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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN DIVORCE

SUIT NO. J011/74

BETWEEN	JAMES HENRY JONES	PETITIONER
A N D	VALERIE GLORIA JONES	RESPONDENT
A N D	TONY WILLIAMS	CO-RESPONDENT
A N D	GEORGE MINOTT	CO-RESPONDENT

Muirhead (with him Adolph Edwards) for Petitioner.

Taylor for Respondent.

Carter for Co-respondent Williams.

Winston Frankson (with him Gilman) for Co-respondent Minott (replacing Hugh Small).

Heard: November 17, 18, 19, 20, 1975
November 22, 23, 24, 25, 1976
DELIVERED: JULY 27, 1977

Vanderpump, J:

These parties were married on the 8th November 1951. Petitioner was then a divorcee of some 50 years and Respondent a spinster of 23 years of age. Their union produced two girls: Jean and Frances. These parties lived and cohabited, firstly, at Smithfield in the parish of Westmoreland, then, in the early 1960s Respondent left Petitioner and came to live in Kingston. Within a year he followed her and in due course purchased premises at No. 9 Merrick Avenue St. Andrew where they once more lived together, moving to Belvedere, Red Hills on the 31st December, 1965. There, according to him, the marriage was doing pretty well until 1970 when, she started to "take to the streets" at night from 8 p.m. generally to around 2 a.m. the following morning, mostly over week-ends. He remonstrated with her to no avail. Respondent left this matrimonial home on 5th January, 1974 and has not since returned to the Petitioner nor resumed cohabitation with him. On 29th March, 1974 the first petition was launched - in it he alleged cruelty first of all. He

maintained that she had developed a habit of staying out late at night or until early morning and when spoken to would abuse and ignore him. The several incidents he complained of were as set out in paragraph 6 of this petition. An incident in 1971 when Jean stayed out late and whilst Petitioner was speaking to her Respondent threatened to hit him with a wooden club. An incident at Easter 1973 since when Respondent refused to prepare meals for Petitioner and so treated him as to cause him worry and stress which in turn caused his diabetes to get out of control. Another incident in September 1973 when Respondent boxed, kicked and beat Petitioner, and lastly when Respondent threatened to bash Petitioner's head after she had chopped out a lock portion of a door (December 1973). Respondent denied this cruelty.

Cruelty

2. Easter 1973 was the turning point of the marriage. She spent that weekend in Port Antonio with their two daughters from Holy Thursday, returning Easter Monday night. When she left he was in the basement packing eggs. He emerged some hours later only to find that no provision had been made for him. Eventually he had to seek refuge with the next door neighbour! Petitioner did not know of the trip! When she returned he did not speak to her which bears out her testimony that they were not on speaking terms. She ceased preparing meals for him. He did not go to the table while she was there. He avoided her. Although surprised he asked her no questions. To Mr. Taylor he said that she did not stop because he was not eating at the table.

3. Respondent said Petitioner was not there then so she left a note for him on his dresser re their week-end address (not seen by Petitioner) and she left a 'fridge' packed with cooked food (not seen by him either). He was the silent one, she 'prattled' away. When she spoke to him he would not answer, she found it embarrassing. She did not tell him of the trip as not on speaking terms. On her return she prepared breakfast and dinner for a period of one week which he did not eat. As a result she actually spoke to

him asking him to let her know when he would be ready to eat so that she could put it on again. He did not answer. To Mr. Muirhead she said, "I never stopped preparing meals until he stopped for one solid week". In chief she had said, "After April 1973 I did not stop fixing meals for him entirely!" She agreed in cross-examination that the provision and presentation of a good diet was important to him as a diabetic although, not being a doctor, she was not aware that harrassment would heighten blood sugar. I accept his evidence that he was present when she left for the Easter week-end - not being on speaking terms she left no note for him even, as she was peeved over his recent visit to Savanna-la-mar, "having just returned from Savanna-la-mar he was excluded from my plans". She left no food for him either. He felt humiliated and embarrassed.

4. Petitioner said if he did not have his special diet which Respondent used to fix for him his blood sugar would go up, he would feel weak and his sight would get blurred. She knew his condition and could see it. On the other hand she said his diabetes was always under control, she did not refuse to fix his diet meals and when they had a fuss he would go to the neighbour or to his former wife who lived downstairs along with their eldest son(!).

5. I find that the Respondent, well aware of the Petitioner's state of health necessitating a special diet, ceased to prepare that diet or any meal for him from shortly after Easter onwards - "I never stopped preparing meals until he stopped for one solid week". The implication of these words are clear in my judgment. If Petitioner had not stopped eating what she had cooked she would not have stopped cooking for him. His conduct brought it about. It was a direct consequence of his own conduct. I so hold. He was then left to fend for himself. He got meals outside and according to him had to take what he got. They were not suitable for a diabetic. His blood sugar went up, he felt weak, his eyes blurred. He admitted to Mr. Taylor that the type of food was not the only reason, the upset of home alone could send up his blood sugar, i.e.

the stress. He was not a doctor but he knew his system and his troubles. In any case one wonders why he did not instruct those preparing meals for him what to prepare as he must have known his own special diet, having been a diabetic from long ago Westmoreland days. He should have tried to help himself and not accepted just anything to eat. He was in no way incapacitated nor helpless.

6. I have to consider what was the effect of her conduct on him in leaving him for the weekend as she did and by not providing meals for him then and thereafter, his case being that the cumulative effect of all this and other treatment of him by her caused stress which in turn caused injury to his health in that he became weak, his eyes became blurred and his blood sugar went up - his diabetes became grossly out of control. Was this conduct reprehensible on her part? Was it a departure from the normal standards of conjugal kindness? If so, was it cruel? That depends on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view, after a consideration of any excuse which this Respondent might have in the circumstances, the conduct is such that this Petitioner ought not to be called on to endure it, Gollins v Gollins 1963, 2 A.E.R. 966, 992. Lord Pearce.

7. Her conduct must be judged in the light of the whole history of the marriage. When they married he was more than twice her age. He had been married before with grown-up sons. In addition he had installed his former wife and one of his sons downstairs where he practically 'lived'! This for a year and a half until she got disgusted and wanted to leave. This prior to 1970. He spoke of a Miss Clarice Lewis of Savanna-la-mar, a close acquaintance of his and former colleague. (He denied, however, that Respondent expressed unhappiness over this association). She spoke of being in possession of letters from one of his mistresses and of friction between them when he had just spent a week in Savanna-la-mar. Relationship between her and his sons was always stormy. When in Westmoreland she was compelled to live with them! One of the reasons why she left there.

8. There were two incidents involving the children and these parties. The first in 1971 and the second in 1973.

(i) At 2:30 in the morning during the month of November 1971 a car brought his daughter Jean home. He was waiting up for her. He held her hand and spoke to her. She asked him to let go her hand. Whereupon Respondent approached him with an upraised club, threatening to bash him in the head if he did not release her! "If you don't release that hold I will bash you in the head". Her evidence was that she was awakened by her daughter's screams. She went out and saw Petitioner wringing Jean's right hand behind her back, bending it to her shoulder. He said he would let it go when he found out where she was coming from that time of the night! Respondent remonstrated with him and he released her. She had not used those words. She had no club nor implement with her. I accept her version on a balance of probabilities. Assuming she had menaced him with an upraised club that would not have been unreasonable conduct on her part to attempt to secure her daughter's release.

(ii) The 30th September, 1973 was a cloudy Sunday morning. Petitioner did not want Respondent to send the children to Sunday School because of the weather. She said they must go as they could not be closed up in the house all the while and the night before he had turned off the light on them. He asked who had told her so. No answer. After an interval he asked Frances, holding her hand, Frances hesitated. Without more ado Respondent then boxed Petitioner in the mouth. He saw his blood. He got wild. He grabbed her in her hair and asked, "Woman, what you mean by?" On her promising not to hit him he released her whereupon she kicked him on his shin which bled. She pitched him down and he dropped on the tiles in the kitchen. She battered him in the side with one of his shoes that had fallen off. He then went upstairs and washed out his mouth. On his case there was no scuffling between them.

When Mr. Hamilton, the neighbour arrived, Petitioner was speaking to him when Jean called him a liar. Petitioner held her to box her. Hamilton prevented him. Respondent came with a broom-

stick to hit him whereupon Hamilton caught the stick. Jean apologised. Respondent started to quarrel, said going to leave him to die. "These two hands will not warm water for him again".

Under cross-examination he denied that he had held Frances by both her hands and taken off his belt to flog her and on the Petitioner's remonstrating with him had swept the breakfast crockery off the table, grabbed her by her throat and then held her down and choked her. Jean did not remove his fingure from her throat. When she boxed him he merely held Respondent by her hair, made a condition when he would release it, released it, she pushed him down on the tiles and used his shoe as a 'weapon' for his side! No mention of a kick in the shin here. The crockery was packed up on a sectional table and in the scuffle some plates fell off and were broken on the tiles. The box from her hand smashed his mouth and it was bleeding. He said he did not see anything to make it rational, it was 'touching' madness for her to "sail into him" as she did! He was terribly surprised. Apparently there was nothing in his manner to cause her so to do! She says she did not.

9. Respondent in the witness box said she had asked Petitioner to let them go out, as the night before he had chased them to bed so early. He got annoyed. He called Frances, asked her if she had told her mother he had sent her to bed. With his left hand he held both her hands and began taking off his belt to strike her. "Why are you going to beat the child?" she asked. "She has not done anything but tell me you sent her to bed". Petitioner pushed away her hand, dropped his belt, made one sweep of all the crockery to the ground where most of them were broken up in bits, grabbed hold of her hair with one hand, other hand in her throat, and threw her down on the ground. Then there ensued a terrible scuffling on the tiles among the broken crockery. Frances and Valda the boarder screamed. The dog barked. Jean was fetched from upstairs. She took her father's fingers from her mother's throat. He had not said he would not let her go unless she decided not to hit him. She, ~~Petitioner~~ RESPONDENT, never hit him nor kicked him in his shin. The broken crockery all

over the kitchen floor could have caused injury to it. She did not pitch him down on the tiles nor batter him in the side with a shoe. He was on top of her, holding her hair and head down on the concrete. She could not get away from him. Jean prised away his fingers and she got away. She went to a Dr. Richards at University for treatment. Jean spoke to him, "You are going to church but it is not helping you ...." In reply he made after her to kick her! Petitioner had a broom sweeping up the crockery and she could have made an attempt to hit him if he was going to kick Jean. Did not say going to leave him to die although did say her hands not going to cook for him, words to that effect.

Under cross-examination she stuck to her story. Petitioner had not asked her, "Woman, what you mean by?" She could not and did not pitch him down as he was stronger than she. She could not have helped herself even if she had wanted to! She denied that she was the aggressor. Hamilton saw he was going to kick Jean so he held him, he did not hold stick in her hand. Petitioner was so enraged that he swept off an entire tea set with his hand then proceeded to strangle her almost to death on the tiles! Even if Respondent had boxed him, that would not justify such a reaction on his part!

10. Doctor said he found two long abrasions over anterior aspect of Petitioner's right leg which in his opinion were more consistent with scrapes than a blow or kick. He also found a small superficial laceration on inner aspect of lower lip consistent with a push in a scuffle, which was some evidence in favour of her version of the incident which included a terrible scuffling on the tiles. Neighbour Hamilton said he saw some bruises on one of his shins and a slight one on his lip.

11. I accept that it happened as how Petitioner [Respondent] recounted which led Jean to rescue her mother from Respondent [Petitioner] and say that his going to church was not helping him! This made him turn on Jean which led to the broomstick incident! An independent witness, Hamilton, gave evidence of this utterance on Jean's part and Petitioner's reaction and Respondent's reaction, he held the broomstick and

Petitioner was not harmed. I do so on a balance of probabilities.

12. Petitioner complained of an incident in December 1973 when there was a controversy over a certain key which he refused to give her. He says she threatened to bash in his head with a hammer after she had beaten out a hole in the basement door to get the lock off. She denies it, he did not own a hammer. I believe her. In any case he was securely locked inside his room then so there could not have been a reasonable apprehension of danger to him, especially as she was downstairs!

13. In doctor's opinion stress could have caused Petitioner's diabetes to be grossly out of control (as well as improper meals and improper taking of medicine). And stress he certainly experienced! But it cannot be said that this stress was really caused by her conduct. Petitioner by his own conduct, brought it about. It was a vicious circle initiated by him. The consequences of his conduct found their mark in her, she reacted to them and the home situation worsened, with its resultant stress taking its toll on him. Their matrimonial venture was not a peaceful one by any means. It was fraught with difficulties. His grown-up sons whose relationship with her was always a stormy one; his mistresses or rather the mistresses she believed he had, "he always kept a mistress" was her evidence (certain letters had fallen into her possession), his sojourns in Savanna-la-mar with one of them (she thought). His taciturnity leading to silence in the home between them until eventually she stopped cooking for him, one thing led to another. Then the children: Jean stayed out late one night causing an incident precipitated by Petitioner, children not to go to Sunday School one morning because of the inclement weather, this another bigger incident where there was actual confrontation and blows this time, again precipitated by him and in which he was the aggressor. In all these circumstances I find that her conduct was not reprehensible, far from it, and although at times it could be said that her conduct departed from the normal standards of conjugal kindness, as in the instance of the non-preparation of meals for him, she was

but following his 'lead' as she only stopped cooking for him when he had stopped eating what she had cooked, breakfast and dinner every day for one week. He did not answer her when she spoke to him so she stopped speaking to him. He spent some time in Savanna-la-mar without her. She spent some time in Port Antonio without him. He initiated arguments over the children so she responded by remonstrating with him. He locked a door and refused to give her the key so she knocked off the lock with a mortar stick (after asking him for the key three times) in order to hang out her clothes in the laundry. He had tower bolted all six outer doors for security so she had to seek him out to gain entrance and that meant sometimes waking him on the fourth floor after 8 p.m!! He used to march up and down with his shot-gun and discharge it over the verandah rail for security reasons he said. When he fired it over his son's head one night in his daughters' presence they all got afraid so she reported it to the police!

In no way could any conduct on her part be regarded as cruel in the circumstances as she was not really responsible for the stress experienced by him. He brought all of it on himself by his conduct towards her - I find. She was consequently blameless. Nor can it be said from a physical point of view that her conduct on occasion caused danger, actual or apprehended, to his life, limb or health - paragraphs 8, 9, 10, 11, 12 supra. She has denied "taking to the streets" at night and staying out late. They were seven miles from Kingston in the bushes, she worked every day, it was a task for her to go in and out. I accept her evidence as being more probable. There was no evidence at all of abuse.

The onus lies on the Petitioner to satisfy this Court by evidence as to the cruelty alleged - section 25 (3) of the Divorce Act and see Fairman v Fairman 1949 Prob. p. 341, 344 Lord Merriman, Davis v Davis 1950 Prob. p. 125, 129 Lord Denning. This on a preponderance of probability. This on a degree of probability proportionate to the subject matter Bater v Bater 1951 Prob. Div. p. 35, 37. Not with the same strictness as in Adultery. Fairman

supra. As to the incidents of physical violence, actual or apprehended, where her evidence conflicts with his I accept her evidence as being the more probable.

I am not satisfied with the evidence as to the cruelty adduced by the Petitioner on a balance of probabilities so accordingly this ground of the petition fails.

Adultery

14. The original petition alleged Adultery as another ground and at paragraph 7 stated that the Respondent had frequently committed adultery, that on the night of January 24, 1974 at 3A Lindsay Crescent she committed adultery with Tony Williams. This was denied by him and not pursued at the trial. Respondent also denied it, said in the box that she had never even heard of him! He was dismissed from the suit at the close of the Petitioner's case.

15. Two supplemental petitions were subsequently filed, some months apart, alleging adultery with George Minott on these same premises on different occasions in the same year. Petitioner also claimed damages against him. Both Respondent and this Co-respondent denied these allegations. Petitioner did not give evidence on this ground. Private investigators from Kane's Security Services did so. A number of photographs were tendered and admitted in evidence.

In May, the month before the first incident, there was a preliminary 'skirmish', by Campbell and Walters. They said they saw Co-respondent around 8:30 p.m. on the 21st May arrive at these premises in a greyish looking Mercedes Benz and went in with arm around her. Lights went out at 9 p.m. came back 10:45. He left. Respondent said had not seen him that night while Co-respondent said had not been there and as a matter of fact had never driven this car as it was his son's property.

16. Then came the first incident complained of, that was on the night of the 8-9th of June 1974. Donald Campbell and Henry Walters were in attendance. No photographs were taken on that night. Both these witnesses spoke of climbing up on her bedroom window and of looking inside through the top part, and seeing both Respondent

and Co-respondent in bed together sleeping. This with the aid of a flashlight. After calling her name and getting no answer they went to the front door and knocked. Both appeared. Campbell then said he told her that he had seen her in bed with the Co-respondent and she will hear more about it in the divorce court. Whereupon Respondent asked her if these were the same men she had been telling him about. She said yes. Walters was more dramatic, he saw them "locked together in each others' arms", and moreover said that Campbell had mentioned this to her, that he had seen her in bed in the arms of Mr. George Minott. Walters did not mention that Co-respondent asked her if these were the same men. Respondent had come earlier that evening in a light blue thunderbird motor car. He then left. It was not disputed that he owned it but at that time it was not in service as it needed a carburettor. Indeed this car could not be driven as it was. This part was purchased in Miami on the 13th June, 1974 (Exhibit 12). A photograph of this window was admitted in evidence as exhibit 6. Some three feet from the ground was a ledge two inches wide (exhibit 9), perhaps another three feet up the same wall was the window ledge said to be approximately 4 inches wide, another three feet up and there were the pivot windows said to be of frosted glass, she said cannot be seen through. (Exhibit 11 was same type glass but not that colour). Exhibit 10 showed the Respondent against and under her back window - all windows were of the same height from the ground. She is 5 ft. 3½ inches tall. Both these private investigators appeared to be under 6 ft. Walters said he was 5 ft. 8 ins. tall. It would indeed be an extraordinary feat for them to climb up on this window with nothing to hold on to but the window ledge on their way up, look though a pivot window (frosted and opening outwards), insert a flashlight into the room pointing it at the bed; playing it up and down although Campbell said there was a thin curtain there, all this in a stooping position standing on the window ledge and holding on to top part of window. Campbell said that if he had had a camera that would have been a perfect opportunity to take a picture! He was then holding on

with left hand and had flashlight in right hand! It is not clear whether each one looked through the same pivot window or whether each had a separate one! In any case exhibit 8 shows that window inside to have substantial drapes all the way down!. Not disputed. In preference to their evidence I accept the evidence of Respondent and Co-respondent that this did not take place, she being in bed with her daughter Frances/then and he being elsewhere. This on balance of probabilities.

17. On the evening of the 28th November, 1974 Campbell returned, this time accompanied by Junior Anderson. Four photographs were taken. Their evidence was that from where they stood outside on Lindsay Crescent they could see into the living room through an open window, open only a foot, it transpired afterwards with curtains! They saw Respondent and Co-respondent and a lady sitting, talking and laughing together. At 8:45 Respondent accompanied the lady to the gate and she left. At the door Co-respondent met Respondent, escorted her back into the living room, both sat down on a settee. Brighter lights came on, Co-respondent sat in front of a piano and played it while Respondent stood behind him and sang a total of three songs while she massaged his shoulders the while (one of them says at end of each song only!) That completed, bright lights were turned off, they went back to the settee, sat down, hugged, kissed and then had sex after he had "gently eased her down". Campbell called it a "quickie!" Because of the body motion why he said they were having sex, he saw Co-respondent's bottom moving up and down, his back and her hands. Too far away to take a photo!

18. After an interval of time both proceeded to the front door and pushed it, it would not open. "Someone is at the door", a male voice said, the door opened, the verandah light came on, both appeared, the Co-respondent rushed to the gate with Anderson after him, while Respondent ran into the house. Anderson managed to take a photograph of him before he reached there. Co-respondent said thought they were thieves and had been going for his gun! He called, "Valerie, Valerie, you can come back now it is alright"!

She appeared with Sadie Jarrett, a photo was taken of these two only, then with Co-respondent in the group he took a photo of the three on the verandah. Anderson then identified himself telling her he had seen her having sex on the settee that night and she will hear more about it in the divorce court. The effect of this on the Co-respondent was electrifying! Boastfully he exclaimed, "I am S. G. Minott of Minott's Service Station Limited, 9 Retirement Road, this family belongs to me. I am in charge now, tell Mr. Jones to kiss my rass"! Coming back with three girls he continued, "I want you to take a picture of me and my family so that when Jones sees that he can go kill himself if he want"! This was duly done. Anderson does not mention the last part about the invitation to Petitioner to do away with himself!

19. They were cross-examined as to their ability to see this sex on the settee. Campbell said the window was half open then, frosted like a gin bottle, he could see the settee and edge of piano, nothing else; settee was against far side of the room, curtains there, did not remember the colour, did not prevent him from seeing. Window could be open enough for camera to point into the room but being 5 ft. 10 ins. in height the bottom of the window to the ground was 'taller' than his head. Later on he said did not see the entire size of the couch or 'tallness' of upholstery. Could not say if it had arms at the ends. Later on, in the house he did not look there as sexual intercourse had finished (!)

Anderson said he could see her from her head to below her waist, below her crutch although he did not notice colour of her underwear (!) Neither took off any garments. The dress did not open up the front, it was folded up. Did not see Co-respondent's penis. He said the window was pushed out from the bottom, hinge at the top, the opening being about a foot, 8-10 inches. He saw the piano playing, singing, massaging and sexual intercourse through this 8-10 inches to a foot! Although camera was smaller than court bible 6½ x 4 x ½ it could not have gone through that opening! He was beside Co-respondent's car, the couch was 10-12 feet

from the window. Flash equipment could not take an object 10-12 feet away. Looking at exhibit 4 the next day in Court he agreed that the window opened to the side - the one nearest to the verandah through which he had looked, and not by pushing out as he had said previously.

20. He insisted that whilst there he had had them constantly in view. To Mr. Taylor for the Respondent he said he had to move when Respondent and the lady came onto the verandah preparatory to going to the gate as he would have been in her line of vision. As they came to the gate he and Campbell turned away, walked off, crossed the street, went up the road facing the house and turned up. He agreed that from that vantage point he would not have had the occupants of the living room in sight! When they returned they were then sitting on the settee, had gone in before they had left the side street. He had a good view of the settee and where lying. It was 15-16 inches from the floor. Later he admitted he did not see the floor! Songs were not reggae, not rock and roll, some he did not know, about. Did not have any words! Incidentally a photograph of this living room was in evidence as exhibit 5. Respondent told Mr. Frankson that the arrangement of the furniture therein was the same as on 28th November, 1974. A settee could be seen against the same wall as the window and not visible from outside! Not challenged.

He denied that either of them asked if Lindsay Crescent or Lindsay Terrace. Did not say had come to a Mr. Smith and wanted water to drink. Did not take picture on the invitation of the Co-respondent.

Respondent's Case:

21. That evening Respondent was in her bedroom and Miss Jarrett was rolling up her hair. Co-respondent arrived and the three of them were talking until Nellie Jones arrived when Co-respondent and Miss Jarrett went to the living room (via the dining room and kitchen), where he played the piano. Nellie Jones left five minutes to nine o'clock and right after that Co-respondent announced it was late and he had to leave. As Miss Jarrett had lessons to prepare she

did not come. Respondent walked him to the gate. She saw two men on opposite bank who asked if it was the Terrace or the Crescent. Co-respondent replied, shorter one asked if it was 3A, said wanted to see a Mr. Smith, on being told did not live there, asked for water, told,no, he pulled out a camera and took picture of her standing at the gate. Co-respondent said if wanted pictures must come and get them. He called Sadie and Respondent called Frances and the men took three pictures and left. They did not say where they were from, did not identify themselves, did not say what their business was, no excuse for what they were doing. No intimacy with Co-respondent.

She was cross-examined when she said he came at around 7:30 and was invited into her bedroom. Piano was playing when Nellie Jones was leaving. She, Petitioner did not participate in the singing - could not say how many songs were sung. She did not massage his shoulders then! She took Nellie to the gate and saw the two men for the first time. Co-respondent did not meet her and escort her inside afterwards. She denied all the allegations saying that could not have had sex on the settee with four people walking around in the house! She looked at the four pictures of them, exhibit 3. Her pictures at the gate not among them. She denied that Co-respondent had used all those expressions about her husband. He had not said in charge of the family now. As far as 9th of June was concerned she and her daughter Frances were in bed. Co-respondent was not there.

Co-respondent's case:

22. Co-respondent said he went there in his blue Thunderbird to see Sadie and Respondent, as had a matter to discuss with Respondent in re a watchman at the office. She was secretary to his Company. Co-respondent was on friendly terms with Miss Jarrett visiting her on occasion, inviting her out for the odd meal and sending her flowers on her birthday. Arriving he was invited into Respondent's bedroom where he spent 10-15 minutes talking to her as Miss Jarrett dressed her hair.

On Mrs. Jones arrival Sadie and himself went into the dining

room where she had a meal, then to kitchen, washed up plates then to drawing room where piano played by him, whilst she, Miss Jarrett, turned the pages and hummed where she knew. At 9 o'clock he was leaving as it was late for him. (He had two young boys at home and had been threatened with violence over the telephone). On the way to the gate he met Respondent, she turned back with him. He saw the two men at the gate, one of them took his picture there, he became suspicious. He concluded they were Petitioner's emissaries as he had already been served with a Petition re 9th June and had instructed his lawyers. He called the rest of them and three photos were taken. He was not aware of photo of Respondent alone. After that they literally ran through the gate, jumped on a motor cycle and fled the scene! Had seen Anderson before (at office premises) but not Campbell. Anderson did not say agent from Kane's Security Service and tell him about sexual intercouse on settee. He denied committing adultery on these occasions or at all in his life. As far as 9th of June was concerned he was not there.

23. Co-respondent was cross-examined. He said he had been requested to play, not unusual for Respondent to sing while he played but infrequent. He denied that she sang and massaged his shoulder that night as he played. No one knocked at the door and he called out, door was not opened and he dashed out pursued by Anderson who took his photo. No sex on the settee before that. He suspected the men were acting on behalf of Petitioner so provided evidence for his defence, a chance to foil the plot! He became suspicious at their questions about it being Terrace or Crescent, Smith, drink of water. He certainly had not addressed himself to them in that picturesques language, as they alleged. Had not introduced himself to them. Had not sent message to Petitioner to kiss his rass! Nor had he suggested that a group picture be taken for Petitioner to see and kill himself if he wanted to.

That concluded the evidence in the case and counsel then addressed.

24. Although heavy, the burden of proof here is not like that in a criminal case but is on a preponderance of probabilities, the degree of probability depending on the subject matter. In proportion as the offence is grave so ought the proof to be clear. Blyth v Blyth 1966 Ac 643, 699 Lord Denning.

Mr. Frankson in his address stressed the improbability of the Petitioner acting in this way on a settee in her living room, a few feet from her bedroom with all her household astir and fully clothed (exhibit 3). I have to bear in mind the fact that these men were paid investigators and heed the words of the Judge Ordinary in Sopwith v Sopwith (4 Swabey and Tristram 243, 246-7)and look with great care on their evidence. Rayden 11th edition.p. 186 sift it and examine it thoroughly.

25. As regards the first incident they were clearly not speaking the truth. It was most improbable, if well nigh impossible, for them to have climbed up on this vertical window with nothing to hold on to, a distance of some 9-10 ft. Added to which a photo (exhibit 8) showing/what appeared to be substantial drapes all the way down inside was not challenged - not suggested that drapes not there at the material time. Having reached that conclusion about these two witnesses I hesitate to accept their evidence about incidents of 21st May, 1974 and decline to do so preferring the evidence of Respondent and Co-respondent.

26. As regards the second incident Mr. Frankson asked the rhetorical question to the effect that why had Campbell not reminded them then of his being there on the first occasion instead of or in addition to the stereotyped pronouncement from Anderson ab about being from Kane's and they will hear more about it in the divorce court. These men showed that they had experience in the giving of evidence - their evidence was nicely tailored indeed so well tailored as to give rise to suspicion of its veracity.
They were both standing together the while yet all Campbell sees is his bottom, back and her hands. Anderson sees much more, from her head to below her crutch and her underwear this through a one

t opening from some yards away on the road the settee being some
ır yards to the window against the far side of the room. They
ood up tolerably well in cross-examination. Both insisted over
ıd over that they had the parties constantly in view yet Anderson
admitted to Mr. Taylor that he and Campbell had to leave and go away
for some distance so that Nellie Jones would not see them when she
left, thereby losing sight of these parties for a while! He,
Anderson was sure window opened from the top, hinges being there at
the top, yet on being shown a photograph of it (exhibit 4) he says
that it opened from the side! This was vital as it was through that
very window he says he saw the sex on the settee through an
opening, be it remembered, of 8-10 inches to a foot. This type of
evidence could not be said to be clear by any means. Petitioner
has not discharged the burden cast on him. On the balance of
probabilities I am constrained to believe the Respondent and
Co-respondent as to what happened that night. I accept their version
as being the more probable. This ground also fails.

In the result the petition is dismissed with costs to the
Respondent and Co-respondent, Minott to be taxed or agreed.