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William S. Jett Jr.
University of Kentucky

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sonal representative of the vendor, the former to convey the land, the latter receiving the money. The rights of all parties may be settled in the one action.

In the event that the vendor had died before the exercise of the option by the purchaser, the land would have gone to the heir as above. But there would be a difference in the disposition of the purchase money. The vendor having died without acquiring a right to the purchase money, the personal representative would receive no right to it. The heir, rather, would receive the purchase money, upon carrying out the obligation of conveyance imposed on the land descending to him.²⁷

GEORGE T. SKINNER.

DOMESTIC RELATIONS—FALSE CHARGE OF LEWD AND LASCIVIOUS CONDUCT AS CONSTITUTING CRUELTY A GROUND FOR DIVORCE.

During a recent bar examination in this state, a question was put to those taking the examination which had reference to cruelty as a ground for divorce in Kentucky. The question was apparently taken from a late Kentucky case,¹ where the facts appear as follows. A wife instituted an action for divorce on the grounds of cruel and inhuman treatment. By answer and counterclaim the defendant husband traversed the allegations of the wife's petition and also asked for a divorce, charging that the wife had been guilty of such acts of immorality and lewd and lascivious conduct as proved her to be unchaste—that within six months before their separation she had been guilty of adultery. Such charges were also proved to have been made by the husband outside the court room. The charges were not sustained. The question was whether the charges of conjugal misconduct made by the husband against his wife, would, if unfounded and not in good faith, warrant the granting of a divorce on the grounds of cruel and inhuman treatment. The trial court answered the interrogatory in the affirmative and granted an absolute divorce to the petitioner.

Bouvier's Law Dictionary defines cruelty as between husband and wife as, "those acts which affect the life, the health, or even the comfort of the party aggrieved, and give a reasonable apprehension of bodily hurt."

The weight of authority is that conduct, in order to constitute cruelty, and thus come within the statutes of the various states, must consist in the infliction or threatened infliction of bodily harm. This

²⁷ Upon the problem see 16 R. C. L., p. 806; 13 C. J., pp. 856-858; also, the annotations in 57 L. R. A. 643, L. R. A. 1916 F 358, 50 A. L. R. 1314.

¹ *Bush v. Bush*, 245 Ky. 172, 53 S. W. (2d) 352 (1932).

infliction of bodily harm may be by personal violence, either actual or threatened, or reasonably to be apprehended, or by words or conduct, without personal violence, causing mental suffering, and thereby injuring or threatening to injure health.² A charge of "such acts of immorality and lewd and lascivious conduct as proved her to be unchaste" contains none of the elements pertaining to personal violence. The question, therefore, narrows down to the proposition: might such a charge contain danger to the health and well being of the petitioner?

The words "treatment cruel and inhuman," as they are generally set out by the statutes, whether practiced by using violence or any other means, admit of great latitude and call for real acumen, caution, and judicial discretion on the part of the trial court. In other words, cruelty, as a ground for divorce, does not admit of an unequivocal definition for, "a course of conduct that would inflict grievous mental suffering upon one person might not have the same effect upon another."³

The weight of authority is that false charges of adultery made by either the husband or the wife maliciously and without probable cause constitute legal cruelty.⁴ However some jurisdictions follow the rule that the husband will not be granted a divorce upon the grounds of cruelty where the wife made false charges of conjugal misconduct, unless he shows that from his temperament or calling the charges produced, or were likely to produce, mental suffering beyond the effect which such charges would naturally have upon a man.⁵ Some cases hold that false charges of conjugal misconduct are not grounds for divorce if made while the parties are living apart,⁶ while others say that the mere fact that husband and wife were separated does not necessarily prevent false and malicious charges of conjugal misconduct from constituting cruelty.⁷

The weight of authority with reference to false charges of conjugal misconduct in the pleadings while a suit for divorce is pending, is that such charges will be considered as aggravating the former acts of cruelty relied on for divorce.⁸ The majority rule is that before false charges of conjugal misconduct, wherever made and under any circumstances, will warrant the granting of a divorce on the grounds of cruelty, such charges must have been made in bad faith.⁹ In other words, the courts say that the declarant need only have acted in good faith, based upon reasonable suspicion when the charge of unchastity was made, and such declaration will not constitute cruelty, though the charge is erroneous.¹⁰

² Madden, Persons and Domestic Relations, p. 268.

³ *De Cloedt v. De Cloedt*, 24 Idaho 277, 133 Pac. 664 (1913).

⁴ 19 C. J., Sec. 93, p. 51.

⁵ *McAlister v. McAlister*, 71 Texas 695, 10 S. W. 294 (1888).

⁶ *Beach v. Beach*, 4 Okla. 359, 46 Pac. 514 (1896).

⁷ *MacDonald v. MacDonald*, 155 Cal. 665, 102 Pac. 927 (1909); *Stewart v. Stewart*, 175 Ind. 412, 94 N. E. 664 (1911).

⁸ 19 C. J., Sec. 93, p. 52.

⁹ 19 C. J., Sec. 93, p. 52.

¹⁰ *Sallee v. Sallee*, 213 Ky. 125, 280 S. W. 932 (1926).

There is a conflict in opinion as to whether the false charges of conjugal misconduct in order to constitute grounds for divorce, must have been made in public or in open court during the pendency of a divorce proceeding. It is conceded that where the false charges are made in the presence of others, it is quite unquestioned that they constitute cruelty of the grossest sort.²¹ An Iowa court has gone beyond public charges of adultery and granted divorces where the charges were apparently made privately.²²

In Kentucky, "cruelty," as used in the divorce statutes,²³ means an actual personal violence, or the reasonable apprehension of it, or such a course of treatment as endangers life or health and renders cohabitation unsafe.²⁴ There is no settled rule in this state as to what is necessary to show such cruel and inhuman behavior as to indicate a husband's settled aversion toward his wife, except that his behavior need not be brutal or violent.²⁵ In a recent Kentucky case a husband's statement that things told him about his wife looked suspicious was held an insufficient charge of unchastity to constitute "cruel and inhuman treatment."²⁶ However, a base and unfounded charge of adultery and unchastity, made by the husband against his wife, constitutes such cruel and inhuman treatment as to entitle her to a divorce upon that ground,²⁷ but the charge of the husband, in order to constitute cruelty warranting a divorce must have been deliberately made and not capriciously, or in a fit of jealousy, or under circumstances not showing a determination to falsely prefer the charge.²⁸ In short, Kentucky is in accord with the weight of authority in making the good faith of the declarant the test, before granting a divorce on the grounds of cruelty.

There are no cases in Kentucky where the husband was granted a divorce from the wife on the grounds of cruel and inhuman treatment, where the alleged cruelty consisted of false declarations made by the wife charging adultery and lewd and lascivious conduct on the part of the husband. Query, what would be the decree of a Kentucky court in such a case?

As history progresses, the divorce laws become broader in scope, and we see more and more causes constituting grounds for divorce. The result in the principal case²⁹ is highly satisfactory, for in this day, when divorce proceedings receive a far flung publicity and pleadings are not considered as a mere pretense or sham, but as true, the unfounded malicious charge of conjugal misconduct would seem to

²¹ *Anderson v. Anderson*, 191 Iowa 497, 181 N. W. 241 (1921).

²² *Sesterhen v. Sesterhen*, 60 Iowa 301, 14 N. W. 333 (1882).

²³ Ky. Stats., Sec. 2117.

²⁴ *Thornberry v. Thornberry*, 25 Ky. (2 J. J. Marsh.) 322 (1829).

²⁵ *Burns v. Burns*, 173 Ky. 105, 190 S. W. 683 (1917).

²⁶ *Reynolds v. Reynolds*, 224 Ky. 668, 6 S. W. (2d) 1078 (1928).

²⁷ *Supra*, note 1.

²⁸ *Johnson v. Johnson*, 183 Ky. 421, 209 S. W. 385 (1919).

²⁹ *Supra*, Note 1.

make further cohabitation intolerable; and when it shall be made fully to appear that from any other reason or cause the parties cannot live together in peace and happiness, and that their welfare demands a separation, then it would seem to be the best policy of the law that a divorce be granted.

The premise that a divorce will be granted on the grounds of cruelty where one of the spouses makes a false charge of conjugal misconduct against the other spouse, knowing such charge to be false,²⁰ is satisfactory in the sense that such a charge is likely to have a direct bearing upon the health and welfare of the party against whom the charge was directed.

The policy of the law is to preserve, if possible, as a practical matter, the marital status. The reasons are based on public policy, and welfare of the community, as well as *stare decisis*. Still, in order to preserve this status, legal jurisprudence should not cause two people, who are wholly unfitted, to carry on such a relationship. The effect of charges of conjugal misconduct made by a husband against his wife, if false and unfounded, is to degrade and tear down the sanctity which originally the church, and now the law, has woven about a wife in an effort to preserve her in a state of cleanliness and virtue. Such charges wreak their havoc on the wife by causing great mental distress and worry, which in turn lead to failing health and disease.

A majority of the courts make the good faith of the declarant, who made false charges of conjugal misconduct, the test before granting a divorce to the other spouse of the ground of cruelty.²¹ As a practical matter, looking at the proposition from the standpoint of the party who is seeking a divorce, the test is weak and at the same time difficult of application. The reason advanced by the courts for granting a divorce on the grounds of cruelty where false charges of conjugal misconduct have been made is because of the harmful effect they will have upon the health and welfare of the spouse against whom they were directed. It is absurd to say that the good faith of the declarant will prevent such an effect, especially where the charges were made in public, or in a crowded court room. It would seem therefore that the declarant should only be permitted to make such charges at his peril.

The true basis for a successful marriage is love and trust, for without these two elements not one marriage out of a hundred would be successful or long lasting. With suspicion of unchastity comes distrust and loss of love, and such suspicion being based on what the spouse making the charge believes to be the truth, is hardly eradicable. When affairs reach the state where suspicions come forth as violent epithets, the foundations of marriage are destroyed and we behold two people who are no longer husband and wife except in the

²⁰ *Supra*, note 4.

²¹ *Supra*, note 10.

legal connotation placed upon the words. Upon the courts devolves the duty of releasing the parties from a relationship which has become distasteful thereby enabling them to pursue their separate search for a more profound happiness.

WILLIAM S. JETT, JR.