

ROYAL COURT
(Matrimonial Causes Division)

45.

5th March, 1996

Before: The Deputy Bailiff, and Jurats
Orchard and Vibert.

Between:	Gordon George Troy	Petitioner
And:	Michèle Troy (née Woodcock)	Respondent

Petition for divorce on grounds of cruelty.

The Respondent had given notice of not having an
intention to defend the action.

Advocate Mrs. M.E. Whittaker for the Petitioner.

JUDGMENT

THE DEPUTY BAILIFF: This is a resumed hearing from the undefended divorce list. The Petitioner seeks a divorce on the grounds of the cruelty of his wife.

5 The matter is unusual because although on 4th December, 1995,
the Respondent signed form 4 to say that she did not intend to
defend the case; an answer to the petition had already been filed.
It is, in the best of lights, a most unusual piece of pleading.
10 It denies some of the allegations in substance but it specifically
admits that the Respondent's behaviour has been cruel and has
affected the health of the Petitioner.

15 It also admits that the Respondent has made it clear to the
Petitioner that the marriage is at an end and that that statement
has caused him great distress.

In Burn -v- Mercer (1st August, 1991) Jersey Unreported, we
said this at p.6:

20 *"In Duffy v. Duffy unreported 91/20a the Learned
Commissioner Mr. Le Cras gave a most helpful*

recapitulation of the duties of the Court in deciding questions of cruelty. We will not set out his recapitulation in extenso. We need only to remind ourselves that the four ingredients of cruelty (from *Mulhouse v. Mulhouse* (1966) p.39 at pp.49 & 50) are as follows:

"(i) Misconduct must be of a grave and weighty nature, it must be more than mere trivialities though there may come a point at which the conduct threatens the health of the other spouse, in which event the Court will give relief.

(ii) It must be proved that there is a real injury to health or a reasonable apprehension of such injury.

(iii) It must be proved that it is the misconduct of the spouse against whom the complaint is made which has caused the injury to the health of the complainant; and

(iv) reviewing the whole of the evidence and taking into account the conduct of one party and the extent to which the complainant may have brought the trouble on himself or herself the Court must be satisfied that the conduct can be properly described as cruelty in the ordinary sense of the term".

We have to adopt a high standard of proof although the offence of cruelty may be proved by a preponderance of probability".

As to the matters we have to decide we have heard this morning from the Petitioner and from his father. We have also considered the affidavit of Dr. Reid, his general practitioner.

Somewhat unusually, the Respondent since the petition was first heard, has moved back into the matrimonial home, although she lives in a separate room and she eats out. The property is jointly owned.

This, from what we have heard in evidence this morning, has caused further distress to the Petitioner and to their 15 year old daughter, whom we were told by Mr. John Troy, her grandfather, has now apparently ended what was a loving relationship with her mother.

We heard from Mr. John Troy in some detail how a happy family unit - for reasons which are unclear - has become totally disunited. We are satisfied, on hearing the evidence and considering the affidavit of Dr. Reid, that the effect on the Petitioner has been to cause a real threat to his health and we

are prepared in the circumstances to grant him a decree on grounds of cruelty while exercising our discretion in his favour.

Authorities

Rayden (10th Ed'n): pp.155-156.

Burn -v- Mercer (1st August, 1991) Jersey Unreported.