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MENTAL CRUELTY AS GROUNDS FOR DIVORCE

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IN AN age which evidences a crying need for uniformity in our state laws, it is not surprising that we observe a desire on the part of both laymen and lawyers to effect a common understanding of one of the most fundamental problems in present day society, namely, divorce. Within the last decade we have witnessed to our shame, the trooping of thousands of individuals to certain states, in which states the statutes on divorce have been so purposely liberalized so as to render it possible for either party of the marriage to obtain a dissolution of the marriage bond for almost any reason which the complaining party may wish to give. Of such states and their divorce laws, there need not be any discussion as to the legal or sociological reasoning for this so-called liberalism. Suffice it to observe that the most important requirement for such divorces, is the establishment of residence by the complaining party in that state for such time as is provided for by statute. Perhaps it were better that such states classify such divorce statutes under more appropriate titles; as for instance, "A Bill for the Benefit of Hotels and Inns."

However, we cannot fail to observe that such havens of redress or relief, whether real or fancied, have had serious repercussions upon the trend of judicial policy, statutory enactment and public opinion in other states.

To point out and analyze the many different divorce statutes contained in the law books of the various states, would be quite impossible in any one article. However, there is one ground for divorce which is common to most jurisdictions and which represents a most surprising phenomenon. This is a question as to whether or not mental anguish or mental cruelty may or may not constitute a legal ground for divorce. Cruelty is a common statutory ground for divorce, either a mensa or a vincula.[1] The statutes differ in language. In many, the offense is described as "extremely cruelty,"[2] or as, "cruel and inhuman treatment"[3] or language having a similar import; and in others, the conduct constituting the offense is described in more or less detail.[4]

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[1] See statutes of the different states.

[2] *Mikkelsen* v. *Same,* 239 Ill. App. 366.

[3] *Rebstock* v. *Rebstock,* 144 N. Y. 289.

[4] Statutes of Arizona, California, Colorado, Delaware, Florida, Illinois, Maine.

In view of the great diversity in the language of the several statutes, it is impossible to frame a definition of cruelty, which will be of universal application. It has been frequently defined as actual, personal violence, or conduct causing a reasonable apprehension of it, or such a course of treatment as endangers life, limb, or health, and renders cohabitation unsafe.[5] It is established in most jurisdictions, however, that mere want of congenialty, or incompatability of temperament and the consequent warring of the parties will not justify a charge of cruelty on the part of either; nor is jealousy or overbearing conduct on the part of the husband or wife a ground for divorce.[6] Laws were primarily enacted for the protection of humanity; and the individual therefore looks to the law for aid in eliminating or for protection in prohibiting certain conditions as may eventually terminate in physical or mental discomfort, or even death.

It has been well established without exception in all states, that where a neighbor becomes noisy or riotous, he is considered a nuisance by the adjoining neighbors, and the law gives such offended neighbors a remedy,—namely, an injunction to abate such a nuisance. Certainly in such cases, it is quite apparent that the law affords the offended mental relief. Thus, we observe that in cases where the individual suffers even minor infractions, he is given the necessary and adequate relief.

Divorce, being a remedy enacted solely for the purpose of affording relief to two contracting parties, whose marital life have become unbearable to either or both and inasmuch as cruelty is one of the grounds for divorce in most jurisdictions, the following questions are presented for weighty consideration:

1. What is the degree necessary to sustain an action of divorce?
2. Should physical violence be a necessary element to sustain such an action?
3. Should mere want of congenialty, incompatibility of temperament, or continued wranglings of the parties justify a charge of cruelty?
4. Should the courts be granted unlimited powers of discretion in determining the probability of cause, or should they be guided entirely by statutes?

The most important question is whether, where physical violence is entirely lacking, there may be cruelty arising merely from mental unkindness, where its effects be deemed sufficiently serious? This is the problem of mental cruelty or mental anguish. Although some of the

[5] *Beyer* v. *Beyer,* 50 Wis. 254, 6 N.W. 807.

[6] *Maddox* v. *Maddox,* 189 Ill. 152, 59 N.E. 599, 82 A. M. St. Rep. 431, 52 L.R.A. 628; *Ward* v. *Ward,* 103 Ill. 477.

courts did not absolutely exclude mental cruelty as a grounds for divorce, it was, until recently, seldom found to be sufficient without physical violence. Even in recent decisions, the courts, although inclined toward the view that nothing but misery is to be attained by compelling the parties to live together where there is mental distress to one or both, are nevertheless confined to their statutes, which specifically designate when and how the divorce should be granted, regardless to the mental feelings of the parties.

Single Acts of Cruelty

In most jurisdictions a single act of cruelty does not ordinarily constitute a ground for divorce, unless it is such as to endanger life.[7] But, some of the courts hold that a single act of aggravated cruelty may warrant a divorce if accompanied with brutal neglect and abandonment or with such precedent or attendant circumstances as to satisfy the court that such acts are likely to be repeated.[8] In some states, if it is of such character as to render intolerable the subsequent living together of the parties as husband and wife, such a condition justifies the granting of a divorce.[9] Other courts, however, have held that a fixed or consistent habit of cruelty need not appear.[10] And even in those jurisdictions, where the statutes require that there shall be "extreme or repeated" cruelty, two distinct acts of violence are held sufficient, provided there is not too great lapse of time between the distinct acts.[11]

The opinion as recited in the Wisconsin courts on this point is quoted as follows, "If the conduct of the guilty party is such as to naturally cause great mental suffering to the other and render impairment of health probable, so that further efforts to perform the duties of the marriage state would be dangerous, that is sufficient."[12] While actual bodily harm or apprehension thereof need not be shown to justify granting a divorce on the ground of cruelty, yet there must have been such treatment as to destroy the peace of mind and happiness of the injured party, and to endanger the health or utterly defeat the legitimate objects of the marriage. This opinion should be compared with the opinion submitted by a New

[7] *Reinhard* v. *Reinhard,* 96 Wis. 555, 71 N.W. H. O. 3; *Freeman* v. *Freeman,* 31 Wis. 235.

[8] *Mahone* v. *Mahone,* 19 Cal. 626, 81 A. M. Dec. 91; *Day* v. *Day,* 56 N.H. 316.

[9] *O'Brien* v. *O'Brien,* 36 Reg. 92.

[10] *Menzer* v. *Menzer,* 83 Mich. 319 47 N.W. 219.

[11] *Eberton* v. *Eberton,* 50 N.C. 202.

[12] *Hiecke* v. *Hiecke,* 163 Wis. 171, 157 N.W. 747; See also *Johnson* v. *Johnson,* 107 Wis. 186, 83 N.W. 291; *Freeman* v. *Freeman,* 31 Wis. 235;*Crichlon* v. *Crichlon,* 73 Wis. 59, 40 N.W. 638.

Jersey court in which it is held "that proof of three or four separate acts of violence occuring at different times during a period of twenty months, each occasion by a mere incident, unaccompanied by any evidence of malice, and which did not cause a condition of terror or apprehension for the future, and did not prevent the continuation of the conubial relation, will not sustain a decree of divorce from bed and board on a ground of extreme cruelty."[13]

On the other hand there is a Missouri case which holds" that courts interfere on the ground of cruelty to prevent future harm, rather than to punish the defendant for what has been already done."[14] In comparing the differences of opinion between the New Jersey and the Missouri case, one is faced with the question as to whether or not the abused party must wait until he or she is bruised or actually disabled before relief can be granted him or her? Does it not seem apparent in the New Jersey case that after three or four acts of violence, no matter how slight, the abused is endangered, and that such a marriage cannot harmoniously continue?

In Illinois, as required by statute, two distinct acts of violence must be proved to sustain an actual divorce charging cruelty. The injustice of such a strict requirement may be indicated by the following illustration that occurred in a Chicago Court room. A husband and wife had agreed, that for various reasons, the marital relation could not be continued. It was agreed that the wife was to obtain the divorce, without the husband contesting it. In proving her case, the wife testified in an action charging cruelty, stating that her husband ha dstruck her on one specific instance. This was considered insufficient by the court, and the case was continued until the following day for further proof. The next day when the wife again took the witness stand the court noticed a bruised eye and lip and asked her what had happened during the few hours that had elapsed since her last appearance in court. She very innocently informed him that her husband had struck her, in order that she might have one other act of violence and thus procure her divorce.[15]

This illustration may perhaps seem grossly exaggerated and perhaps ludicrous, but, it occurred primarily because of the strictness of the law governing such a situation, which the judge could not remedy by using his own discretion, for had he done so, it would have been an abuse of discretion and a violation of the law.

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[13] *Hewitt* v. *Hewitt,* 37 N.J. 101.

[14] *Doyle* v. *Doyle,* 26 Mo., 545, 547.

[15] Writer was present when this case was heard; no record of case.

Intention, Wilfulness and Malice

Ordinarily, intention, wilfulness or malice are necessary elements in that cruel treatment which the law recognizes as a ground for divorce, and according to some authorities this is true, notwithstanding that the act complained of has a harmful effect upon the health of the other spouse. This occurred in a Massachusetts court, where in denying a husband a divorce on the ground of cruel treatment where the proof showed that the health of the husband had been injuriously affected by the acts of his wife, the court said, "It would seem that the libelee intended to sting the libellant's feelings, and her treatment may well have justified him in living apart from her. But there may be misconduct justifying separation for a while which will not require the court to grant a divorce, though the libellant was affected injuriously in his health to some extent by her acts and words, she had no purpose to harm him in this manner, but in part was moved by what seemed to her good motives, and by a desire for his success in life, and in part by her own nervous condition, she being in reality strongly attached to him, and her feelings being affectionate."[16]

Directly contrary to the above decision it has been held that where the health of the other spouse is seriously injured thereby, a divorce should be granted, though the offending spouse acted without any malevolent motives. Thus, in a New Hampshire court, where in granting a divorce to a husband whose health had become seriously injured because his wife became a healer in a Christian Science church, and persisted therein against his remonstrances, the court said, "a malevolent motive in the party complained of need not be shown. Divorce is not punishment of the offender but relief to the sufferer. Whether the behavior proved is sufficient ground for divorce depends on the question whether it has seriously injured health or endangered reason. This is the sole test. The question is, not whether the treatment reasonably ought, or could reasonably be expected, seriously to injure the health or endanger the reason of a person of ordinary intelligence and mental strength, but whether it has in fact had that effect upon the health or reason of the person complaining."[17] Intention cannot always be explained, nor are excuses always acceptable from the accused, and so a husband who is habitually harsh toward his wife, cannot explain away bodily injuries inflicted upon her by saying that they were unintentionally caused in playfulness.[18]

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[16] *Freeborn* v. *Freeborn,* 168 Mass. 50, 52.

[17] *Robinson* v. *Robinson,* 66 N.H., 600, 610. 23 Atl. 362.

[18] *Goodrich* v. *Goodrich,* 44 Ala. 670.

PERMITTING CRUELTY BY THIRD PERSONS

In illustrating cruelty by third persons, let us take the case of a wife, who in the presence of a husband, is assaulted by a third party. The husband makes no move to prevent the assault but looks calmly on. Let us presume that this has occurred on three other occasions, which acts have provoked numerous quarrels. Does this constitute such an act on the part of the husband as to enable the wife to procure a divorce charging cruelty? Certainly it cannot be denied that the wife undergoes some mental reaction. She believes that the husband does not love her; that the husband delights in seeing her abused and in seeing her suffer. Her beliefs may be unwarranted or perhaps unjust, for the husband may not be able to cope physically in defending his wife from such third person, but to the wife, as would undoubtedly be the feeling of the average person, there is no excuse for the husband's failure to adopt some form of action to prevent this continued abuse. It is interesting to note the opinion of a Massachusetts court in passing judgment in a divorce action on a case of this kind. The Massachusetts court states that, "undoubtedly, if the assault were in any degree participated in or encouraged or even afterwards approved by the husband, it would have been material evidence of cruelty on his part; in view of the duty of protection owed to a wife by her husband, it would perhaps have been as strong evidence against him as if he had himself committed the assault. But he cannot be answerable for the act of a third person, even of one with whom his relations were as close and intimate as was alleged to be the case here, unless he is shown to have made the act his own, either by procurement or previous assent or by acquiescence or subsequent approval and adoption."[19] Were one to follow the inlogical sequence of the reasoning of the Massachusetts court, it would follow that the court, before granting a divorce to the wife, would ask that it be shown that the husband held the wife firmly while the third party committed the assault, or have it shown that the husband applauded the acts of the third party during the commission of the act.

The majority of the states however, contrary to the minority ruling, as expressed by the Massachusetts court, hold that where the husband permits third parties to so conduct themselves toward his wife as to seriously impair her health, it will entitle the wife to a divorce on ground of cruelty.[20] It has also been held that if a wife actively aids her children in being cruel toward her husband, she is answerable for such conduct on the part of the children, and the husband may be entitled to a divorce on the grounds of cruelty. The reasoning and logic

[19] *Hold* v. *Hold,* 204 Mass., 25, 90 N.E. 392.

[20] *Day* v. *Day,* 84 Ia., 221, 50 N.W. 979; *Dakin* v. *Dakin,* 1. Neb. 457.

of this rule is based solely upon the mental anguish which the husband sustains as a result of his wife's actions.

Conduct Causing Mental Suffering

In repetition of previous statements made in this article it may be restated that actual bodily harm or apprehension thereof, must be shown to authorize granting a divorce on the ground of cruelty, and although this doctrine still prevails in a number of jurisdictions, the courts have lately tried to envoke a more modern and perhaps more sensible rule. This new view is that any unwarranted conduct by either spouse which causes mental suffering, is deemed sufficient to constitute cruetly and will permit the granting of a divorce.[21]

The preferred rule is quoted as follows: "The modern and better considered cases have repudiated the doctrine requiring actual bodily harm as a ground of divorce charging cruelty, claiming this doctrine as taking too low and sensual view of the marriage relation, and it is now very generally held that any unjustified conduct on the part of either the husband or the wife, which so grievously wounds the mental feelings of the other, or so utterly destroys the peace of mind of the other as to seriously impair the bodily health or endanger the life of the other, or such as in any other manner endangers the life of the other, or such as utterly destroys the legitimate ends and objects of matrimony, constitutes extreme cruelty under the statutes, although no physical or personal violence may be inflicted or even threatened."[22]

The following examples have been held to constitute cruelty:

1. The suffering caused to a husband because of the refusal of the wife to attend to her household duties.[23]

2. The wanton attack by the wife on the character of her husband and her demands that he be expelled from the membership of a fraternal organization of which he is a member.[24]

3. The unhappiness caused to the wife by reason of her husband's insistence that she submit to abortions, thereby destroying her peace of mind and happiness by defeating the object of the marriage relation.[25]

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[21] *Menzer* v. *Menzer,* 83 Mich. 319, 47 N.W. 219.

[22] *Cevene* v. *Cevene,* 143 Wis. 393, 129 N.W. 942; *Beebe* v. *Beebe,* 174 N. Y. App. Div. 408, 127 N.W. 942.

[23] *Carpenter* v. *Carpenter,* 30 Kans. 712, 2 Pac. 122.

[24] *McGee* v. *McGee,* 72 Ark. 355, 80 S.W. 579.

[25] *Dawson* v. *Dawson,* 63 Tex. Civ. A. 168, 132 S.W. 379.

4. The demands of a husband that his wife return to her parents because of the wife's illness having caused an accumulation of doctor bills which the husband no longer cares to contend with.[26]

We have three courts, who in rendering decisions in accordance with the above stated rule, give the following reasons for their holdings. One holds that, "Mental anguish, wounded feelings, constantly aggravated by repeated insults and neglect are as bad as actual bruises of the person; and that which produces the one, is not more cruel than that which causes the other."[27] Another holds in the following manner, "We find little patience with the insistence of the once semi-barbaric rule that afforded an avenue of escape to the injured wife only where physical violence was inflicted upon her."[28] A third court has held that, "the conduct of the husband may produce such mental agony as to be even more cruel and inhuman than if mere physical pain had been inflicted."[29]

There are numerous distinct acts of conduct that may cause mental suffering, and they may be listed as follows:

(a) False charges of adultery, antenuptial unchastity, other crimes, insanity, physical incapacity.

(b) Abuse of children.

(c) Adultery and lewd association.

(d) Attempts to entrap.

(e) Offensive language.

(a) Ordinarily, false charges of any of the above enumerated by either the husband or the wife maliciously and without probable cause has been held to constitute legal cruelty, although it has been held that where the false charge is made by the wife, the husband is not entitled to a divorce for cruelty, unless he shows that from his temperament or calling, the charges produced or were likely to produce mental suffering beyond the ordinary effect which such charge would naturally have made upon a man. There are some cases, however, in which it has been held that false charges of adultery, whether made by the husband or the wife are not of themselves ground for divorce. Some cases hold that such charges are not grounds for divorce if made while the parties are living apart, but others hold that the mere fact that the husband and wife were living separate does not necessarily prevent false or malicious charges from constituting extreme cruelty.[30]

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[26] *Platner* v. *Platner,* Iowa, 162 N.W. 613; *Dun* v. *Dun,* 150 Mich. 476, 114 N.W. 385.

[27] *Broyas* v. *Broyas,* 106 S.W. 212.

[28] *Glass* v. *Wynn,* 76 Ga. 319, 322.

[29] *Hildebrand* v. *Hildebrand,* 41 Okla. 306, 312, 137 Pac. 711.

[30] *Kissam* v. *Kissam,* 47 N.Y. S. 270.

The prevailing rule is that the charge must be unfounded or malicious in order to sustain the action of cruelty. It will again be noticed that New Hampshire disagrees with this rule. The court there says; "It is within the sound discretion of the court to deny a petition for a divorce nothwithstanding proof of extreme cruelty in repeated false accusations of infidelity and unchastity, where evidence tends to show that the falsely accused spouse is not without blame for the original excitation or subsequent perpetuation or increase of the suspicions of the accusing spouse, which culminates in such accusation."[31]

(b) While the husband may use force in protecting himself from unreasonable interference by the wife and the proper chastisement of their child, yet if he maltreats the child solely to give the mother pain, and if as a result her health is impaired, it is legal cruelty.[32] It seems that this rule, under this state of facts, should have omitted the words, "as a result her health is impaired." Certainly if he maltreats the child solely to give the mother pain, the father would not appear to be a proper person to exercise control over the child and for that reason alone, a divorce might be granted to the wife. In an early Oregon case it was held that lewd and indecent conduct toward a step-daughter was not such cruel and inhuman treatment or personal indignity as entitled the wife to a divorce.[33] However, this rather inconsistent rule has since been supplemented by a holding that such an action on the part of the husband does entitle the wife to a divorce.

(c) In comparing the various interpretations which the many states have given this subject which we have titled: "Adultery in Lewd Association," we come face to face with a maze of contradicting opinions which illustrates in the best possible manner the great need for a unification of the several state statutes into a code of divorce law which might have a nationwide application. For example, New York holds that adultery does not constitute cruelty as grounds for divorce while other jurisdictions state that it is cruelty toward a wife for a husband to express his preference for, or openly consort with, lewd women, or with the wife of another man.[34] It is quite apparent that these courts differ widely in their views as to what may constitute cruelty. One court contends that it is not cruel if one spouse engages in adulterous relations, while another court feels that a mere expression of a preference for other women will be considered cruelty. It has also been held cruelty toward a wife for a husband to threaten or attempt to commit adultery or to introduce into the bedroom of an invalid wife a loose

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[31] *McDonald* v. *McDonald,* 155 C.A.L. 665.
[32] *Dunlap* v. *Dunlap,* 49 La., Ann. 1696, 22 So. 929.
[33] *Gordon* v. *Gordon,* 77 N.H., 597, 92 Atl. 546.
[34] *Cline* v. *Cline,* 10 Or. 474.

woman in an almost nude condition, accompanied by lewd behavior. A modern view has also held that it is cruelty toward a husband for his wife to repeatedly leave his home and their young children for several days without excuse, and consort with other men.[35]

(d) Where the husband or the wife maliciously concoct schemes to entrap one or the other into the appearance of having committed adultery for the purpose of securing evidence to be used in a suit for divorce, such behavior constitutes cruelty which entitles the injured party to a divorce. However, some courts have held that the effect of such conduct must have been to endanger the life of a party sought to be entrapped, in order that it constitutes cruelty. This was so held in an Iowa case in which the court stated, "that although such conduct was most dastardly, cruel and unreasonable, it is not a ground for divorce in the absence of showing that the wife's life was endangered thereby."[36] In considering entrapment as an action of cruelty, the question has often arisen as to whether the employment of a detective to follow the husband or wife, is such an entrapment as to constitute cruelty. The determining factor in such a question is the conduct of either of the parties. If the husband or wife is induced to employ a detective because of the immoral conduct of the other, then it is not cruelty to the party who is being surveilled, but if there is no basis for such an attitude, the courts have held that there is such a mental distress produced as to constitute cruelty.

(e) Whether the habitual use of rough language is cause for a divorce on the ground of cruelty depends upon the character of the parties and the degree of cultivation they exhibit. It is generally held, however, that a systematic and continued use by the husband of vile, profane and unkind language in the presence of and toward the wife, causing mental suffering and threatening permanent injury to her health, entitles her to a divorce.[37] In Illinois, offensive or abusive language, unaccompanied by some physical act, is not considered cruelty as to entitle either of the parties a divorce.[38] It has been held that profane, obscene, and insulting language toward a wife by the husband, may amount to extreme cruelty, but that this same language used by the wife toward the husband is not recognized as such extreme cruelty. Why such a differentiation is made, the courts do not say and yet divorces have been granted to wives on this ground and refused to husbands where the wife has been the one who has been guilty of using

[35] *Allen* v. *Allen,* 110 N. Y. S. 303; Contra, *Tower* v. *Tower,* 134 App. Div. 670, 119 N. Y. S., 506.

[36] *Eistedt* v. *Eistedt,* 178 Mich. 371, 153 N.W., 676.

[37] *Blair* v. *Blair,* 106 Ia. 269, 76 N.W. 700.

[38] *Sturgis* v. *Sturgis,* 173 Mich. 597, 139 N.W. 866.

profane language of a like nature. Whether the wife's feelings have been considered more sensitive than those of the husband has not been stated by the courts. The reason for such differentiation has not been given.

Conclusion

This article is not intended to convey the impression that in all cases of slight marital differences a divorce should be granted, for such an attitude undoubtedly would result in untold abuses and dangers where such liberal interpretations applied.

There is no doubt but that wounded mental feelings caused by austerity of temper, petulence of manner, rudeness of language, or a want of civil attention, if they do not threaten bodily harm, are nevertheless a moral offense in the marriage state. Surely these are differences which the law does not contemplate when it gave individuals the right of the redress in dissolving the relation created by the contract between two human beings known as matrimony. Under such misconduct of either of the parties it is quite obvious that either or both of the parties must bear in some degree the consequences of slight inherent or acquired differences which are bound to arise in the matrimonial state. However, where the differences become aggravated and cruel and cannot be remedied by prudent conciliation, must they both suffer in silence and risk the possibility of allowing this torment to drive them into acts of violence and thereby injure the person or the lives of one of the parties. It has frequently been complained of that because of the inability of the courts to pass judgment on these matters without the restrictions imposed on them by statute, much injustice has been suffered and much misery permitted. The complaint may be answered by saying that the courts of justice do not pretend to furnish cures for all the miseries of life. They redress or punish gross violations of duties, but go no further. The Supreme Court of Michigan expressed its ideas on this subject as follow: "The law does not permit courts to sever the marriage bond and to break up households merely because parties from unruly tempers or mutual wranglings, live unhappily together. It requires them to submit to the ordinary consequences of human infirmities and of unwise selections, and the misconduct which will form a good ground for a legal separation must be very serious, and such as amounts to extreme cruelty, entirely subverting the family relations by rendering the association intolerable."[39]

The Supreme Court of California stated as a test of cruelty the following: "Although the character of the ill treatment whether it operates directly upon the body, or primarily upon the mind alone,

[39] *Duberstein* v. *Duberstein,* 171 Ill. 133, 49 N.E. 316.

and all the attending circumstances are to be considered for the purpose of estimating the degree of cruelty, yet the final test and the suffring, as a cause of divorce, must be its actual or reasonably apprehended injurious effects upon the body or health of the complaining party. The practical view of the law is that a degree of cruelty which cannot be perceived to injure the body or the health of the body can be practically endured, and must be endured if there is no other remedy than by divorce, because no skill by which to gauge the purely mental susceptibilities and sufferings has yet been invented or discovered, except such as indicate the degree thereof by their perceptible effects upon the physical organization of the body."[40] In a later case, however, in this same state the court said, "that this quotation was too narrow under their statute declaring extreme cruelty to be the infliction of grievious bodily injury or grievious mental suffering."[41]

It would appear that this test is somewhat narrow in determining what constitutes cruelty. Perhaps the better test for determining mental suffering is that when this condition becomes so great as to prey upon the mind and thereby undermine the health, even though the suffering is caused by words and conduct, unaccompanied by any act of physical violence, the result is bodily harm and hence such conduct constitutes legal cruelty.

As to the effect of mental suffering upon bodily health comes to be more fully realized and understood, there will be no question but that the tendency of modern decisions will be toward a much greater latitude than has been found in the earlier cases, in granting divorces in those cases known as "mental cruelty." Even without repudiating the doctrine that the injury must be physical the courts are beginning to recognize legal cruelty as existing in systematic abuse, insults of humiliating nature and annoyances resulting in mental suffering and consequent ill health, as fully as in acts of violence.

Let us consider a case where a husband may by a studied course of humiliating insults and annoyances practiced in various ways with ingenious malice, eventually impair the health of his wife, even though such conduct has not been accompanied by any form of violence, either actual or threatened. Would it follow, therefore, in such a case, that the wife had no remedy under the divorce laws because of an absence of actual or threatened violence? The answer to this question should be considered in conjunction with the principles on which the divorce for cruelty is predicated. Cruelty should be judged from its effects, not solely from the means by which those effects are produced. To hold absolutely that the avoidance by the husband of either positive or per-

[40] *Waldron* v. *Waldron*, 85 Cal. 251, 24 Pac. 649-858.
[41] *Cooper* v. *Cooper*, 17 Mich. 205.

sonal violence against the wife, makes him immune against any charge of cruelty as defined by the divorce statutes, is to invite a system of abuse. Thus, it is possible to assume, that because of such condition and diverse opinions, we will witness a more unified enactment of laws by the individual state legislatures, which will be broad enough to permit the courts wider discretion in determining what is that degree of mental anguish or mental cruelty which is a legal ground for divorce.

[42] *Barnes* v. *Barnes,* 95 Cal. 171, 30 Pac. 298.