

SIONE VAIVELA v. LOSI VIVIANI AND TAKAI

(Divorce : Hunter J. Nuku'alofa, 14th June, 1954.)

Adultery — Damages — Principles on which damages should be assessed — Petitioner's expulsion from college a matter for consideration by Court.

The Petitioner sought a dissolution of his marriage on the ground of his wife's adultery with the Respondent. The Court was quite satisfied that the adultery alleged had been committed. The Petitioner was a student at Sia'toutai, the Theological College and at the time of the adultery the Petitioner and the Respondent were living at the college. On the Principal of the college becoming aware of the wife's adultery he expelled the Petitioner (who was innocent of any wrong doing) from the college.

HELD. That the expulsion of the Petitioner from the College was a direct result of the wife's adultery and was a matter which should be taken into consideration in assessing damages.

Tu'akoi appeared for the Petitioner.

Tupou appeared for the Respondent.

Finau appeared for the Corespondent.

HUNTER J. : In this case the Petitioner is seeking a dissolution of his marriage on the grounds that the Respondent committed adultery with the Corespondent in December, 1953 at Ha'alalo and Kolomotu'a and on or about the 14th January, 1954 at Houma, and the Petitioner is asking for £200 damages from the Corespondent. The parties were married on 20th December, 1946. There are no children of the marriage.

I am satisfied that the Respondent and Corespondent committed adultery at the times and places alleged in the Petitioner. It may be that the adultery in December was condoned by the Petitioner but this offence was revived by the adultery on January, 1954 which has certainly not been condoned.

Having found both the Respondent and the Corespondent guilty I have to address myself to the question of damages.

Damages in divorce are not intended as a punishment to the Corespondent, but should be an amount proper in all the circumstances to compensate the Petitioner for the loss he has suffered by reason of the loss of his wife, the injury to his feelings, the blow to his honour and the hurt to his family life.

In this case the parties lived reasonably happily together until the Corespondent came on the scene.

Prior to marriage the Respondent was not a virtuous woman as she herself admits that she had been living with another man. This is a matter that should be considered in assessing damage.

According to the wife's evidence it was she who was responsible for the wreck of this marriage. She tells us that she set out "to win" the Corespondent and practically implored him to commit adultery with her. However, the Corespondent knew that she was a married woman, and should have resisted this temptation.

Having seen the wife in the witness box, and remembering her character, and considering the fact that the Petitioner knew that she had been living with another man shortly before marriage I do not think that the loss of such a wife is, in itself, a reason for substantial damages, but the matter goes further than that. For nearly five years after marriage the wife seems to have redeemed herself, and as far as I can gather was a good wife to her husband.

The petitioner impressed me as a man of honour, of a forgiving nature and one who tried to live up to the religious principles he was being taught in the college at which he was a student.

The petitioner has put forward two matters which he says should be taken into consideration in assessing damages.

These are that on account of his wife's adultery :

- (1) He was expelled from his college.
- (2) His name was struck off the list of local preachers.

I am satisfied that the striking of his name off the list of local preachers had nothing to do with his wife's adultery, but I am equally satisfied that his expulsion from the college was due solely to this fact. It may seem strange that a Christian institution should punish an innocent man in this way but the principal of the college, who gave evidence, made it quite clear that this was so.

I have been in some doubt as to whether this is a matter which can be taken into consideration when assessing damages but I think it can and should. It is certainly a blow to the Petitioner's honour to be expelled from his college, and the expulsion is a direct result of the adultery.

I find marriage and domicile. I find that the Respondent and Corespondent committed adultery at the times and places alleged in the Petition and I pronounce a Decree Nisi not to be made absolute for 6 weeks.

I order the Corespondent to pay £50 damages such sum to be paid into Court in ten monthly instalments of £5 each, the first of such payments to be made on the 14th July next and thereafter on or before the 14th day of each month. The money so paid into Court to be paid out to the Petitioner.

I order the Respondent to pay the Petitioner's Court costs of £10/4/6 on or before the 14th day of October next and I order the Corespondent to pay £5 5/0 lawyers fees on or before the 14th day of July next. The Court costs and Lawyer's fees to be paid direct to the Petitioner.
