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JUDGMENT NO. 90.

IN THE SUPREME COURT OF THE)
)
TERRITORY OF PAPUA AND NEW)
)
GUINEA.)

CORAM: MR. JUSTICE BIGNOLD

27th September, 1956.

M.C. 11 of 1956.

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B E T W E E N:

JAMES ANTHONY MARLOW Plaintiff

and

EDITH MAY MARLOW Defendant

J U D G M E N T

James Anthony Marlow, the Plaintiff in this action, appears before this Court claiming the dissolution of his marriage with Edith May Marlow (formerly Cooke) upon the ground of her desertion. The action is undefended. Mr. Clay appeared for the Plaintiff and there was no appearance for the Defendant.

The Plaintiff claims a Papuan domicile and bases his claim for matrimonial relief upon the ground of desertion.

First as to domicile, the evidence is extremely flimsy and depends upon the unsupported evidence of the Plaintiff himself. The facts as to domicile are as follows: - The Plaintiff, with his wife, came to Australia as assisted immigrants, and, after working in the New South Wales country area, the Plaintiff secured a job in Brisbane to work for the Commonwealth Works Branch operating at Port Moresby, and left Brisbane on the 5th April, 1952 to take up his duties in Port Moresby, where he remained in employment until June/July, 1955, when he took a trip to England, returning to duty again in Port Moresby in or about February, 1956. The Plaintiff says that upon coming to Port Moresby, where he has been ever since his return, he decided to make it his permanent home, and intends, upon his retirement, to live here as such and not to return either to England or Australia. Beyond his own testimony, he can produce no evidence in support of his claim that Papua is his place of domicile, as, for example, the ownership of property here, or otherwise.

As regards his claim that his wife has deserted him, the evidence is quite uncorroborated, and I am convinced that he has not been frank with the Court.

His account is, that upon arrival in Australia, he and his wife went to a Migrants' Hostel in Brisbane, where there was much

congestion, and that, without any previous friction and without any intimation of his wife's intention, she just disappeared, leaving no address. Three days after her disappearance, he went to Sydney where he knew she had relatives, but Sydney seemed so large that he packed up and returned without discovering his wife, or, so far as the evidence goes, taking any effective steps to locate her.

The Plaintiff says that he tried to communicate with his wife through her sister in England, but he could produce no copy of any letter to her, and received no reply from her or her sister.

However, he says, before he left for England he asked his wife's sister to send a letter to his wife to meet him at the "Strathnaver" in Sydney. He received no reply, but she did, in fact, see him for a few minutes at the ship in June/July, 1955.

He said to her - "How are you? What do you intend to do?" She replied - "I am quite happy where I am and have no intention of returning to you."

He said - "Where are you living?" She replied - "It is none of your business. I want a divorce."

The Plaintiff then proceeded to England and had nothing further to do with his wife, and did not even see the sister in England. The Plaintiff wrote to the sister upon his return from England to get his wife's address for service of divorce proceedings, and received a plain sheet of paper with her address at Albury, which the Plaintiff failed to produce.

That, then, is the scanty evidence placed before the Court.

I find the service of the Writ and Statement of Claim proved.

I find the marriage proved.

I find, with reluctance, the domicile proved.

I am unable to find, on the evidence placed before me, the desertion claimed by the Plaintiff. In view of this finding, it is unnecessary for me to make the other usual findings, and I dismiss the Plaintiff's claim.