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Judgment No. (B) 9/59
of 9th October 1959

JOINT COURT OF THE NEW HEBRIDES

Civil Jurisdiction

The ninth day of October in the year One thousand nine hundred and fifty nine.

Before Their Honours:

C.F.C. MACASKIE, C.M.G., British Judge, President,
J. LEFEVRE, French Judge,

and M. Henri RUSSET, the Assessor selected to assist the Court according to the provisions of Art. 2 (iii-b) of the Exchange of Notes of 1939,

and M. E. BUTERI, Registrar.

MARY of Eratap,

Plaintiff,

v.

TOM ROLING, husband of
the plaintiff,

Respondent.

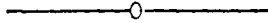
This is an appeal by Tom Roling against judgment No. CIV/1/59 given on 2nd September, 1959 by the Native Court of Central District No. 1, which ordered the respondent to pay to his wife, the plaintiff, £A.1 for each child and £A.1 for his wife each month before the end of the month, that is, £A.5 per month as maintenance.

The grounds of the appeal were put forward by Mr. R. Pujol who appeared for the respondent, and the plaintiff having given evidence the Court retired to consider its judgment.

JUDGMENT

This appeal has presented the Court with a somewhat difficult problem, because no native code of civil law has been drawn up. A native Court should take cognizance of native custom where ascertainable, and when it is not ascertainable should decide "according to substantial justice and the general principles of law". Now it is a general principle both of French and English law that where husband and wife are living together the Court will not meddle with the financial arrangements between them. (Balfour v. Balfour 1919 2 K.B. 571). There is a general duty on the husband to support his wife and family but no order can be made for any specific sum to be paid by the husband to the wife unless they are separated. For that reason the appeal must succeed if the general principles of law are to be followed. It might be that native custom would sanction an order for a specific sum to be paid, but this Court would require clear evidence of such custom. There is the further consideration that assuming the order by the Native Court

for payment could be upheld there would appear to be no procedure for enforcing the order, and in view of the disability under which the respondent suffers it might well be impossible for him to comply with it. This appeal must therefore succeed and the judgment of the Native Court in C.D.I. Civil Jurisdiction CIV/1/59 dated 2.9.59 Mary of Eratap v. Tom Roling must be set aside. This Court impresses upon the respondent that it is his duty to do all he can to support his wife and family and advises him that all copra from the trees which belong by native custom to his wife should be sold by her.



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French Judge.

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British Judge.

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Assessor.

[Handwritten signature]

Registrar.