IN THE SUPREME COURT OF JUDICATURE

OF JAMAICA

IN DIVORCE

SUIT NO. D. 978 M. 094

BETWEEN	ENA MOORE	PETITIONER
AND	WOODROW NEWTON MOORE	RESPONDENT
AND	SHIRLEY MAY MCDONALD	INTERVENER

Mr. S. Shelton & Mr. D. Goffe, for Petitioner
Mr. S. Fyfe Mr. J.H.N. Forrest for Respondent
Mr. R.A. Penso for Intervener

9th & 10th October, 1980, 9th, 10th
11th February, 1981, 20th, 21st, 22nd
October, 1981, 11th December, 1981.

PATTERSON J.

On the 15th day of November, 1978, the wife presented a petition for divorce on the ground that her husband had since the celebration of the marriage committed adultery. She alleged that:

> " the respondent has frequently committed adultery with Shirley May McDonald, also known as Joan Collins; in particular, the respondent has from July, 1978 to the date of this petition, lived, cohabited and habitually committed adultery with the said Shirley May McDonald also known as Joan Collins at 36, Bronx Avenue, Kingston 8 in the parish of St. Andrew and in particular committed adultery with the said Shirley May McDonald also known as Joan Collins at the afore-mentioned 36, Bronx Avenue on Wednesday the 12th July, 1978. "

The respondent in answer to the petition, said he is not guilty of adultery as alleged in the petition or at all; alternatively he said that if he has committed adultery as is alleged, which is denied, the petitioner by her own conduct conduced to such adultery.

Mrs. Shirley May McDonald, the woman named, who was granted leave to intervene in the cause, in answer to the petition also denied the allegation of adultery.

The petitioner and the respondent were lawfully married on the 5th June, 1965 in Kingston, and about two months after, they migrated to the United States of America and lived in New York. In 1972 they agreed to return to Jamaica and the respondent, in June, returned to Jamaica to look for a suitable place to establish the permanent matrimonial home. The petitioner was left behind, and after the respondent bought No. 36 Bronx Avenue, Kingston 8, he notified her and she came home to what she described as "an ideal love nest." There were no children of the marriage, and they both were the only occupants of No. 36 Bronx Avenue. They were reasonably happy together. They both obtained employment and Jamaica was now their permanent residence and place of domicile.

The petitioner testified that she went to the United States of America in 1974 for approximately eight months, and again in 1975, 1976 and 1977, each time with the consent of the respondent, and returning each time to resume cohabitation with him. On the 14th April, 1978 she left again for the United States of America with the respondent's consent. He drove her to the airport. She intended then to be away for a little over six months, during which time she would work and purchase a small car for her use in Jamaica. The respondent had told her he intended to take up a management course in the United States of America in 1979, and she would then be without the use of his car.

Prior to 1977, the respondent and herself would attend the Barbican Baptist Church together, but on her return from the United States of America in 1977, she discovered that he was now attending the Moravian Church in Richmond Park, and he did not invite her to go with him. He told her he was a member of a singing group, but again, she was never invited to participate. He left her at home every night of the week until the late hours, and his excuse was that he was out singing and out "with the boys."

She said that before she left Jamaica in April, 1978, she had heard "something" about the respondent, but she did not think much of what she heard. Up to then, she had never heard the name

Shirley May McDonald nor the name Joan Collins, nor had she ever seen the intervener. About two months after leaving for the United States of America, she said she heard "lots of things" about respondent. They corresponded and one of the letters (Exhibit 4) received from dated 29th June, 1978. It was shortly after that she heard "things" about her husband.

It is against that background that she engaged the services of a private investigator, one Cleveland Wilson. Mr. Wilson said he was assigned by the petitioner to investigate "the whereabouts of her husband." He said he was only given the name Woodrow Moore then, but subsequently he was given another name - Mrs. Collins, and that he was to get evidence for divorce proceedings. The petitioner's case is to a great extent dependent on the testimony of this private investigator and his assistant Hervin Radway. Their testimony must now be examined in some detail.

Mr. Wilson said that his assignment took him to Bronx Avenue, where he made enquiries and observations. He made "several visits" in the area from time to time, and about five night visits prior to the night of July, 12, 1978, On two of those visits he had seen the respondent and the intervener leaving the premises in the respondent's car. On the night of July, 12, 1978, along with his assistant, he drove a motor car to Bronx Avenue, getting there about 7:30 p.m. he parked the car near to No. 36 Bronx Avenue and his assistant and himself kept moving up and down the street. At about 7:40 p.m. he saw the respondent and the intervener leave the premises in the respondent's car. He remained in the area and at about 11:10 p.m. they both returned and entered the house at No. 36 Bronx Avenue. The light in the living area came on as also that in a bedroom nearest the living area. He said he could see "people moving in the room, but it was not possible to identify who they were." At about 11:45 p.m. he and his assistant attempted to enter the premises, but they were attacked by dogs and had to retreat to the car. They spent the rest of the night there in the car until the following morning at about 5:30 a.m. when they gained entrance to the premises.

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It may be helpful at this stage to describe the lay-out of No. 36 Bronx Avenue. The petitioner, Mr. Wilson, and indeed, the respondent and intervener, gave evidence as to the lay-out. Counsel invited the Court to view the locus, and I did so on the 9th February, 1981, accompanied by the parties and their attorneys-at-law. Bronx Avenue runs South off Barbican Road and No. 36 is on the left. On entering by the gateway, there is a driveway which leads into a car port; a walkway leads off the left of the driveway and turns right unto a verandah. A doorway leads from the verandah into the living dining area. The living area is somewhat larger than the dining area. A passage which is visible from the doorway, and almost straight ahead, leads off the living area. This passage is about 2½ feet wide and on its left are two doors situated beside each other which lead into the only two bedrooms. On the right, a door leads into a bathroom, and at the end of the passage is the doorway to the study. The doorways to the bedrooms are adjacent to each other and are separated by the wall which divides the rooms. There are no inter-communicating doors or windows in the bedrooms. On the northern side of the first bedroom are metal louvre windows. The southern wall of the room is to the passage and the door is on that side. The wall to the west divides the bedroom from the living area and there is neither door nor window in that wall. There is another bathroom, the entrance to which is through the study. Behind the study is a back proch. The Kitchen is behind the dining area. Such then is the lay-out of the premises in so far as it is relevant to this matter.

Now, to continue with the testimony of Mr. Wilson, he said that he rapped on the gate and the respondent appeared at the front door. He identified himself to the respondent who invited him inside the house. He went in accompanied by his assistant. He said he entered the living area, sat down, and respondent and himself were talking. He then asked the respondent if he would make a statement, "concerning his association with whom he is living." He said the respondent replied, "My wife left me alone and expect me to live without anyone in the house." Just about this time, the intervener "appeared" in the living area - she came from the first bedroom, and she were a pink nightgown

He said that while inside the house in the living area, he shifted position and looked inside the said room and saw a bed, dresser, bedside lamp, a nicely furnished room from his observation. On the bed he saw female attire - what appeared to be a dress, and on a chair he saw what appeared to be a pair of pants and a shirt. He said he asked the name of the person in the night-gown and she said "Joan Collins." Asked if she would make a statement concerning her association with Mr. Moore, the intervener made no reply. He said that his assistant, the respondent and himself talked for a few minutes more and then his assistant and himself left.

Mr. Wilson was subjected to very searching cross-examination by both counsel for the respondent and the intervener. He was very evasive at times, and I formed the view that he was not being frank with the Court. He insisted that he had made no less than five visits to the Bronx Avenue area making observations, yet he was quite unable to give the dates of his visits. He said he made notes but did not memorise dates. He received instructions from the petitioner in early June, and started his investigations a day or two after that. This does not appear to be borne out by the petitioner's testimony, since she said that up to the time when she received the letter (Exhibit 4) from her husband dated 29th June, 1978, she had not "heard things" about her husband - it was shortly after that. It seems hardly likely that she would have employed the services of a private investigator when her suspicions were still dormant. He said he saw the respondent and intervener leave the home on more than one occasion prior to the night of the 12th July, 1978, but he could not remember those dates, although he regarded such behaviour as relevant - but not at that time.

I do not believe that Mr. Wilson and indeed, his assistant Mr. Radway, made visits to Bronx Avenue or the area prior to the 12th July, 1978 and consequently I reject their evidence that they saw the respondent and the intervener leaving the house on more than one occasion. I find that Mr. Wilson did not receive instructions in early June as claimed by him; his instructions from the petitioner were given shortly before the 12th July, 1978.

I come now to the night of the 12th July, 1978. Did Mr. Wilson and his assistant visit Bronx Avenue at 7:30 p.m. and if so, did they see the respondent and the intervener leave the premises together and return together at about 11:10 p.m? Did Mr. Wilson see shadows of persons that night in the first bedroom? Both the respondent and the intervener said in evidence that they did not leave the house that night; they were not together in the same bedroom that night or any other night. The respondent said he went to bed at about 10 p.m. closed the windows in his room, turned on the air-conditioned unit and went to bed. Before he retired he heard the intervener in her room playing her guitar. Mr. Wilson and his assistant did not agree as to where they were when the respondent and intervener left the premises that night, nor could they be precise as to the sequence of events leading up to the departure of the parties from the premises. They said that after the parties returned to the house that night and the lights went out, they both spent the night in the car after failing to gain entrance to the premises. Why they remained on the scene for the better part of the night escapes me. From their own evidence, it was obvious that the parties had retired for the night, so what was the vigil for? According to them, it was not their first visit but at no other time did they stay the whole night. I accept the evidence of the respondent and the intervener that they did not go out that night. I find as a fact that Mr. Wilson and his assistant did not see the respondent and the intervener leave the house that night nor did they see them return at about 11:10 p.m. or at all. Mr. Wilson did not see shadows in the first bedroom as he claimed he did. Indeed, I do not believe that they spent the night in a car parked on Bronx Avenue. On a balance of probabilities, they did not arrive at Bronx Avenue until the early morning of 13th July, 1978. If they did go to Bronx Avenue at 7:30 p.m. that night, then they did not see what they said they saw. It is interesting to note that Mr. Wilson, a professional investigator, with a view to getting their reaction, did not at any time mention to either the respondent or the intervener that he had been watching their movements

and had seen them going out and returning together and more important, that he had seen them together in the first bedroom.

What transpired on the morning of the 13th July, 1978 must now be examined in detail. It is not disputed that Mr. Wilson attended on the respondent early that morning, and that he was invited into the living area of the house. Mr. Wilson, in his examination in chief, would have me believe that his assistant also entered the living area with him, that they both remained throughout the visit and that they eventually left together. However, in cross-examination, he contradicted himself and testified that his assistant did not enter the living area but remained on the verandah. Mr. Radway's evidence is that he remained on the verandah most of the time that Mr. Wilson was inside the house; he said he paced between the verandah and the car port or driveway. On the other hand, the respondent said that Mr. Radway did not even enter the premises. It was Mr. Wilson alone that he invited to enter and he then closed the gate and Mr. Radway proceeded towards a car that was parked across the street. The respondent said that from where he sat in the house, he could see the verandah and at no time did he see Mr. Radway on the verandah. Mr. Radway's evidence was so vague as to what occured on the visit and his description of what he saw of the lay-out of the house conflicted so violently with the rest of the evidence, that I concluded that he did not enter the premises at all that morning. His evidence in this regard cannot support or advance the petitoner's case. I find as a fact that he did not enter the premises on the morning of the 13th July, and that he did not see the intervener as he testified he did. Mr. Wilson's testimony as to what took place inside the house came in three versions which lead me to believe that he could not be speaking the truth, having regard to the lay-out of the house. On the 9th October, 1980, he testified in examination-in-chief that on the invitation of the respondent he went in the living area of the house accompanied by his assistant and they sat down and talked. He said he "asked Mr. Moore if he would make a statement concerning his association with whom he is living" and that the respondent answered "my wife left me alone and expect me to live without anyone in the house." He continued

" Just about this time the intervener appeared in the living area - she came from the room mentioned before. She had on a pink night-gown. While inside the house in the living area, I shift position and looked inside the said room and saw a bed, dresser, bedside lamps - nicely furnished from observation. I noticed on the bed female attire - it appeared to be a dress, and on a chair I observed what appeared to be a pair of pants and a shirt - on a chair. I asked the name of the person in the nightie - she said "Joan Collins." I asked her if she would make a statement concerning her association with Mr. Moore. She made no reply. My assistant, Mr. Moore and I were there talking for a few minutes more and then we left. "

That was the first version of Mr. Wilson's testimony. When cross-examined by Mr. Fyfe for the respondent he described the lay-out of the house. He was uncertain on which side of the doorway the door to the first bedroom was hinged, but the door which he said was wide open, was some 6 feet along the passage; it could be 10 feet. He sat in a living room chair to the right of the door on entering the living area. He said that from the chair to where the passage commences would be about 10 - 12 feet - on reflection he said 6 - 8 feet, and from the front door to the passage would be about 10 - 12 feet. He was not sure as to the position of the door to the first bedroom, but from where he was sitting to the door leading to that room would be a maximum of 14 feet, not 19 - 20 feet. He then said,

" I shifted my position before I left. I was in the chair sitting before I shifted my position. My assistant was not in living area. Mr. Moore invited me in - my assistant followed - he was on the verandah - could not say exactly where; I left him on the verandah, and went inside with Mr. Moore. From where I sat I could not see on the verandah as my back was turned to door. While I was in the house I did not know where my assistant was."

That evidence was given on the 10th October, 1980. When the matter continued on the 9th February, 1981, Mr. Wilson could remember that a carpet was in the living area, but he could not recall if the chair in which he sat was on that carpet near to its edge. He faced the passage but he was not directly in front of it; he could not recall if he was to its left or right. He then continued

" when I was about to leave, I stood up - I walked towards the passage, shifted a little to the right. I walked forward for about 2 yards or a little more - possibly less than 3 yards. I was then off the carpet in the living area. To the right of the carpet, I think its the dining area. I moved forward about 2 yards down the passage way. The passage commences the width of the living area from where I was sitting. From the chair to the

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commencement of the passage could be about 12 - 13 feet. I walked the width of the living area and then 2 yards down the passage."

It was from that vantage point that he said he was able to see in the room. He could see then only one wall in the room. He did not see the wall dividing the bedroom from the living area nor the wall dividing the bedrooms. He saw the foot of the bed, but could not see the middle. He said that it was at the foot of the bed that he saw what appeared to be a lady's dress - portion hanging over and the other portion on the bed itself. He said "there was a chair - almost in front of the bed - to the foot of the bed." He saw a bedside lamp over the other side near to the northern wall. He said he was not lying. He did not point out the dress to the respondent or intervener, nor did he mention it to them.

What I describe as the third version came when he was cross-examined by Mr. Penso for the intervener, He said he saw the foot portion of theb bed, a lamp and a chair, articles of male and female attire. He continued

> "I went down passage - close to doorway - a foot or two in a slanting position - almost opposite doorway. I I did not enter the room. I saw linen on the bed. The door is hinged on the right as I stood. It opens on the inside. Door was fully opened. The head of the bed was towards the living dining area - foot towards the other bedroom. The bed was not against wall between the passage and room - was about 3 feet from the passage wall. I did not see the head of the bed. I cannot say how far the foot of the bed was from the wall that seperates the bedrooms as I could not see that wall. Cannot say what position door was in wall as I could not see the other wall. There was another door further down the passage - possibly 12 - 15 feet away from the first door. First door is about 2 yards 1 foot down passage." .....
> I did not see female apparel in room. I did see in the bedroom. It is highly improbable that I could see in room without going in passage."

He said he did not see the intervener come from the first bedroom. In answer to a question put by the Court, he said he went along the passage to look in the room, but stopped short of going to the door as he did not want to disclose to Mr. Moore than he was actually inspecting the bedroom.

The truth as I find it to be is that Mr. Wilson did not go along that passage on the morning in question, nor did he at anytime see into the room, as he claimed he did. I accept the evidence of the respondent that it is not possible to stay in the living area and [illegible] his

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bedroom. It seems strange that an investigator is employed to obtain evidence would stop short of letting the other side know that he had seen what could be regarded as damaging evidence. He could not have seen the northern wall of the room without seeing the eastern side, that being the side on which the door opens. I accept the evidence of the respondent that not only when the petitioner and himself shared the room, but on the 13th July, 1981 and even now the bed head was always turned to the wall which divides the two bedrooms. It follows that Mr. Wilson did not see the foot or any portion of the bed or anything in the room.

I find as a fact that on the morning of the 13th July, 1978 Mr. Wilson was invited into the house by the respondent and that he was seated in the living area in a chair just to the left, not to the right, of the entrance door. From where he was seated he could not see the doors leading to the bedrooms; consequently he did not see where the intervener came from before she "appeared" in the living area. The respondent it was who went to the door of the second bedroom which was occupied by the intervener and he called her to come to the living room. The intervener came from her room which is the second bedroom and not from the respondent's bedroom which is the first bedroom. I accept the evidence of the respondent that it was outside of his house that he had a conversation with Mr. Wilson as to whether he was living with a woman and that it was when Mr. Wilson expressed a desire to speak with the intervener that he was invited to enter the house. When the intervener entered the living area she was attired in a house dress (Exhibit 6). Mr. Wilson asked if her name was Mrs. Collins and she told him her correct name; they had some talk that was not relevant to his mission, and it was thereafter that he told her the purpose of his visit, that he was a private investigator sent by Mrs. Moore who was interested in getting a divorce and that she was the woman named. The intervener told him she was a tenant and after Mr. Wilson chatted about himself a few more minutes, he left the premises. He did not go down the passage as I said before; he did not see into the respondent's bedroom, and he did not

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see female attire in that bedroom; he did not see the intervener come from that bedroom.

The respondent and the intervener have both denied having a sexual relationship. They insist that the relationship is strictly that of landlord and tenant and receipts were tendered in proof of payment of monthly sums by the intervener to the respondent by way of rental for the room she occupies. They both related how in 1977, they met at the church which they both attended and discovered that they knew each other from childhood days. The respondent related the way in which it came about that he took a tenant in the house. It is admitted that both the respondent and the intervener are living under the same roof since the 1st July, 1978.

Adultery is voluntary sexual intercourse between a married person and a person of the opposite sex, the two persons not being married to each other. It is rarely that direct evidence of the act of adultery is adduced in a petition for a divorce on this ground, and this is not such a case. It is not necessary to adduce direct evidence in order to prove adultery. In nearly every case what is relied on (as in this case) is circumstantial evidence, such as the conduct of the respondent and the woman-named, confessions and admissions, acts of undue familiarity, suspiciouns / circumstances, and generally evidence which points to the conclusion that they were involved in an adulterous association. The burden of proving adultery is throughout on the person alleging adultery, there being a presumption of innocence. There have been various views expressed with regard to the standard of proof in matrimonial cases, the cases making a distinction in standard of proof according to the ground of divorce. It has been said that "adultery must be proved to the satisfaction of the Court, that is beyond reasonable doubt; the evidence need not reach certainty, but it must carry a high degree of probability." (Halsbury's Laws of England Third Edition Vol. 12 at page 237). If I may say so with respect, that standard of proof seems to be equating a matrimonial offence to a criminal offence, and since it has been held that a suit for divorce is a civil and not a criminal proceeding, it probably has set too high a standard. In Blyth v. Blyth (1966) A.C. 643, it was said that in

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proportion as the offence is grave, so ought the proof to be clear. Perhaps the true position was best stated by Wilmer L.J. when he said:-

> " In the present case, what is charged is "an offence." True, it is not a criminal offence; it is a matrimonial offence. It is for the husband petitioner to satisfy the Court that the offence has been committed. Whatever the popular view may be, it remains true to say that in the eyes of the law the commission of adultery is a serious matrimonial offence. It follows, in my view, that a high standard of proof is required in order to satisfy the Court that the offence has been committed, (Bastable v. Bastable & Saunders (1968) 3 All E.R. 701, 704).

I accept the views of Wilmer L.J. to contain a true statement of the standard of proof required and I am guided by that view in arriving at my decision in the present case. As I have said before, the success of the petition depends to a large extent on the evidence of the paid private investigators, Mr. Wilson and his assistant Mr. Radway. I have looked at their evidence with great care and have found that they are discredited on those points which were directed at establishing possible familiarity and cohabitation. Familiarities by themselves are insufficient to found a decree, though together with evidence of opportunity, may be just sufficient for the Court to draw the inference that adultery has taken place. In so far as the evidence of those two witnesses goes, they have failed to establish any familiarities or improper behaviour between the respondent and the intervener. It is true to say that the inference that adultery has taken place arises if the respondent and intervener spend the night in the same room (see Woolf v. Woolf [1931], P. 134) but I have not accepted the evidence that it so happened. In the event, I am left with only the evidence of Mr. Wilson as to the conversation between himself, the respondent and the intervener. No admissions were made except that the respondent and intervener were living under the same roof, and the uncontroverted evidence is that the intervener was a tenant of the respondent. Proof of general cohabitation excludes the necessity of proof of particular facts to establish adultery (Rutton v. Rutton [1976] 2 Hag. Con. 6), but is there such proof of general cohabitation? The fact that a man and a woman are living under the same roof does not necessarily provide proof of cohabitation.

(See Bartram v. Bartram (1949) 2 All E.R. 270). It seems to me that the evidence must go further and at least show that the parties have been living as man and wife, though proof of sexual intercourse would not be required. The Court must take a common sense view of the facts of each case and decide whether or not there is proof of general cohabitation. I accept the evidence that the intervener was the tenant of the respondent. I further accept the uncontroverted evidence that they did not share the same bathroom and that although they shared a common kitchen, they did not cook for each other. I will not hold that where a person who is living alone takes a tenant of the opposite sex under the same roof, cohabitation is established or that it inevitably points to their having a sexual relationship.

One of the objects of cross-examination is to establish one's own case by means of the opponent's witnesses. The respondent and the intervener were subjected to cross-examination, no doubt for this purpose. Mr. Shelton in his address has asked me to draw the inference of adultery from certain circumstances which, if I understand him correctly, he contends cannot be mere co-incidence and he pointed to the following evidence:-

(i) "The petitioner said that the marriage commenced to deteriorate in 1977; the respondent and the intervener renewed acquaintances in 1977."

It does not appear to me that if the marriage did commence to deteriorate then, it can be attributed to the renewal of acquaintances between the parties. The only evidence is that they attended the same church. There is no evidence to suggest that they were meeting otherwise than church.

(ii) "The petitioner said that the respondent began staying out late in 1977 and gave excuse as "singing," and it was that year that the respondent started attending the Moravian Church and met up with the intervener."

The respondent denied staying out late at nights except on the odd occasion when his job kept him away from home. But even assuming that he did stay out late at nights, where is the evidence to say that an association with the intervener was the cause? The petitioner said he was out "with the boys," and if that is so, is there any contradicting

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evidence?

(iii) "Less than 5 months after the Petitioner leaves for the United States of America the respondent finds it necessary to rent a room to his "Mizpah acquaintance," and in the light of Jamaican circumstances, could that be considered reasonable?"

But the respondent gave evidence that it was because of his illness and the fact that he was then alone in the house, that he decided to take in a tenant. The intervener said she decided to leave her own home and to move into rented accomodation because she was suffering from blood pressure and her own home was very noisy and was not conducive to rest. Having seen No. 36, Bronx Avenue she decided to rent a room there. These reasons may not appear to be very convincing, but they were uncontroverted.

(iv) "The respondent did not call his wife in the United States of America and tell her of his illness in 1978, but in 1974 he had called her to come home. Instead what he did was to contact his church and then gets intervener to fill the role of his wife."

I do not regard that as a reasonable inference to be drawn from the proven facts. The intervener did say that before she went to live at Bronx Avenue, she had overheard the respondent say that he was thinking of having someone else in the home in case of illness or emergency and it was then that she became aware of his desire to take someone in the home. She was asked the question, "so you knew that in the event that Mr. Moore got sick that you would have to assist him?" Her answer was, "not necessarily so, I was aware of it. If it became necessary I would assist him." In the event would it be an unreasonable thing to do and is that a role exclusively reserved for wives? This was not advanced by the intervener as a reason for her renting the room at No. 36, Bronx Avenue.

(v) "The respondent did not tell the Petitioner that he was renting out the room although he wrote her a few days before, and the home was jointly owned by them. The respondent was never under the impression that his wife had deserted him. The Petitioner had paid three months salary in advance to the helper."

(vi) "The intervener said she came there to rest - she did not know if the respondent was married then and it was not her business if he was. She hears that he is married after she moved in and then on the 12th July, 1978 she hears from the investigator that the respondent's wife had sent him there and yet she has not removed. He asked the question, "Is that the action of an innocent person?"

From all the circumstances outlined above, the Petitioner is asking the Court to say that the cumulative effect shows that the relationship of the respondent and intervener was not innocent; motive can be inferred from such evidence and from their behaviour. Even if general cohabitation is not established, then opportunity exists from the admitted fact that they are living under the same roof.

Such were the arguments advanced in that regard in favour of the Petitioner's prayer for a decree. But they are bound to fail. In my view the evidence at its highest has only established ground for suspicion and an opportunity to commit adultery; it has fallen short of the standard of proof required to establish adultery between the two parties. The respondent expressed his strength to "resist temptation in sexual matters." He said that when the intervener came to live in the house he had not had sexual intercourse for several years and this seems to be borne out by the evidence of the Petitioner, at least in so far as she was concerned. He said he has taken his mind off sex. In all the circumstances I cannot say that I am satisfied to the required standard that from the nature of things the respondent has committed adultery with the intervener, either on the night of the 12th July, 1978 or any time at No. 36, Bronx Avenue. The Petitioner has failed to discharge the burden placed on her to prove that the respondent has committed adultery, and consequently, the decree sought must be refused.

Having regard to my findings, it will be unnecessary to review the evidence tendered for and against conduct conducing. Suffice it to say that if I am wrong in my findings, and the Petitioner is indeed entitled to a decree on the evidence, I would hold that there is insufficient evidence to support the respondent's claim that the Petitioner's conduct amounts to conduct conducing, and for that reason I would not have exercised by discretion to refuse the decree.

In my judgment, for the reasons already stated, the Petition is dismissed and the intervener is dismissed from the suit.

The question of costs is reserved for argument.