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JEAN MURIEL THOMAS v. EDWARD JAMES THOMAS

JUDGMENT

delivered by Phillips C.J. on
Friday, 5th November, 1954.

The plaintiff in this action, Jean Muriel Thomas, seeks the dissolution of her marriage with the defendant, Edward James Thomas, on the ground of his desertion. Service of the Writ and Petition upon him in Australia has been proved, but he has not chosen to appear or to defend the action.

Evidence has been given, and I find, that the parties were married at Concord in the State of New South Wales on the 7th of September, 1929, by the Reverend Robert Josiah Thomas, according to the rites of the Methodist Church. The marriage certificate states the husband's age as forty and her age as nineteen, and it gives his occupation as that of Gold Miner and hers as that of Clerk.

This is a Territory of New Guinea matter and the relevant Ordinance is the Divorce and Matrimonial Causes Ordinance 1934-1951 of that Territory. Section 14 of that Ordinance provides that any married person who is domiciled in the Territory of New Guinea and, at the time of the filing of the petition, has been domiciled or resident there for two years at least, may petition for a divorce from the other party of the marriage on the various grounds specified in the section, one of them being "Desertion for three years." It will be noted that that ground differs from the ground of desertion mentioned in the corresponding Papuan Ordinance: in Papua, the ground is "Desertion for three years and upwards immediately preceding the commencement of the action without reasonable excuse."

In this case, the wife is the plaintiff-petitioner. Usually a wife's domicile is that of her husband, but the present plaintiff, in bringing this action, has not relied on her husband's domicile or claimed that his domicile is in the Territory of New Guinea: indeed, no evidence has been given to establish where his domicile may be. The plaintiff relies on a "deemed" domicile: that is to say, she claims that she must be deemed to be domiciled in the Territory of New Guinea because of the provisions of Section 15(3) of the abovementioned Ordinance.

To bring herself within the provisions of Section 15(3) of that Ordinance, she has to prove three things.

First, she has to establish that she is a wife who is petitioning for a divorce and who is "living" in the Territory of New Guinea and has been "living" there for not less than three years immediately preceding the filing of her petition:- i.e. the three years immediately preceding the 15th of July, 1954. Secondly, she has to establish that she has "such intention of residing in the Territory (of New Guinea) as would constitute a Territory domicile in the case of a single woman". Thirdly, she has to prove that she "has been living apart from her husband for a period exceeding three years." If she succeeds in establishing these three things, then she is, because of Section 15(3), "deemed to be domiciled" in the Territory of New Guinea "and to have been, at the time of the petition, domiciled there for two years at least, within the meaning of" Section 14 of the Ordinance - the section that gives a married person the right to seek a divorce on the grounds specified in it.

So I first have to consider whether Mrs. Thomas, as the petitioning plaintiff, has established that she is living in the Territory of New Guinea and has been living there for the three years immediately preceding the 15th of July, 1954, the date of the filing of her petition. That raises the further question:- Has she to establish that she has lived in the Territory of New Guinea continuously for the three years

immediately preceding the 15th of July, 1954, without ever having left the Territory of New Guinea during that period? Learned Counsel for the plaintiff has contended that the sub-section does not require that the three years' period of living in the Territory should be an unbroken or continuous one and he has cited some authorities, most of which relate to periods of residence necessary to qualify for a franchise. It does not follow, of course, that the meaning of words in legislation relating to one subject-matter is necessarily the meaning of the same words when used with reference to another subject-matter. I should like to refer to two English cases that were not cited by Counsel during the hearing, but that seem to me to be helpful, especially as they were matrimonial cases. In England, there is jurisdiction to entertain proceedings for divorce by a wife if she is "resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings"; and the meaning of the words "resident" and "ordinarily resident" in that context has been considered in both of the cases to which I am about to refer.

In Hopkins v. Hopkins, (1951) P:116: 66 T.L.R. (Pt. II), 896, it was held that a wife's absence from England for five months (in Canada) out of the relevant thirty-six months' period had, in the circumstances of that case, broken the continuity of the period, even though she had returned to England before the thirty-six months were up: the Court considered that as the wife had given up her English physical residence entirely and had gone to live with her husband in Canada for the five months and had become domiciled in Canada, she had become "ordinarily resident" in Canada for that five months and could not be said to have been "ordinarily resident" in England during that time.

In Stransky v. Stransky, (1954) 3 W.L.R. p. 123, the facts were somewhat different: in that case the wife was the petitioner and the parties had, during the relevant three years' period, "spent in all some nineteen months in Munich where the husband was employed until October, 1952, but throughout the three years, the wife had maintained a flat in London where the parties had lived from time to time between 1948 and 1952, to which the wife had also returned on occasions without the husband, and where the wife was still living at the time of the hearing of her petition. She had never let the flat and had kept it ready for occupation during the absences abroad." Karminski, J. said:- "But it is to be observed that Section 18 of the Matrimonial Causes Act 1950, used the term 'resident' as a requirement at the time of the institution of the suit, and the term 'ordinarily resident' as a requirement during the preceding three years. I do not think that the use of the two terms is either meaningless or accidental. Clearly, some temporary absence from England, such as a holiday abroad, would not make a gap in the period of ordinary residence, nor, in my view, would a longer gap of some months, such as one caused by a journey overseas by a wife accompanying her husband on a business trip, necessarily break the period or ordinary residence." The learned Judge therefore held that the wife's "long sojourns in Munich were accidental in the sense that they were dictated by the exigencies of the husband's work"; and he said that he could find "no intention on the wife's part to make Munich her home for an indefinite period." He considered that she had gone to the trouble to keep the flat in London as a permanent home and that she had satisfied him that she was ordinarily resident in England for the requisite period of three years immediately preceding the commencement of those proceedings.

It seems to me that the word "living" in Section 15(3) of the New Guinea Ordinance should be given its ordinary meaning and that the provision in that sub-section, that the petitioning wife shall have been living in that Territory for not less than three years immediately preceding the filing of the petition, does not go so far as to require her to have lived in the Territory of New Guinea every day of that three years' period. In my view, it does not go so far as to insist that she may never go, for instance, to Australia for a holiday or on business or on a visit to her children, except at the cost of breaking the continuity of the three years' period. On the other hand, if the wife, during that three years' period, deliberately decided to cease to live in New Guinea and went to live, permanently or for an indefinite period, in Australia, but then changed her mind and returned to live in New Guinea before the three years'

period had ended, I think, on the authority of Hopkins v. Hopkins, that the continuity of the three years' period of living in the Territory of New Guinea would have been broken. In other words, it is a question of fact in each case.

In the present case, the plaintiff had lived for many years in New Guinea, prior to her compulsory evacuation because of the War. She returned to New Guinea in 1946 and is still living in New Guinea. During the three years immediately preceding the filing of her petition, she had visited Australia thrice:- on the first occasion for three weeks in or about September, 1951, for the purposes of seeing her mother and getting supplies, such as wire rope, for her mining operations; on the second occasion for three weeks in September, 1953, to pre-view the person her daughter had in mind as a fiance; and, on the third occasion, for two months in the early part of this year for the purpose of having her "first real holiday" since the War. In my opinion, it cannot rightly be said that, because of those brief absences, she has not been "living" for that three years' period in the Territory of New Guinea. I therefore find that she has satisfied that requirement of the relevant sub-section.

As to the second requirement of Section 15(3) - that she should establish "such intention of residing in the Territory (of New Guinea) as would constitute a Territory domicile in the case of a single woman": it appears to me that that intention on the part of the plaintiff has been completely proved by the evidence. She came to New Guinea as a young bride in 1929; all her children were born in New Guinea; and, except for the period when she was compulsorily evacuated during the War and for brief visits to Australia such as I have mentioned, she has lived in the Territory ever since. She returned to the Territory after the War to work her mining tenements and, because of delay in the payment of War Damage compensation due to her, sold the only pieces of real property that she had in Australia in order to get funds to enable her to work the mining properties: she still is working these tenements and she has also taken up a large agricultural holding for the purpose of growing coffee. She has a home at Wau and two of her children are living in New Guinea. She says that she intends to live in that Territory permanently and that she regards New Guinea as her permanent home and as her country. I therefore find that the second requirement in section 15(3) has been fulfilled.

As to the third requirement in Section 15(3) of the Ordinance - proof that she has been living apart from her husband for "a period exceeding three years": the evidence conclusively shows that they have not been living together since August, 1944, and I so find.

Thus the plaintiff has, in my opinion, shown that she comes within the provisions of Section 15(3) of the Ordinance: and she must therefore be "deemed to be domiciled" in the Territory of New Guinea and to have been so domiciled for the period required by Section 14 of the Ordinance. For these reasons, I hold that this Court has jurisdiction to entertain her present petition.

The plaintiff has alleged desertion on the part of her husband and the onus is therefore on her to prove that desertion. It has been said that no Judge has ever attempted to give a comprehensive definition of "desertion" and that probably no Judge would ever succeed in doing so. But desertion has been described by Cussen, J. in Tulk v. Tulk, (1907) V.L.R. p. 44, 46, as follows:- "Desertion commences when one of the spouses, without the consent of the other, terminates an existing matrimonial relationship with the intention of forsaking that other, and of permanently or indefinitely abandoning such relationship. Desertion, once commenced, continues until either the matrimonial relationship is re-established, or until the deserting spouse, by a sincere and bona fide offer to re-establish it, has manifested a change in his intention, or until the deserted spouse consents to the separation or otherwise indicates that he or she is not desirous of re-establishing the matrimonial relationship."

The plaintiff therefore has to prove that her husband withdrew from an existing matrimonial relationship between them and that he did so without her consent and without reasonable excuse, intending to end that

relationship. She further has the onus of proving that that withdrawal on his part continued with the same intent, and without her consent and without reasonable excuse, throughout the whole of the three years' period prescribed in Section 14 of the Ordinance: (Pratt v. Pratt, 1939 A.C. 417, 420, cited in Thomson v. Thomson 1953, 87 C.L.R. 488, at 498).

The Court, therefore, has now to consider whether the evidence tendered in this case has established the desertion alleged against the defendant.

The history of the marriage, according to the plaintiff, is as follows:- Immediately after she married her husband in Australia on the 7th of September, 1929, at the age of nineteen, she accompanied him to New Guinea. After a few weeks at Rabaul, they went to Salamaua, then recruited native labour in the Markham Valley and then went to Wau. By December of that year, they were living in a tent and mining at Lower Edie Creek. The plaintiff bore five children (one of whom died in infancy) in New Guinea - the last in 1936. As to the relations between herself and her husband, she has said that, although he had an ungovernable temper at times and they from time to time had tiffs, their marital relations in New Guinea were normal. I infer from this that their occasional tiffs were no more than what a Master of the Rolls has described as the "ordinary rough and tumble of married life". On the 27th of December, 1941, because of the state of the War, she was evacuated from Wau to Australia. Up to that time, the mining and business ventures of the parties in New Guinea - (she says she used to attend to all the business arrangements for them both) - had evidently been successful, because they had "and/or accounts", fixed deposits, bonds and war savings certificates in Australian Banks that were of a total value of about £30,000. Part of that amount the plaintiff regarded as hers: in evidence she first estimated the value of her share at "about £10,000", but almost at once amended that to "from £10,000 to £15,000". On arriving in Australia, she stayed with her mother at Strathfield in Sydney until she got a house at Goulburn, the district her father's people had come from. Then she and her mother and the children went to live there. Her husband joined her in Goulburn in February 1942. Friction occurred between the parties at Goulburn over the plaintiff's mother, over the education of the children and over their assets in Australia. She says her husband was very jealous and resented her seeing her mother, whereas she herself was anxious to see more of the mother she had seen so rarely for so many years. The upshot was that her mother left the house and went to a hotel in Goulburn and later on used to come to Goulburn on brief visits, staying always at the hotel. On one of those occasions, the plaintiff says, her husband used violence in an effort to prevent her from going to see her mother; and in the ensuing scuffle, her head was gashed on a pergola post (as her son has corroborated). The plaintiff also said in evidence:- "For the rest of 1942, it was like that. At times he'd be all right: at other times he'd get into an ungovernable rage about something and get very abusive and would use bad language: he made no charges against me, but objected to my seeing anyone - he objected to my seeing my mother." As to the friction about the education of the children, the plaintiff says that although it had been agreed that the eldest boy should go to the Goulburn High School, her husband put him, in February, 1943, and without consulting her first, into a Roman Catholic School at Goulburn: when she asked why, he announced that, notwithstanding her wishes in the matter, all the children were to be educated in Roman Catholic Schools: until then he had led her to believe that he was Church of England, but now, for the first time, he had stated that he was a Catholic. In April, 1943, she says, her husband handed her five draft letters and asked her to type fair copies and sign them. These were addressed to the various Banks they had been doing business with. One was addressed to the Bank of New South Wales in Sydney and was to be a relinquishment by her of all right to deal in any way with their "and/or account" at that Bank. Another was addressed to the Bank of New South Wales in Melbourne and was to be a relinquishment by her of all her rights to deal in any way with their "and/or account" at that Bank. Another was addressed to that Melbourne Bank and was to be a relinquishment by her of all right to deal with the fixed deposit of £10,000 in their account at that Bank. Another was addressed to the same Melbourne Bank and was to be a relinquishment by her of all rights to deal in any way with all bonds and war savings certificates held in her "and/or" his account at that Bank. Another was addressed

to the Bank of New South Wales, Goulburn, and was to be a relinquishment by her of her right to deal with their "and/or account" at that Bank. She asked him why he wanted her to sign those letters and she says that the only explanation he would give to her was, that it was "belittling to him" to have "and/or" accounts with his wife. She pointed out that they had had such accounts for many years, but he replied that the "set-up was different in Australia" and again said that such accounts "belittled" him. Although she typed out the draft letters, she did not sign them. He gave her until 4.00pm the next day to do so. But she still had not signed them by that time next day. That evening, she says, after the children had gone to bed, he got her in the kitchen, demanded her signature to the letters and, on her refusal to sign them, assaulted her by punching her repeatedly about the face and head. When, after that, she still refused to sign them, he headed to the adjoining back verandah. She says that that was where he had left a knife, like a bootmaker's knife, that she had noticed him sharpening during the afternoon. She says that he said, as he went in that direction:- "I will find a better way to make you sign". She seized the opportunity to escape from the kitchen by another door and she left the house and slept the night elsewhere with friends. Nevertheless she returned next day to get the children to school. She encountered her husband. He wanted to know where she had slept the previous evening and, when she went into the toilet, kicked the door in: it struck her and wounded her on the forehead: (her son says that he saw such a wound). She had her head treated by the doctor and then returned home and told her husband that they would have to live apart. He said he was very sorry and begged her forgiveness. She says that he then said that she could go if she liked but that she could not take the children. She replied that she could not go without the children. Then, either that day or the next, he suggested that she could go and have control of the children and he would provide for them, provided she signed the five letters to the Banks: but she would not agree to do that. She says that at this time he was still begging to be forgiven and trying to "patch it up", but that she was suspicious of his motives, even though she would have "done anything to have come to an amicable arrangement". She was still very fond of (her) husband" and "was anxious to keep (their) marriage on foot and intact". She says that a day or two later he produced a draft agreement and asked her to type a fair copy and to sign it. She did type a fair copy, but did not sign it. That draft was as follows:-

> "I Edward James Thomas hereby agree to attend within the next week" (to?) "arrangements concerning legal separation between myself and Jean Murial Thomas and agree to leave her in full charge and control of the four children of the marriage in consideration of her signing over to me, Edward James Thomas, Bonds, Fixed Deposits, War Savings Certificates and Bank Deposits with Bank of New South Wales, Melbourne, approximately £30,000. Thirty thousand pounds. I further agree to support and contribute to the upkeep of the four children in a manner in which they have been accustomed."

The plaintiff has said in evidence that it was quite likely that she had suggested that a deed of separation should be drawn up and that that was why the words "legal separation" appeared in that draft agreement. But she said that she had no intention of signing that paper. When she was asked by the Court why she had typed it, if she had no intention of signing it, she replied:- "At that time, I had been through a pretty terrible ordeal and at times I felt that I would do anything to get away from him and at moments may have thought of signing it; but then I would get enough strength to decide not to sign it." She said that when she refused to sign that draft agreement, "her husband seemed to calm down completely and that that went on for about two months; but then came the time for income tax returns and he again raised the question of (her) signing the five letters to the Banks". She said in evidence - "I could see he was working himself up into a frenzy and I was frightened of him: he would kick or shove me or elbow me, as like as not, whenever I passed him. I was frightened and sent a wire to an aunt in Sydney to come at once; and I kept our maid by me all day, and after putting the

children to bed, went and sat on the Railway Station till my aunt arrived. She arrived, bringing my mother with her. The three of us stayed at the hotel. Next morning, the three of us went to my home and I got the children to school. My husband was home. He and my mother had a lot to say to each other. I packed my bags.

(To the Court: Q. Who decided that you should do that, you or your mother? A. I did. I had made up my mind to leave when I sent for my aunt).

To Mr. White: Having packed my bags, I got a taxi: then, with my aunt and my mother, I went to the school and collected all my children and took them with me to Sydney."

What the husband's opinion of that successful coup was, the Court has not been told.

Although it was the plaintiff who, in the physical sense, left her husband at Goulburn in June, 1943, Mr. White has submitted that the husband, because of his conduct, had really "constructively deserted" her. The so-called doctrine of "constructive desertion" has not escaped some criticism: see, e.g. the judgment of Denning, L.J., in Hosegood v. Hosegood, (1950) 66 T.L.R. (Pt. 1) 735, at 737, 738, in which he suggested that the danger of "constructive" doctrines is that they may get out of hand and "lead in time to the law attributing to a man - quite falsely - a state of mind which he never possessed." He went on to say:- "There are at present two schools of thought about constructive desertion. One school says that, in constructive desertion, as in actual desertion, the husband is not to be found guilty, however bad his conduct, unless he had in fact an intention to bring the married life to an end ..... The other school of thought does lip-service to the necessity for such an intention, but says that, even if the husband had no intention in fact to bring the married life to an end, yet he is conclusively presumed to intend the natural consequences of his acts: and if his conduct is so bad or so unreasonable that his wife is forced to leave him, he must be presumed to intend her to leave and he is guilty of constructive desertion, however much he may in fact desire her to remain." The learned Lord Justice considered that "the views of the first school are logically unanswerable," and he uttered this caution about the presumption of intention:- "When people say that a man must be taken to intend the natural consequences of his act, they fall into error: there is no 'must' about it; it is only 'may'. The presumption of intention is not a proposition of law but a proposition of ordinary good sense. It means this: that, as a man is usually able to foresee what are the natural consequences of his acts, so it is, as a rule, reasonable to infer that he did foresee them and intend them. But while that is an inference which may be drawn, it is not one which must be drawn. If, on all the facts of this case, it is not the correct inference, then it should not be drawn." At page 739 of the report, Lord Justice Denning adopted the view that had been expressed by Lord Greene, M.R., in Buchler v. Buchler (1947) P., at pages 29 and 30, in the following terms: "In constructive desertion the spouse charged must be shown to have been guilty of conduct equivalent to 'driving the other spouse away' ..... from the matrimonial home and to have done so with the intention of bringing the matrimonial consortium to an end."

English and Australian cases on "constructive desertion" have been considered quite recently by the High Court of Australia in Deery v. Deery, 1954, A.L.R., 262, and it was there held by Dixon, C.J., and Webb J., Kitto J., dissenting, that what must be proved, to establish "constructive desertion", is either an actual intention to bring about a rupture of the matrimonial relation or an intention to persist in a course of conduct which any reasonable person would regard as calculated to bring about such a rupture.

Applying that principle to the case before me, I consider that the evidence given about the husband's conduct, prior to the plaintiff's departure from Goulburn in June, 1942, is not sufficient to prove that he had either of the intentions referred to in Deery v. Deery. In my opinion, neither of those intentions was necessarily implicit in the strong, even violent, determination he had evinced to get sole control of all their assets in the Australian Banks. I think the plaintiff was just as strongly determined not to sign any documents by which she would relinquish to him any rights she had over the assets in those Banks. She was

suspicious, she says, of what he might do with those assets if she signed the letters he had asked her to sign. It is conceivable that he, on his part, did not wholly trust her in the matter of their "and/or accounts": he was a generation older than she was and he may have had old-fashioned ideas about the proprietary rights of wives. At any rate, they were at complete variance about this, but what the rights and wrongs of that dispute may have been, it is not possible, on the evidence before me, to say. The plaintiff has said in evidence that she considered that she was really entitled to from £10,000 to £15,000 of the approximate £30,000-worth of assets in the Banks. Evidently her husband thought otherwise. Curiously, when the plaintiff and the defendant agreed, in March 1944, to settle the suit she had instituted, the settlement provided that he was to pay certain sums in respect of expenses and costs she had incurred and in respect of the maintenance of herself and the children, but it did not give her anything like the £10,000 to £15,000 she says she regarded as her share of the £30,000-worth of assets at the Banks: the settlement merely gave her, out of those total assets, war savings certificates of the face value of £1,250, and of these she had to hold certificates to the face value of £1,000 in trust for the children. It may be, (although I do not think she has expressly said so), that she agreed to that in order to procure the insertion, in the settlement, of the clause that provided that the children should be brought up and educated as members of the High Church of England or the Church of England.

The evidence of the husband's conduct, immediately after the plaintiff had so suddenly left him in June, 1943, taking the children with her, does not seem to me sufficient to support a suggestion that he was in "constructive desertion" at that time, either. The plaintiff has told the Court that he came to Sydney very soon after she did and that he rang her from the Carlton Hotel asking to see her and the children. She met him with the children and these meetings were, she says, very pleasant. She subsequently went out with him herself and he was "charming" to her on those occasions.

But a little later she discovered that he had been to Melbourne and she further discovered that he had converted everything in the Bank there, except the fixed deposit that had not yet matured, into his own name solely. She then consulted her solicitors in Sydney. As a result, a suit in equity was instituted by her about August, 1943 and, she says, "he counter-claimed". These proceedings were eventually settled; and, by consent, the Court's decree of March, 1944, gave effect to the settlement.

The plaintiff has told the Court that, after she had instituted the equity suit and while it was still pending, she spent a week with her husband at his flat in King's Cross, Sydney. This was at his suggestion, she says, and she came to King's Cross from Goulburn (where she was living at that time with the children). Her account of that visit was very brief and was as follows:- "We got on quite well; we cohabited, and he was charming, but he finally got around to asking me to drop the suit; but as he was not prepared to do anything for me or the children, I would not agree. He got angry. We parted". On that scanty evidence I cannot find that his conduct on that occasion or his suggestion that she should drop her suit amounted to "constructive desertion" on his part.

After her abortive visit to King's Cross, the plaintiff returned to Goulburn and for some time did not see her husband and had no direct dealings with him. Their legal advisers attended to the legal proceedings and negotiated the eventual settlement of March, 1944, to which I have already referred.

But in August, 1944, only a few months after the settlement had been sanctioned by the Court, the plaintiff tried to effect a reconciliation with her husband. She went to see him, she says, and told him that she knew of a house at Bellevue Hill. She proposed that they "should set up a home together again, live as man and wife, and have the children with (them)". He agreed to this proposal and she rented the house. It was school holiday time and the four children came to the house for their holidays. Her husband joined them there but, after being there for about four or five days, he went into town one day and came home with a document that had been prepared by his solicitors. He requested her to sign it. She read

the document and was shocked to find that it proposed that she should, in consideration of the payment by him to her of the sum of ten shillings hold all her property, rights, interests and claims in New Guinea in trust for him absolutely and covenant that she would whenever called upon by him to do so, transfer to him all her property and rights and interests and claims in New Guinea. She has told the Court that she estimated that the value of her property, rights, interests and claims in New Guinea at that time would have been about £15,000 to £20,000. She says that, after reading this document (which has been produced at this trial), she was "pretty well speechless": she refused to sign it and said to him:- "We are back where we started". He then said (she says) - "We have no chance together unless you sign it": She told him she would "never sign it"; and she has said in evidence:- "I was angry. He had been very charming during the days he had been at Bellevue Hill, but when he handed me that it knocked me: I mean, it upset me very much. I don't think there was further comment from either of us and he just packed his bag and left. He did not say 'goodbye' to me before he left. I have had no further contact with him except through solicitors: correspondence of that kind was necessary because the war damage claims were joint and had not been assessed: there was considerable friction between him and me over the war damage claim and that claim was not settled until January, 1950. Oh! I did see him once, in May 1946, when he came to Vaucluse, where I was then living, about the war damage claim: that was all that was discussed between us then. I have not spoken to him since. Since August, 1944, he has never approached me with any suggestion that we should resume the marriage."

Asked by Mr. White whether she had consented to his leaving her in August, 1944, the plaintiff replied "I did not restrain him and I did not consent: he did not ask me. He left of his own accord: I did not sign the document, so he left." As already mentioned, the Plaintiff returned to New Guinea in November, 1946, and recommenced work on her mining holdings. Except for a few brief visits to Australia, she has lived in New Guinea ever since.

Mr. White has submitted that from the time the defendant asked the plaintiff, at Goulburn in April 1943, to sign the five letters to the Banks, until the day he left her at Bellevue Hill in Sydney in August, 1944, his behaviour indicated one unchanging attitude, and that was that he, the husband, was to get hold of all the property that the parties had jointly got together. That consideration, Mr. White said, loomed over any other consideration in the husband's mind and the brief reunions in Sydney in 1944 were not genuine attempts on the husband's part to effect a reconciliation but were a device to get his wife to surrender all her property to him: this, Mr. White suggested, was "dramatically corroborated" by the husband's attempt to get her to sign the "declaration of trust" that he had got his solicitors to prepare and that he handed to her at Bellevue Hill in August, 1944. When she refused to sign that document, the defendant immediately left her; and that, Mr. White contended, was the "final evidence of an intention to desert her". Mr. White summed it up in this graphic way: the defendant, he said, "was wedded, in his mind, not to her but to the money he wanted: when she stood in the way of his ambition, he cast her aside without any hesitation."

In an undefended matrimonial action, a Court is at a disadvantage in getting at the truth of the matter because it has heard only one side. That is the case here; but I have to do the best I can with the material available. On the evidence that has been put before me, it appears that the parties got on fairly well together while they were in New Guinea - that is to say, from 1929 until the end of 1941. Their real troubles arose after they began to live together in Australia in 1942. Differences occurred between them over the wife's mother and about the education and religious up-bringing of the children: such topics are not uncommon sources of matrimonial friction and the plaintiff and the defendant were not the first married couple to quarrel about such things, nor will they be the last. Their dispute about the control of the assets held in Australian Banks on their "and/or account", however, seemed to intensify, deeply, the already-existing tension between them. A battle of wills developed. Both were determined people. Moves were followed by counter-moves and neither of them was prepared to give way. His violence and the pressure he put on her to induce her to sign the five letters at Goulburn were met by her flight and by her whisking the children away with her from under his very nose.

His next move, made under cover of an apparent resumption of friendly social relations, was to go to Melbourne and get the bulk of the assets that were in the Bank there, in their "and/or account", into his own sole control. She countered this by instituting the equity suit, which he opposed. His next step was to invite her to come and live with him at his flat at King's Cross. She agreed and came and lived with him there, as man and wife, for a week; but when he then proposed that she should drop her suit, she left. The legal proceedings were gone on with, but in March, 1944 - no doubt on the advice of their legal advisers - they agreed to a settlement and consented to a Court decree based on the settlement. The settlement and the decree were meant to put an end to their financial differences and in effect gave her control of the children; but they did not touch the marital relations of the parties. The plaintiff now had some financial security and had the children; and some wives might have left things at that. The plaintiff, however, in August, 1944, made an effort to set up a matrimonial home again and she took the initiative by proposing this to her husband. I think that was a sincere and genuine proposal on her part and I think that she really wanted the marriage to survive and her children to have an established home to come to. Her husband agreed to her proposal, and he actually joined her at the house she had procured at Bellevue Hill. For a short period, he lived with her there as man and wife, with their children around them. For that brief space of time there were all the external signs of reconciliation and of a resumption of their matrimonial relationship. But after four or five days of this, he suddenly produced the so-called "Declaration of Trust" that he had got his own solicitors to prepare and he asked her to sign it. Had she signed that document, it would, prima facie, have enabled him to acquire all her interests in New Guinea, which were worth thousands of pounds, for the extremely modest consideration of ten shillings. When she had read that document, her hopes were wrecked and her disillusionment was complete. That was surely a natural and very understandable reaction. She refused to sign the document and, in my view, her refusal to sign that preposterous paper was not unreasonable, nor may it be regarded as any excuse at all for him to leave her. On her refusal to sign it, the defendant said to her:- "We have no chance together unless you sign it": in other words, he told her that he would not live with her unless she signed away to him all her remaining property in New Guinea for ten shillings. She told him she would never sign that document, whereupon, without comment or more ado, he packed his bags, left the house without saying goodbye, and has never attempted a reconciliation with her or a resumption of their marital relationship since that time.

What inferences may the Court rightly draw, as to the defendant's intention, from that final conduct of his? It is clear that for four or five days he lived with his wife at Bellevue Hill in a way consistent with a complete resumption of the matrimonial relationship. On the evidence before me, I feel unable to find that he had no genuine intention whatever, during those first few days, to resume that relationship. A person's intention is not always static: it may be influenced by events or swayed by change of motives: and it does not follow that the defendant's intention on the day he arrived at Bellevue Hill was necessarily the same as his intention when he left Bellevue Hill. What then was in his mind on that final day, the day on which he produced the astounding "Declaration of Trust" and asked his wife to sign it? We are told that when she refused to sign it, he gave her, in effect, an ultimatum: "Sign it, or we cease to live together". That ultimatum could be regarded as showing that he did not yet intend to leave her, provided she agreed to his intolerable condition. But when she rejected that ultimatum and again told him that she would never sign the document, he said no more, but packed his bags, left the house without saying goodbye, and from that day to this has made no attempt at any reconciliation with her and has made no attempt to resume a matrimonial relationship with her. Whereas it was she who, in the physical sense, left him at Goulburn in June, 1942, and at King's Cross in January, 1944, it was he who left her at Bellevue Hill. I think that it may fairly be inferred or presumed, from that final conduct of his, that his intention when he left the plaintiff's house at Bellevue Hill that day in August, 1944, was to end their marriage. He left without her consent and without any reasonable cause or excuse. That state of affairs has continued, I find, with the same intention on his part, and without reasonable excuse, for much more than the three years' period prescribed in the Ordinance. For these reasons, I consider that the plaintiff has proved that the defendant

deserted her, and I find that that desertion began in August, 1944, at Bellevue Hill, and has continued until now.

The plaintiff will have her decree nisi on that ground, with costs against the defendant.

(Sgd.) Phillips C.J.