

TONO, Plaintiff
v.
MOMO and NACHUMI, Defendants
Civil Action No. 238
Trial Division of the High Court
Truk District
November 8, 1963

Action for damages following dissolution of marriage under Trukese custom. The Trial Division of the High Court, Chief Justice E. P. Furber, held that after plaintiff divorced defendant-spouse under the custom, defendant had no obligation thereafter to return when plaintiff changed her mind, and since plaintiff has shown no good cause for throwing away defendant, she has not sustained burden of showing she is entitled to damages from person he later married.

1. Truk Custom—Divorce—Recording

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

2. Truk Custom—Divorce

Under Truk custom, once one spouse divorces the other, latter has no obligation to return when spouse causing divorce changes her mind.

3. Truk Custom—Divorce—Civil Liability

Under Truk custom, where one spouse divorces the other and no good cause is shown therefor, no damages are due her when divorced spouse leaves home and refuses to return, or marries third party.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Tono “threw away” her husband Momo.
2. The plaintiff Tono has failed to establish that the defendant Momo and Nachumi had had any improper relations with each other before Tono threw him away, or that Tono had any good reason for “throwing away” her husband Momo.

OPINION

[1] This is an action for damages following the breakup of a marriage of a couple living on Fala-Beguets

Island, Truk District. No question has been raised but that they were both living in good faith under the Trukese system of society. As explained in memorandum from the Chief Justice and Associate Justice to the District and Community Court Judges in the Truk District, dated December 20, 1954, it is considered clear that

“UNDER TRUKESE CUSTOM 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.”

The principal issues in this case were: (1) whether the plaintiff Tono had actually thrown away the defendant Momo, and (2) whether the defendant Momo and the defendant Nachumi (whom Momo had later married) had given the plaintiff Tono good cause to throw away her husband. Although there was some conflict in the evidence, the court is satisfied that the plaintiff Tono did order the defendant Momo to leave their home one evening; that he indicated his reluctance to go, remained in the home overnight, and was again ordered by Tono the following morning to leave, when he did so; and that she, by the combination of her words and her acquiescence in the berating of Momo by her mother, gave him fairly and reasonably to understand she did not want to see him again. It is clear that the immediate cause of the incident resulting in Momo's being ordered away from the home on the occasion referred to above, was his failure to deliver promptly some turtle meat which had been entrusted to him for his mother-in-law, but that this was just the last in a long series of disagreements between the plaintiff Tono and the defendant Momo. It is not disputed that a few days later Tono changed her mind and sent word to Momo to return, but he refused to do so.

[2, 3] The court holds under all the circumstances that the plaintiff Tono had divorced the plaintiff Momo under Trukese custom, that therefore Momo was under no obligation to return when Tono changed her mind, and that since Tono has shown no good cause for throwing Momo away, she has not sustained the burden of showing she is entitled to any damages from him for leaving the home or refusing to return, or from either him or the defendant Nachumi for their subsequent courtship and marriage to each other.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. That neither the defendant Momo nor the defendant Nachumi, both of whom live on Fala-Beguets Island, Truk District, owes the plaintiff Tono, who also lives on Fala-Beguets Island, Truk District, anything.

2. The defendants Momo and Nachumi are awarded such costs, if any, of this action as they may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided they file a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.