

## NOTES OF CASES

### ARTIFICIAL INSEMINATION — NULLITY — APPROBATION

In *Q. v. V.*<sup>1</sup> a wife, in an undefended suit, sought a decree of nullity on the ground of her husband's incapacity. She had earlier given birth to a child which she had conceived as a result of A.I.D. to which her husband had consented. In granting the decree Mr. Commissioner Latey Q.C. held that the wife's submission to artificial insemination did not amount to approbation of the marriage on the ground that the wife was ignorant of her rights at the material time:

it was clear that the wife, at the time when she went through the process of A.I.D. had no knowledge of the legal remedy open to her in view of the husband's incapacity, and her act in so doing did not, therefore, amount to approbation.

Under the circumstances of the case this seems eminently reasonable, for if a petitioner is unaware of her rights respecting annulment of her marriage she is in no position freely to decide whether or not to approbate the marriage despite its deficiencies.<sup>2</sup>

It seems important to stress, however, that neither this case, nor the earlier decision in *R.E.L. v. E.L.*<sup>3</sup> can be taken as deciding that resort to A.I.D. can never amount to approbation of the marriage. This case turned on the fact that the wife was unaware of her rights respecting annulment: the decision in *R.E.L. v. E.L.* turned on the point that the wife's consent, in that case, to submit to artificial insemination was not intended to approbate an abnormal marriage but was done with the intention of attempting to produce normality in her relationship with her husband.

The moral of the decision in *Q. v. V.* seems to be that doctors who resort to artificial insemination should inform the spouses of their rights respecting nullity before consenting to undertake the treatment so that should it prove successful it would then no longer be open to either party to rely on incapacity as a ground for annulment on the ground of their ignorance of their legal rights.

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1. (1960) *The Times* 12 May.
2. The same view was taken in *Slater v. Slater* [1953] P. 252; [1953] 1 All E.R. 216. a case in which the wife had submitted to A.I.D. and on it proving unsuccessful agreed to the adoption of a child.
- 3 [1949] P. 211.
4. *Facchini v. Bryson* [1962] 1 T.L.R. 1386; *Addiscombe Garden Estates Ltd. v. Crabbe* [1958] 1 Q.B. 513; [1957] 3 All E.R. 663.
5. *Clore v. Theatrical Properties Ltd.* [1936] 3 All E.R. 483.