

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

CORAM : OLLERENSHAW, A.C.J.
RABAUL.

16th October, 1964.

THE UNIVERSITY
OF
PAPUA & NEW GUINEA
THE LIBRARY

<u>BETWEEN</u>	A.B.	Petitioner.
<u>AND</u>	C.D.	Respondent.
<u>AND</u>	E.F.	Co-respondent.

Heard at Rabaul,
15th and 16th
October, 1964.

JUDGMENT

The hearing of this action commenced before me yesterday.

Mr. Smith appears for the petitioner. Mr. Murray, instructed by Mr. Stan Cory, who had entered an appearance, but no defence for them, appeared for the respondent and co-respondent and consented to an order granting leave to the petitioner to amend Paragraph 7 of the petition also granting leave to the petitioner to add a fifth prayer to the petition.

Mr. Murray made application that, in the event of the Court pronouncing a decree for divorce and granting the petitioner's prayer for the custody of the children of the marriage, reasonable access to the children be granted to the respondent and that no order for the payment of damages be made against the co-respondent.

Mr. Smith announced that the petitioner would not be proceeding with his claim for damages. He also announced that the petitioner, in the event mentioned by Mr. Murray, would consent to an order granting reasonable access to the respondent provided that such access should not be allowed at any place where the respondent might be living with the co-respondent while not married to him whereupon Mr. Murray announced that such a condition to an order for reasonable access would be acceptable to the respondent.

I then, at his request, granted Mr. Murray leave to withdraw and upon Mr. Smith's application I adjourned the further hearing of this action until today.

I am satisfied as to the petitioner's domicile and I am also satisfied that at the time of the filing of his petition he had been then resident for two years at least in the Territory of New Guinea. I find the ground upon which the petition is presented, namely adultery, proved to my satisfaction.

Section 17 of the Divorce and Matrimonial Causes Ordinance, 1934, amended, provides, insofar as it is material, that a decree for divorce shall not be pronounced if the petitioner has connived at the adultery.

I say : "insofar as it is material" because there is no question in this action of condonation or collusion and the petitioner had this thing thrust upon him so that he was in no sense accessory to the adultery.

However, on the face of it there is a question of connivance. This is so because throughout the period of the development of the relationship between the respondent and co-respondent - a period of distress and trial for the petitioner - from his initial discovery of some form of attachment between them until the stage was reached when the respondent finally left the petitioner and their children to go to the co-respondent, the petitioner, to state it compendiously, behaved as a gentleman as well as a husband and a father.

Having carefully followed his evidence and having observed his demeanour in the witness box and having regard to the inferences which I think must be drawn in favour of the petitioner, in the circumstances in which he found himself, I have come to the conclusion that he did not have a "conniving mind"; vide : Monahan v. Monahan (1949-50) 23 A.L.J. 469 at p. 471.

I am familiar with the authorities there collected including Davis v. Davis and Hughes (1904-5) 2 C.L.R. 178 and Haevecker v. Haevecker (1936-1937) 57 C.L.R. 639 and see also Sharpe v. Sharpe (1936-1937) 10 A.L.J. 335.

I have also read at some time or other Moorsom v. Moorsom 3 Hag. Ecc. 87; 162 E.R. 1090, and see Rayden on Divorce 5th ed. at p.129.

.

It follows from the judgment which I delivered this morning that I should and I, therefore, do pronounce a decree for divorce and order that a decree nisi for dissolution of marriage be entered not to be made absolute until after the expiration of six months from this date.

I order that the petitioner do have the custody of the two children of the marriage and that the respondent do have reasonable access to them provided that such access is not to be had at any place where the respondent and the co-respondent are residing or at any place where the co-respondent is residing until such time as the respondent and co-respondent are lawfully married.

I do further order and adjudge that the petitioner do recover against the co-respondent his costs of this action to be taxed if not assessed by agreement.

..

..