

**PURAKO, Plaintiff**  
v.  
**EFOU, Secretary of Moen Municipality, Defendant**  
**Civil Action No. 36**  
**Trial Division of the High Court**  
**Truk District**  
**March 18, 1955**

Petition for writ of habeas corpus averring that petitioner was wrongfully imprisoned by community court for "being married to another man while her husband was still alive." On official record prepared more than one month after trial, accused was charged and found guilty of adultery. The Trial Division of the High Court, Associate Justice James R. Nichols, held that petition presented proper grounds for writ of habeas corpus, that community court had no jurisdiction to convict person of bigamy and any such conviction is void. The Court also held that defendant was divorced from first husband under Truk customary law and this was not criminal offense, and that drafting of complaint subsequent to trial charging person with commission of offense not mentioned at trial has no legal effect.

Writ granted.

**1. Constitutional Law—Due Process**

Due process of law has acquired widely known meaning in United States as guaranteeing part of ancient English liberties confirmed in Magna Charta in 1215.

**2. Constitutional Law—Due Process**

Words "due process of law," when used by Americans in Trust Territory Bill of Rights, must be presumed to mean the same thing they do in United States in those situations to which they are applicable.

**3. Habeas Corpus—Jurisdictional Error**

Writ of habeas corpus reaches jurisdictional error only and cannot properly be used to serve mere purpose of appeal or writ of error. (T.T.C., Sec. 4)

**4. Habeas Corpus—Jurisdictional Error**

No court may properly release prisoner held under warrant, conviction, or sentence of another court, unless for want of jurisdiction or some other matter rendering its proceedings void.

**5. Habeas Corpus—Jurisdictional Error**

Jurisdiction of court or judge to make order, judgment or sentence by which person is imprisoned is always proper subject of inquiry on habeas corpus.

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**6. Habeas Corpus—Jurisdictional Error**

If alleged excess or want of jurisdiction is found to exist, judgment or order is absolutely void and prisoner may be discharged from custody.

**7. Courts—Community Courts**

Jurisdiction of Community Courts in criminal cases is limited to those in which maximum punishment which may be imposed does not exceed one hundred dollars or imprisonment for six months, or both. (T.T.C., Sec. 149)

**8. Courts—Community Courts**

Community Court has no jurisdiction to try any person for bigamy, and conviction of this offense in Community Court is void. (T.T.C., Sec. 406)

**9. Truk Custom—Divorce—Recording**

Under Truk custom, any marriage may be dissolved by either spouse at any time at will without action by any court, magistrate or other official.

**10. Truk Custom—Divorce**

Under Truk custom, marriage may be dissolved by either spouse "throwing away" other spouse.

**11. Truk Custom—Divorce—Recording**

While order issued during Navy Administration that divorces be recorded in municipal offices resulted in evidence of divorce, order was repealed and recording or failure to record in municipal office a divorce effected in accordance with local custom has no effect on validity of divorce.

**12. Truk Custom—Divorce—Criminal Liability**

Under Truk custom, "throwing away" of spouse does not constitute crime, and conviction of such alleged offense in Community Court is void.

**13. Truk Custom—Divorce—Civil Liability**

Under Truk custom, liability for civil damages may result from "throwing away" of one's spouse.

**14. Criminal Law—Complaint**

Drafting of complaint subsequent to trial, charging person with commission of specific offense not mentioned at trial and not included within offense charged at trial and against which that person has had no opportunity to defend himself, has no legal effect.

**15. Appeal and Error—Scope of Review—Record**

When it is clearly shown that official record is in error, it is duty of appellate court to consider facts.

NICHOLS, *Associate Justice*

FINDINGS OF FACT

1. Early in December, 1954, the plaintiff Purako was notified that she should appear before Albert M., Judge of the Community Court of Moen Island, for a trial about her divorce from her husband, Udong. This notification was made by a letter written by Rekis, Clerk of the Community Court, and delivered on Dublon Island by a private person not duly appointed to serve process. At no time prior to the trial was a citation or penal summons issued or an arrest made.

2. Purako, the plaintiff herein, Udong, the complainant in the Community Court, and their witnesses appeared before Judge Albert M. in the meeting house on Moen Island on December 8, 1954. At the opening of the proceeding the judge asked the plaintiff if she was ready to proceed with the trial about her divorce and she replied in the affirmative. The judge then told the plaintiff that she was before the court because she had divorced her husband and taken another man. No specific criminal charge was made at the beginning of or during the course of the trial, and at no time was the plaintiff herein given an opportunity to offer a defense to any criminal charge. However, during the course of the trial the judge did ask the plaintiff's witnesses if they did not think her, Purako, guilty of bigamy because she was married to two men at the same time. Then, before announcing his decision, the judge asked the plaintiff herein if she were guilty of "throwing away" her first husband, Udong, and she replied in the affirmative. The judge then announced that he found the plaintiff Purako guilty of being married to another man while her husband was still alive and sentenced her to three months hard labor. The plaintiff was, on that same day, turned over to the defendant Efou, who

caused her to begin serving her sentence on the authority of the judge's oral commitment. The execution of this sentence was suspended by order of this court on February 24, 1955, following a hearing held herein on that date.

3. It is agreed that the plaintiff "threw away" her first husband, Udong, but this fact was never recorded at the Moen Island Municipal Office. It is further agreed that, at the time of the alleged offense, the plaintiff herein and one Uerner were living as man and wife under the claim that they were legally married.

4. In the absence of Rekis, the Clerk of the Court, Meipung, Assistant Chief of Moen Island, recorded the proceedings at the trial held December 8, 1954. More than one month later, on the basis of the notes submitted to him by Meipung, Rekis prepared a complaint, penal summons, and record of criminal trial for the case tried by Judge Albert M. on December 8, 1954, on official forms mimeographed in the Trukese language. This record of criminal trial, with complaint and penal summons attached, was signed by the judge and submitted to the Clerk of Courts for the Truk District as the official record of the case. In this record, the offense with which the plaintiff herein was charged and that of which she was found guilty was adultery.

#### CONCLUSIONS OF LAW

[1,2] 1. The meaning of the provision, "No person shall be deprived of life, liberty, or property, without due process of law", which is contained in Section 4 of the Trust Territory Code, is discussed in the conclusions of law in the case of *Ichiro v. Bismark*, 1 T.T.R. 57. There the court said:

"From their use in those amendments (Fifth and Fourteenth Amendments to the United States Constitution), and in state constitutions, and from many court decisions construing them as used

there, the words 'due process of law' have acquired a widely known general meaning in the United States as guaranteeing a part of the ancient English liberties confirmed in the Magna Charta in 1215 and said to be even older than that. Such famous words when used by Americans in the Trust Territory Bill of Rights, must be presumed to mean the same things they do in the United States, in those situations to which they are applicable."

[3-6] 2. In this connection, we find the following statement in 25 Am. Jur., Habeas Corpus, § 26:

"In short, the writ reaches jurisdictional error only; it cannot properly be used to serve the mere purpose of an appeal or writ of error. It is well settled that no court may properly release a prisoner held under warrant, conviction, or sentence of another court, unless for want of jurisdiction or some other matter rendering its proceedings void. On the other hand, the jurisdiction of a court or judge to make or render an order, judgment, or sentence by which a person is imprisoned is always a proper subject of inquiry on habeas corpus; and if the alleged excess or want of jurisdiction is found to exist, the judgment or order is absolutely void, and the prisoner may be discharged from custody."

[7-9] 3. According to Section 149 of the Trust Territory Code, the jurisdiction of community courts in criminal cases is limited to those in which the maximum punishment which may be imposed does not exceed one hundred dollars (\$100) or imprisonment for six months, or both. Under the provision of Section 406 of the Trust Territory Code, any person convicted of bigamy shall be imprisoned for a period of not more than five years. Therefore, a community court has no jurisdiction to try any person for the offense of bigamy, and a conviction of this offense in a community court is void.

[10-13] 4. A study of Trukese customary law reveals that any marriage may be dissolved by either spouse at any time at will without action by any court, magistrate, or other official. That is, the marriage may be dissolved by either spouse "throwing away" the other spouse. While

the order issued during the Naval Administration of the Trust Territory that divorces be recorded in the Municipal Offices expedited the preparation of statistics and provided a source of evidence that the parties were actually divorced, that order was repealed by High Commissioner's Executive Order No. 32, and the recording or failure to record in the Municipal Office of a divorce effected in accordance with local custom has no effect upon the validity of the divorce. Under Trukese custom the "throwing away" of a spouse does not constitute a crime. Therefore, it cannot be punished under Section 434 of the Trust Territory Code regardless of whether it has been recorded or not, and a conviction of such an alleged offense in a community court is void, although, under Trukese customary law, liability for civil damages may result from the "throwing away" of one's spouse.

[14, 15] 5. The drafting of a complaint, subsequent to a trial, charging the person with the commission of some specific offense not mentioned at the trial and not included within an offense charged at the trial, and against which that person has had no opportunity to defend himself, even in connection with the same set of facts upon which the person was tried, has no legal effect. When it is clearly shown that the official record is in error, it is the duty of this court to consider the facts.

JUDGMENT

Since the question of the proper disposition of the plaintiff herein was fully considered at the hearings on the order to show cause why a writ of habeas corpus should not be issued, and both sides were given a full opportunity to be heard, it is this 18th day of March, 1955,

Ordered, that a writ of habeas corpus be granted unconditionally and is to be treated without further formality as issued, and it is further

Ordered, that the plaintiff herein be discharged from the

detention imposed upon her by sentence of the Community Court for Moen Island on December 8, 1954.

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**KALIFIN and TISAN, Appellants**

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee**

Criminal Case No. 30

Trial Division of the High Court

Truk District

March 22, 1955

Appeal from conviction in Truk District Court of violation of Truk District Order No. 3-49. Appellant claims that provision in Administrative Procedure Manual nullifies all district orders which were not approved by High Commissioner. The Trial Division of the High Court, Associate Justice James R. Nichols, held that intent of High Commissioner in exercising his legislative power was not to repeal district orders.

Affirmed.

**1. Statutes—Construction**

Primary rule of construction of statutes is to ascertain and declare intent of legislature and to carry intention into effect.

**2. Statutes—Construction**

Intention of legislature, when discovered, must prevail in interpretation of statutes, despite any contrary rule of construction declared by previous acts.

**3. Trust Territory—Applicable Law**

District orders in force and effect on July 1, 1951, including those issued before requirement that they be approved by High Commissioner, regardless of whether they were issued before or after that date, have not been repealed. (Executive Order No. 32; T.T.C., Secs. 20, 26, 28; Staff Memorandum No. 68)