[HIGH COURT OF AUSTRALIA.]

JUANITA GOUGH . . . . . APPELLANT;

AND

ERROL HUNTER GOUGH . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1956.

SYDNEY, *Aug.* 10;

MELBOURNE, *Oct.* 15.

Dixon C.J., Webb and Taylor JJ.

Matrimonial Causes—Dissolution of marriage—"Repeated assaults and cruel beatings"—"During one year previously"—"During"—"Repeatedly"—Four incidents during said year—Nature—Gravity—Sufficiency—Matrimonial Causes Act 1899-1954 (*N.S.W.*), *s.* 16 (*f*).

Section 16 of the *Matrimonial Causes Act* 1899-1954 (N.S.W.) provides that a wife "may present a petition to the Court praying that her marriage may be dissolved on one or more of the grounds following: . . . (f) that during one year previously her husband has repeatedly assaulted and cruelly beaten the petitioner."

Upon the hearing of a petition filed on 18th January 1955 under s. 16 (f) of the *Matrimonial Causes Act* 1899-1954 (N.S.W.) for the dissolution of her marriage the wife-petitioner deposed to four incidents: (i) that on 27th June 1954 her husband kicked her hard "in the seat" after a quarrel; (ii) that on 27th August 1954 her husband pushed the door open when she was behind it pushing her against the wall, but she was "not hurt terribly"; (iii) that on 22nd September 1954 during a quarrel her husband hit her with the back of his left hand on which there was a heavy gold ring, three or four times across the nose and the mouth which she said broke the skin a bit; and (iv) that on 22nd December 1954, while they were still separated she refused to go home with her husband and he hit her on the side of the face with a closed fist and broke her denture. The husband did not defend the petition, and did not proceed in a suit brought by him for a decree for restitution of conjugal rights. The trial judge held that the requirements of s. 16 (f) that the husband had during one year previous to the date of the petition repeatedly assaulted and cruelly beaten the petititioner were not satisfied and dismissed both the wife's petition and the husband's petition. On appeal to the High Court,

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Held, that the appeal should be dismissed.

Per Dixon C.J.: Section 16 (f) should be understood as limiting the period within which acts must be found satisfying the description to twelve months, namely the twelve months preceding the presentation of the petition, and as requiring that there shall be a series of such acts forming separate incidents or examples of conduct on the respondent's part. Although such a series implies that the acts are spread in point of time it is not essential that they be spread over the whole twelve months.

Per Webb J.: The expression "repeated assaults and cruel beatings" is a composite phrase, and having regard to its context, each assault must be inexcusable, of a grave nature and be coupled with battery, constituting physical cruelty, and these assaults and beatings must have taken place so often throughout the year preceding the petition that it can properly be said that the husband guilty of them had a propensity to commit them.

Decision of the Supreme Court of New South Wales (*Brereton* J.), affirmed.

APPEAL from the Supreme Court of New South Wales.

The facts sufficiently appear in the judgments hereunder.

R. Watson, for the appellant. The facts are sufficient to establish the grounds relied upon on one or two possible definitions of the phrase "repeated assaults and cruel beatings" in s. 16 (f) of the *Matrimonial Causes Act* 1899-1954. It means either a battery with a cruel ingredient added as stated in *Findlay* v. *Findlay* (1), or, alternatively, there is the word "repeated"—something more than two—and the word "assault"—repeated blows with an element of cruelty about them. The sub-section does not say repeated cruel beatings. All cruel beatings are, obviously, assaults. The inclusion of the word "assault" shows that there was anticipated something less in content than what is meant by a cruel beating. The whole four subject incidents come within the definition in *Findlay* v. *Findlay* (1). The word "beating" is defined in the latest *Shorter Oxford Dictionary* as "repeated blows". The word "cruel" is defined as being disposed to inflict suffering indifferent to or taking pleasure in another's pain; merciless, pitiless, hard-hearted. The foregoing are primary meanings. The strength of the blows is immaterial. The requirements of s. 16 (f) are satisfied if, as here, it be shown that there was a series of blows which had within themselves that element of cruelty, that is a cruel beating. Two incidents within the twelve months, the first of which closely followed an incident outside the twelve-months period, are sufficient to establish

(1) (1893) 14 L.R. (N.S.W.) D. 13; 10 W.N. 97.

the word " repeatedly ": *Richardson* v. *Richardson* (1). " Cruel " and " cruelty " were considered in *Cox* v. *Cox* (2) and *Taylor* v. *Taylor* (3). An assault is something less than a cruel beating. The word " repeatedly " was meant to apply to cases where a husband had been in the habit of cruelly beating his wife and it had, in fact, become an habitual thing. Each of the subject incidents was progressively more serious than the immediately preceding incident: *Glossop* v. *Glossop* (4), see also *Young* v. *Young* (5). " During " was considered in *Cradick* v. *Cradick* (6). In *Mossman* v. *Mossman* (7) the judge held that the parties must be married for at least one year, and refused to follow *Low* v. *Low* (8) in which although the parties had been married for less than one year the judge granted a decree on this ground. A definition of what is meant by " repeated assaults and cruel beatings " in the Victorian legislation appears in *Worland* v. *Worland* (9) but that was by a judge of single instance and carries no weight of authority because there were not any real reasons given as to why the judge arrived at that peculiar kind of definition. In *Ruddell* v. *Ruddell* (10) the judge made the test " physical cruelty " but in the court below *Brereton* J. said that was the very thing he should not be asked to find. Two incidents in one year were held to be not enough in *Anderson* v. *Anderson* (11) and consideration was given to the question in *Colless* v. *Colless* (12); see also *Wyndham* v. *Wyndham* (13). An expression of opinion by the judge in *Richardson* v. *Richardson* (14) puts the distinction in this case, and what the situation was that faced the Full Court in *Young* v. *Young* (15). In *Lawton* v. *Lawton* (16) there were eight incidents during the year. It is not understood why the meaning of the word " cruelty " in s. 16 (b) differs from the meaning of the word " cruelly " in s. 16 (f). The word " cruel " embraces not only the situation where a man is indifferent to the consequences of his act, but it also embraces the other situation where there are some hurtful consequences of such acts. There is ample evidence of the subject four assaults, the last two of which clearly come within the definition of " cruel beating "—the first two being " assaults " —and it shows that the wife-petitioner is in future jeopardy.

(1) (1944) 61 W.N. (N.S.W.) 12.
(2) (1949) S.A.S.R. 117, at p. 118.
(3) (1893) 14 L.R. (N.S.W.) D. 13; 10 W.N. 97.
(4) (1896) 13 W.N. (N.S.W.) 30.
(5) (1901) 1 S.R. (N.S.W.) D. 22, at pp. 24, 30, 31; 18 W.N. 90, at pp. 91, 93.
(6) (1910) 10 S.R. (N.S.W.) 710; 27 W.N. 177.
(7) (1956) S.R. (N.S.W.) 206; 73 W.N. 170.
(8) (1952) 70 W.N. (N.S.W.) 37.
(9) (1910) V.L.R. 374, at p. 375.
(10) (1911) V.L.R. 330.
(11) (1926) 44 W.N. (N.S.W.) 9.
(12) (1934) 51 W.N. (N.S.W.) 118.
(13) (1938) 55 W.N. (N.S.W.) 167.
(14) (1944) 61 W.N. (N.S.W.) 12, at p. 14.
(15) (1901) 1 S.R. (N.S.W.) D. 22; 18 W.N. 90.
(16) (1952) 69 W.N. (N.S.W.) 285, at p. 286.

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E. Little, for the respondent. The expression "assaults and cruel beatings" means something of a very grave nature. Dictionary meanings are not important except as a guide. In all the circumstances the *dicta* laid down in *Taylor* v. *Taylor* (1) are of most assistance to the court. "Assault and cruel beating" is a composite action. Two of the incidents occurred during quarrels. A blow struck in the course of a quarrel is not so serious in intent. The gravity of the matter is mentioned in *Findlay* v. *Findlay* (2); *Glossop* v. *Glossop* (3); *Wyndham* v. *Wyndham* (4) and *Flavel* v. *Flavel* (5). These assaults are not of such a grave nature as would justify a divorce. "During" may be throughout or substantially throughout the year or it may be within the year: see *Richardson* v. *Richardson* (6); *Egan* v. *Egan* (7); *Cradick* v. *Cradick* (8); *Colless* v. *Colless* (9) and *Wyndham* v. *Wyndham* (4) in which it was said in effect: "during a substantial part of the year provided that there was a certainty or a possibility of recurrence". In the first few months there was not any assault at all; the incidents were confined to six months. *Low* v. *Low* (10) and *Mossman* v. *Mossman* (11) were conflicting decisions. As to whether a beating is a cruel beating is a matter of degree. At least three of the incidents are not sufficiently grave to be assaults and cruel beatings. They were not repeated and they were not during, i.e. throughout, the year.

R. Watson, in reply.

Cur. adv. vult.

Oct. 15.

The following written judgments were delivered:—

DIXON C.J. This appeal is by the petitioner in a wife's suit for dissolution of marriage which was dismissed. The ground of the petition was that the respondent husband had during one year previously repeatedly assaulted and cruelly beaten the petitioner. The suit was commenced on 18th January 1955. The petition was heard by *Brereton* J., who held that the ground was not made out.

There was also a petition by the husband for a decree for restitution of conjugal rights but that was not supported at the hearing by the husband and was dismissed. In fact, although he filed an

(1) (1893) 14 L.R. (N.S.W.) D. 16; 10 W.N. 98.
(2) (1893) 14 L.R. (N.S.W.) D. 13; 10 W.N. 97.
(3) (1896) 13 W.N. (N.S.W.) 30.
(4) (1938) 55 W.N. (N.S.W.) 167.
(5) (1948) V.L.R. 479.
(6) (1944) 61 W.N. (N.S.W.) 12.
(7) (1909) 26 W.N. (N.S.W.) 184.
(8) (1910) 10 S.R. (N.S.W.) 710; 27 W.N. 177.
(9) (1934) 51 W.N. (N.S.W.) 118.
(10) (1952) 70 W.N. (N.S.W.) 37.
(11) (1956) S.R. (N.S.W.) 206; 73 W.N. 170.

appearance and an answer to his wife's petition, he did not appear at the hearing of the two petitions. The parties were married on 6th January 1951, the husband being twenty-seven and the wife twenty-five years of age. There are no children of the marriage. The husband's occupation is given as that of a commercial traveller. The wife has been in employment throughout her married life. In June 1954 her work was at a milk bar in North Sydney. They lived at Willoughby. Her complaint of violence begins with an incident at that time. Her scanty account of it suggests an altercation. She says that in the hall of their residence her husband kicked her " in the seat ". Apparently she then left her husband and stayed with her mother for a time but later returned to him. She says that when on one evening he came home from his work her husband pushed the door as she opened it and forced her against the wall : it was quite a severe push but she " was not hurt terribly ", which the learned judge construed as meaning that she was not hurt at all. That incident occurred in August 1954. A month later the third of the acts of violence took place on which the appellant based her petition. In the meantime she had again gone to stay with her mother. She says that her husband had telephoned to her and had asked her to go for a drive with him to talk things over. The result of the drive was a quarrel, in the course of which she got out of the car to return by bus. He told her to get back into the car, which she did. Then while he was driving, as she says, at forty miles an hour, he hit her three or four times across the face with the back of his left hand, telling her that he should drive her to the Gap but she was not worth hanging for. He wore a ring. The back of his hand struck her across the nose and mouth and " broke the skin a bit ". He drove her home to her mother's house. Later she returned to live with him but on 21st December 1954 left him again. Next day as she was returning to her mother's house from her work she found him waiting for her at the tram stop. He told her to get into the vehicle in which he had driven there and come home with him. She refused and said that if he wished to talk to her he could come to her mother's home for the purpose. This he declined to do. He then hit her with his left fist on the side of the face. It was a heavy blow which broke her upper denture and the membrane inside her mouth, particularly the roof of the mouth. She went to the house of a neighbour, who at the hearing was called as a witness and said that the petitioner had blood upon her face and her mouth was bleeding. The witness telephoned to the police. The respondent was outside the house and the police requested him to keep away from his wife. Next day she laid a charge of assault against

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him, to which before the magistrates he pleaded guilty, but it does not appear that any order was made. The petitioner has not since returned to her husband.

Brereton J. considered that neither of the first two of these four incidents could amount to a cruel beating. In *Lawton* v. *Lawton* (1), his Honour discussed the meaning of the word "cruelly beaten" in the relevant ground of divorce in the light of the decided cases. In that case his Honour said that the beating to constitute a cruel beating must at least occasion some substantial pain or injury and went on to discuss the subjective character of the test of cruelty within the broad limits he had mentioned. The learned judge referred to the effect of vexation and anger under provocation as reducing the element of calculation, wilfulness or wantonness. In the present case *Brereton* J. referred to what he had said in *Lawton* v. *Lawton* (1) and held that in all the circumstances the third of the four incidents could not be held to be a cruel beating. The last incident, however, he regarded as satisfying the test. His Honour said that he could not hold that four assaults, three of which were committed in the heat of quarrel and one only of which could be described as a cruel beating, satisfied the requirements of the provision. The learned judge added:—"I am well aware that during the last fifty years the courts have adopted an increasingly liberal interpretation of the section. I am invited to take a step further along this road. To accede to this request would I feel involve substituting the words 'been guilty of physical cruelty' for those chosen by the legislature in the section and this I decline to do."

The provision in question is s. 16 (f) of the *Matrimonial Causes Act* 1899-1954 which in spite of its apparent strength of expression is so indefinite that it certainly has proved a source of considerable difficulty. This appeal does not present a state of facts calling for a general reconsideration of its meaning or application, but there are one or two matters which must be mentioned. As the provision now stands it is expressed to enable a wife with three years' domicile in New South Wales to present a petition praying that her marriage may be dissolved on the ground that during one year previously her husband has repeatedly assaulted and cruelly beaten the petitioner. In the first place there can be no doubt that the period of time to which the words "one year previously" refer is twelve calendar months before the presentation of the petition: cf. *Maney* v. *Maney* (2). In the next place the word "repeatedly" has

(1) (1952) 69 W.N. (N.S.W.) 285. (2) (1945) Tas.L.R. 15.

rightly been taken to modify the verb in the expression "cruelly beaten" as well as the verb "assaulted".

Much difficulty has been occasioned by the word "during". See *Cradick* v. *Cradick* (1) and the cases there reviewed: *Anderson* v. *Anderson* (2), per *Owen* J.; *Colless* v. *Colless* (3); *Wyndham* v. *Wyndham* (4); *Richardson* v. *Richardson* (5) and *Low* v. *Low* (6). The last-mentioned case relates to the question whether before the expiration of one year from the marriage a petition may be presented on the ground now under consideration. It was decided by *Richardson* J. that in such a case the ground may be made out. Of course the present case cannot touch such a question and it can be put aside till it calls for our decision; but see *Mossman* v. *Mossman* (7). But a consideration of what has been said in the various authorities about the word "during" suggests the conclusion that the significance of the word has been over-emphasised. Its primary purpose must have been to put a limit of time to the period in which the facts must occur that constitute the ground of divorce. There was perhaps a reason for using the word "during" and not "within", but it is difficult to agree in the view of the majority of the Full Court of Tasmania in *Maney* v. *Maney* (8), that it is necessary that substantially over the whole year the petitioner should have been repeatedly assaulted and cruelly beaten. That result is reached by giving the word "during" the full force of "throughout". It is perhaps useful to reproduce the text of the provision as it was first introduced by the *Divorce Amendment and Extension Act* 1892 (N.S.W.), s. 1 (*d*). It runs: "On the ground that, within one year previously, the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or on the ground that the respondent has repeatedly during that period assaulted and cruelly beaten the petitioner." The change of language from "within" to "during that period" there looks to be rather instinctive than designed or deliberate. Probably it was due to the association of the idea suggested by the word "repeatedly". If the words had been "in the course of that period" the meaning would have been conveyed. The better mode of interpreting and applying s. 16 (f) seems to be to understand it as limiting the period within which you must find acts satisfying the description to twelve

(1) (1910) 10 S.R. (N.S.W.) 710, at p. 717; 27 W.N. 177.
(2) (1926) 44 W.N. (N.S.W.) 9, at p. 10.
(3) (1934) 51 W.N. (N.S.W.) 118.
(4) (1938) 55 W.N. (N.S.W.) 167.
(5) (1944) 61 W.N. (N.S.W.) 12.
(6) (1952) 70 W.N. (N.S.W.) 37.
(7) (1956) S.R. (N.S.W.) 206; 73 W.N. 170.
(8) (1945) Tas.L.R. 15.

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months and as requiring that there shall be a series of such acts forming separate incidents or examples of conduct on the husband's part. Such a series itself implies that the acts are spread in point of time. But it is difficult to suppose that they must be spread over the whole twelve months. It would mean that at neither end of the period nor anywhere within it could there be a substantial interval in which the petitioner enjoyed a suspension of the cruel beatings or succeeded in avoiding them.

From the foregoing it follows that the fact that the four acts of violence of which the appellant complains occurred in little more than six months of the year was not enough in itself to defeat her petition. But when the acts of which she complains are considered they clearly appear insufficient to constitute the ground of divorce on which alone she relies.

It should be conceded in her favour that not only the fourth but also the third of the exhibitions of violence of which she told might properly be counted as assaults and cruel beatings if there were a sufficient series. *a'Beckett* J. was doubtless right when he said in *Hocking* v. *Hocking* (1): "A mere trivial assault clearly could not constitute an offence under" the provision. But he went on to say: "I agree with him (*Windeyer* J. in *Findlay* v. *Findlay* (2)) in thinking that it cannot be necessary for an assault to count that it should inflict serious bodily injury. The Act contemplates a series of assaults; it could scarcely contemplate a series of serious injuries as necessary to give a claim to relief" (3). When her husband struck the appellant in the face as he drove the car, he may have done so in ungovernable anger but his conduct seems to qualify for the epithet cruel and the law cannot regard such a "battery" as different from a "beating" as the statute uses that word.

But it is impossible to place the kick and the push with the opening door in any such category. Assaults they may have been but they were not cruel beatings. The two later batteries cannot suffice to satisfy the expression "has repeatedly assaulted and cruelly beaten the petitioner". It is impossible to say how much suffices to satisfy the word "repeatedly". But when you have only two exhibitions of violence and they are of the kind of which the husband here was guilty, they cannot suffice to constitute the ground relied upon.

The appeal should be dismissed.

(1) (1910) 32 A.L.T. 134.
(2) (1893) 14 L.R. (N.S.W.) D. 13; 10 W.N. 97.
(3) (1910) 32 A.L.T., at pp. 134, 135.

WEBB J. This is an appeal from a judgment of the Supreme Court of New South Wales (*Brereton* J.) refusing a decree nisi for the dissolution of a marriage on the ground that the respondent husband had " repeatedly assaulted and cruelly beaten " the appellant wife. Section 16 (f) of the New South Wales *Matrimonial Causes Act* makes that a ground of divorce when the assaults and beatings occurred during the year before the presentation of the petition.

The marriage took place on 6th January 1951 and the petition was presented on 18th January 1955. The suit was heard as an undefended suit, so that the wife's evidence was uncontradicted. It was as follows :—

There were no children of the marriage. Throughout her married life she had been working. On 27th June 1954 when she was working at the Metro Milk Bar at Crow's Nest the washing machine broke down and she asked her husband to fix it and he became abusive and gave her a hard kick in the " seat ". She then went to her mother's place but returned after two or three weeks. On 27th August 1954 her husband came home from work and pushed the door as soon as she opened it and forced her against the wall ; but she was " not hurt terribly ". She then left him again and again went to her mother's place. While she was still there on 22nd September 1954 her husband asked her to go for a drive with him and she did. They quarrelled and she got out of the car to get a bus. He told her to get back into the car and she did. He then struck her with the back of his left hand on which he wore a heavy gold ring. He struck her three or four times across the nose and mouth and broke the skin a bit. The car was then moving at about forty miles per hour. He told her he should drive her to the Gap and push her over, but that she was not worth hanging for. He then took her back to her mother's place. She went back to him again but left him once more on 21st December 1954 and went to her mother's place. The following night, just before eight o'clock, when she was on her way home from work her husband followed her and told her to get into his truck and go home with him, but she refused and he hit her with his left closed fist on the side of the face. It was a heavy blow and broke all the skin inside her mouth and broke all her teeth, the upper denture and the roof of her mouth. It broke the denture into several pieces. Next day she took out a summons against him in the Magistrates Court. He pleaded guilty, but the Magistrate suggested a settlement out of court.

A woman called as a witness by the wife said that at about a quarter to eight in the evening of 22nd December she saw the wife

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and her face had blood on it. Her mouth was bleeding from inside and her upper denture was broken.

Commenting on this evidence *Brereton* J. said in his judgment that the wife had said nothing about any pain or injury or even bruising as the result of the assault on 27th June 1954 ; that as to the events on 27th August 1954 when the door was pushed open, his Honour had the impression that she was not hurt at all ; as to the incident on 27th September 1954 when he struck her with the back of his hand she was able to notice that the car was moving 40 miles per hour and all that happened was that he broke her skin a bit. His Honour noted that these three incidents were not corroborated, although the wife was living with her mother and had the opportunity of calling her as a witness, and that no serious or substantial injury was inflicted. But his Honour thought that the last incident could be called a cruel beating. However he thought that, even taking the evidence at its face value, there was not a picture of repeated assaults and cruel beatings. He observed that three of the assaults were committed in the heat of quarrels and only one could be described as a cruel beating.

Counsel referred to New South Wales decisions on the meaning of these provisions of the *Matrimonial Causes Act* 1899-1954 and also to decisions in Victoria where *The Marriage Act* 1928, s. 75 (d) makes similar provisions.

I propose to deal briefly with these decisions under two heads (1) the nature of the repeated assaults and cruel beatings and (2) the period over which the misconduct is to take place, to be a ground for divorce.

As to 1 : In *Findlay* v. *Findlay* (1) *Windeyer* J. said in referring to the expression " repeatedly assaulted and cruelly beaten " in s. 1 (d) of the *Divorce Amendment and Extension Act* 1892 that " repeatedly " meant more than once, though oftener than twice ; twice with threats of more beatings, and that the assaults must be unprovoked and coupled with battery, constituting cruelty. In *Young* v. *Young* (2) (*Darley* C.J. and *Owen* and *Walker* JJ.) it was said that the words must be read as *ejusdem generis* with words in the same section, which included " attempted murder " and " grievous bodily harm ". In *Worland* v. *Worland* (3) *a'Beckett* J. said that the conduct must be of a grave nature ; grave acts of assaults and cruel beatings ; cruel violence. In *Powell* v. *Powell* (4) *Lowe* J. said the phrase was a composite one and referred to assaults

(1) (1893) 14 L.R. (N.S.W.) D. 13 ; 10 W.N. 97.
(2) (1901) 1 S.R. (N.S.W.) D. 22 ; 18 W.N. 90.
(3) (1910) V.L.R. 374.
(4) (1941) V.L.R. 204.

of a grave nature occasioning physical harm. Later in *Flavel* v. *Flavel* (1) *Lowe* J. said it referred to assaults serious and grave but not necessarily dangerous to life.

As to 2: In *Glossop* v. *Glossop* (2) *Simpson* J. said repeatedly meant " in the habit ", " becoming an habitual thing ". In *Egan* v. *Egan* (3) *Sly* J. said the assaults and beatings must have extended fairly throughout the year. In *Cradick* v. *Cradick* (4) (*Cullen*, C.J. and *Cohen* and *Pring* JJ.) *Cullen* C.J. said, repeating what had been said by *Gordon* J., the primary judge, " the whole year must be looked at " (5). But he added that acts of violence need not have extended right through the year, if the wife was exposed to danger during the whole period. *Gordon* J. had said that it was not enough that there had been repeated assaults and beatings during part of the year (6). *Pring* J. said that there had to be a propensity for beating the wife over a certain period (7). In *Anderson* v. *Anderson* (8) *Owen* J. said that " during the year " meant substantially throughout the year; extending throughout the year and becoming more or less an habitual thing (9). In *Wyndham* v. *Wyndham* (10) *Jordan* C.J. and *Davidson* and *Nicholas* JJ. followed *Cradick* v. *Cradick* (4). In *Richardson* v. *Richardson* (11) *Bonney* J. said that the whole year's conduct must be looked at; but in *Low* v. *Low* (12) *Richardson* J. granted a decree nisi although less than a year had elapsed between the marriage and the petition.

I have come to the conclusion with the assistance of these authorities that " repeated assaults and cruel beatings " is a composite phrase and having regard to its context that each assault must be inexcusable and of a grave nature and be coupled with battery, constituting physical cruelty; and further that these assaults and beatings must have taken place so often throughout the year preceding the petition that it can properly be said that the husband guilty of them had a propensity to commit them.

This being the law as I understand it I am unable to find on the evidence that the husband was guilty of " repeated assaults and cruel beatings " during the year before the presentation of the petition. There was in fact only one grave assault and cruel beating, judging by the physical injuries inflicted on the wife.

(1) (1948) V.L.R. 479.
(2) (1896) 13 W.N. (N.S.W.) 30.
(3) (1909) 26 W.N. (N.S.W.) 184.
(4) (1910) 10 S.R. (N.S.W.) 710; 27 W.N. 177.
(5) (1910) 10 S.R. (N.S.W.), at p. 718; 27 W.N., at p. 178.
(6) (1910) 10 S.R. (N.S.W.), at p. 714; 27 W.N., at p. 117.
(7) (1910) 10 S.R. (N.S.W.), at p. 720; 27 W.N., at p. 179.
(8) (1926) 44 W.N. (N.S.W.) 9.
(9) (1926) 44 W.N. (N.S.W.), at p. 11.
(10) (1938) 55 W.N. (N.S.W.) 167.
(11) (1944) 61 W.N. (N.S.W.) 12.
(12) (1952) 70 W.N. (N.S.W.) 37.

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So judged the other assaults were not grave and there was no cruelty involved.

I think then that *Brereton* J. rightly refused the decree nisi and so I would dismiss this appeal.

TAYLOR J. I agree that, in the determination of this appeal, there is no occasion for us to review the opinions which have been expressed from time to time concerning the meaning and application of the provisions of s. 16 (f) of the *Matrimonial Causes Act* 1899-1954. Even on the most liberal view which can be taken, both of the evidence and of the statutory provisions, it is abundantly clear that the appellant failed to make out a case and that the learned trial judge was right in dismissing the petition. In these circumstances it is as unnecessary as it would be futile to attempt the impossible task of defining precisely the boundary line between conduct which constitutes repeated assaults and cruel beatings during a period of one year and conduct which does not. I agree that the appeal should be dismissed.

Appeal dismissed.

Solicitors for the appellant, *J. Birnie Jackson & Coates.*
Solicitor for the respondent, *B. Burns.*

J. B.