

Matrimonial Causes Jurisdiction  
Port Moresby.

Coram : Ollerenshaw A.J.  
24th April, 1954.

W. J. CONNELL v. I. W. CONNELL, J. O. R. McMATH.

JUDGMENT.

This action was heard before me on the 22nd instant.

Mr. Cromie appeared for the plaintiff. Mr. Sturgess appeared for the defendant to apply for an abridgment of the time for Decree absolute in the event of my pronouncing a Decree Nisi.

I then indicated that I was satisfied as to service of the Writ and Petition, marriage, no appearance by the co-defendant, no defence by the defendant, domicile and domicile for two years at the time of filing the petition and adultery. I reserved judgment because Section 17 of the Divorce and Matrimonial Causes Ordinance, 1934/1951 provides, in so far as it is material, that a decree for divorce shall not be pronounced if the petitioner (as he is called in this Ordinance) has connived at the adultery and I did not then feel satisfied that he had not so connived.

The difficulty, to some extent, arises from what his counsel has called the "baldness" of his story.

However, I have read over his evidence and, having regard to the inferences which I think should be drawn in favour of such a plaintiff in the circumstances in which he found himself, I have come to the conclusion that he did not have a "conniving mind"; See Sharpe v. Sharpe (10 A.L.J. 335). I have read the authorities there collected and the available cases cited by his counsel, including Davis v. Davis (2 C.L.R. 178) and Moorsom v. Moorsom (3 Hag. Ecc. 87; 162 E.R. 1090). I have also read Haenecker v. Haenecker (57 C.L.R. 639), Monahan v. Monahan (23 A.L.J. 469) and see also Rayden on Divorce 5th ed. at p. 129 to 135.

As to the application for abridgment of time, made by counsel for the defendant; in response to my asking him where was the power for me to do this, he made two submissions.

Firstly that the effect of Section 25(1) of the Divorce and Matrimonial Causes Ordinance 1934/51 prescribing that:

"Every Decree for divorce ..... shall in the first instance, be a decree nisi not to be made absolute until after the expiration of six months from the pronouncing thereof"

was cut down by the opening words of Section 26 - the section dealing with the circumstances in which a Decree Nisi pronounced under Sections 19 and 25(1) becomes absolute and the issue thereof.

Secondly he submitted that the necessary power is to be found in O. 90 R. 6 of the Rules of Court, because, as I understood him, Section 25(1) is to be read as a rule of procedure and not as a mandatory statutory direction.

I need say no more about these submissions than that, to my mind, they are without substance.

I therefore 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 day.

I also order plaintiff's costs to be paid by the co-defendant; in the event of their being paid before this Decree is made absolute the provisions of O. 91 R. 19 will apply.

Rupert Ollerenshaw A.J.