

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

No. M.C.21 of 1959 (N.G.)

Matrimonial Causes.

BETWEEN : ELLEN PATRICIA BOYLE

Plaintiff

and

ARCHIE WILLIAM CHARLES BOYLE

Defendant

JUDGMENT

This case is an undefended one in which the woman named, Mrs. Erdme Dymond, has not intervened. The Petitioner seeks a dissolution of her marriage on the ground of her husband's adultery with the woman named in the Petition.

The facts in regard to the unhappy manage of the Petitioner are as follows:-

The parties to the marriage were happy together until April or May, 1959 - in fact, until the advent of Mrs. Dymond, who was employed in a frock shop in Lae called "Capri". of which the Petitioner was a partner.

In March 1959 Mrs. Dymond was a frequent visitor to the Boyle household, but gradually, by April, she began to stay for dinner, and then all night, and the wife (the Petitioner) complained to the husband that he was paying her (Mrs. Dymond) too much attention, but this complaint he brushed aside, saying it was ridiculous and that she just imagined it.

In May 1959 he was increasingly attentive to Mrs. Dymond and began taking her for drives at night, from which they returned sometimes after midnight.

From the first week in June Mrs. Dymond lived altogether at the Boyle house, staying all night, and did so until the 22nd July.

On June 15th the Petitioner was suffering from dengue fever and sent her husband about six o'clock for the Doctor, and he and Mrs. Dymond went off apparently to fetch the Doctor, but instead returned with two pills which the Petitioner took and which her husband told her were tranquillising pills. These pills in fact made her feel drowsy, and about eight to eight-thirty two male visitors arrived, Mr. Sullivan and Mr. Ryan. Mrs. Dymond and the Respondent drank with them whilst

the Petitioner sat in a chair in a drowsy condition, all being in the main lounge-room. According to both Sullivan and Ryan, the Respondent and Mrs. Dymond went off for a drive about ten-thirty, but they did not say what time they returned.

The two male guests, Sullivan and Ryan, went off to sleep on a divan in the lounge-room, and the Petitioner was asleep in a chair in the lounge-room.

The house in which the Plaintiff and Respondent lived was a two-bedroomed one - one bedroom being occupied by the children, of which there are two.

When the male visitors awoke they testified that they passed the bedroom which opens on to the lounge-room, and by the light from the lounge-room which threw into the bedroom, through the half-open door, saw Mrs. Dymond and the Respondent on the bed fully clothed, face to face, with the Respondent embracing Mrs. Dymond. The Petitioner has testified similarly, but she did not enter the room, and gave as an excuse that she was still drowsy from the pills.

The next day she spoke to her husband and Mrs. Dymond and they said that they had had too much to drink and had passed out. Later the Petitioner spoke to her husband, saying - "You and Golly" (meaning Mrs. Dymond), "slept the night on my bed," to which he replied - "There is nothing wrong with it. We went to sleep after too many drinks."

On the 22nd June the Petitioner had a quarrel with her husband on the subject of Mrs. Dymond, saying to him - "What is the matter with you. You are behaving like a teenager with Golly. When you are out in public and in at home you will only eat the meals that she cooks and not the ones I cook." He replied - "You are just jealous", and the Petitioner lost her temper and kicked him in the shins, whereupon he smacked her on the bottom and on the face and held her round the neck with his hands. The Petitioner says that eventually she became angry and got into the car and drove away for about twenty to thirty minutes. When she returned she walked into the house and the Respondent and Mrs. Dymond walked out to the car and drove off. That was about nine p.m. She says she locked the house and rested on her bed. About twelve-thirty, according to her, they returned and broke in, forcing the front door. The Petitioner says she did not speak to them that night, and the Respondent slept on the day-bed in the sitting-room.

Bryan Desmond Sullivan gave evidence of being at the Boyle house about the 15th June, and says that when he went to the kitchen he noticed through the open door the Respondent and Mrs. Dymond closely embraced on the bed, but when he came back from the kitchen they had separated a bit apart. The two on the bed were fully dressed. The witness Ryan corroborated Sullivan's evidence.

The two male visitors, Sullivan and Ryan, stayed all night and went to work from the Boyle house. Sullivan testified to having gone on the following Friday night to Dr. Smythe's house with Mrs. Boyle, Mr. Ryan and a Mr. McAuley, and that when returning Mrs. Boyle to her home, he got out of the car, found the house in darkness, turned on the verandah and lounge room lights, and saw Mrs. Dymond on the divan in the lounge room with her frock above her thighs and Mr. Boyle's hand as far up between her thighs as it could be. Mrs. Dymond, he says, adjusted her frock, and he turned round to help Mrs. Boyle who had got out on the side of the car furthest away from the house. Mrs. Dymond laughed hysterically, according to Sullivan, and said - "We must have dropped off." Mrs. Boyle, who entered the house later, did not see the above described by Sullivan.

Sullivan also gave evidence of the Respondent and Mrs. Dymond flirting together at a Dinner Dance at the Hotel Cecil, where they were kissing each other, and the Respondent was nibbling Mrs. Dymond's ear and kissing her on the neck on the dance floor. He says that at the Lae Club - and there is no corroboration of this at all - he spoke to Mrs. Dymond who had been taking pink pills, and asked what they were. She laughed and said they were oral contraceptive pills.

The witness Sullivan was named in an action for a divorce by the Respondent against his wife, but this action was subsequently withdrawn.

On the 22nd July Mrs. Dymond ultimately left the Boyle household, but not before Mrs. Boyle had said to her - "Don't go for a couple of days. Don't leave me by myself. I am frightened if I am by myself that he might kill me," - meaning that her husband might kill her.

Immediately preceding the day that Mrs. Dymond left, the Petitioner's husband telephoned her and said - "Golly is not going home. It is my house," to which the Petitioner replied - "Well, that is something belong you."

On the 16th July the Petitioner was at a dinner birthday party which her husband gave. There were present Mrs. Dymond, another man, the Respondent and the Petitioner. During dinner Mrs. Dymond sat next to the Respondent and they behaved, according to the Petitioner, over-affectionately together. Mrs. Dymond had a bad cold and she reached into the Respondent's pocket to borrow his handkerchief from his trouser pocket, which made the Petitioner, she says, feel very humiliated, and she left the party. She says that the other man who was at the birthday party drove her, as she could not get a taxi, back to the Lae Club for a drink, and at the Lae Club they were joined by some friends, and the man who had driven her there disappeared. Someone else took her home to her house, where she found the Respondent and Mrs. Dymond, and the Respondent had cuts, one above each eye. Her husband told her that he had been attacked by the man who drove her to the Lae Club.

In late July - 26th July - the Respondent left for Port Moresby in connection with his leave, and when he returned he told the Petitioner that he had been to see Craig Kirke and had instituted divorce proceedings on the ground of her misconduct with Bryan Sullivan. The Petitioner said she was speechless and said - "This must be just nonsense of yours. It can't possibly be true," and he said - "You need not have any publicity. You need only sign a confession and it will be heard in a closed Court." To this she replied - "Don't be ridiculous. I won't sign a confession for something I haven't done." She says her husband had never accused her of adultery before this, and a few days later she flew to Sydney and saw a Solicitor. She returned to the Territory on the 4th or 5th August, but did not see her husband until the 6th August, when he told her - "I have decided I have been a fool and that you have not committed adultery and I will withdraw the case that I have started. I am going to Brisbane tomorrow. If you want to you can join me there within a week and perhaps we can effect a reconciliation." She says that she then went South and instituted this Petition, signed on the 28th August and issued on the 2nd September, and that her husband never returned to Lae from leave.

Counsel for the Petitioner has referred me to:-

Briginshaw v. Briginshaw (1938) 60 C.L.R. at p.347.
Farnham v. Farnham (1925) 41 T.L.R. at p.543.
Murray v. Murray (1960) 33 A.L.J. at p.521.
Mann v. Mann (1957) 97 C.L.R. at pp.433 to 441.

He has urged that there was obviously a guilty attachment between the Respondent and the woman named Mrs. Dymond, and that in all the circumstances I should be prepared to conclude that the Respondent and the woman named had on divers occasions committed adultery together, but after careful consideration of the evidence placed before me in this case, it is, I think, a question of fact to be determined from the evidence on the balance of probabilities like any other civil issue, and having regard to its gravity, I am not prepared to do this, and therefore find the adultery alleged not proved, and I dismiss the Petition.

Respondent to pay Petitioner's Court costs of and incidental to the action.

(Sgd) E. BIGNOLD

J.

12/8/60.