CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

OCTOBER TERM, 1967.

NANCY NAH, Appellant, *v.* BLECHO NAH, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 19, 1967. Decided January 18, 1968.

1. A party to an action may not introduce evidence on issues not raised by the pleadings.
2. Defenses not pleaded by a defendant cannot be asserted at the trial or on appeal.

Plaintiff brought an action for divorce against his wife, on the ground of cruelty. The wife's answer alleged facts and stated defenses not related to the defense of condonation, which was first raised at the trial, where plaintiff obtained judgment. On appeal, the *judgment* of the trial court was *affirmed.*

C. L. Simpson and *G. P. Conger-Thompson* for appellant. *J. Dossen Richards* for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

As can be seen from a brief resume of the history of this case contained in the opinion of this Court during its

October 1966 Term, denying a motion for diminution of record, Blecho Nah and Nancy Nah were married in the United States of America, where they lived for some time, after which they returned to Liberia, their place of birth. That because of some intolerable acts of cruelty as averred by the husband, he commenced an action of divorce against his wife. During the December 1965 Term of the Sixth Judicial Circuit Court, the case was heard. Predicated upon a verdict of the jury, on February 2, 1966, the trial judge affirmed said verdict and adjudged the matrimonial bonds dissolved. Mrs. Nancy Nah, the defendant below, being dissatisfied with the verdict of the jury, and the several rulings and final judgment, has appealed to this Court for a review.

When this case was called for hearing before this Court, the appellee strongly contended that all of the counts or issues contained in the brief of the appellant, as well as the bill of exceptions, were not raised by the pleadings in the court below and, therefore, should not be heard by this Court. That is to say, that both the brief and the bill of exceptions contain two main issues, one which has been disposed of by the Justice presiding in chambers from which no appeal was taken and, therefore, which cannot now be considered, and the second and principal plea of appellant, constituting condonation as a defense:

> "The acts of cruelty complained of in plaintiff's complaint were allegedly committed in the years 1956 and 1962; nine and three years respectively after the said acts complained of were allegedly done, in terms of the date of the filing of this action, during which period plaintiff did have sexual intercourse with defendant/appellant, and appellant gave birth to a child thereafter; which acts were also admitted by plaintiff, thus supporting defendant's plea of condonation, a good legal ground for the abatement of the said action of divorce for cruelty."

The contention of appellant that appellee is barred

from raising this plea necessitates a recourse to the record. During the June 1965 Term of the Circuit Court appellee filed an action of divorce for cruelty, alleging:

"Plaintiff in the above entitled cause complains of Nancy Nah, his wife, defendant, in manner following:

"1. That plaintiff and defendant, his wife, were lawfully married in the City of Wichita, State of Kansas, United States of America, on the 2nd day of April, 1947, and thereafter lived and cohabited together as husband and wife, in tolerable peace and happiness up to the 1st day of March, 1956, when defendant became unmindful of her marital vows and covenants between them made, and did on the aforesaid 1st day of March, 1956, beat, batter and illtreat the plaintiff, her husband, thereby causing lacerations of his eye and injuries to other parts of his body.

"2. And also because plaintiff further complains of the defendant that, intending to inflict physical injury on him and in continuance of her cruel and inhuman treatment of him, did on the 14th day of March, 1963, strike him on his head with the top of a water filter, thereby cutting and wounding him on the head so that he had to take three stitches and seek medical treatment.

"3. And also because plaintiff further complains that on the 16th day of August, 1964, the defendant did threaten to take plaintiff's life by poisoning his food, and in order to save his life he had to stop eating the food that she had prepared, fearing that she might carry out her threat and take his life by administering poison to him.

"4. And also because plaintiff further complains that he fears seriously that the continuance of the relationship as husband and wife and their cohabiting together would most certainly and seriously endanger his physical health and well being.

"Wherefore, plaintiff prays judgment dissolving

> the marital contract now existing between plaintiff and defendant so that they be hereafter regarded as separate and distinct persons both in law and in equity."

The appellant in her four-count answer, which for some obvious reason we will refrain from quoting verbatim, says (1) that the complaint should be dismissed for the reason that said complaint is in violation of the Stamp Law; (2) that the complaint is factually false and misleading, and to the contrary it is plaintiff who is cruel, and caused her and her children to suffer by his act of abandonment; (3) that she intends to file a divorce against him for adultery. This count accuses appellee of having numerous paramours and names two prominent ladies with whom, she avers, he has consorted for seven years, up to the filing of the answer, thereby abandoning her.

The fourth count denies all the allegations in the complaint. There is no issue of condonation whatsoever raised in these four counts, directly or indirectly. To the contrary, the answer states that plaintiff has abandoned her and bestowed his affection, diverted his attention, and obviously all that which goes with affection between the opposite sexes, on two others whose names she specially mentioned, for a period of seven years. This count three of the answer is in complete contradiction to the plea of condonation raised in count two of the brief, and to count three of the bill of exceptions.

The reply of a witness J. Gbaflen Davies during the trial, also serves to refute this defense:

> "I did all I could, and we have many conferences to bring about peaceful solution between plaintiff and defendant, but all to no avail and it would appear that each time of the conference they were uncompromising; I recall at one of the conferences the Rev. S. T. Roberts, a pastor of their church was present, and another, Superintendent Nemely, was also present, even

> I talked with the children, and they said they have tried to no avail, yet each side tried to accuse the other side and justify the correctness of his or her side, so as friend to both of them it was my personal opinion that the only solution would be for the both of them to divorce, even though neither of them had taken into consideration the number of children between them."

Thus, count three of the answer is in complete contradiction to the plea of condonation as raised in count two of the brief, and count three of the bill of exceptions. Appellant fills her entire brief with the plea of condonation, and has cited a case, *Bryant* v. *Bryant,* 4 L.L.R. 328 (1935), quoting from p. 341.

According to Mr. Bouvier, condonation is:

> "The conditional forgiveness or remission, by a husband or wife, of a matrimonial offense which the other has committed. A blotting out of an imputed offense against the marital relation so as to restore the offending party to the same position he or she occupied before the offense was committed."

A plea of condonation admits the offense complained of, but submits that cohabitation, with awareness of the offenses, amounts to forgiveness.

> "Appellant realized her failure to plead properly at the trial."

Let us look at that portion of the evidence referred to and its effect.

Taking the stand on her behalf the appellant was asked the following question on direct examination:

> "On the whole, taking into account the usual misunderstandings between husband and wife at certain stages of their marriage would you please jog your memory again and say if after all these misunderstandings that happened in 1956, and thereafter, you lived and cohabited with your husband, the plaintiff in this case?"

To this question objection was made on the grounds:

> "1. Irrelevant to the case of cruelty, and 2. An attempt to raise the plea of condonation or forgiveness, which were not pleaded in the answer of the defendant and, therefore, cannot be raised at this stage."

To this objection, the judge ruled:

> "The Court: The court says it has been a long-standing principle as well as an established principle of law in our pleadings and practice, especially of civil procedure, that a party is only permitted to prove any issue of fact raised in his answer, or which the plaintiff raises in his complaint; since condonation was not pleaded in the answer, the court feels it would be irregular to introduce same to the trial, especially so when the witness is now on direct examination; the objection is, therefore, sustained."

The direct examiner persisted in his error and asked this question:

> "Please state for the benefit of the court and jury whether or not since the alleged incident of cruelty complained of against you, there has been any reconciliation between yourself and your husband?"

This was also objected to on the ground that:

> "The question is substantially the former, which was intended to raise the plea of condonation or forgiveness, which is a plea in confession and avoidance, which should be pleaded in the answer, for the use of the word, reconciliation, in itself depicts forgiveness."

The court in ruling, said:

> "The court feels that the question is indirectly evading the doctrine of *stare decisis* and is, therefore, overruled."

And so the effort made to inject this plea into what was not regularly pleaded, and on which appellant solely based her appeal, was aborted.

To this procedure, this court has said that a party may not on trial introduce evidence on points on which issue

has not been joined in the pleadings. *Dennis* v. *Reffell,* 9 L.L.R. 26 (1945).

This Court has also held that courts will only decide upon issues joined between the parties specially set forth in their pleadings and matters of defense not set up in defendant's plea shall not be allowed. *Clark* v. *Barbour,* 2 L.L.R. 15 (1909). The judgment of the court is hereby affirmed; costs in these proceedings against the appellant.

And the clerk of this Court is hereby authorized to send a mandate to the lower court informing it of this judgment. And it is hereby so ordered.

Affirmed.