out of time. In her Answer she alleged condonation and asked also that the Petition be dismissed. She claimed that the husband was domiciled in the

Channel Islands, living in St. Saviour, Jersey. She denied that the marriage had broken down irretrievably. She had joined her husband at his first Jersey home in 1973. Eventually on 18th December, 1973, the Petition was dismissed, for want of prosecution and on the further ground that the husband was not domiciled in England. According to the wife the husband had left her just before Christmas 1972, prior to his taking up residence in Jersey. He asked her to let the divorce go through and "when it was all sorted out" they would get together again.

In September and November 1973, the wife committed adultery with a Mr. R, a man who had been at school with the husband, but with whom he had lost touch. The husband filed a Petition for Divorce on 15th January, 1974. He later filed a discretion statement. The wife admitted the allegations of adultery, but alleged conduct condoning. She did not continue with her Answer and the husband was granted a Decree Nisi on 19th February, 1975; the Decree was made absolute on the following day. A minute of agreed ancillary relief shows, inter alia, that the husband was to pay to the wife maintenance at the rate of £3,000 p.a. in addition to being responsible for school fees and other expenses incurred by the children.

According to the wife the husband had arranged for her to meet him in Barbados after the divorce, when they would get together again. In fact, the husband turned up in Barbados with his second wife and met the wife who had taken the children to the island for a holiday, and had paid for it. It seems to us that the husband exhibited the same equivocal attitude to this divorce as he had done to the abortive T divorce in 1973.

We have noted that in the R divorce the husband prayed for the Court's discretion. In that divorce also, Mr. Valpy, then acted for the wife, instructed by professional clients. In this case, however, he acts for the husband. This is not an arrangement of which the Court can be expected to approve. Counsel in Jersey are not in the same position as Counsel in England, they are in addition to being advocates general practitioners. (No mention is

made in paragraph 7 of the 1975 Petition. We assume that that was an unintentional error). Again, the husband prayed for the Court's discretion to be exercised in his favour; it was, and the ancillaries were left over, with which we are now dealing.

Unfortunately the husband's second marriage ended in divorce some few months afterwards and, little by little, the parties began to see more and more of each other, until, following an operation upon the wife in July 1980, they went to Florida together and were remarried in that place in October 1980. In the meantime, the husband had bought a property in St. John and, later on, a property in Trinity. He sold the latter house in July 1983. He then bought a property in Grouville in his own name and a property in England through his holding company, Samarkand Limited.

The parties' second marriage was not happy. The wife alleges that the husband drank to excess and behaved badly. The husband alleges that the wife had an adulterous affair with a Mr. K . The wife consulted a solicitor, Mr. Morris, in England at the end of 1983, and was herself going to petition for a divorce, but was unable to file the Petition because she was awaiting the arrival of the Florida marriage certificate. The husband filed his Petition on 2nd June, 1984. The wife was advised by her English solicitors, not to defend it, as the marriage was at an end, although she had filed an Answer, again alleging conduct conducing, this time by the husband's cruelty. The Petition alleges adultery during June 1984, with B , the Co-Respondent in this case.

On 23rd July, 1985, the husband was granted a Decree Nisi. In the meantime, on 6th November, 1984, the Greffier Substitute made an Interim Order by consent that the husband should pay to the wife £200 per week, until further order. The wife now seeks an award of a lump sum from the husband's assets. The husband says that the wife should be precluded from receiving an award by the Court because of her conduct and, moreover, even if the Court were not to accept his submission then his assets are not such that it would be

inequitable to make any award to the wife. He seeks the discharge of the Interim Order.

A good deal of the evidence which the Court heard was directed to ascertaining the husband's means. It was claimed by the wife that he had squandered a considerable fortune and that he had hidden assets. He had disclosed fewer shares in his father's family firm than he had held, and that, as a result, he should have available to him now some £200,000 more than his Affidavits of Means suggested.

It is perfectly true, as we have said, that so far as the husband is concerned, he sought the discretion of the Court in respect of both the divorces granted in this jurisdiction. However, we are satisfied that notwithstanding his own adultery, as disclosed in his discretion statements, those adulteries did not affect the marriage, as they took place after the filing of his Jersey Petitions. Moreover, the wife makes no allegations against the husband in this respect. If the wife has conducted herself so as to make it unjust for the Court to award her anything, then an examination of the husband's means and a decision as to whether, in fact, he has more than he originally disclosed in his Affidavits, becomes unnecessary. One thing is clear to us, however, and it is that each party enjoyed a high standard of living during both marriages. Even if we do not have to reach a conclusion as to the husband's present means, it is clear that, at one stage, he was substantially richer than he is now and, whether one accepts the wife's contentions that he has more money than disclosed, the parties lived comfortably, entertained, travelled extensively, and their children were educated at private schools.

The nub of the wife's claim to be entitled to receive a lump sum is that, far from Mr. B being the cause of the breakdown of the second marriage, it was the husband's persistent drinking and certain acts which might constitute cruelty, which had led her at the end of January 1984, to consult Mr. Morris. These allegations were strenuously denied by the husband, but they have to be examined to see whether the wife was driven to commit adultery with

Mr. R and Mr. B , or entered into these acts, so to speak, of her volition. We are satisfied that, so far as the allegations of drink are concerned, both parties drank, and it was an acceptable part of their marriage. It is true that the wife deposed to one incident where the husband became incontinent due to drink; but one has to balance that incident which was admitted by the husband, against the style of living which both parties enjoyed.

One particular incident was relied on by the wife, which took place whilst the parties were living in England at Christmas 1983, when the wife says that following a day's shooting the husband threatened her with a gun in the presence of two children. The husband agreed he had waved a gun at her, but denied that it was closed and asserted that it was broken. We are satisfied that he did wave a gun at her and that gun was, in fact, closed. We are not satisfied, however, that he intended other than to frighten her. All the parties on that occasion had been drinking.

The present position of the wife appears to be that she is living intermittently with Mr. B , but according to her, he has discarded her once and may do so again. In all her Affidavits she gives her address as being in Stourbridge. Having looked at the documents tendered by the wife, that property now appears to belong to her mother, whereas at one time it was left to her by her father, and she occupies it, when she does, on licence and by leave of her mother. The husband has claimed that it would have been more honest to have given her address in England as Mr. B's. The liaison with Mr. B went so far as to permit a local newspaper to describe her in January 1985, as Mr. B's wife, although it is fair to say that she told us she had not authorised this).

Unfortunately for the wife, the issue of drink appears to us , to take second place to her conduct with Mr. K . The husband told us, and we accept his evidence, that once he had discovered his wife's adultery with Mr. T , he was shattered. The subsequent discovery, following the R divorce and the parties remarriage, of her behaviour with Mr. K confirmed

his fears about her, and that if he did drink more than he should have done during 1983, this can be traceable to the wife's behaviour, particularly with K. We shall return to this gentleman in a moment.

One of the wife's more serious allegations, although it is only an inference, is that on one drunken occasion the husband sat his teenage daughter on his knee and somehow her jumpsuit, or the top part of it, came undone. The inference is that he was acting towards her in a sexual way. That would be a very unpleasant allegation; it was not specifically made, but the inference to us was clear. We are satisfied that the husband had no such intention but, his behaviour was not, we think, that of a "sensible father".

One further allegation by the wife was that on another occasion when Mr. K was, in fact, staying with the family, but because of the relatively small number of bedrooms there was nowhere for him to sleep, the husband suggested that he should sleep with A. The husband denies that he made any such suggestion, in the sense that Mr. K should have sexual relations with A, but merely that he should share her bed if she was willing to let him. In the event, we accept the wife's evidence, that on that occasion she went to A's room, found Mr. K in her bed, and removed A to the bedroom of the husband and herself where the three of them spent the night. Again, there had been considerable drinking by the parties and by Mr. K.

We consider now the husband's allegations about Mr. K. First he says that during 1983 the wife's behaviour with Mr. K gave him grounds for complaint; she saw too much of Mr. K, and occasionally returned to the house under the influence of drink. A more serious incident is that, shortly after Christmas 1983, Mr. K and A with A's friend, D, went with the wife to the Chequers Inn at Drojtwich. They remained there after closing time. The husband alleges that Mr. K and the wife were surprised in an act of adultery on the kitchen floor. To prove that act the husband called his daughter, with reluctance, and D. The evidence

showed that again there had been considerable amount of drink all round, and at one stage Mr. K and the wife were alone in the kitchen. There were swing doors between the sitting-room and the kitchen. D said that on one occasion A had gone into the kitchen and returned in a very distressed state and told him that she had found her mother in an embarrassing situation on the floor. As the swing doors swung open he saw the wife and Mr. K on the floor. The wife was starting to get up. Neither the wife nor Mr. K were sober. He was very angry at what he had seen. Later the same evening the wife said she was sorry that she had upset A (as she is called by the family), and that D had seen her in the position he did, but she added she "liked her nooky", or words to that effect. We accept D's evidence on this point and find that even if adultery had not taken place there certainly was opportunity and her behaviour with Mr. K on other occasions leads us to suppose that she probably had an inclination. We do not feel called upon to decide whether she actually committed adultery with Mr. K, but her behaviour with him throughout the period described by the husband in 1983, could not be described as acceptable behaviour for a wife.

The issue of conduct, its scope and the weight to be attached to it in ancillary matters is one that has troubled the Courts in England and Jersey for some years. So far as the Royal Court is concerned, it has had to balance the conflicting legislation of the two jurisdictions. In England, divorce is based on a "no fault" attitude, but we still retain in Jersey the concept of a matrimonial offence and hence, that of a guilty or an innocent party. Yet it is clear from earlier decisions of the Royal Court that even where the Court finds one of the parties to be the guilty party, that fact does not of itself bar that guilty party from claiming (at any rate) a lump sum, where the parties' means are considerable. However, greater emphasis is placed on conduct here, than in England (see *Patterson -v- Patterson*, 1980 J.J. p.125). In Jersey conduct is a main consideration to be taken into account under Article 29 of the *Matrimonial Causes (Jersey) Law 1950*. In England, it is so to speak, a postscript to section 25 of the *Matrimonial Causes Act 1973*, (formerly section 5(i) of the *Matrimonial Proceedings and Property Act 1970*).

We have had to examine the allegations of the wife to see whether we can find that it was the husband's behaviour, in effect, that drove the wife into the arms of three, or possibly four lovers, during both marriages. It was certainly not the husband's conduct that led to her adultery with Mr. T , because the wife wrote a letter to her mother-in-law some time afterwards in January 1972, in which she blamed herself for the breakdown of the marriage at that stage. That affair with Mr. T can therefore be disregarded.

As regards Mr. R , that is to say the first divorce in Jersey, she filed an Answer in that case, and whilst it refers to some drinking, it was based principally on allegations of the husband's wilful neglect and misconduct. That was a foretaste of the allegations in the instant case, although there they were only adumbrated. Her Answer was struck out by agreement.

As regards Mr. K , we think that her conduct with him was not caused by the husband's drinking, although as we have noted, he did so on occasions to excess, but again, sometimes the wife was not wholly unprepared to participate.

This leaves us with the present case of Mr. B . Although the wife once more filed an Answer substantially on the same grounds open which she had instructed Mr. Morris in December 1984, she did not pursue it and offered no evidence. The main allegations were; first, excessive drinking; second, the episode with the gun; third, the K - A incident (from her point of view); and fourth, the jumpsuit matter with A . It is worthwhile pointing out that the wife can be said to be consistent in her general allegations of drink and misbehaviour, yet she has not on the three occasions open to her, including for this purpose the T Petition and disregarding her letter to her mother-in-law, she did not pursue them. As was pointed out in *Urquhart -v- Wallace*, 1974 J.J. at pages 140 to 141, the Court is not entitled to say that the husband has behaved badly, because although the wife has made a number of allegations which she has not proved, nevertheless there is "no smoke

without fire".

Before we can disentitle the wife to any sum, and after all we have to take into account that she contributed some years, at least in the first marriage, to the happiness of the husband and probably although to a lesser extent in the second also, judging from the photographs he produced to us, we have to be satisfied that it would be repugnant to justice to allow her any sums. No allegations have been made by either parties about their attitude to the children.

The wife's attitude to adultery was indicated by her evidence and the manner in which she gave it. She seemed to think that, and we do not repeat her exact words which were difficult to understand exactly, but this was our impression; a small number of infidelities if related to and set against the length of the marriage could be acceptable provided they were not too numerous. That may well be the contemporary approach to marriage amongst young people, although we cannot be sure of this, but at any rate it sits ill in the mouth of a mature woman, as the wife is.

The parties started with many material advantages, we put them in no particular order: education, money, social position, good health - to name some of them. Between them they frittered away some, if not all, and we make no finding on this point, of their wealth. So far as a responsible attitude towards money is concerned, with the exception of the setting up of a trust for the two children, they were both equally prodigal. It is fortunate indeed that the children have had a discretionary trust set up by the husband and on that occasion he acted very responsibly towards his children.

In all the circumstances of this case, and having regard to the parties' conduct, we have come to the conclusion that it would be repugnant to justice to allow the wife any share in the husband's assets and to make an award to her. Accordingly the Interim Order is discharged and her application is dismissed. Each party will pay their own costs.

