

IN THE SUPREME COURT OF FIJI

In Divorce

Native Action No. 28 of 1961

Between:

TIROTUME IELI

Petitioner

v.

FAKUPE ANA

Respondent

Native Divorce Ordinance (Cap. 102)—s. 4 (a)—respondent continuously under care and treatment for more than five years—whether incurably insane.

Under s. 4 (a) of the Native Divorce Ordinance (Cap. 102) the petitioner sought a decree of divorce on the ground that his wife, the respondent, was incurably of unsound mind and had been continuously under care and treatment since 1953. The medical evidence established that the respondent had been continuously under care and treatment for the period in question but had latterly been treated with certain new drugs. Under these drugs her mind was sound. These drugs might or might not completely cure her.

Held.—Since it could not at present be established that the respondent was incurably of unsound mind the petition must be dismissed.

Petitioner *in personam*.

Respondent represented by Guardian *ad litem*.

KNOX-MAWER, Ag. J. (22nd October, 1961).

The petitioner, a native of Rotuma, seeks to divorce his wife under section 4 (d) of the Native Divorce Ordinance, Cap. 102, on the ground that she is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. The petition was presented on 21st November, 1960, before the District Officer, Rotuma. Apart from the petitioner himself, no other evidence was adduced before the District Officer, Rotuma in support of the petition. The District Officer, Rotuma forwarded the papers to the Supreme Court, under section 14 (1) of the Native Divorce Ordinance, with a recommendation that the petition be allowed and the marriage dissolved.

By an order, dated 4th July, 1961, the Supreme Court pointed out that the evidence as it stood was quite inadequate to support the petition and transferred the case for hearing before the Supreme Court. The Rev. Wright has been appointed guardian *ad litem* of the respondent.

On 12th October, 1961, the hearing took place before the Supreme Court. The petitioner did not appear. The respondent was represented by her guardian *ad litem*. Dr. Rushton, Visiting Consultant, Mental Hospital, Suva, gave evidence to the effect that the respondent was continuously under care and treatment at the Mental Hospital from 21st March, 1953, until 11th June, 1961. From December, 1960, until the present day the respondent has been treated with certain drugs. Under these drugs her mind is sound. The treatment with drugs will be carried on for about three years, then she will be given a trial period without them. She may then be completely cured. If however her attacks of mania then return Dr. Rushton has said she thinks it will be possible to say that the respondent is incurably of unsound mind. At present, however, it cannot be said that she is incurably of unsound mind.

In these circumstances the court is bound to dismiss the petition. The situation is a tragic one. The only course would appear to be for the petitioner to review the position in three years time.