

**ITOKO, Appellant**  
**v.**  
**ANTON (represented by Esetito), Appellee**  
**Civil Action No. 276**  
**Trial Division of the High Court**  
**Truk District**  
**November 8, 1963**

Appeal from judgment in Truk District Court ordering defendant to pay damages under Trukese custom for allegedly breaking up marriage of plaintiff and his spouse. The Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence shows plaintiff threw away his spouse, that marriage was therefore dissolved under Trukese custom, and that plaintiff is not entitled to damages.

Reversed.

**1. Truk Custom—Divorce—Recording**

Reporting of divorces under Truk custom to Municipal Office, or obtaining certificate from Magistrate with regard thereto, is purely voluntary and precautionary matter, and is of no legal significance regarding validity of divorce except as matter of proof.

**2. Truk Custom—Divorce—Recording**

Under Truk custom, any 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.

**3. Truk Custom—Divorce**

Under Truk custom, in order to determine if spouse has actually been thrown away, member of lineage of spouse who feels he or she may have been thrown away, for father of that spouse, should take up matter with other spouse.

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

Where party makes it understood he has divorced spouse under Truk custom, and divorced spouse later marries another, party is not entitled to damages under Truk custom from individual whom divorced spouse later marries.

<i>Assessor:</i>	JUDGE ICHIRO MOSES
<i>Interpreter:</i>	F. SOUKICHI
<i>Reporter:</i>	EVELYNA A. TAIJERON
<i>Counsel for Appellant:</i>	FUJITA PETER
<i>Counsel for Appellee:</i>	FRANK, N.

FURBER, *Chief Justice*

This is an appeal from a decision granting damages under Trukese custom for allegedly breaking up a marriage of a couple who had been living on Uman Island in Truk Atoll.

Counsel for the appellant argued that the plaintiff-appellee had himself divorced his wife Patto at least by June 1961, and that the evidence clearly shows that the defendant-appellant had not even met Patto until late November 1961; that in the meantime Patto's brother had endeavored to have Anton return, but Anton had refused to come back with the brother, although he said he would do so later, but he failed to do that, and that the defendant-appellant's subsequent marriage to Patto had been with the permission of her brother.

Counsel for the appellee argued that when Patto's brother was asked by Itoko for permission to marry Patto, he did not indicate any real consent or approval since he said it was up to Patto, and that Patto and Anton should not be considered to have been divorced before Itoko married Patto since no parents or brother had taken part in the divorce.

It is agreed that the defendant-appellant had already, at the order of the District Court, paid Thirty-three Dollars (\$33.00) on account of the judgment before it was stayed pending this appeal.

OPINION

In this action the plaintiff-appellee did not even testify in his own behalf. The sole witness for the plaintiff was

his sister who did not even claim to have been present at the alleged "throwing away" of Patto by Anton. The fact that Anton had thrown Patto's things outside of the house they had been sharing, in either March or June of 1961, that he had gone to another island and at least failed to come back when Patto's brother asked him to, and that Anton and Patto had not lived together since this throwing of her things outside of the house was clearly established, and Patto's testimony, ". . . I asked Anton why he threw our things outside the house, and he told me to get my things and go home because we are divorced", was entirely uncontradicted. There was also no testimony that Itoko and Patto had any contact with each other before November 30, 1961.

[1, 2] Apparently the trial judge was much influenced by the fact admitted by Patto that no report of her and Anton's separation or divorce had been made to the Uman office. This reporting of divorces under Trukese custom to the Municipal office, or the obtaining of a certificate from the Magistrate with regard thereto, is a very helpful practice as a matter of proof and as clear evidence of the intention of one or both of the parties, but so far as this court can determine this is purely a voluntary and precautionary matter and is of no legal significance, except as a matter of proof. It is firmly believed that as stated in memorandum from Chief Justice and Associate Justice to the District and Community Court Judges in the Truk District, dated December 20, 1954, it is 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."

[3] As indicated in that memorandum, if there is any doubt as to whether a spouse has been really "thrown away", the traditional method for determining this is to have a member of the lineage of the spouse who feels he or she may have been thrown away, or the father of that spouse, take the matter up with the other spouse. Here this was done by Patto's brother and Anton's equivocal answer, plus his conduct, clearly, and the court believes reasonably, gave her brother to understand that Patto's marriage to Anton had been dissolved under Trukese custom. Although the brother did say the decision was up to Patto, he testified flatly that he gave Itoko permission to marry Patto.

[4] Under all the circumstances the court holds that the evidence before the trial court was insufficient to warrant the finding in favor of the plaintiff and holds that the plaintiff had failed to sustain the burden of proof.

#### JUDGMENT

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

1. The judgment of the District Court for the Truk District in its Civil Action No. 237 is hereby set aside and judgment entered that the defendant Itoko owes the plaintiff Anton nothing.

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

3. The plaintiff Anton shall repay to the defendant Itoko with interest at six (6) percent a year from the date of this present judgment, the sum of Thirty-three Dollars (\$33.00) heretofore paid under the judgment herein set aside.