35 OF 1968

PRIVY COUNCIL

Judgment 9, 1170

On Appeal from the Gambia

Court of Appeal

ABDOULIE DRAMEH *Appellant*

Versus

JOYCE DRAMEH *Respondent*

GPB. 1255/1068/20.

CONTENTS

IN THE SUPREME COURT OF THE GAMBIA

Divorce and Matrimonial Causes.
Suit No. S. 9/1966.

To: His Lordship,
Mr. Justice J. A. L. Wiseham,
The Supreme Court,
Bathurst.

July 1966.

THE HUMBLE PETITION OF JOYCE DRAMMEH showeth:-

1. That on the 17th day of September, 1956, that Joyce Drammeh lawfully married (then Joyce Morris, Spinster) to Abdoulie Drammeh at Groves Street Methodist Church, Liverpool. This was a formal Christian marriage.

2. That after the said marriage the petitioner and the respondent lived together at various towns and addresses in England and finally at 2, Cameron Street, Bathurst, Gambia.

3. That there are seven issues of the said marriage now living namely:—

   (*a*) Sandra born 18th March, 1957
   (*b*) Ida born 23rd July, 1958
   (*c*) Amy born 19th September, 1960
   (*d*) Joy born 26th October, 1961
   (*e*) Malcolm born 5th September, 1963
   (*f*) Pamela born 2nd May, 1965
   (*g*) Linda born 25th April, 1966

4. That the petitioner is living at 2, Cameron Street, Bathurst and that the respondent who is an Advocate and Solicitor of the Supreme Court of The Gambia is living at 11a, Cotton Street, Bathurst. That both the petitioner and the respondent are domiciled in The Gambia.

5. That there have been no previous proceedings in the Supreme Court or in any Court of Summary jurisdiction with reference to the said marriage, save that there were proceedings in England as to the custody of the five children in England which were not pursued to a conclusion.

6. That on 31st of March, 1966 the respondent went into a ceremony of Muslim marriage with one MARIAMA JALLOW of 11A, Cotton Street, Bathurst (hereinafter called the co-respondent).

7. That on 31st day of March, 1966 the respondent committed adultery with the co-respondent at 11A, Cotton Street, Bathurst aforesaid.

8. That on the 31st day of March, 1966, until now the respondent lived and cohabited and frequently committed adultery with the co-respondent at 11A, Cotton Street, Bathurst aforesaid and at a hotel in Dakar, The Republic of Senegal, from the 14th day of April, 1966 to 17th day of April, 1966.

9. That the Petitioner has not in any way condoned the said adultery.

10. That the Petitioner has not in any way been accessory to or connived at the said adultery.

11. That the Petitioner is not presented in collusion with the respondent or co-respondent.

Wherefore the Petitioner humbly prays that this Honourable Court will:—

(*a*) That the marriage celebrated between the petitioner and the respondent be dissolved.

(*b*) That the petitioner may have the custody of the children.

(*c*) That the respondent pay the costs of and incidental expenses to the proceedings.

(*d*) That the respondent pay to the petitioner such sums by way of alimony pending Suit — and maintenance of the children, and maintenance of and as a secured provision as may be just.

(*Sgd*) J. DRAMEH
Petitioner.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Cause.
Suit No. 9/1966.

BETWEEN:

JOYCE DRAMMEH
(*Nee* MORRIS) ..... *Petitioner*

AND

ABDOULIE DRAMMEH..... *Respondent*
11A, Cotton Street
Bathurst.

MARIAMA JALLOW ..... *Co-respondent*
11A, Cotton Street,
Bathurst.

I, JOYCE DRAMMEH, of 2, Cameron Street, Bathurst, in The Gambia, HOUSEWIFE, make oath and say as follows:—

1. That the Statements contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of my said petition are true, to the best of my knowledge information and belief.

(*Sgd.*) J. DRAMMEH.

SWORN at Bathurst this 11th day of July, 1966.

BEFORE ME

(*Sgd.*) E. S. N'JIE
Commissioner for Oaths.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Cause
Suit No. S. 9/1966.

BETWEEN:

JOYCE DRAMMEH ..... *Petitioner*
(*Nee* MORRIS)

AND

ABDOULIE DRAMMEH..... *Respondent*
11A, Cotton Street,
Bathurst.

MARIAMA JALLOW
11A, Cotton Street,
Bathurst ..... *Co-respondent*

TO: ABDOULIE DRAMMEH,
11A, Cotton Street,
Bathurst.

TAKE NOTICE that you are required, within eight days after service hereof upon you, inclusive of the day of such service, to enter an appearance either in person or by your Solicitor at the Divorce Registry at Bathurst, should you think fit so to do, and thereafter to make answer to this petition and that, in default of your so doing, the Court will proceed to hear the petition and pronounce judgment, your absence notwithstanding.

The petition is filed and this notice issued by JOYCE DRAMMEH.

DATED at Bathurst this 12th day of July, 1966.

(*Sgd.*) E. S. N'JIE,
Registrar.

Note:— Any person entering an appearance must at the same time furnish an address for service which must be within the jurisdiction of the Court in which proceedings were commenced.

If you desire to enter an appearance by post, you must send to the Divorce Registry by pre-paid letter an entry of appearance and a duplicate thereof and a postal order for the prescribed fee (2/6d). An appearance entered by a Solicitor cannot be entered by post.

The Answer should be filed within fourteen days of the limited time for entry appearance. An answer cannot be filed by post.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Causes.
Suit No. S. 9/1966.

BETWEEN:

JOYCE DRAMMEH ..... *Petitioner*
(*Nee* MORRIS)

AND

ABDOULIE DRAMMEH..... *Respondent*
11A, Cotton Street,
Bathurst.

MARIAMA JALLOW ..... *Co-respondent*
11A, Cotton Street,
Bathurst.

AND FURTHER TAKE NOTICE that should you not desire to be heard on this petition in regard to any relief claim other than the claim for the custody of the children you are at liberty within eight days after service hereof upon you, inclusive of the day of such service, to enter an appearance in the manner aforesaid to the said petition limited to that claim and that in default of your so doing, the Court will proceed to hear and determine such claim and may order custody of the children pending Suit your absence notwithstanding.

AND FURTHER TAKE NOTICE THAT in the event of your entering an appearance to the said petition either generally or limited to the claim for custody of the children you are required within fourteen days thereafter to file in the Divorce Registry an affidavit in pursuance of Rule 43 of Order 2 of the Supreme Court Rules, 1928 giving full particulars thereof.

(*Sgd.*) E. S. N'JIE,
Registrar.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Causes.
Suit No. S. 9/1966.

BETWEEN:

JOYCE DRAMMEH ..... *Petitioner*
(*Nee* MORRIS)

AND

ABDOULIE DRAMMEH..... *Respondent*
2, Cameron Street,
Bathurst.

MARIAMA JALLOW ..... *Co-respondent*
11A, Cotton Street,
Bathurst.

Enter an appearance in person for ABDOULIE DRAMMEH the respondent in this cause generally.

(*Sgd.*) ABDOULIE DRAMMEH,
of 2, Cameron Street,
Bathurst, Gambia.

To:

(1) The Registrar of the Supreme Court, Bathurst.
(2) The above-named Petitioner or her Solicitor, Mr. S. A. N'Jie.
(3) The above-named Co-respondent or her Solicitor, Alhaji A. M. Drammeh.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Cause
Suit No. S. /1966
Ex. Suit No. /1966.

BETWEEN:

JOYCE DRAMMEH ..... *Petitioner*

AND

ABDOULIE DRAMMEH..... *Respondent*

AND

MARIAMA JALLOW ..... *Co-respondent* 10

HIS LORDSHIP,
THE CHIEF JUSTICE,
SUPREME COURT,
BATHURST.

IN THE MATTER OF PETITIONER BY JOYCE DRAMMEH

Enter an appearance for MARIAMA JALLOW Co-respondent in this cause.

Dated the 16th day of July, 1966.

1. The Registrar of Supreme Court, Bathurst.
2. The above-named Petitioner, or her Solicitor, 20
   Mr. S. A. N'Jie.
3. The above-named Respondent, or his Solicitor.

(*Sgd.*) ALHAJI A. M. DRAMMEH,
2, Cameron Street,
Bathurst, Gambia.
Solicitor for Co-respondent.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Causes
Suit No. S. 9/66
Misc. Cause No. S. /66.

BETWEEN:

JOYCE DRAMMEH ..... *Petitioner/Applicant*
(*Nee* MORRIS)

AND

ABDOULIE DRAMMEH..... *Respondent/Respondent*
2, Cameron Street,
Bathurst.

AND

MARIAMA JALLOW ..... *Co-respondent/Respondent*
11A, Cotton Street,
Bathurst.

TO: HIS LORDSHIP,
MR. JUSTICE J. A. L. WISEHAM,
THE SUPREME COURT,
BATHURST.

The Respondent Abdoulie Drammeh in answer to the Petition filed herein says:—

1. He admits paragraph 1 of the petition.
2. He admits paragraph 2 of the petition.
3. He admits paragraph 3 of the petition but says that the names of the children as given in sub-paragraph (*c*), (*e*) and (*g*) are wrong and should be as follows:—

   (*c*) AMINATA (She is named after my mother's sister)
   (*e*) MALIK (He is named after Imam Malik, founder of the Maliki School, followed by nearly all the Muslims in Africa South of the Sahara including The Gambia).
   (*g*) JAHOU (She is named after my sister).

4. He denies that he is living at 11A, Cotton Street, Bathurst. He has always lived with the Petitioner in the Matrimonial Home at 2, Cameron Street, Bathurst, aforesaid.
5. That he denies that Malik Drammeh was included in the proceedings in England as to custody.
6. That he denies the statement in paragraph 6 of the petition that the respondent and co-respondent went into a ceremony of Muslim marriage on 31st March, 1966.
7. That he is not guilty of adultry as alleged in paragraph 7 or in the said petition.

8. That he denies that on the 31st of March, 1966, until now he lived with the Co-respondent and frequently committed adultry with the co-respondent at 11A, Cotton Street, Bathurst, aforesaid and at a hotel in Dakar. The Republic of Senegal, from the 14th day of April, 1966, to the 17th day of April, 1966. He admits that the Co-respondent was with him at a hotel in Dakar the Republic of Senegal from 14th day of April, 1966 to 17th day of April, 1966, with his children named in sub-paragraphs (*a*), (*c*) and (*d*) for the purpose of caring for these children while their mother was unable to travel to Dakar with the children and their father to see the 1st World Festival of Negro Arts as the petitioner was expecting the child she delivered on 25th April, 1966, 8 days after our return to Bathurst — see sub-paragraph (*g*) of the petition. The Petitioner gave her consent for the children to accompany the Respondent to Dakar to see the Festival. He denies that he committed any adultry during the Dakar visit, on 31st March, 1966, or any time after. He is not guilty of adultry as alleged in paragraph 8 or in the said petition.

9. That this Answer is not presented or prosecuted in collusion with the Petitioner or Co-respondent.

Wherefore the respondent prays that the prayer of the Petition may be rejected and that the Court shall decree: -

(*a*) a decree of restitution of conjugal rights.

(*b*) that the Petitioner pays the costs of and incidental expenses to these proceedings.

(*Sgd.*) ALHAJI A. M. DRAMMEH,
Respondent.

1. The Registrar of the Supreme Court,
Bathurst.

2. The Petitioner or her Solicitor,
Mr. S. A. N'Jie,
19, Buckle Street,
Bathurst.

3. The Co-respondent or her Solicitor,
Alhaji A. M. Drammeh,
2, Cameron Street,
Bathurst.

IN THE SUPREME COURT OF THE GAMBIA

Divorce & Matrimonial Causes
Suit No. S. 9/66
Misc. Cause No. S. /66.

BETWEEN:

JOYCE DRAMMEH ..... *Petitioner*
(*Nee* MORRIS)

AND

ABDOULIE DRAMMEH..... *Respondent*
2, Cameron Street,
Bathurst.

AND

MARIAMA JALLOW ..... *Co-respondent*
11A, Cotton Street,
Bathurst.

TO: HIS LORDSHIPS
MR. JUSTICE J. A. L. WISEHAM,
THE SUPREME COURT,
BATHURST.

The Co-respondent, Mariama Jallow, in answer to the petition filed herein says:—

1. That she denies that the respondent is living at 11A, Cotton Street, Bathurst. He is in fact living with the petitioner in the Matrimonial Home at 2, Cameron Street, Bathurst, aforesaid.

2. That she denies the statement in paragraph 6 of the petitioner that the respondent and the co-respondent went into a ceremony of Muslim marriage on 31st March, 1966.

3. That she is not guilty of adultry as alleged in paragraph 7 or in the said petition.

4. That she denies that on the 31st of March, 1966, until now she lived with the co-respondent and frequently committed adultry with the respondent at 11A, Cotton Street, Bathurst, aforesaid and at a hotel in Dakar, the Republic of Senegal, from the 14th day of April, 1966 to the 17th of April, 1966. She admits that she was with the respondent at a hotel in Dakar, the Republic of Senegal from 14th day of April, 1966 to 17th day of April, 1966, with his children named in sub-paragraph (*a*), (*c*), (*d*) for the purpose of caring for these children while their mother was unable to travel to Dakar with the children and their father to see the 1st World Festival of Negro Arts as the petitioner was expecting the child she delivered on the 25th April, 1966, 8 days after our return to Bathurst — see sub-paragraph (*g*) of the petition. The Co-respondent denies that she committed any adultry during the Dakar visit, on 31st March, 1966 or any day after. She is not guilty of adultry as alleged in paragraph 8 or in the said petition.

5. That this answer is not presented or prosecuted in collusion with the petitioner.

Wherefore the Co-respondent prays that the prayer of the petitioner may be rejected and that the petition be dismissed with costs and incidental expenses to the proceedings.

her
MARIAMA *X* JALLOW
mark

Co-respondent

Witness to Mark
ABIGAIL STAPLETON,
5, Louvel Street,
Bathurst.

IN THE SUPREME COURT OF THE GAMBIA

1st December, 1966. Divorce & Matrimonial Cause No. 9/66

JOYCE DRAMMEH ..... *Petitioner*

AND

ABDOULIE DRAMMEH..... *Respondent*

MARIAMA JALLOW ..... *Co-respondent*

A. A. M. DRAMMEH, *Respondent*,
"I ask that this case be heard in Chambers as children are involved and there is ground for reconciliation as far as I am concerned".

N'Jie "Open Court, no children involved, no question of reconciliation."

Drammeh "The news will spread — the children will be told — interest to the Public, Justice will be better done in Chambers — so that no one will be afraid to give evidence."

N'Jie "This is all new to us — no reason why case should not proceed in open Court."

Drammeh "This is an exceptional Case."

ORDER

The case will proceed in open Court — but it may be continued in Chambers if anything is said in evidence which I think sufficient to adjourn to Chambers.

(*Sgd.*) J. A. L. WISEHAM
Chief Justice.

In open Court:

S. A. N'Jie for *Petitioner*

Respondent in person

Drammeh "I appear for *Co-respondent*"

P. 1—Joyce Drammeh, s. on *B*, in English.
Xd. by N'Jie: 2, Cameron Street, Bathurst. On 17-9-1956, I married Abdoulie Mohamed Drammeh, Respondent, at Trinity Chapel, Grove Street, Liverpool — Methodist Church. This is the Marriage Certificate (Ex. 'A' admitted). We lived together in London, Devon, Liverpool and finally at 2 Cameron Street, Bathurst.

We were married according to Christian Rites by a Minister of the Church. We were not married according to any other rites here or elsewhere.

There were seven issues of the marriage as stated in paragraph 3 of my petition. The last one Linda died on 23rd November last.

I still live at 2, Cameron Street. The Respondent lives at 11A Cotton Street at present since July this year.

I applied for custody of 4 children in England about 1961 — but the proceedings were dropped. Respondent lives at Cotton Street with one Mariama Jallow. I have been there to 11A, Cotton Street and met them both there. That was in July — I met her alone the first time — the second time was on 27th October when I met both of them there. I was told my husband had taken another wife and her mother had removed his goods from my house — so — I went to see if — it was true. The first time I went she told me the respondent was out. I saw his things there. On my second visit I went to collect my little boy Malcolm and I saw respondent and co-respondent.

In March my children mentioned my husband had taken a woman as his wife to Dakar for the Negro Festival, I have never condoned their living together — or connived or induced their relationship. No collusion either. I ask for a divorce and custody of my children — maintenance and Costs.

XXd. by Drammeh: (Six birth certificates (Exs. 'B' to 'B 6' admitted) put to Petitioner.) The names are partly right. Partly because Malick was changed to Malcolm. I did it since Petition was filed. I baptised them. You were at Cotton Street. — They were christened without your consent. I admit contents of this letter (Ex. 'C' admitted) — there was no authorisation by you. There was no Court order then about the children I did not receive this motion (Ex. 'D' admitted). I received verbal information that I was asked not to send the children to church, but the discretion was mine — so I took them. It was the Registrar who told me. Then later the Court ordered that the children were not to be taken to the Church or Mosque. I had no lawyer in those proceedings.

After the case, I will abide by Court's order. If Court orders, I will take them to England or the West Indies. If you had custody would you take them to Mecca?

Q. Will you take them to the schools they were in England?

A. All my relatives have promised to educate them and bring them up in their father's religion — a Methodist I abide by statements in my affidavit on 29th July in Misc. No. 1 of 1966 (Matrimonial) I did not consent to my children travelling with you to Dakar. I did not consent to co-respondent going with you. I never even knew of the woman then. Would I stay in the house alone to deliver child without a husband, mother or anyone?

I never met the co-respondent then. All the children were born in England.

Although as to last child — I was living in The Gambia — but went to England for 2 months.

When you came back from Dakar, I did beg you to let me go to England for good with the children — as I was frightened — alone in The Gambia.

My children — would I agree to co-respondent looking after them — she has three of her own and cannot look after them.

In my memory, I never saw co-respondent several times.

Q. Did you not visit her several times before and after the marriage?

A. No. Only twice did I go there and you arrested me with the police — so it was not a friendly affair.

I visited a place in Serrekunda, during the mango season — June— July — but you did not tell me it belonged to co-respondent. No body lived there. We went for mangoes — to your clients' place or compound you said — many times.

The Imam was always coming to our house and I used to feed him and send food to your mother and send them clothes.

When we came here in 1959, we lived with Imam, but you said his ways were so bad — eating up your money — that we had to get out.

Who was the interpreter? I cannot speak to the Imam. I have nothing in common. Very, very, occasionally I go with you to the Imam. I did not consent to respondent's marriage.

I have never seen you pray. I left you a few times in England. But in Liverpool you lived with my mother. You did not say you were going to Mecca — you said Middle East as it was important for your studies. You became Bachelor of Laws, Liverpool. I see Alhaji — the name — but you call yourself Charlie. This name Alhaji means nothing to me I don't know it — but I have letters addressed to you "Charlie Drammeh".

You ran away to Mecca and left my children. You left your own step-father to look after them. I am a Baptist — I was converted to be a Methodist because you are a Methodist.

If you are a Moslem — why did you marry in the Methodist Church as far as I am concerned you are still a Christian. I have never seen you pray. You said these Muslims were fanatics.

Your brother the Imam stayed with my mother in Liverpool and prayed regularly — You said he was crazy, but you never prayed.

Our children went to the Princess Gate, Baptist Church, in Liverpool. Only Sandra and Ida only — went to Sunday School — you did not object, the rest were too young. The children were christened in Bathurst. It is not unusual. I was christened at 7 years old.

You said my mother was old when I wanted to christen them in England — you said I should wait till I get to Bathurst.

You only became an Alhaji when you came to Bathurst — so that you could get cases, you said, from these people.

Many people study Islamic Law in London — you said it would help you in cases. I don't know why my son was called 'Malick' — I don't know your auntie or whether Ida was named after her — we have that name in the West Indies — but you suggested Isatou and I did not like it.

In 1964 you came home to Bathurst with all my children and you left me — because I was too sick to travel — not because I did not want to come to the Gambia — I have followed you every where — West Indies — Exeter — England — Gambia.

My domicile prior to marriage was Jamaica. In Jamaica I have never seen a Muslim. I never heard of Moslems — in Jamaica — Indians were Christians.

If you were a Moslem you should have gone to the Mosque in England, but you are a unique Moslem — you go to Church.

You left 2 Cameron Street — before my petition, You live at 11A, Cotton Street.

I came to the Court to get maintenance — saw the Chief Justice in Chambers — I could not tell him about your marriage — he was going to decide the case. I only came about maintenance.

Q. I put it to you I have not committed adultery

A. Well she is having your baby — 7 or 8 months pregnant — either bigamy or adultery.

You know when you committed adultery.

No true Muslim goes to Church. The people of Bathurst like me and buried my child for me as you ran away to Freetown. I had control of the child. I don't know the civil service rules. The children have attended secondary school — the convent — and some to Mrs. N'Dow's school.

RXd. by N'Jie: The pre-fix 'Alhaji' was for propaganda to get clients. In England he said the people did not like Abdoulie, so he called himself Charlie — changed with the climate. My domicile is now Gambia. Never been through any other form of marriage.

P.W. 2—Mclunis Biggerstaf, s on *B.* in English. . .
Xd. by N'Jie: 2, Cameron Street. I know respondent Charles or Abdoulie Drammeh, my son in law. He married my daughter 17-9-1956. It was a Christian marriage. Methodist Church, Liverpool. He was happy about the whole ceremony — he never objected never said it was not valid — never said he was anything other than a Christian. I attended the wedding ceremony. Petitioner and Respondent lived with me in Liverpool. Respondent's elder brother stayed with me for 2 weeks in Liverpool. I did not see him pray — I used to go out to work at 7.30 a.m. — in winter — it was not bright — it was dark when I came home at 5 p.m.

I have never seen Charlie pray or do anything as a Muslim.

I cannot remember which year he went to Mecca. I did not know he was going there — did not know what Mecca was.

XXd. by Respondent: You did not represent you were Charlie. I know you as A. M. Drammeh. I don't know — you did not say you were Charlie. You left my daughter without any maintenance and you spent a lot of money going by plane to Mecca. My husband and I collected (No. 21 and No. 14 — 2 houses) the rents and it was not sufficient to maintain your wife. We had to maintain her. Your brother the Imam visited us in Liverpool. I have never seen your (certificates) papers addressing you as "Alhaji". I attended the University, I had no programme — in fact I did not hear a word — such a big crowd — I never heard your name as 'Alhaji'. I don't know your business — you went with my daughter to London — you came back and said you wanted to sell her washing machine for £25 as you wanted money. I said "No" and gave you the £25.

My permanent home at the time my daughter married was in England — my intention was to live and staying in England — I had no intention of returning to Jamaica.

RXd. by N'Jie: Respondent bought 2 houses in Liverpool — through the Midland Bank — and my husband helped him to keep it up. I have never seen Respondent pray as a Moslem. I have never known him as a Moslem.

P.W. 3—Momodou Lamin Bah, *S.* on *K.* in Wolloff.

Xd. by N'Jie: Imam of Bathurst. Brown Street. I know Mariama Jallow and Abdoulie Drammeh my brother. They are husband and wife.

XXd. by Respondent They were married on 7th April. I am the head of your family. I once went to you and asked whether your wife accepted and you said 'yes', but I do not speak English, so I tied the marriage. According to Islam, it is legal — it is a valid marriage. It took place at Brikama. I went that same evening I went to Mariama's compound — and told her that the marriage was tied. You came with mariama and your children at Dakar and lodged with my wife.

I came with M. L. Saho to get the body of the child that died. The Chief Justice called Petitioner, but she refused. I said the father was a Muslim.

At the time you married Mariama — I take it you were a Muslim so I solemnised the marriage.

There was a dispute between you and your wife as to the children — I said let them grow up and then decide.

If you are a Muslim at the time your children are born — then they are Muslims. In 1960, I went to England and stayed in compound of that woman and your wife.

Wherever I go, I pray. You used to pray with me there.

Christians cannot perform the pilgrimage to Mecca. They would be arrested and killed. In 1965 you went to Mecca the second time.

In 1959, you and your wife visited me and stayed in my house for two days in Bathurst. If your children are brought up as Christians they cannot inherit from you as a Muslim. Different religions — you cannot inherit.

If the children are taken to the West Indies — if they are Muslims they should be brought up under Muslims.

RXd. by N'Jie: I do not know where Abdoulie Drammeh and Mrs. Drammeh were married. Only day before yesterday I saw the Church marriage certificate.

Adjourned to tomorrow.

(*Sgd.*) J. A. L. WISEHAM
Chief Justice.

Counsel as before.

2nd December, 1966.

P.W. 4—John Andrew Mahoney, s. on *B.* in English.

Xd. by N'Jie: Director of Medical Services. 2, Buckle Street. In April this year I was in Dakar — Hotel Majestique. I saw A. A. M. Drammeh there.

XXd. by Drammeh: I was there for the latter part of the Negro Festival — between 14th and 24th April.

Q. I was there between the 14th and 17th.

A. I won't dispute it. I was not following your movements. I exchanged greetings and sat at different tables for breakfast.

Rxd. by N'Jie: Nil.

P.W. 5—Salieu Jobarteh, s. on *K.* in English.

Xd. by N'Jie: now unemployed. 70, Dobson Street. I know A. M. Drammeh. I worked for him since his arrival till December 1965 as Office Manager — Clerk as well.

His earnings were different every week. In the legal field in the year 1964 his total takings — were £700. In 1965, Office was in full swing — total takings nothing less than £900.

He owned three taxis. I was responsible for all three drivers — daily takings £7 for each taxi per day. In 1964 October, he owned three taxis. Drivers were paid £14 per month. I was the only employee in the office.

He also owned a private car. I taught him to drive. One boy called Jallow used to get a dash only for driving. I used to buy stationery from Printing Department — never exceeded £10 for the year. Books from England — once £19.

Petrol for his own car from Tabbal. He had three maids for £3 a month. I paid them. Sometimes I earned £17 to £20 a month.

XXd. by Drammeh: I was on leave on retirement when I first started. You approach me on arrival and I joined you — 20th March — possibly. You had no money. I used to feed you then.

I said average £700 — my estimate — the money passed through my hands in 1964 same in 1965.

GA. 2848 — was bought in October, 1964 by you in your name
GA. 2925 — licenced in the name of your mother
GA. 3069 — ditto
GA. 3070 — ditto

I received every day £7 from each driver minimum. Sometimes even £12 — we take everything the driver brings in. January to June is £7 a day — in the rainy season £3 a day.

GA. 2848 — was disposed of in July, 1965
GA. 3069 — was disposed of in July, 1965 to one man Joseph Najib
GA. 3070 — of Kaur — for £550 and £450 — because Mr. Drammeh was in trouble.

You transferred me Glamour Enterprises in January, 1966 for £20 a year, and terminated my employment on 31-5-66. I have a suit pending against you (Suit 30 of 1966).

Yes you were a P.P.P. candidate. Glamour appointed me agent of Garba Jahumpa, I did not broadcast for U.P./Congress.

You sent for me on 30.—3.—and my appointment was terminated because you lost the election.

It is not true I am giving false information because my appointment was terminated. Not true.

No dispute as to what you owed me — when I went to the Labour Exchange.

These notes shown to me — some in my handwriting — these are earnings of vehicles (Ex. 'E' put in), — not £8 total for the day — impossible.

I introduced you to the public to get clients.

RXd. by N'Jie: Ex. 'E' is only for one vehicle — every vehicle has its own book. I do not give evidence because I hate Drammeh. I am a perfect Muslim.

N'Jie: "I am calling Registrar, but he has not got all the documents ready. Ask to adjourn till Monday."

Hearing adjourned to 5th December.

5th December, 1966. Counsel as before.

Edmond Samuel N'Jie, *S.* on *B.* in English:
Xd. by N'Jie: Registrar, Supreme Court, living at B.O.A.C. Fajara. Since 9th August, 1965 — I have been the Registrar. I have a list of cases in which Respondent appeared as counsel.
He also practised before the Magistrate, Bathurst, Kanifing and elsewhere in The Gambia. There were two important cases — COMAF & Forster — also Georgette Salleh & S. Madi — both involving big amounts — the 2nd case for £33,000 odd.

This is my list (Ex. admitted)

XXd. by Drammeh: Nil.

Close of Case for Petitioner.

Respondent R. 1

Alhaji Abdoulie Mohamed Drammeh, *S.* on *K.*, in English:
Barrister & Solicitor of this Court. At time of filing of petition I was living at 2, Cameron Street and still have my chambers there. I now live at 45 Leman Street. I left the Gambia 1946 and went to the United Kingdom for study. I met petitioner's family 3 or 4 years before I married her. At that time she was in Jamaica. The first member was Solomon Flash — uncle of the petitioner — he was my rent collector for my properties.

Her mother was living in Liverpool and used to come to London to see her brother. Petitioner joined her mother in Liverpool in 1956 — December. My friendship with the uncle and the mother had gone on for 3 years.

I married the petitioner as contained in the marriage certificate presented to the Court. I had started legal and other studies prior to the marriage — studies included Christianity and its practice.

Petitioner was in England in December, 1955 — as we married in 1956.

At time of marriage — nothing was said about the issues of marriage. I had planned to move back to the Gambia and Petitioner was willing to accompany me.

My first matrimonial home was in December, 1956 — Exeter.

Petitioner was at the time — not so religious — and had never been to church — not in my knowledge although I knew she was a Baptist. That December Xmas we spent decorating our new house. No plan as to how children were to be brought up — regarding religion — nothing arranged before marriage.

Round about end of that December — I became serious and I had been already studying Islam even before I went to England. I then reverted to my religious Islam — about December 1956.

Xd. by Court: I said prior to that I practised Christianity.

Then in 1956 I sent for my son and brother in 1958 and they stayed with us in Devon in 1959. Petitioner and I left England and came to the Gambia in 1959 to see the Cadi's Court and the set up of Islamic Law and to take up study of Islamic Law. That was in July 1959 and we stayed with my brother the Imam in his house in Bathurst. The Petitioner and I went to the Mosque — on Friday. I went inside and prayed — she stopped outside on the opposite side with her baby in the pram. I joined her and went home. We returned to the United Kingdom in September, 1959. We then shifted our home to Liverpool with Petitioner's mother. In 1960 the Imam came to England and stayed with us.

In June 1960, I performed the pilgrimage to Mecca. Later I graduated LL.B. and went to London University and read Islamic Law.

I went to the West Indies with Petitioner's mother to enrol which I did as a Solicitor and returned to England in 1963. In March I returned to the Gambia for good with all my children — including Malick aged 5 months. Petitioner decided not to come with us. On my arrival in Bathurst I had a letter

Xd. by Court: I have lost it or not saved it as I did not anticipate these proceedings.

continuing: letter said she hoped I would marry and settle down with the children. By the following Apapa — the Petitioner arrived in Bathurst with her step-father.

My children were all born in England, except the last one deceased. The birth certificates are all correct. All the children were born while I was a Muslim — and they are all Muslims according to Islamic Law.

The marriage, I contend, is valid according to Muslim Law.

The children have never attended Church, Sunday School, or receive any religious training — either Islamic or Christianity and they were not christened in England. They have not attended Church in the Gambia either. Petitioner on arrival here and as I noticed in England wanted to come to the Gambia, and came to the Gambia but in fact did not want the Gambia — or want to stay — or did not like the Wolloff way of living.

She frequently asked to be returned to England and said she would leave the children with me. The zenith came when she was expecting our child Pamela 2 years ago and she wanted to go to England due to paucity of Doctors. I paid her fare and she returned. She again wanted to go back to England and she wanted to go home for good. I refused to pay. That was when trouble started. I am very keen that my children remain in the Gambia and are Muslims, and I am determined not to return to England.

She embarked on a scheme to annoy me so that I would send her away. She threatened to send the children to Church — I refused — as they were Muslims. She still persists in going to England and annoying me.

I talked to her and explained to her that she could remain Mrs. Drammeh as my legal wife — at the same time let me have some — body — a legal wife as someone to look after children if Petitioner left me. I suggested to Petitioner that I marry a client of mine — Mrs. Mariama Jallow. Petitioner agreed. Petitioner met Mariama Jallow (the co-respondent) on several occasions and visited her and she also visited both of us in our home. So I went to Brikama and saw Mariama's parents — and the father said he was a bit perturbed because the marriage with Petitioner was a marriage with a person who came from abroad. So I visited the father (Ahmed Tijan McCauley) and he came to our house and met the Petitioner, myself and he was satisfied that my statement that I had obtained Petitioner's consent was true. He went away. On 7th April, 1966 my marriage to co-respondent was solemnised at Brikama. She was then living at 44A, Allen Street. My brother the Imam headed the ceremony and reported the marriage to Mariama at 44A, Allen Street.

The Imam, in Petitioner's presence and mine, while I did the interpretation, was told that Petitioner had agreed to the second marriage.

Petitioner knew who Mariama was both before and after the marriage when Petitioner visited her compound in Serrekunda.

In April, I suggested to Petitioner that she and some children visit Dakar to see the Negro Arts Festival. Petitioner was unable to travel — so with her consent I travelled with Co-respondent to Dakar.

I had not then paid all the dowry — only an advance — so no right to consummate marriage with co-respondent without her consent.

In Dakar, we occupied different rooms — no adultery in Dakar — nor anywhere else. We returned to Bathurst. I started electionering as a candidate. The co-respondent then moved into 11A, Cotton Street. I used that place as my election office, but sleep at Cameron Street. Petitioner used to visit Cotton Street at night.

I applied to Court when Petitioner took children to Church secretly on 17th July, 1966. I filed a motion on 23rd and she christened all the children on the 25th. I wrote to Rev. Clarke, and had a reply (Ex. 'C').

On 4th July everything was alright in our matrimonial home, when Petitioner saw the Chief Justice and complained that I had left without giving her money. She wanted a monthly allowance while I said a daily allowance, and I did not agree to a monthly. She said nothing about my marrying — The Chief Justice said rather than come to Court it would be better to settle it in chambers regarding maintenance, as I was a Barrister of the Court. On getting home — she said you will pay for this — I have asked you to send me home and you refuse — you know you have married this lady and committed bigamy. As usual, I left her — taking my papers — and went to Kanifing.

On my return, my clerk Miss Cham informed me that Petitioner had destroyed everything she could get hold of in the office — typewriter, books etc. and took away some records and cut the telephone. I phoned the Police and reported and the post office. Petitioner said office was closed. Police gave me an escort and opened the office she was still violent. Police have always provided me with escort — one night she refused to sleep in the same house — she spent the night in hospital and brought back next day in an ambulance. Her lawyer had told her it would spoil her case if she slept in same place — I moved to the children's bedroom. I left the house later for peace sake — and I am still at Half-Die.

It is not true I have earned the figures named by Jobarteh. In 1964, 1965, 1966 — my average earning was about £766 — as stated in my affidavit — legal profession and business. This is gross Expenses — as in affidavit — since I left Cameron Street — electricity bill has jumped to £15 a month — due to Petitioner's use of fan and light continuously.

Apart from provisions supplied, I pay her £7 a week and have to keep myself as well. School fees have increased.

It is true I operated Taxis and Joberteh did it for me. They were sold because they were not a proposition. I am Director of Glamour Enterprise — I have a £1 share — but it makes no profit as yet — I draw not a penny.

Our fees are not comparable to our cases we take. I have a lot of gold pledged to me for fees. Conveyancy is done by government officials themselves and we get only nominal fees. We help people by custom. If the children are sent away Court would have no control. Difficulties of Negros in England. Children have settled down in Gambia schools. I cannot afford their standard of life in England or their school fees. Petitioner has no plan and profession.

XXd. by N'Jie: In about December 1957, I became a Moslem again. married in the Christian Church, Christian ritual — it is legal in Islam.

Hearing adjourned to tomorrow.

(*Sgd.*) J. A. L. WISEHAM,
Chief Justice.

6*th December*, 1966. Parties as before

Adjourned to 7*th December*, 1966.

(*Sgd.*) J. A. L. WISEHAM,
Chief Justice.

7-12-66. Abdoulie Drammeh on same oath:

XXd. by S. A. N'Jie: I did not assume other names — other than Hamad clothing — a trading concern of mine in England. 'Alhaji' is a name and title.

South Suburban Corporation Society 99, London Road, Croydon — I have dealt with them. Looking at this — name ALBERT is wrong (Ex. 'F' admitted).

Looking at these letters (Ex. 'G' to 'G 5').

she addresses me as *Dear Charlie* but the envelope is correctly addressed. You don't need to be baptised to become a Christian. To become a Muslim you do not need any ceremony — only 2 things required — belief in God — and that Allah is a prophet. These are local customs but not necessary in Islam.

Name Abdoulie can be used both as a Muslim and as a Christian. Like my son Malick — a Muslim name — now Christian.

Only one child the eldest was born while I was a Christian, while both my wife and I were Christians.

I said no adultery before and up to Filing of petition. I admit my 2nd marriage is consumated now. I don't know how old her pregnancy is. No objection by me to a medical examination.

I live now at 45, Leman Street. I have never slept or lived at 11A, Cotton Street. I visit there at night — but not in May. Both wives are legal in law and in fact. I never came home late in mornings to Cameron Street. I ran my election campaign.

Tenancy of 11A, Cotton Street is in my name and my 2nd wife moved there a week after marriage.

Sagar N'Yang lives partly there — he has 2 wives Aret Secka also lives there. They are U.P. members — your friends — you visited them to broadcast. Election ended on 26th May, but campaign started in April. My car would be lying outside if I went.

My relation with my wife were normal during campaign. Between 7th April, 1966 and the filing of petition — she is still my client — she was my legal wife — I was happy with her. She was not sick in bed — not handicapped.

Q. Why did you wait for sexual intercourse till after the petition?

A. Because the dowry was not paid — even now it is not fully paid.

I committed no adultery. I am a lawyer. I know the legal position.

My 2nd marriage is not registered — I did not register it. I am still a lawyer.

Hamad Clothing was registered under Trade Names Act. I had some capital — also rents coming in.

I bought a sewing machine for £8 and paid a girl £2 a week — 16 years old — no national insurance paid by me for myself — but I had to pay it for my staff. (Ex. 'H' admitted) these are my accounts — wages and national insurance £156 — was for 3 years. I had a staff increase to three — and only one shop — two — one in Exeter and one in Newton Abbot. Two my girls £4 each and altogether £14 a week. In the end the business was a loss.

I only have one property now in England. I had eight properties in all — but I have sold them all except one. This is a letter from my Solicitors (Ex. 'J' admitted).
saying three properties sold and what the balance was, I cannot now remember what each property was sold for.

I admit this bundle of correspondence (Ex. 'K'). I only have one life policy now I understand my mother-in-law keeps it up — I could not keep premiums up on other policies — I have not received the surrender values yet — I can tell you value tomorrow — they have all lapsed — not two years old.

These are Insurance papers I admit (Ex. 'L' admitted). Before marriage my wife was pupil nurse — stopped work immediately after marriage — because we left Liverpool. She went back to another hospital for one month and resigned. When we returned to England in 1959 — my mother-in-law provided everything — but I later bought houses and they managed my affairs — all the properties — all the money and rents — if not sufficient they provided — ! was studying.

Business was bad. I admit these committal warrants (Ex. 'M' admitted). My mother-in-law paid £274 for my passage to Jamaica. She set me up and bought me my wig and gown and five suits, bowler hat, umbrella. She was a kind mother-in-law. She still looks after my one property.

This petition was filed on 11th July 1966. It was long after that I had sexual intercourse with my second wife — nothing still after my answer on 29th July. I had intercourse only after I left Cameron Street with my second wife. I cannot remember the date.

I cannot say when I first knew that my 2nd wife was pregnant — may be November — she went to the clinic. She had three children previously. She told me she was pregnant when she returned from the clinic. I drove her, but I did not see the Doctor. She will tell you when she comes. I cannot answer if the child she is carrying is mine or not. She will tell you.

Q. have you any suspicion that she has had anything to do with another man?

A. No she is not that type of woman and I would not have married her if I thought so.

Q. Are you satisfied that she is pregnant by you?

A. I am satisfied she is a good woman. I am not deviating from that.

R.W. 2: Ahmed Tejan McCauley *S.* on *K.*, in English.
Xd. by Drammeh: Brikama, Writing Clerk. I am step-father of Mariama Jallow.

Since March 1966, you came to me at Brikama — you met myself and my wife. You wanted to marry Mariama Jallow. I told you I heard you had a wife and it will not be possible — you said you had the consent of your wife.

So I visited you and your wife at 2, Cameron Street. That was the first time.

The wife did not know. You said "this is the father of the girl I told you".

Your wife then said "I have given you my consent. I agree" I said I was quite satisfied and I was going and told you to tell your parents to see me.

Mrs. Drammeh said she wanted to go home and you should get someone to look after the children.

You and I have prayed together in my place many times — Brikama. I am a Muslim I led the prayer many times.

XXd. by S. A. N'Jie: This woman here — Mrs. Drammeh — consented I met her in the house. I went inside — I sat this side — she sat that side.

Q. Can you describe this house?

A. I mean the parlour. What I observed was a fan — only one standing — I don't go inside to look at anything.

I never knew Mr. Drammeh was a Christian and married in Christian Church. I see this Christian marriage certificate. I don't know but I know he is Alhaji.

Q. Do you think any sane Christian wife would consent to another marriage?

A. May be I can't say.
It is true I went there once — I am not lying. I would not be interested if my daughter was not concerned.

Mr. Drammeh has not got the estate of Alpha Jallow — it is not in his hands. He died 23rd May last year. Administration started about three months ten days after. I don't know when.

Q. Why do you come to perjure yourself offered £100?

A. No I don't try to conceal any part of estate of Alpha Jallow. I came to Bathurst 30th March — was afternoon Wednesday — I did not call at Drammeh's office first — other side of MacCarthy Square. I can tell you a shop next door — but I don't know if it was open. Mrs. Drammeh did not speak to me.

RXd. by Drammeh: I saw chairs in the house. It was late so I went to the house. The administratrix is Mariama Jallow. You are solicitor of the estate.

Q. Before or after marriage.

A. Before 7th April.

R.W. 3: Bakary N'Dong *S.* on *K.*, English.
Xd. by Drammeh: 13, Cotton Street. I was employed by you £5 a month as an office helper. I was present when Mrs. Drammeh called in the office You were not there. It was Monday 4th July. She asked every one to get out. She threw down the typewriter and scattered papers and files, tore documents.

two typewriters were destroyed. She pushed the telephone of and the radio and it fell on the floor — the fan also. Then she went outside. I then locked the office and handed the key to Drammeh's elder brother. Police were informed. Later I entered and arranged the things.

XXd. by N'Jie: This was 4th July. I don't know Mariama Jallow — know nothing about the marriage. I don't know Yusefa Samba or Sajar Jagne I have lived 3 years now at 13 Cotton Street. I have never come with anything from Mariama. I don't know Mr. Macauley. I was in the office in March. We closed at 12 and returned from 3 to 5 o'clock. During this throwing things about — nobody said anything.

RXd. by Drammeh: Nil.

R.W. 4: Marie Cham, S. on *K.*, in English.
Xd. by Drammeh: I was Mrs. Jobe, 3, Clarkson Street. I am your clerk for 1 year 2 months now.
I remember Mrs. Drammeh coming and tearing the window screens and she took away some files — the 2nd time.
I am paid £10 a month.

XXd. by N'Jie: That time she was talking like an angry woman.
I know Mariama Jallow — now married to Mr. Drammeh
Mrs. Drammeh, destroyed things after the 2nd marriage.

RXd. by Drammeh: We worked for the Alpha Jallow estate.

Adjourned till tomorrow.

(*Sgd.*) J. A. L. WISEHAM,
Chief Justice.

8*th* December, 1966.

Counsel as before.

R.W. 5: Omar Jaiteh, s. on K., in Mandinka.
Cadi of Mohammedan Court, Bathurst, live at Dippakunda.
I have visited you in your house — I don't know where it is — first in your office, then in your parlour — many months ago about sunset — say about six months ago.

I had a friend Karamo Konateh's son who was in trouble. He did not know you, so I accompanied him. Drammeh was out at Bakau — but returned. I wanted to leave for prayers first and Drammeh said "could you not conduct your prayer here", Drammeh brought a big carpet, spread it and Karamo, myself and Drammeh said the prayers. I led the prayers — Drammeh participated. Mrs. Drammeh No. 1 came and stood at the door and opened her eyes — may be in surprise or not.

You once brought Mrs. Drammeh No. 2 to my house and said you married her. I was not at the marriage.

A Christian would not go to Mecca. You told me you had been to Mecca. I knew of your second trip to Mecca.

Three people can conduct a valid marriage in the Gambia.

XXd. by N'Jie: Nil.

R.W. 6.: Edmond Samuel N'Jie, s. on *B.*, in English.
Court: I have no objection, but this witness was once called."

Xd. by Drammeh: Registrar. I put in the judgment of the Cadi in Ibrima Goddard's case. (Ex. 'N' admitted). I have (Ex. 'O') application of 27-10-65 for L of Admin. for estate of Jallow. Applicant was Mariama Jallow and letters were granted in November, 1965. Your motion for your children not to go to Church was served on 23rd July. Lite N'Jie, son of S. A. N'Jie, signed for it (Ex. 'P') you saw the Chief Justice and I was asked to tell Mrs. Drammeh not to take the children to Church till the motion was heard. I told her so personally.

XXd. by N'Jie: I have visited 11A, Cotton Street between 1 and 1.30 p.m. and saw Mr. Drammeh during this case. I saw him in pyjamas.

RXd. by Drammeh: I went because your wife brought all your children and surrendered them to me, so I came to ask you to collect them.

9*th December*, 1966. Counsel as before.

R.W. 7: John Herbert Thomas, s. on *B.*, in English.
Xd. by Drammeh: Inspector of Police. On 11th July, 1966, I was on duty at Police Station. Mr. Drammeh came for help. I sent a Policeman and later followed to 2 Cameron Street. I found Mr. and Mrs. Drammeh, Eben Thomas, Mrs. Ikwah Thomas in the house — about 9 p.m. The Drammehs were having a heated argument. Mrs. Drammeh insisted Mr. Drammeh was not going to sleep in any room in the house — and she had instruction from her solicitor to do this. She said you were ungrateful — your old haggard witch of a mother — you were after Mariama' estate. Finally Eben Thomas left and returned and said he could not get at the solicitor. He was going to make arrangements for her to be taken to the hospital to calm the position. Mr. Drammeh at times applied for Police Protection.
XXd. by N'Jie: Mrs. Drammeh was accusing Mr. Drammeh of marrying a second wife. He did not dispute it. He said "you see love — I love you" — "and kept saying this love."

RXd. by Drammeh: Nil.

Drammeh "close of my case".

C.R. 1: Mariama Jallow, s. on *K.*, in Wolloff

Xd. by Drammeh: 11A, Cotton Street, former husband late Alpha Jallow — died in May, 1965 — I applied for administration. Lawyer Drammeh acted in September and I got Letters of Administration. I was living at 44, Allen Street. On 7th April, 1966, I transferred to 11A, Cotton Street. I married you on 7th April, 1966 and transferred to 11A, Cotton Street — two days later. After the marriage, I went to Dakar with Mr. Drammeh with three children from 14th to 17th April — in separate rooms — children and I in the bed room and Drammeh in the parlour. We lived together as husband and wife.

Mrs. Drammeh No. 1 visited me — it was after marriage she knew me — but the summons was taken long after. After summons she visited me.

XXd. by N'Jie: You have seen I am pregnant. I cannot say when I became pregnant. I am not a police-woman to be examined medically.

RXd. by Drammeh: Nil.

Drammeh: ".Case for Co-respondent closed"

Drammeh: "ask for time to address you"

Order

For addresses on Monday the 11th December — only on question of dissolution of marriage. If petitioner does not succeed it will be dismissed. If it succeeds, there will be a Decree Nisi — and three months later on application for Decree Absolute the question of custody and maintenance will be dealt with finally.

(*Sgd.*) J. A. L. WISEHAM
Chief Justice.

12*th December*, 1966.

Address:—

Drammeh: "in view of complication and authorities — some foreign — I submit a copy of my address —

I am addressing on behalf of co-respondent and myself.

I now proceed to read my address:—

Respondent reads the whole of his type written copy of address to the Court.

S. A. N'Jie: not called upon to address the Court.

Decision:— Decree Nisi of Dissolution of Marriage pronounced.

The following have been established from the evidence adduced in this case.

1. That the Respondent husband was domiciled in the Gambia at the time of the marriage to the Petitioner.
2. That the intention of the parties to this suit was to make their home in the Gambia when the respondent finished his studies in the United Kingdom.
3. That the Marriage was a Christian Marriage.
4. That at the time of the celebration of the marriage to the co-respondent the Respondent was a Muslim.

It is submitted that for the following reasons, the Petitioner must fail and the prayers of the respondent should be granted.

That the marriage between the Petitioner and the Respondent had become polygamous (Muslim) one at the time the respondent married the Co-respondent. And as the Co-respondent was the Respondent's legal wife there was no question of adultery; adultry not a ground for the dissolution of a marriage in Islam. The Petitioner 2nd witness, Alhaji Momodou Lamin Bah, Imam of Bathurst, an expert in Islam and indeed the interpreter of Islamic Law and religion in Bathurst (by virtue of his office) in his evidence stated that:—

(1) The respondent was a Muslim at the time of his marriage to the Co-respondent.

(2) The Respondent's marriage to the Co-respondent was valid according to Islamic Law in the Gambia.

Omar Jaiteh, Cadi of the Mohammedan Court, Bathurst, also made an identical statement to that of the Petitioner's 2nd witness, Imam of Bathurst.

This proposition of law is supported by the Privy Councils decision in Attorney General of Ceylon *v* Reid, viz. In Attorney General of Ceylon *v.* Reid (1965) 1 All E.R. 812 the Privy Council took the view that a man domiciled in a country of many races and creeds, such as Ceylon, may change his religion and therefore the system of matrimonial law to which he becomes subject. If, for example, he marries according to Christian rites and then having embraced Islam contracts a Polygamous marriage with another woman he is not indictable for bigamy under the law of Ceylon. Notwithstanding the continued existence of the monogamous marriage, the polygamous marriage is lawful. Sir Jocelyn Simon P. in Cheni *v.* Cheni (1962) 3 All E.R. 873 considered all the relevant cases on polygamous marriage and came to the conclusion that the material date at which time the nature and character of a marriage that was in issue had

to be determined was not the date of the inception of the marriage, but the date of the proceedings brought thereon. A marriage originally potentially polygamous could become monogamous: a marriage originally monogamous could become polygamous. To quote the most important passage of the judgment: "If parties marry monogamously the law will readily and reasonably presume that they will not relapse into polygamy. After all, there are no marriages which are not potentially polygamous, in the sense that they may be rendered so by a change of domicile and religion on the part of the spouses". This was a sentence which was quoted and acted upon by the Privy Council in Attorney-General of Ceylon *v.* Reid (1965) 1 All E.R. 812. "But", continued Simon P., "particularly in these days of widespread interpretation of societies in different stages of development, it is not a reasonable presumption that spouses who marry polygamously will not by personal volition or act of state convert their marriage or have them converted, into monogamous unions".

As long as something has happened which can be regarded as changing the character of a marriage by the time it comes before a Court for a adjudication, it does not matter that it commences as a polygamous marriage: and in the light of the case of Attorney-General of Ceylon *v.* Reid vice versa. Commenting on the decision of Cheni *v.* Cheni one learned writer (Webb. 1963) 12 International and Comparative Law Quarterly, at P. 675) said a change of religion by the wife might not be necessary, any more than she need be willing that the spouses domicile should be changed. The principle in Cheni *v.* Cheni was carried further by Ali. In Ali *v.* Ali (1966) 1 All E.R. 664. Cumming-Bruce J. said this. There a marriage originally polygamous, celebrated in Hyderabad between domiciled Indians of the Mohammedan faith was alleged to have become monogamous by the husband's subsequent acquisition of an English domicile of choice. The question was relevant because the husband was petitioning for divorce on the grounds of the wife's desertion and the wife was cross-petitioning on the grounds of cruelty and, as later added, adultery. The learned judge held that the allegations of desertion and cruelty were applicable to a time when the marriage was still potentially polygamous, before the husband's domicile had changed: therefore the court had no jurisdiction to entertain an allegation of such matrimonial offences. But the adultery occured after the change of domicile, at which time the marriage became monogamous. Hence, in respect of this adultery, the Court did have power to investigate and determine the issues. Consequently, a decree of divorce was granted to the wife on this ground. Therefore applying Attorney General *v.* Reid the petitioner has failed to

establish that the respondent's second marriage was void by the law of The Gambia by reason of the earlier Christian monogamous marriage and the allegation of adultry were applicable to a time when the marriage was still potentially polygamous. In English law domicile is the test of personal law in matters of status. It would seem, therefore, that English courts have progressed or advanced to the point at which the Hyde principle, with some degree of ease has been outflaked and the decision in Attorney General *v.* Reid has completely destroyed it as far as the Courts under the Privy Council hierachy, like the Supreme Court of the Gambia, are concerned. The Petition must therefore fail in this suit.

This is brought about by the greater mobility of people from countries in which polygamy was accepted as part of the law, religion and custom of the land, and the gradual independence of such countries from colonial rule, which are developments of the post 1939 war period. Professor Graveson (Conflict of Laws, 5th edition, PP 207, 209) calls it a more, liberalising policy. Dr. Cheshire in his Private International Law, 7th edition (1965), page 267 suggests that the monogamous or polygamous character of a marriage must be tested by the law of the matrimonial domicile. It follows that in this case, the husband (Respondent) being domiciled in The Gambia which recognises polygamy, and the parties having married on the basis that they would make their home in The Gambia, the English marriage was at the time of these proceedings (polygamous). In Kenward *v.* Kenward (1951) P. 124 Denning L. J.'s judgment was this: "If she while in England, marries a man of a polygamous race, intending (as the Petitioner in this case intended) to go to live with him in his homeland, knowing what marriage means in that country, there would be no condition that it should be monogamous. And she could not complain if he took there another wife. A marriage owes its existence to the lex loci contractus and is no doubt subject to that law in respect of the ceremonial formalities and other purely contractual matters. But where an English woman becomes the wife of a foreigner as the result of English ceremony she necessarily acquires his domicile. "The marriage is contracted with a view to that matrimonial domicile which results from placing herself by contract in relation of wife to the husband whom she married, knowing him to be a foreigner, domiciled and contemplating permanent and settled residence abroad. Therefore, it must be within the reasoning of such a contract — that she is to become subject to her husband's law, subject to it in respect of the consequence of the matrimonial relation and all other consequences depending upon the law of the husband's domicile" — Harvey *v.* Farnie (1882) 8 Appeal cases 43 at P. 50 per Lord Selborne. The English theory of Judicial precedent is that a decision of a judge, once given in a question of law, binds both the judge himself and subsequent judges in lower courts to decide

the same question in a similar manner — Hanbury, English Courts of Law' 1949 Impression P. 24 But any judgment of any court is authoritative as to that part of it, called the ratio decdendi, which is the principle considered to form the real basis of the decision. Obiter dicta have no binding force. As applied to Colonial Law the doctrine of judicial precedent means that decisions of the judicial committee of the Privy Council bind all Colonial Courts of whatever status or jurisdiction, e.g. The Gambia Court of Appeal and all Colonial Supreme Courts must therefore, give precedence to the decisions of the Privy Council before those of any other tribunal. Again in the recent case Fatuma Bintu Mohammed Bin Saliur Bakshuwen v. Mohammed Bin Bakhshuwen (1952) A.C. 1. P.C., the judicial committee strongly warned against the assumption that its judgments in series of cases from India on points of Mohammedan Law were confined to that law as applied or administered in India. — British Colonial Law by T. O. Elias (1962) PP. 25 et seq. Conversiion to Islam is mainly a question of fact. Islam depends upon belief but it is well known that the thought of man is not triable". No hard and fast rules can be laid down so far as external tests are concerned. In India for example circumcision is one of the tests, but it is by no means final. In Abdool Razack *v.* Aja Mohmed (1893)) 211. A. 56, 64 Lord Macnaghten said "No Court can test or guage the sincerity of religious belief". In order to be treated as a Muslim a man must profess to be a Muslim and secondly the conversion must not be colourable, profession with or without conversion is necessary. This view is supported by the judgment in the Estate of Ebrima Goddard, deceased, heard in the Cadi's Court, Bathurst a few months ago. In that case Mr. Goddard, the deceased while a Christian contracted a Muslim marriage with Miss Haddy N'Dongo a muslim girl. A few months thereafter the parties marry at the Methodist Church in Bathurst. After some 20 years Mr. Goddard converted to Islam and married Mrs. Haddy Majang a muslim lady. This marriage was a muslim one and took place in Bathurst. In 1966 Mr. Goddard died intestate. The question before the court was what share went to the two wives Haddy N'Dongo (married according to Christian rites) and Haddy Manjang (married according to Islam). The court held that as Haddy N'Dongo had stated in Court that at the time of her late husband's death she was a Muslim she was entitled to one-half of the estate and Haddy Manjang would have the other half of the Estate. It is to be noted that in this case no evidence was adduced by Haddy N'Dongo to establish that she had perform any ceremony of conversion to Islam. She was believed and her statement in Court that she was a muslim was the only thing necessary. She did not even bring forward a witness that saw her pray according to Islam. The Development of the Common Law in the Commonwealth to which I referred earlier came earlier than the case of Attorney General *v.* Reid. "The recent case of Mawji (and Laila Jhina) *v.* R. (1957) 2 W.L.R. 277, which came on appeal to the Privy Council from Tanganyika, has established that husband and wife under Islamic law, which recognises polygamy, are married for the

purpose of English law and, therefore, cannot be guilty of a criminal conspiracy. The justification for this bold but realistic finding of the judicial committee is that, since English law applies to the territory and since the law of the Territory recognises marriage by Islamic Law, the English common law principle that husband and wife cannot commit conspiracy also applies to the Tanganyika case. This conclusion is eminently libral and logical" — British Colonial Law by T. O. Elias (1962).

I now come to the case of Attorney General of Ceylon *v.* Reid .Dr. Cheshire in his Private International Law (1965 Edition P. 273) has this to say about polygamous marriages. "There was a tendency some years ago for the courts to disregard it for all purposes on the inadmissible ground that "it is a union falsely called "Marriage" (Harvey *v.* Farnie (1880) 6 P.D. 35 at P. 53) and one that merits no recognition in a Christian country. This disdainful attitude towards an institution favoured by a large proportion of the human race is, however, a thing of the past. In Baindail *v.* Baindail (1946) P. 122 at pp 127, 128; (1946) I All R. 342 at 345, Lord Greeve stressed that since the status of a person depends upon his personal law, the status of husband and wife conferred upon the parties to a polygamous marriage by the law of their domicile must be accepted and acted upon in other countries". At page 273 of the same work Dr. Cheshire says this. "In Attorney General of Ceylon *v.* Reid (1965) I All E.R. 812, the Privy Council took the view that a man domiciled in a country of many races and creeds, such as Ceylon, may change his religion and therefore the system of matrimonial law to which he becomes subject. If, for example, he marries according to Christian rites and then, having embraced Islam, contracts a polygamous marriage with another woman he is not indictable for bigamy under the law of Ceylon notwithstanding the continued existence of the monogamous marriage, the polygamous marriage is lawful".

"*The implications of this decision*", *said Dr. Cheshire* "*are far-reaching and a little disturbing.*

I submit that what Dr. Cheshire means when he says that the implications of this decision are far-reaching and disturbing is that the decision means what it says. That is to say a man in Reid's position has not offended any law civil or criminal and that the polygamous marriage is to be recognised for all purposes criminal or civil. This being so, the petitioner in this case Mrs. Drammeh No. 1) cannot succeed in her allegation that I committed adultery with the Co-respondent who is in law my wife in all respect criminal or civil and with whom I cannot commit adultery. My marriage to the Co-respondent is valid according to the law of this country. The ratio decindenda in Attorney General of Ceylon *v.* Reid are as outlined by Dr. Cheshire above. Any other matter alluded to in that decision, e.g. above adultery is an obiter dicta and does not form part of the decision and therefore is not binding on this court or any other court. Alternatively it was not argued in the case e.g. it may have been conceded.

I now come to the final stage of this address. The matters raised here are those relating to the ordinary law and practiced of Divorce in English law as opposed to conflicts of law. I submit that the Petitioner has failed to establish adultry by either the Co-respondent or the Respondent. On the contrary the evidence established the following:—

(*a*) **Consent**. The evidence of the 2nd witness for the Petitioner the Imam of Bathurst establish that the petitioner knew of and consented to the marriage between the respondent and the co-respondent.

Although the Petitioner denied it in her evidence, the evidence also establish knowledge of and consent to the same marriage. Similar evidence is to be found in the Respondent's evidence which has not been denied. The Petitioner knew and consented to the Respondent and Co-respondent visit to Dakar. The Petitioner therefore connived at any adultery found to have been committed. The leading case on cornivance is Churchman *v.* Churchman (1945) P. 44 (C.A.) which defines it. It may be said to occur when one spouse consents to the adultery of the other spouse, or corruptly and intentionally permits it. The case of Grost *v.* Grost (1952) P. 94 is specially called to your Lordship's attention.

(*b*) **Condonation.** It is submitted that there is sufficient evidence in this case to establish that the Petitioner condemned any adultery the court may find established.

The evidence of the 2nd witness of the Petitioner is in point. The Petitioner knew of the 2nd marriage which took place in April but kept quiet until July. Even so she failed to mention it to the Chief Justice when she visited him in his Chambers on 4th July, 1966 and complained that I did not talk to her that morning etc. There was a meeting in the Chief Justices' Chambers the next morning in which both the Petitioner and the Respondent were present but up till that time the Petitioner had not complained of the 2nd marriage although she knew full well that it had taken place three months earlier and had consented to the Dakar visit as well as visiting the Co-respondent several times. The Petitioner was also living with the Respondent at the matrimonial home and sharing the matrimonial bed and in all respect performing her maritial obligations. As the evidence of Inspector Thomas show she only attempted to exclude the Respondent from the matrimonial home when, according to her, her lawyer told her that if she continued to have intercourse or shared the bed with him her suit filed that day (11th July 1966) would fail. This happened three months after the marriage (which marriage she knew) to the Co-respondent had taken place.

(c) **Confessions, and admissions:** It is submitted that it is good law that a confession or admission is only evidence against the person who makes it (Rutherford v. Richardson (1923) A.C. 1, 6.

Delahunty v. Delahunty (1961) 1 W.L.R. 515 (deceased Co-respondents statement not admissible against respondent). In such cases as the present one it is the respondent's adultery which must be established. So where the court finds that the Co-respondent has committed adultery with the respondent, but that the respondent has not committed adultery with the Co-respondent the petition would fail, because it is the Respondent's adultery which must be proved for the Petitioner to obtain a divorce (matrimonial causes act, 1959, section 1 (1).

(*d*) **Corroboration:** In matrimonial cases where adultery is alleged, the party with whom the adultery is alleged to have taken place is in the same position as an accomplice. As a general rule of practice the court will not act upon the in-corroborated evidence of the petitioner.

It is submitted that:—

(1) there is not sufficient evidence to establish adultery against either the respondent or the co-respondent.

(2) if there is such evidence, the adultery is connived at and condoned by the Petitioner. The Petitioner must therefore fail.

IN THE SUPREME COURT OF THE GAMBIA

12*th December*, 1966 Divorce & Matrimonial Cause No. 9/66.

JOYCE DRAMMEH .... *Petitioner*

AND

ABDOULIE DRAMMEH..... & *Respondent*

MARIAMA JALLOW ..... *Co-respondent*

S. A. N'Jie for *Petitioner*
Respondent in Person
Drammeh for *Co-respondent.*

Decision:— Decree Nisi of Dissolution of Marriage pronounced.

REASONS FOR DECISION

The Petitioner asks for dissolution of her marriage to the Respondent.

The Petitioner deposed that she married the Respondent in 1956 at a Methodist Church in Liverpool. Thereafter, the parties lived and co-habited in London, Devon, Liverpool, and finally here in Bathurst and there are six surviving issue — all born in the United Kingdom. For all purposes she has always regarded the Respondent as a Christian and she stands by her Christian marriage. She is a Jamaican of Jamaican parents and her mother later deposed that they are domiciled in Britain and have no intention of returning to Jamaica. The Petitioner has never heard of Muslims in Jamaica and the Respondent at no time informed her that he was going to Mecca — but said he was going to the Middle East. She said that in March her children mentioned that her husband had taken a woman as his wife to Dakar for the Negro Festival. The month is obviously wrong as it did not occur till mid or end of April.

The Petitioner claims a dissolution of marriage on the ground of respondent's adultery.

The second witness for Petitioner (P.W. 2) is mother of Petitioner She said she did not know what Mecca was — that her permanent home is in Britain — and she has never known the Respondent as a Muslim.

The third witness Lamin Bah (P.W. 3) is the Imam of Bathurst and the elder brother of the Respondent. He tied the marriage of the Respondent to the Co-respondent on the 7th April, 1966. When he asked the Respondent whether the Petitioner agreed to Respondent's marriage to the Co-respondent the Respondent replied "Yes". This witness does not speak English and the Petitioner speaks nothing else.

The fourth witness (P.W. 4) Dr. Mahoney saw the Respondent at Dakar between the 14th and 24th April, 1966.

The fifth witness (P.W. 5) Salieu Jobarteh was a one time employee of the Respondent and gave evidence of the Respondent's earnings and finances and business enterprises — not relevant at this stage for the purposes of the present decision.

The sixth witness (P.W. 6) E. S. N'Jie, Registrar of this Court gave evidence of the extent of practice of the Respondent as a Barrister and Solicitor in The Gambia. The Respondent deposed that he had planned to come back to The Gambia and that the Petitioner was willing toaccompany him, but at the time of the marriage nothing was arranged as to how the children were to be brought up regarding religion. In 1959 The Respondent said he and the Petitioner visited Bathurst and they both went to the Mosque — she staying outside. This statement I judge to be false.

In March 1963, The Respondent came to The Gambia with all his children and the Petitioner followed on the next boat — being too ill to travel together. She frequently asked to return to England — an attitude inconsistent with the Respondent's evidence or argument that she ever with the Respondent's evidence or argument that she ever intended to abide by Muslim Law or agree to the Respondent's second marriage to the Co-respondent.

The Respondent also deposed that the Petitioner consented to a second marriage and that she consented to his going to Dakar with the Co-respondent. I find this evidence also to be false. The Respondent also deposed that at Dakar no sexual intercourse or adultery took place with the Co-respondent. I also find this to be false evidence. The Co-respondent herself admits it and as a matter of inference I also draw the conclusion that immediately after the 2nd marriage the respondent and Co-respondent lived together at Dakar in a room and parlour as husband and wife.

The Respondent further deposed that in December 1957, he became a Muslim again. According to him one can be a Christian without being Baptised and one can be a Muslim with a simple belief both in God and Allah — an over simplification of both religions, which accounts for the Respondent's easy conscience.

The Respondent deposed he had carried on business in Britain under a trading name and that he has possessed eight properties in all out of which he still possesses one in England — the rest having been sold.

He also went to Jamaica — his mother in law (P.W. 2) paid his passage (£274) and bought him his wig and gown and bowler hat and umbrella.

This all makes nonsense of Respondent's argument or evidence that he intended to come to The Gambia to adopt Islam and that his wife agreed to or had the intention at the time of marriage to take up a domicile in the Gambia. On the contrary, everything points to the Respondent buying properties in England, marrying in England, having all his children in England, adopting Christianity in England and even venturing to Jamaica — before he thought of coming to The Gambia.

The Respondents first witness (R.W. 2) is the step-father of the Co-respondent. At the time of the proposed 2nd marriage this witness said that he had heard the Respondent had a wife and that the second marriage would not be possible although he did not know that Petitioner was a Christian. According to him, he interviewed the parties and the Petitioner consented to the 2nd marriage. I reject the evidence of this witness in toto as completely untrue. I disbelieve him.

The next two witnesses Bakary N'Dong (R.W. 3) and Marie Cham (R.W. 4) gave evidence of how the Petitioner wrecked devastation in the Respondent's office on the 4th July, 1966 — which gives the lie direct to any false evidence of the Petitioner consenting to a 2nd marriage. The next witness Omar Jaiteh (R.W. 5) the Cadi of the Mohammedan Court, deposed how, six months ago, he prayed together with the Respondent and how the Petitioner opened her eyes in wild surprise. The next witness — E. S. N'Jie (R.W. 6) recalled, produced a judgment of the Cadi, which has no binding relevance on facts or law on this Court.

John Herbert Thomas (R.W. 7) on the 11th July witnessed a scene and quarrel between the parties when the Petitioner was accusing the Respondent of marrying another woman, which again gave the lie direct to any suggestion of consent or condonation.

Lastly, the Co-respondent admitted her Muslim marriage to the Respondent and that she lived as husband and wife with him at Dakar in April 1966.

At the conclusion of the trial, the Court was presented with a written address which the Respondent read out. The Respondent appeared to me to devote his arguments primarily to establish that he had committed no bigamy and to lay emphasis on the validity of his second marriage. He has tried to fit what he submits are facts to the law — instead of fitting the law to the facts.

I find that at the time of the Christian marriage it was never the intention of both parties to make their home in The Gambia.

The Attorney General of Ceylon *vs.* Reid (1965) 1. All E.R. 812 concerned a charge of bigamy and turned on its own facts. The issue in those Criminal proceedings was bigamy — and not adultery in divorce proceedings. The Christian marriage in this present case was monogamous and remains so and the Petitioner never had the slightest intentton of ever following the Respondent's reversion to Islam — she never even knew he was a Muslim at any material time to this Case.

The Respondent may contend that his second marriage is lawful in Islamic Law, but it is still adultery within the meaning of a Christian monogamous marriage — one man — one wife — to the exclusion of all others.

I have considered the evidence very carefully and I am quite satisfied that there has been no consent to adultery or any connivance or condonation thereof.

The Petitioner is entitled to her prayer for a dissolution.

For the above reasons a Decree Nisi was pronounced.

(*Sgd.*) J. A. L. WISEHAM,
Chief Justice.

S.C. Civ. N.B.
Vol. 50/24.

IN THE GAMBIA COURT OF APPEAL

Notice of Appeal No. 7/1966

BETWEEN:

ABDOULIE DRAMMEH..... *Appellant*

AND

JOYCE DRAMMEH ..... *Respondent*

TAKE NOTICE that the Appellant being dissatisfied with the decision of the Supreme Court of The Gambia contained in the judgment of Chief Justice Wiseham dated the 12th day of December, 1966 doth hereby appeal to The Gambia Court of Appeal upon the ground set out in paragraph 4.

AND the Appellant further state that the names and addresses of the persons directly affected by the appeal are set out in paragraph 5.

2. The order of the Chief Justice be set aside.

3. Ground of Appeal.

(*a*) Because the judgment was against the weight of evidence.

(*b*) Because the learned Chief Justice was wrong in law in finding that I committed adultery with the Co-respondent.

(*c*) Because the judgment was otherwise erroneous.

4. Relief sought from The Gambia Court of Appeal that the decision be set aside and judgment entered for the Appellant.

5. Persons directly affected by the appeal:—

MRS. JOYCE DRAMMEH,
2, CAMERON STREET,
BATHURST, GAMBIA.

DATED at Bathurst this 13th day of December, 1966.

(*Sgd.*) ALHAJI A. M. DRAMMEH,
(*Appellant*).

IN THE GAMBIA COURT OF APPEAL

Notice of Appeal No. 17/66.

BETWEEN:

ABDOULIE DRAMMEH..... *Appellant*

AND

JOYCE DRAMMEH ..... *Respondent*

AMENDED GROUNDS OF APPEAL

1. Because there is no indication on the record that the learned Chief Justice considered the need for corroboration of the evidence of the Co-respondent.

2. Because the statement of the Co-respondent is only evidence against her or alternatively the learned Chief Justice should have only acted on it if he had directed himself as to the danger of acting without corroboration.

3. Because the Judgment was otherwise erronous:—

   (1) The learned Chief Justice throughout his Judgment wrongly maintained that "Christian marriage" does refer to Christianity as a religion.

   (2) The learned Chief Justice throughout his Judgment wrongly defined the character of the marriage with the Respondent as the time it was celebrated.

   (3) The learned Chief Justice wrongly found that there was no consent to the adultery. Consent here is a matter of law.

   (4) The evidence of Dr. John Mahoney (P.W. 4) is valueless.

   (5) The learned Chief Justice was wrong in saying that the Respondent went with me to Jamaica.

4. Because the learned Chief Justice was wrong in law in finding that I committed adultery with the Co-respondent.

(*Sgd.*) ALHAJI A. M. DRAMMEH,
Appellant.

IN THE GAMBIA COURT OF APPEAL

Civil Appeal No. GCA/7/1966.
Ex. Civil Suit No. S. 9/1966.

BETWEEN:

JOYCE DRAMMEH ..... *Applicant/Respondent*

AND

ABDOULIE DRAMMEH..... 1*st Respondent/Appellant*

MARIAMA JALLOW ..... 2*nd Respondent/Co-respondent*

NOTICE OF MOTION

10 TAKE NOTICE that the Court will be moved on Wednesday the 17th day of May, 1967, at 9 o'clock in the forenoon or so soon as Counsel can be heard thereafter by SHERIFF AIDARA N'JIE, Counsel for the Applicant/Respondent, that this Honourable Court may be pleased to make an order allowing fresh evidence to be adduced to substantiate the fact that the marriage between the 1st and 2nd Respondents was consumated earlier than July, 1966, when the 1st Respondent ceased to live with the Applicant.

(*Sgd.*) S. A. N'JIE
of 19, Buckle Street,
Bathurst, The Gambia.

Solicitor for the Applicant/Respondent.

IN THE GAMBIA COURT OF APPEAL

(*Divorce & Matrimonial Cause*)

Civil Appeal No. GCA/7/1966.
Ex. Civil Suit No. S. 9/1966.

BETWEEN:

JOYCE DRAMMEH ..... *Applicant/Respondent*

AND

ABDOULIE DRAMMEH..... *1st Respondent/Appellant*

MARIAMA JALLOW ..... *2nd Respondent/Co-respondent*

AFFIDAVIT

I, JOYCE DRAMMEH, of Number 2, Cameron Street, Bathurst, The Gambia, make oath and say as follows:—

1. That I am the Applicant in this cause.
2. That on or about the 11th of July, 1966, I filed a suit for the dissolution of my marriage with the 1st Respondent, and the 2nd, Respondent was joined as Co-respondent.
3. That during the cause of the trial it became evident that the Co-respondent was pregnant but she had refused to give evidence relating to her pregnancy.
4. That on the 12th of December, 1966, Judgment was given in my favour and a decree nisi granted to me.
5. That 15 days after the Judgment was delivered, the Co-respondent/2nd. Respondent gave birth to a child at 11A, Cotton Street, Bathurst, where the Co-respondent/2nd. Respondent now lives with the 1st. Respondent/Appellant as husband and wife
6. That the said child was a normal child, I could not have foreseen when delivery would take place, since the act took place after the said Judgment was delivered.

I, THEREFORE, pray that this Honourable Court may be pleased to order that fresh evidence may be adduced to substantiate the fact that the said marriage between the 1st and 2nd Respondents was consumated earlier than July, 1966, when the 1st Respondent ceased to live with me.

(*Sgd.*) J. DRAMMEH,
Deponent.

SWORN AT BATHURST, this
29th day of April, 1967,
before me.

(*Sgd.*) E. S. N'JIE
Commissioner for Oaths

IN THE GAMBIA COURT OF APPEAL

Civil Appeal No. GCA/7/1966
Ex. Civil Suit No. S. 9/1966.

BETWEEN:

JOYCE DRAMMEH ..... *Applicant/Respondent*

AND

ABDOULIE DRAMMEH..... 1*st Respondent/Appellant*

MARIAMA JALLOW ..... 2*nd Respondent/Co-respondent*

AFFIDAVIT IN REPLY

I, Alhaji Abdallah Muhammed Drammeh, Solicitor for Advocate, Gambian, make oath and say as follows:—

1. That I am the Respondent in this cause.
2. That paragraph 2 of the Applicant's affidavit is admitted.
3. That I cannot deny or confirm paragraph 3 of Applicant's affidavit.
4. That paragraph 4 of Applicant's affidavit is admitted.
5. That I deny paragraph 5 of Applicant's affidavit.
6. That I deny paragraph 6 of Applicant's affidavit.
7. That the evidence now applied to be adduced could have been made available at the hearing in the Court below.
8. That the learned Chief Justice throughout his Judgment accepted the evidence of the Co-respondent that she had committed adultery with the appellant, e.g. "the Co-respondent admitted her Muslim marriage to the Respondent and that she lived as husband and wife with him at Dakar in April, 1966."
9. That the fresh evidence to be adduced, if true, would have had, or would have been likely to have had no determining influence upon the decision of the Court below.

I, therefore, pray that this Honourable Court may be pleased to dismiss this application.

(*Sgd.*) A. M. DRAMMEH,
Deponent.

SWORN at Bathurst, this
11th day of May, 1967.
before me,

(*Sgd.*) E. S. N'JIE,
Commissioner for Oaths.

IN THE GAMBIA COURT OF APPEAL (GENERAL SITTINGS) HOLDEN AT BATHURST ON WEDNESDAY, 17TH MAY, 1967

Civil Appeal 7 of 1967.

CORAM: SIR CECIL G. AMES *President*
G. F. DOVE-EDWIN *J.A.*
J. B. MARCUS-JONES *J.A.*

JOYCE DRAMMEH ..... *Appellant*

AND

ABDOULIE DRAMMEH..... *Respondent* 10
MARIAMA JALLOW ..... *Respondent/Co-responde nt*

S. A. N'Jie for *Applicant*
A. Drammeh in person, and for the *Co-respondent*

S. A. N'Jie:— Refers to affidavit.
15 days after Judgment a child was born.

Respondent has said that the marriage was not consummated until after the decree.

Court consults and decides to refuse the application.

Order:— The application is refused.

(*Sgd.*) C. G. AMES.

7/1966.

ABDOULIE DRAMMEH..... *Appellant/Petitioner* 20

AND

JOYCE DRAMMEH ..... *Respondent/Respondent*

No appeal filed by the co-respondent in the Court below.

Appellant in person.
S. A. N'Jie for *Respondent.*

Appellant:— Amended grounds filed.

Grounds on P. 38 abandoned: and leave asked to substitute the amended grounds.

S. A. N'Jie:— I have no objection.

Court gives leave

Appellant:—

Ground 1 (Reads it).

I have written out my arguments to assist the Court, in following it; and here it is. For all grounds. (Hands up copies of it for use of Court)

Page 32. Corroboration of the co-respondent is necessary. (Cites Davies *v.* D.P.P., and others and two Gambian Supreme Court decisions, all being set out in his written argument.)

Rayden 10th Ed. 1967 P. 180.

R. *Vs.* Basberville is quoted as an authority in divorce cases. "relevant authority."

The admission by co-respondent must be corroborated. The Chief Justice relied entirely on her evidence.

Ground 2 (Reads it).

In reply to petition, respondent denied adultery but in evidence she admitted. No corroboration; and Judge relied on it.

Ground 3 *Item* (1)

Rayden P. 92 — 94 note F on P. 94. Bowman *Vs.* Bowman. Christian marriage has nothing to do with religion. As Judge thought.

P.29 l 16—18

P.17 l 24—28. No mention of co-respondent.

Raspin *Vs.* Raspin.

Item (2)

Chief Justice held that this marriage took place in England on such and such a day, and must remain like that for ever.

Not the law to-day.

Rayden P.92

Mullah 19th Ed. P.92 note (*i*) to sec 20. John Jiban *Vs.* Abinash Chandra.

Item (3)

If there was second marriage there was no adultery, if there was consent. Consent can be inferred from four reasons which I give:— (Reads them — as set out in written argument)..

Item (4) Dr. Mahoney did not mention the co-respondent.

Ground 4 (Reads it)

Wishes of the parties does not come into it.

5th Ed. Graveson P.204.

Current Law year Book, 1962, and 1965.

Change of domicile changed their personal law, and the marriage became a polygamous one.

Adjourned until Monday 22nd at 9 a.m.

(*Sgd.*) C. G. AMES.

Monday the 22nd day of May, 1967

CORAM: SIR CECIL G. AMES *President*
G. F. DOVE-EDWIN *J.A.*
J. B. MARCUS-JONES *J.A.*

7/1966.

ABDOULIE DRAMMEH..... *Appellant*

AND

JOYCE DRAMMEH ..... *Respondent*

Resumed.

Appellant in person.

E. D. N'Jie holding S. A. N'Jie's brief, says he is not well and asks for one day's adjournment.

Ames:— There is no need to adjourn for that reason, because we are agreed that we are not calling on Mr. S. A. N'Jie, and the appeal will be adjourned to Wednesday 24th for decision.

Order:— Adjourned to Wednesday 24th for decision.

(*Sgd.*) C. G. AMES.

Wednesday the 24th day of May, 1967.

CORAM: SIR CECIL G. AMES *President*
G. F. DOVE-EDWIN *J.A.*
J. B. MARCUS-JONES *J.A.*

7/1966.

ABDOULIE DRAMMEH..... *Appellant*

AND

JOYCE DRAMMEH ..... *Respondent*

Resumed.

Parties as before.
Ames reads a judgment.
Dove-Edwin States his agreement.
Marcus-Jones states his agreement.

Order:— The appeal is dismissed, with costs.

Costs:

Drammeh: Respondent had free copy of record, and her motion in this Court was dismissed. Some hearings counsels was not here. I suggest 10 guineas would be sufficient.

(Dove-Edwin: Any in the Court below?)
Yes: being taxed. I am to pay.

S. A. N'Jie: I prefer to have them taxed.
(*In reply to Court*)

10 **Drammeh:** Respondent is physical custody of the children. I pay maintenance, £10 a week, Rent and Electricity Bill.

(*Court confers*)

Order as to costs: Respondent/Petitioner is awarded costs of this appeal assessed at 25 guineas.

(*Sgd.*) C. G. AMES.

IN THE GAMBIA COURT OF APPEAL

Civil Appeal No. 7/1966.

GENERAL SITTING HOLDEN AT BATHURST, THE GAMBIA IN MAY, 1967

CORAM: SIR CECIL GERIANT AMES — *President*
G. F. DOVE-EDWIN — *Justice of Appeal*
J. B. MARCUS-JONES — *Justice of Appeal*

ABDOULIE DRAMMEH..... *Appellant*

Vs.

JOYCE DRAMMEH ..... *Respondent*

JUDGMENT DELIVERED ON 24TH MAY, 1967.

This is an appeal by a husband against the decision of the Court below granting the wife a decree nisi of dissolution of their marriage on the ground of adultery with the co-respondent woman. The co-respondent has not filed an appeal. The case was of an unusual kind for a petition based on adultery. The appellant is a legal practitioner in this country and argued the appeal himself. He had made a lot of research into the law and provided us with extensive notes of his argument and the authorities, for which we were grateful.

The appellant abandoned the grounds of appeal filed with the appeal and amended grounds were substituted, with leave. The first two grounds can be considered together. They are:—

> "1. Because there is no indication on the record that the " learned Chief Justice considered the need for corroboration of the evidence of the Co-respondent."
>
> "2. Because the statement of the Co-respondent is only " evidence against her or alternatively the learned Chief " Justice should have only acted on it if he had directed " himself as to the danger of acting without corroboration."

It is correct that nowhere in the short judgment of the learned Chief Justice is there any direction on either of these points. Yet it is impossible that he could have overlooked them, because the appellant gave the learned Chief Justice a copy of his address to the Court, which he (the appellant) then read. On page 6 of it (the last page) items (c) and (d) raise these very points.

The Chief Justice might well have referred to them, but he did not. I attach no importance to the omission, because there was ample corroboration in the evidence of the appellant. He said:—

> "On 7th April, 1966, my marriage to co-respondent was solemnised at Brikama" (that was a Mohammedan form of marriage)...." In April, I suggested to the petitioner that "she and some children visit Dakar to see the Negro Arts "Festival. Petitioner was unable to travel, so with her consent "I travelled with co-respondent to Dakar. I had not then paid "all the dowry, only an advance so no right to consummate "the marriage with the co-respondent without her consent."

The co-respondent said in her evidence that at Dakar on that occasion she and the appellant "lived together as husband and wife". The appellant denied that there was adultery in Dakar; although his argument is that it would not have been adultery, even if there had been sexual intercourse.

Anyhow at the time of the hearing in the Court below the co-respondent was pregnant. As to this the appellant's evidence was:—

> "I said no adultery before and up to filing of petition. I admit "my second marriage" (i.e. to the co-respondent)" is consum- "mated now. I don' know how old her pregnancy is. No "objection by me to a medical examination."

And under cross examination:—

> "I cannot say when I first knew my second wife was pregnant, "may be November..... she told me she was pregnant when "she returned from the clinic..... I cannot answer if the child "she is carrying is mine or not. She will tell you.
>
> "*Q.* Have you any suspicion that she has had anything to do "with another man?"
>
> "*A.* No. She is not that type of woman and I would not have "married her if I thought so.
>
> "*Q.* Are you satisfied that she is pregnant by you?"
>
> "*A.* I am satisfied she is a good woman. I am not deviating from that."

The third ground of appeal is:—

"(3) Because the judgment is otherwise erroneous:—

"(1) The learned Chief Justice throughout his judgment wrongly maintained that "Christian marriage" does refer to Christianity as a religion."

"(2) The learned Chief Justice throughout his judgment wrongly defined the character of the marriage with the Respondent as at the time it was celebrated."

"(3) The learned Chief Justice wrongly found that there was no consent to the adultery. Consent here is a matter of law."

"(4) The evidence of Dr. John Mahoney (P.W. 4) is valueless".

There is no substance in items (1) (3) & (4). The Chief Justice used the term "Christian monogamous marriage — one man — one wife — to the exclusion of all others. "There was ample evidence to support the finding of absence of consent to the adultery. The doctor's evidence was valueless and there is nothing to indicate that any weight was attached to it.

Item (2) can be considered together with the fourth ground which is:—

"4. Because the learned Chief Justice was wrong in law in finding that I committed adultery with the Co-respondent."

It is here that the unusualness of the case comes in. The petitioner is a Jamaican. In 1956 she was living in Liverpool with her parents, and England was then their domicile of choice. On September 17th of that year she and the appellant were married in a Methodist Church in Liverpool, and so it was a Chirstian and monogamous form of marriage. The appellant said in evidence that he was then a Christian. The learned Chief Justice found it to be a fact that at that time it was not the intention of both parties to make their home in the Gambia.

It would seem consequently that England was then the appellant's domicile of choice, but there was no finding on the point. The evidence, however, was that he had been there since 1946, and had acquired eight properties, and had a business with two shops and also got called to the bar. Some of their seven children were born there. They were in Jamaica for some time (how long is not clear).

In March, 1963, the appellant returned to the Gambia, which was his domicile of origin and is his present domicile. His wife necessarily has likewise been domiciled here since then.

It is disputed when exactly he reverted to the Muslim faith, in which he had been born, but it was before 7th April, 1966, when he was married to the co-respondent at Brikama, in the Mohammedan form of marriage, which of course can be polygamous. His reversion was genuine, and in fact he is an alhaji.

"The Petitioner never had the slightest intention of ever following the respondents' reversion to Islam; she never even knew he was a Muslim at any material time to this case" — (from the judgment).

On these facts, the appellant submits that his monogamous form of marriage in England became a potentially polygamous one, which is a legal form of marriage in this country and that his marriage to the co-respondent was lawful and sexual intercourse with her (which he denied there had been before the petition) could not have been adultery.

Or, to put it in another way, he submits that his unilateral reversion to Islam took with it into Islam the petitioner whether she willed or not and changed her personal law so that her status became that of a Mohammedan wife, who has no right of complaint or redress to her husband's taking second wife.

Can this be the law of The Gambia?

This case is one of reversion to Islam: but the argument would be no different if the husband in a valid monogamous marriage had in this country under the Christian Marriage Act (Cap. 119) or the Civil Marriage Act (Cap. 120) was unilaterally genuinely converted to Islam during the continuance of the marriage.

The appellant cited a number of cases to us, including some Indian ones, of which there are no reports here. Others were:—

1. Cheni (orse Rodriguez) V. Cheni (1963: 2 W.L.R. 17).
2. Ali *V.* Ali (1966 1. All E.R. 664)
3. Mirza *V.* Mirza (The Times, July 23, 1966, noted in 1966: 7 Current Law Note 332a).
4. Attorney-General of Ceylon *V.* Reid (1965: 1 All E.R. 812). The first three concerned marriages which started off as potentially polygamous but became monogamous, in (1) owing to the happening of a certain event and in (2) & (3) owing to a change from domicile of origin to a domicile of choice in England. None of these help the argument.

The fourth, from Ceylon, is a decision of the Privy Council. In Ceylon a man could then make a monogamous marriage under the Marriage Registration Ordinance, which could be according to Christian Rites: or if he was a person professing Islam he could make a Mohammedan and therefore potentially polygamous marriage. It is probably still so. The situation here is the same.

Reid and a woman, both domiciled in Ceylon, made there a Christian form of monogamous marriage. Twenty four years later the wife deserted him. Two years later Reid and another woman were genuinely converted to the Muslim faith, and a month later again were marri d under the Muslim Marriage and Divorce Act, 1951, of Ceylon. Reid was prosecuted for bigamy, and convicted. The Privy Council held that the second marriage was not bigamous. The Privy Council were not called to decide whether the second marriage was adulterous or not. In the argument before them, however, one of the matters which was not in controversy between the parties was, "..... the first wife can if she so desires treat the second marriage as an adulterous association by her husband on which she can found a petition for divorce....."

That is exactly what the appellant argues cannot be done. Had the petitioner been converted to the Muslim faith with her husband the appellant, it might well be so. But as she was not, in my opinion, it was as far as she is concerned, an adulterious association.

I would dismiss the appeal.

(*Sgd.*) C. G. AMES,
President

I agree

(*Sgd.*) G. F. DOVE-EDWIN
Justice of Appeal

I agree

(*Sgd.*) J. B. MARCUS-JONES
Justice of Appeal

24th May, 1967.

LIST OF DOCUMENTS OMITTED TO BE PRINTED

Exhibit A — Certified copy of an entry of marriage No. TB 398469
„ B1-6— Certificates of Birth
„ C — Letter dated 8.8.66 from W. E. Prickett to A. M. Drammeh.
„ D — Affidavit of A. M. Drammeh dated 10th August, 1966.
„ E — List of Cases.
„ F — Receipt Form - South Suburban Co-op Society Ltd.
„ G1-5 Letters.
„ H — Trading & Profit & Loss Account
„ J — Letter from Hill & Coxe — Solicitors — to A. M. Drammeh Esq. dated 14.8.64.
„ K — Bundle of Correspondence.
„ L — Bundle of Insurance documents
„ M— Bundle of County Court Warrants.
„ N — Judgment in the matter of Ibrima Goddard, died dated the 4th August, 1966 from the Cadies — Court Bathurst.
„ O — Letters of Administration in the matter of Alpha Jallow deceased, P/R/36/65, granted 27th November, 1965.

1. Application by Motion for leave to appeal to the Judicial Committee of the Privy Council; Affidavit and Affidavit in reply.

2. Order.
3. Application by Motion for extension of three months.
4. Order.
5. Application by motion for and "rejecting the purported grounds of appeal of the Respondent as being out of time".
6. Decision of the Full court of Appeal.
7. Application for final leave to appeal to the Privy Council.

IN THE GAMBIA COURT OF APPEAL

Civil Appeal No. GCA/7/1966.
Ex. Civil Suit No. S. 9/1966.

BETWEEN:

ABDOULIE DRAMMEH ..... *Appellant*

AND

JOYCE DRAMMEH .. .. *Respondent*

Ground 1. *Because there is no indication on the record that the learned Chief Justice considered the need for corroboration of the evidence of the Co-respondent.*

An adulterer who gives evidence of his own adultery is in the same position as an accomplice in a criminal case; the dangers of relying on that person's unsupported evidence are great (Galler v Galler) (1954) P. 252,258; (1954) 1 All E.R. 536, 541; Senat v Senat (1965) P. 172; (1965) 2 All E.R. 505), and the court will be very slow to act on it, and should direct itself that it is unwise to do so and that it is unsafe to accept it — Galler v Galler, (1954) P. 252, 255; (1954) 1 All E.R. 536, 539. Marjoram v Marjoram (1955) P. 2 All E.R. 1, 6-7. See also R. V. Baskerville (1916) 2 K.B. 658, which has been treated as relevant authority in divorce: Statham v Statham (1929) P. 131. See further Fairman v Fairman (1949) P. 341; (1949) 1 All E.R. 938 and Simmons v Simmons (1847) 1 Rob. Ecel. 566, 573 per Dr. Lusington. Corroboration must be independent testimony which affects the accused by connecting him or tending to connect him with the offence—Senat v Senat (1965) P. 172, 175-176; (1965) 2 All E.R. 505, 507-508, per Sir Jocelyn Simon P.

Facts which are equally consistent with the truth of the testimony or the reverse are in-admissible for the purpose of constituting corroboration; it follows that evidence of mere opportunity is not sufficient to constitute corroboration, since opportunity may or may not be used—Senat v Senat (supra); Thomas v Jones (1921) 1 K.B. 22, 33; Burbury v Jackson, (1917) 1 K.B.; Galler v Galler (supra)—see also Matrimonial Causes Act, 1950 (14 Geo. 6. c 25 section 4.

In a criminal trial it is the duty of the judge to warn the jury that it is dangerous to convict upon the uncorroborated evidence of an accomplice. This practice has the force of a rule of law. The law is contained in the leading case of Davies v D.P.P. (House of Lords case) 1954 A.C. 378; (1954) 2 W.L.R. 343, (1954) 1 All E.R. 507; 38 Cr. App. R. 11.

The following is from the Law Reports:—

"Lord Simons L.C. ..... The true rule has been in my view, accurately formulated by the appellant's counsel in his first three propositions, more particularly in the third.

These propositions as amended read as follows:—

First proposition: In a criminal trial where a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the judge to warn the jury that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated.

Second proposition: This rule, although a rule of practice, now has the force of a rule of law.

Third proposition: Where the judge fails to warn the jury or, as in this case to warn himself in accordance with this rule, the conviction will be quashed, even if in fact there be ample corroboration of the evidence of the accomplice".

Illustrations of this rule in The Gambia are as follows:—

IN THE SUPREME COURT OF THE GAMBIA

Criminal Appeal No. S. 9/1964.

IBRIMA B. N'YANG .. *Appellant*

VERSUS

COMMISSIONER OF POLICE *Respondent*

Judgment

Wiseham, C. J. The appellant was convicted on three counts of stealing sentenced to a total of 18 months imprisonment. The appellant was an employee of the Co-operative Society and the precedure for despatch of nuts from up river, from Fass in this particular case, was that they would be loaded unto river craft and transported to Bathurst. When the nuts arrive here they were unleaded from the river craft unto a waiting vehicle. The function of the accused, as a representative of the co-operative society, was to weigh the nuts on the vehicle on a weigh-bridge and to record the same. The normal procedure was for two representatives of G.O.M.B. to check this and eventually counter-sign the receipt against the appellant's signature and that receipt was handed back to the canoe captain to be taken back to Fass. Thereafter the vehicle would drive off to the mill.

It would appear from the evidence that the accused's sole responsibility was to weigh the nuts and the possession thereof passed to the G.O.M.B. representatives and they would be responsible for the delivery to the mill. There is evidence in this case that on the three charges relating to over 33 tons, the groundnuts did not reach the mill. The appellant admitted he signed three relevant receipts, admitting that the nuts on all three counts had arrived at the weighing bridge. The two representatives of G.O.M.B. denied that they signed these receipts and the learned Magistrate, in his judgment, believed their evidence that they did not sign these receipts and in addition he said that from the evidence of one S. A. Sanneh that Sanneh had said that the signatures of Mr. N'Ying and Mr. John, with which he was familiar, were not on these receipts. It was pointed out that the learned Magistrate had erred in that respect because the most that Sanneh said was that) it was not the signature of Mr. N'Ying and omitted that of Mr. John.

The point now raised on appeal is that both these two representatives of G.O.M.B. should be treated as accomplices.

Now the law in this respect has been changed by section 45 of the Courts' Ordinance, 1964, which says:

> "No conviction shall be illegal or reversed or altered on appeal merely because it proceeds upon the uncorroborated testimony of an accomplice".

This is a similar provision to this law in India and the law in East Africa and the law elsewhere and in other places it has been held that the section, although perfectly valid that a conviction shall not be illegal, nevertheless *does not override the English rule of practice that before the evidence of an accomplice is accepted, the Court should warn itself of the kind of evidence it is dealing with namely, evidence to be mistrusted.* That rule of law still exists in every case where the learned Magistrate has not warned himself and is therefore not aware of the probative value of an accomplice's evidence. In other words, the rule of law is still not that *you cannot convict* on the evidence of an accomplice, but that *you should not convict* on the evidence of an accomplice without due warning.

Now in this case the two witnesses were undoubtedly employees of G.O.M.B. and they cannot be absent from duty for any length of time to allow 33 tons of groundnuts to pass through the weigh-bridge without their being aware of the transit of such a big amount of groundnuts

However I do not propose to alter or reverse the decision merely on this ground although I have drawn attention to the rule. I have another ground on which this appeal must be allowed and that is that the only evidence before the Court was that the appellant signed a receipt. It was not his duty to see that the nuts in transit were delivered at the mill nor is it the defence's duty to go and look for the driver. That is a burden which never shifts and it should have been on the prosecution to show what happened to that huge quantity of nuts. I am not satisfied of the taking and conversion to his use of this huge quantity of nuts.

For that reason I respectfully disagree with the learned Magistrate and the appeal is allowed. The Appellant is acquitted.

(*Sgd.*) J. A. L. WISEHAM,
Chief Justice
27/6/64

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"IN THE SUPREME COURT OF THE GAMBIA

NANCY LOUM .. .. .. *Appellant*

AND

COMMISSIONER OF POLICE *Respondent*

Crim. App. No. 121/65

30*th April*, 1966:

A. S. B. SAHO *for Appellant*

S. E. O'BRIEN-COKER *for Respondent.*

JUDGMENT

The Appellant along with another Accused was charged with Forgery, Uttering false documents, Obtaining money by false pretences and attempt to commit a misdemeanor on six separate Counts. The Co-accused pleaded guilty and was duly convicted and sentenced and became a prosecution witness against the Appellant.

It is conceded by learned Crown Counsel that the learned Magistrate did not warn himself that this Kebba Ceesay, the co-accused, was an accomplice. (*Provided this warning is recorded clearly* it is perfectly permissible to convict on the uncorroborated evidence of an accomplice. *In the absence of this warning or genuine appreciation of accomplice evidence the convictions must be quashed as it is impossible for an appellate Court to say that the Lower Court would have come to the same conclusion in spite of a due warning required in such cases.*

The Appellant was acquitted on the first count of Forgery. She is now acquitted on the remaining five Counts, but there remains the charge of false accounting—Charge No. B569/65.

In this charge, there is clear evidence that the entry in Ex.C read with the pension Register Ex.G—shows that the entry relating to the supposed watchman P.W.D. pensioner was a false entry. The entry was proved to be in the handwriting of the Appellant. Moreover, the Appellant confessed to Mr. Davies that she had done so. No question of accomplice evidence arises here. The conviction on this charge is confiemed, but as it now stands in isolation the Appellant's sentence is reduced to a fine of £50 or in default, Three months imprisonment.

(*Sgd.*) J. A. L. WISEHAM,
Chief Justice.
2/5/66."

S.C.C.N.B. Vol. 25/312.

In cases where sexual misconduct is alleged, as in this case, an appellate court will intervene unless the trial court expressly warned itself of the danger of uncorroborated evidence, but in other cases not, unless the absence of the warning together with other matters show that the trial court proceeded obvious to the above rules—see Current Law Year Book, 1965, section 1268 which reads as follows:—

"Constructive Desertion—Corroboration:

1. Where a matrimonial offence is established, all courts look for corroboration of the complaint's evidence of any matrimonial offence and will normally require corroboration before finding an offence on the sole evidence of the complaint. This is a rule of practice, not law, and it is open to the court to act on the uncorroborated evidence of a spouse if there is no doubt where the truth lies.

2. *In cases where sexual misconduct is alleged, an appellate court will intervene unless the trial court expressly warned itself of the danger of uncorroborated evidence*, but in other cases not, unless the absence of the warning together with other matters show that the trial court proceeded oblivous to the above rules.

In a case of constructive desertion by acts of physical and other cruelty and telling the wife to go, justices found for her and ordered maintenance without referring to the need for, or desirability of, corroboration. The husband's counsel had reminded the justices before they retired that the wife's evidence was uncorroborated. Held, on appeal, that the absence of express mention of corroboration was not enough to set aside the order. (Dictum of Sir Boyd Merriman P. in D.B. v W.B. (1935) P. 80 applied; Joseph v Joseph (1915) P. 122 explained).

Alli v Alli (1965) 3 All E.R. 480, D.C."

See also Current Law—Consolidation 1, 1947-1951, section 2703 which reads as follows:—

"*Corroboration of evidence of accomplice*: In Churchman v. Churchman (1945) P. 44, Lord Merriman, P. said: "The same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so-called". This observation has been applied to the offence of adultery as well as to an allegation of connivance in the offence of adultery. The same strictness does not apply to other matrimonial offences, for example, to desertion, cruelty or wilful neglect to provide reasonable maintenance. In such a case it is not necessary for the Court to direct itself more strictly than that the onus lies on the spouse who makes the charge to satisfy the Court that the offence is proved.

In an application to discharge a maintenance order the finding of the justices that between 1943 and 1946 the wife had continually been committing adultery, depended solely on the evidence of a man who had been staying as a lodger in the house where the wife was living, and who had stated that he had frequently committed adultery with her. Held, on appeal, the lodger's evidence was that of an accomplice, and the uncorroborated evidence of an accomplice to adultery was in-sufficient to prove that offence Fairman v. Fairman, (1949) P. 341; (1949) L.J.R. 1073, D.C. (applying Churchman v. Churchman, supra; Ginesi v. Ginesi, Section 2723; Statham v. Statham, (1926) P. 131; and R.V. Tate, (1908) 2 K.B. 680; criticising dictum of Wallington, J., in Spring v. Spring and Jiggins, Section 2788).

As recent as January, 1967, the Court of Appeal applied this rule as follows:—

"*Current Law January* (1967) *I.C.L. Section* 294 *K. Possibility of witnesses being accomplices not mentioned.* The defendant was charged with breaking and entering and with driving while disqualified at the trial the recorder rejected a defence submission that three witnesses should be treated as possible accomplices and in the course of his summing up said nothing about corroboration. The defendant was convict on two counts. Held, on the facts, that the recorder had made an unfortunate and fundamental mistake and the defendant's convictions should be quashed: R. V. CLARKE, The Times, January 18, 1967, C.A. (G.H.).

Now what has been the attitude of this Court (or W.A.C.A.) on this subject? The answer is simply that this Court has always regarded the law as outlined above. For example, I quote from 3 W.A.C.A. 7 **Rex v.** Akinpelu Ajani & Others:—

"The evidence given which implicated the appellant has already been set out. It is the evidence of two accomplices, there is no corroboration, and the evidence of one accomplice is no corroboration of that of the other.

Now a jury can only convict properly upon the uncorroborated evidence of accomplices if they have been correctly instructed as to whether or not there is any corroboration and have been warned as to the danger of acting upon such evidence.

There was no jury in this case, but it is clear that the Judge misdirected himself on the question as to whether or not there was corroboration—the fact that he called upon the appellant for his defence is suffiencent to show this. Indeed it is evident that it was never present to his mind that there was no admissible evidence against the appellant other than that of accomplices.

For this reason the conviction on count one could not be allowed to stand."

My Lord the co-respondent's evidence is to be found at page 27 of the records. As the learned Chief Justice puts it at page 31 lines 15. "The Co-respondent admitted her Muslim marriage to the Respondent and that she lived as husband and wife with him at Dakar", etc.

No where in the record is there an indication that the learned Chief Justice considered the need for corroboration of the evidence of the Co-respondent, or as the authorities cited above put it warned himself of the kind of evidence he is dealing with, namely, evidence to be mistrusted

My Lord the appeal should be allowed on this ground alone.

Ground 2. *Because the statement of the Cor-espondent is only evidence against her or alternatively the learned Chief Justice should have only acted on it if he had directed himself as to the danger of acting without corroboration.*

Confession and admission: The learned Chief Justice almost entirely based his judgment on the co-respondent's admission of her Muslim marriage to the appellant and that she lived as husband and wife with the appellant at Dakar.

My Lords, I invite your Lordships to have a quick look at the answer to the Petition filed by the co-respondent. There your Lordship will observe that she denied committing adultery of any kind with the appellant, including at Dakar. But in the actual trial she confessed or admitted her Muslim marriage and that she lived as husband and wife with the appellant at Dakar—see lines 19-22 at page 30 of the records.

A confession or admission is only evidence against the person who makes it—here the co-respondent—and not against the other party with whom the adultery is alleged to have taken place see RUTHERFORM v. RICHARDSON (1923) A.C. 1, 6; Delahunty v. Delahunty (1961) 1 W.L.R. 515 (deceased co-respondent's statement not admissible against respondent).

Where confessions of adultery are admissible in evidence, they are sometimes regarded with suspicion and corroboration is always advisable. The court will only act on an uncorroborated confession or admission, if it is satisfied beyond doubt that such confession was in fact made and that it is genuine (Warren v Warren (1925) P. 107, 110) *and if it has directed itself on to the danger of acting without corroboration—FAIRMAN v. FAIRMAN* (1949) *P.* 341, 344*; (set out below) Galler v. Galler* (1954) *P.* 252 (*C.A.*) *Senat v. Senat* (1965) *P.* 172*;* (1965) 2 *All E.R.* 505 (*Corroboration of evidence of woman named desirable*).

"*Current Law—Consolidation* 1, 1947—1951, *Section* 2703

Corroboration of evidence of accomplice: In Churchman v. Churchman (1945) P. 44 Lord Merriman, P. said: "The same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so-called". This observation has been applied to the offence of adultery as well as to an allegation of connivance in the offence of adultery. The same strictness does not apply to other matrimonial offences, for example, to desertion, cruelty or wilful neglect to provide reasonable maintenance. In such a case it is not necessary for the Court to direct itself more strictly than that the onus lies on the spouse who makes the charge to satisfy the Court that the offence is proved.

In an application to discharge a maintenance order the finding of the justices that between 1943 and 1946 the wife had continually been committing adultery, depended solely on the evidence of a man who had been staying as a lodger in the house where the wife was living, and who had stated that he had frequently committed adultery with her. Held on appeal, the lodger's evidence was that of an accomplice, and the uncorroborated evidence of an accomplice to adultery was insufficient to prove that offence Fairman v. Fairman, (1949) P. 341; (1949) L.J.R. 1073, D.C. (applying Churchman v. Churchman, supra; Ginesi v. Ginesi, Section 2723; Statham v. Statham, (1926) P. 131; and R. v. Tate (1908) 2 K.B. 680; criticising dictum of Wallington, J., in Spring v. Spring and Jiggins, Section 2788).

The law expounded in the leading House of Lords case of Davies v. D.P.P. (1954) A.C. 378 referred to in Ground 1 above is also relevant here: "Where the judge fails to warn the jury or, as in this case, warn himself in accordance with this rule, the conviction will be quashed, even if in fact there be ample corroboration of the evidence of the accomplice". There is no such warning on the records before your Lordships.

Finally I draw your Lordship's attention to the Canadian case of Robertson v. Robertson (1950) 3 D.L.R. 772; reported in current law consolidation 1, 1947-1951 section 2694 as follows:—

"*Current Law—Consolidation* 1, 1947-1951, *Section* 2694 *Adultery—Admission:* (Can.) In ROBERTSON v. ROBERTSON, (1950) 3 D.L.R. 772, the High Court of Ontario refused to grant a decree of divorce where the only evidence of adultery which grounded the petition consisted of the admissions of the respondent and the co-respondent."

Your Lordships on this ground alone this appeal should be allowed.

Ground 3. *Because the judgment was otherwise erroneous.*

"*Christian marriage*" "Christian marriage" does not refer to Christianity as a religion—Bowman v. the Secular Society (1917) A.C. 406, 464.

Therefore the learned Chief Justice's statement in his judgment in lines 16-18 at page 29.

"For all purposes she (respondent) has always regarded the respondent (appellant) as a Christian and she stands by her Christian marriage" is erroneous and lead him to arrive at his judgment. It is submitted that this state of mind and mis-statement of the legal meaning of "Christian marriage" lead the learned Chief Justice to believe that he had a duty to protect Christianity by arriving at the decision he gave. This way of thinking prevailed throughout his judgment. The so called "Christian marriage" is nothing to do with the Christian religion, and is nothing but a form of kind of marriage.

P.W. 4 *John Andrew Mahoney:* This witness's evidence is to be found at page 17 lines 24-29 of the record. The relevant part reads as follows "In April this year I was in Dakar—Hotel Majestic. I saw A. A. M. Drammeh there".

The obvious reason for calling this witness was to establish that I stayed at the Majestic Hotel, Dakar, with the co-respondent. Has this purpose been achieved. The answer is no; nothing like it has been fulfilled either.

Dr. Mahoney's evidence made no mention of the co-respondent's presence in the Majestic Hotel with me.

I submit that the law is as follows: "In cases where what is known as "Hotel evidence" is given, it is not sufficient to prove that the parties engaged a room for one or more nights, and evidence must be given to show that they actually occupied the room; even so, the court will not necessarily presume adultery in the absence of a background of an adulterous association—Raspin v. Raspin (1953) P. 230"—see page 30 "The Law and Practice of Divorce" by D. Tolstoy, 5th Edition, Sweet & Maxwell.

Dr. Mahoney's evidence is therefore absolutely valueless as "Hotel evidence" nor is it capable of corroborating any other evidence given in the court below.

Character of marriage. Throughout his judgment, the learned Chief Justice wrongly defined the character of the marriage between the espondent and the appellant as at the time it was celebrated. This is he old law. The up-to-date law is to be found at page 92, et seq of the 967 (10th Edition) of "RAYDEN ON DIVORCE" published about a month go and written about a month before the decision of the learned Chief ustice was given in the court below.

According to this leading authority: "A marriage is defined in haracter at the time it is celebrated, but that is not the decisive considera- on: if it is monogamous at the time of proceedings in the Divorce Division, albeit potentially polygamous at its inception, the court has urisdiction to adjudicate upon it. A change of personal law may convert a otentially polygamous marriage into a monogamous one", etc.

The authorities cited in support of these propositions include the ading Privy Council of case ATTORNEY GENERAL of Ceylon v. REID 1965) A.C. 720; 1965) 1 All E.R. 812 P.C. (monogamous marriage ollowed by a change of faith and of personal law; valid later polygamous arriage) a case at four with the present one. I submit that the law as I nderstood it both from this must recent leading Text-book on the subject, n the cases (e.g. Cheni v. Cheni (1965) and as expounded in the legal eriodicals, is that a marriage may start a Christian one i.e., monogamous, ut by a change of personal law irrespective of the wishes and intention f the parties to the marriage) later changed to a polygamous one and ice versa ATTORNEY GENERAL of Ceylon v. REID (1965), Mirza v. Mirza

1966) Times July 23rd.

The learned Chief Justice's finding in the court below that "The

espondent may content that his second marriage is lawful in Islamic law, ut it is still adultery within the meaining of a Christian monogamous arriage—one man—one wife—to the exclusion of all others" does ot represent the law to-day and is therefore erroneous Cheni v. Cheni 1962); ATTORNEY GENERAL of Ceylon v. REID 1965 A.C.

Whether a marriage is monogamous or polygamous is to be tested y the court at the time of the proceedings, not at the time of the elebration of the marriage in question as the learned Chief Justice rongly held when he gave the decision. See MIRZA v. MIRZA (1966), ne Times, July 23, 1966 set out below and referred to at PP 94 and 95 AYDEN ON DIVORCE 10th Edition 1967.

(1966) 7 *C.L. i.e man Current Law Monthly Publication for July*, 1966

'(1966) 7 *C.L.*

Polygamous Marriage — Change of Domicile. The parties were married in Calcutta in 1957 and both were Muslims. That marriage was potentially polygamous; but by the marriage contract the husband could not marry a second time without the Wife's permission, which she had not given. The parties had acquired a domicile of choice in England by the time the Wife filed a petition for divorce on the ground of cruelty, and there was no evidence that it had been abandoned. The suit was undefended. Held, (as to jurisdiction), (1) *that the material date was the inception of proceedings:* (2) *that by acquiring a domicile of choice in England the husband had precluded himself from taking a further wife and his potentially polygamous marriage had been converted thereby into a monogamous one: and* (3) *that as cruelty was proved a decree nisi should be pronounced.* Quaere, whether the wife's refusal to allow her husband to take a second wife would have been sufficient to convert the marriage to a monogamous one. (Cheni (orse. Rodriguez) v. Cheni (1962) C.L.Y. 1042; Ali v. (1965) C.L.Y. 1261 applied): MIRZA v. MIRZA, The Times, July 23, 1966, Stirling J. (J.B.G.)".

Thus he was wrong when he maintained as follows: "For all purposes she has always regarded the respondent as a Christian and she stands by her Christian marriage". As stated above "Christian marriage" has nothing to do with religion; it is simply a form of marriage. Again, the respondent's wishes or intention is irrelevant in deciding or defining the character of the marriage between the respondent and the appellant. Therefore, when that marriage became polygamous as far as I was concerned (namely at the time the muslim marriage between the co-respondent and the appellant was celebrated or at the time the proceedings in the court below were heard) the question of the intention of the respondent did not arise to be considered, as the learned Chief Justice wrongly maintained in his judgment.

The case of Attorney-General of Ceylon v. Reid, a decision of the Privy Council, is also contained in section 1968 Current Law Year Book 1965 as follows:

"Current Law Year Book 1965

1868, *Polygamous marriage:* (Penal Code of Ceylon, Legislative :nactments of Ceylon 1956 Rev., C 19, s. 362B.)

A Christian monogamous marriage contracted in ceylon does not rohibit a change of faith and of personal law on the part of a husband :sident and domiciled there; he has an inherent right to change his :ligion and personal law and so to contract a valid polygamous marriage, ' recognised by the laws of Ceylon, notwithstanding an earlier subsisting ıarriage.

R, the respondent, domiciled and resident in Ceylon, while a :hristian marriage a Christian woman according to Christian rites. ubsequently, R and another woman were converted to the Muslim ıith and were duly married under the provisions of the Muslim marriage nd Divorce Act notwithstanding that the earlier marriage subsisted. :'s conviction of bigamy under s. 362B of the Penal Code of Ceylon ras quashed by the Supreme Court of Ceylon. Held, dismissing the ppeal of the Attorney-General of Ceylon, that R had the right to change is religion and personal law and so to contract valid polygamous marriage :cognised by the laws of Ceylon nothwithstanding his earlier subsisting ıarriage. (Dicta of Innes J. (1866) 3 Mad. H. C. Ruling VII approved; :mperor v. Lazar (1907) I.L.R. 30 Mad. 550 distinguished; Datta v. en, I.L.R. (1939) 2 Cal. 12; Khanum v. Irani (1947) A.I.R. (Bom.) 72; and Cheni (orse. Rodriguez) v. Cheni (1962) C.L.Y. 1042 considered).

ATT.—GEN. (CEYLON) v. REID (1965) A.C. 720; (1965) 2 W.L.R. 71; (1965) 1 All E.R. 812, P.C."

ATT.—GEN. of Ceylon v. Reid (1965) is the reverse of Cheni v. :heni (1962). That is to say that whereas Cheni v. Cheni (1962) establish hat a polygamous marriage be converted (for example by a change of omicile) into a monogamous one, ATT.—GEN. v. Reid (1965) establish hat a monogamous marriage may be converted into a polygamous one, .g. by a change of faith or personal law.

The case of John JIBAN v. ABINASH CHANDRA (1939) 2 CAL. 12 as iven below is relevant:

JOHN JIBAN V. ABINASH CHANDRA (1939) 2 CAL. 12, Held n Calcutta that a married Christian domiciled in India, after his onversion to Islam, is governed by MUHAMMADAN LAW, and is entitled, luring the subsistence of his marriage with his former wife, to contract a alid marriage with another woman according to Muhammadan rites.

Consent to adultery It is submitted that the question whether the respondent consented to any adultery or not, in this case is a matter of Law. This is a Sexual Offence and there the test as to consent is the same as consent in Sexual Offence in the Criminal Law e.g. as in rape. Briefly the law is that the victim need not say "Yes I agree to what may take place". Consent will be inferred if the Victim (here the Respondent) behaved in such a way that it can be inferred that he did not raise any objection to what took place or was in different about it.

I submit that the following action on the part of the Respondent as declared in the record when take together is tantamount to consent to the adultery alleged by her.

(1) Visiting the co-respondent's compound at Serrekunda with me and alone line 13-16 page 14 of the record.

(2) Allowing the children to go to Dakar with the co-respondent lines - page of the records.

(3) Knowing the marriage between the co-respondent and the appellant in April and not doing anything such as filling a petition until July 11th 1966.

(4) Visiting the Learned Chief Justice in his Chambers on 4/7/66 about maintenance and not saying anything about the marriage between the Co-respondent and the Appellant to him since this should have been her main Grievance and the cause of needing maintenance.

Ground 4. *Because the learned Chief Justice was wrong in law in finding that I committed adultery with the co-respondent.*

It is submitted with the greatest respect to the leaned Chief Justice that his finding that I committed adultery with the co-respondent does not represent the law to-day and is therefore erroneous. It is not disputed that (1) the material date for considering whether my marriage to the respondent was monogamous or polygamous was the inception of the proceedings in the Courts below (2) my domicile at the time of the proceedings had been in The Gambia—see MIRZA v. MIRZA, the Times, July 23, 1966, set out below; also Attorney-General of Ceylon v. Reid, 1965, and other relevant cases set out below:

"(1966 7 *C.L. Current Law*
i.e. Current Law monthly publication
for July, 1966

Polygamous Marriage—Change of Domicile: The parties were married in Calcutta in 1957 and both were Muslims. That marriage was potentially polygamous; but by the Marriage contract the husband could not marry a second time without the Wife's permission, which she had not given. The parties had acquired a domicile of choice in England by the time the Wife filed a petition for divorce on the ground of cruelty, and there was no evidence that it had been abandoned. The suit was undefended. Held, (as to jurisdiction), (1) that the material date was the inception of proceedings; (2) that by acquiring a domicile of choice in England the husband had precluded himself from taking a further wife and his potentially polygamous marriage had been converted thereby into a monogamous one; and (3) that as cruelty was proved a decree nisi should be pronounced. Quaere, whether the wife's refusal to allow her husband to take a second wife would have been sufficient to convey the marriage to a monogamous one. (Cheni (orse. Rodriguez) v. Cheni (1962) C.L.Y. 1042; Ali v. Ali (1965) C.L.Y. 1261 applied): Mirza v. Mirza, The Times, July 23, 1966, Sterling J. (J.B.G.)"

"*Current Law Year Book*, 1965

1868. *Polygamous Marriage:* (Penal Code of Ceylon, Legislative Enactments of Ceylon 1956 Rev., c. 19, s. 362B).

A Christian monogamous marriage contracted in Ceylon does not prohibit a change of faith and of personal law on the part of a husband resident and domiciled there; he has an inherent right to change his religion and personal law and so to contract a valid polygamous marriage, if recognised by the laws of Ceylon, notwithstanding an earlier subsisting marriage.

R, the respondent, domiciled and resident in Ceylon, while a Christian married a Christian woman according to Christian rites. Subsequently, R and another woman were converted to the Muslim faith and were duly married under the provisions of the Muslim marriage and

Divorce Act notwithstanding that the earlier marriage subsisted. R's conviction of bigamy under s. 362B of the Penal Code of Ceylon was quashed by the Supreme Court of Ceylon. Held, dismissing the appeal of the Attorney-General of Ceylon, that R had the right to change his religion and personal law and so to contract a valid polygamous marriage recognised by the laws of Ceylon notwithstanding his earlier subsisting marriage. (Dicta of Innes J. (1866) 3 Mad. H. C. Rulings VII approved; Emperor v. Lazar (1907) I.L.R. 30 Mad. 550 distinguished Datta v. Sen, I.L.R. (1939) 2 Cal. 12; Khanum v. Irani (1947) A.I.R. (Bom.) 272; and Cheni (orse. Rodriguez) v. Cheni (1962 C.L.Y. 1042 considered).

ATT.—GEN. (CEYLON) v. REID (1965) A.C. 720; (1965) 2 W.L.R. 671; (1965) 1 All E.R. 812, P.C."

"*Current Law Year Book* 1962

1042. *Potentually Polygamous marriage:* 1. The English court has jurisdiction to try a nullity suit if the purported marriage is monogamous at the time of the proceedings, even if potentially polygamous when contracted.

2. As regards marriages between close relations, the rule is apparently not that stated in Story's Confict or Laws (1st ed.), p. 188, that no Christian country will recognise a marriage deemed incestuous by all Christendom, but rather that the court will follow the law of the domicile unless it would be unconscionable to do so.

H. and W. were Sephardic Jews domiciled in Egypt, who married in Egypt in accordance with Jewish rites, at the same time entering into a binding agreement that H. should not take a second wife even if W. did not bear him a child within ten years, except with the authorisation of the Rabbinical courts. A child was born within two years and thereupon the marriage became monogamous by Jewish law, which was the relevant law according to Egyptian law. H. was W's maternal uncle, but a marriage between uncle and niece was not prohibited by Jewish law. H. and W. became domiciled in England and W. brought a nullity suit. Held, that the court had jurisdiction to hear it as at the date the proceedings were brought the marriage was monogamous, and that the marriage was valid and recognised by the English courts since, though between uncle and niece, it was good by the law of the parties' domicile, which is the proper law by which capacity to marry is to be tested and was neither contrary to the general consent of Christendom or of civilised countries, nor to public policy nor to the conscience of the English court: CENI (ORSE. RODRIGUEZ) v. CHENI (1963) 2 W.L.R. 17; (1962) 3 All E.R. 873, Sir Jocelyn Simon P. (applying observations of Lord Merriman P. in Sowa v. Sowa (1961) C.L.Y. 2802 and Ohochuku v. Ohochuku) (1960) C.L.Y. 973)".

"IN THE SUPREME COURT OF THE GAMBIA

Civil Appeal No. 15/16

HADDY MANJANG .. .. *Appellant*
AND
HADDY NDONGO .. .. *Respondent*

Civil Appeal No. 16/66

HADDY GODDARD .. .. *Appellant*
AND
HADDY MANJANG .. .. *Respondent*

Civil Appeal No. 3/67

MARY GODDARD .. .. *Appellant*
AND
KHADI MANJANG *Respondent*
KHADI NDONGO

E. D. N'Jie, Esq., for Haddy Manjang.
A. A. M. Drammeh, Esq., for Mary Goddard.

Judgment:

These are three appeals from the decision of the Bathurst Mohammedan Court—Civil Appeals Nos. 15 and 16 of 1966 and No. 3 of 1967. The three appeals have been consolidated and heard together as they arose out of the same case and concern the same estate of one Ebrima Goddard, deceased.

It is not in dispute that in 1913, Ebrima Goddard was a Christian and he took unto himself his first wife Haddy Goddard, a Muslim. The marriage was a Muslim marriage and there was one issue of the marriage, namely Mary Goddard, born 1920 and who became a Christian at puberty.

Then, in 1933, this first wife converted to Christianity and married Ebrima Goddard by going through a civil marriage, this first wife is also known as Khadi N'Dongo Goddard.

Then, in 1954, Ebrima Goddard converted to Islam and married his second wife Khadi Manjang, a Muslim, according to Muslim rites and this marriage was duly registered as a Mohammedan marriage.

Seven months later, the first wife Khadi N'Dongo reverted to Islam.

The decision of the two assessors, who sat in the absence of the Cadi, was that the estate of the deceased husband should be divided equally between the two wives and that the daughter Mary Goddard was not entitled to share in the estate. All three parties have appealed.,

The assessor or Tamsir, who sat with me on appeal, was of opinion that the second wife was the only person entitled to the estate, but I am not bound by his opinion. The first question is the position of Mary Goddard and whether she has a right to inherit. The decision of the Court below that the 1913 marriage was not valid either from the Christian or Muslim point of view and that Mary Goddard was therefore illegitimate. It was urged on appeal that the subsequent Civil marriage in 1933 legitimised the previous issue of the same parents, but the legitimacy Act of 1926 was never applied to The Gambia. Mr. Saho for this appellant, however urges with some force that by section 19 of the law of England (Application) (Amendment) Act of 1964 further amended by the Revised Edition of the Laws (Amendment) Act 1966, the jurisdiction conferred upon the Supreme Court in matrimonial causes and proceedings "may be exercised by the Court in conformity with the law in force in England immediately before the 18th day of February, 1965. The Legitimacy Act of 1926 would therefore now apply, in matrimonial causes, to the Gambia, if not as a statute of general application, it would certainly apply as being the law in force before the 18th day of February 1965 (the day of the Gambia's Independence as a Nation). In spite of this concession of her status, the appellant Mary Goddard is a Christian and she cannot succeed by inheritance to the estate of a Muslim. Ebrima Goddard died a Muslim and I accept that finding of fact by the lower court, The appeal of Mary Goddard is dismissed.

The second question is the position of Khadi N'Dongo the first wife and whether whe has a right to inherit. The law on the subject was dealt with thus—"Imam Malick states in his "Record" (Al-Mudawwana) and is followed by Ibn Arafat and other well known jurists of the Maliki Sect that it is permissable with "censureship"—but the period between their conversion must not exceed one month. Abu Mahdi goes against this and says the period can be longer, but does not put a limit to it. (Sheik Khalil—the "Synopsis"—Jawahir page 282). In the "Rigalat" (First steps in Muslim jurisprudence) of Al-Khairwani page 18 "if the man is converted, while the woman remains a scriptual woman, his right to his wife continues."

What happened was that the period was seven months, but the "Synopsis" adds the proviso that "it is imperative to recall the woman to Islam after her husband's conversions, if she did, well and good, if not then the marriage should have been dissolved."

The Lower Court went on to find as a fact that after her conversion the husband and first wife lived together as Muslims and the marriage endured until the deceased breathed his last. I accept this finding both on the facts and evidence and the law set out.

Mr. Drammeh for this appellant has urged that the Christian marriage was never dissolved and that the deceased died a Christian is an alternative case—and that therefore this appellant is entitled to the whole estate. An alternative case is only permissible when it is not consistent and contradictory and I must reject it in this case.

The appeal of the first wife is dismissed.

The third question is the position of the second wife Khadi Manjang and here it is abundantly clear that her Muslim marriage to converted muslim husband was valid and that she is entitled to inherit. Her appeal however as being entitled to the whole estate is dismissed. According to Muslim law, both wives take a quarter share and there being no issue the remaining three quarter share should strictly go to the "Baitul Mal", but there being no such institution in The Gambia—the three quarter share is to be divided between the two wives equally.

Accordingly both wives will share the estate in equal share.

No costs awarded.

(*Sgd.*) J. WISEHAM,
C.J."

3rd March, 1967
S.C. Civ. N.B.
Vol. 50/292.

Therefore, as a Muslim domiciled and resident in The Gambia, and as my personal law is Islam, I am entitled to marry the co-respondent notwithstanding that the earlier marriage (which had became polygamous) with the respondent subsisted. Both the Cadi, Mohammadan Court Bathurst and the Imam of Bathurst (called by the respondent in the court, below have stated that my marriage to the co-respondent is legal in the Gambia.

Therefore, any maritial relation between the appellant and the co-respondent cannot be styled adultery as the parties are husband and wife according to the laws of the Gambia, adultery not a ground for the dissolution of a marriage is Islam. This is the law in 1967, to be gathered from the following sources:

1. "*Rayden of Divorce 10th Edition* 1967. This leading work was published *after* the learned Chief Justice gave his decision in the Court below and was not, therefore, available during the proceedings.

At page 92 under the heading "(B) Monogamy and Polygamy" is to be found the following statement of this new law:

"Christian marriage" does not refer to Christianity as a religion—BOWMAN v. THE SECULAR SOCIETY (1917) A.C. 406, 464..... A marriage is defined in character at the time it is celebrated, but that is not the decisive consideration if it is monogamous at the time of proceedings in the Divorce Division, albeit potentially polygamous at its irriception, the court has jurisdiction to adjudicate upon it—Cheni (otherwise Rodriguez) v. Cheni, (1965) P.85, 92, (1962) 3 All E.R. 873, 878; Ali v. Ali (1966) 1 All E.R. 664; (1966) 2 W.L.R. 620; Lee v. LAU (1964) 2 All E.R. 248, 252; (1964) 3 W.L.R. 750; *Attorney General of Ceylon v. Reid* (1965) *A.C.* 720; (1965) 1 *All E.R.* 812, *P.C.* (*monogamous marriage followed by change of faith and of personal law valid later polygamous marriage:* Mirza v. Mirza (1966) The Times, July 23rd". Your Lordships, at page 180 of this work is to be found the following statement relating to corroboration— para. 112 note (d) "see also R. v. Baskervill (1916) 2 K.B. 658, which has been treated as relevant authority in Divorce," etc., At page 93 of this work Attorney-General of Ceylon v. Reid (1965) A.C. 720 has been treated by the authors of "Rayden on Divorce" 1967 (10th) Edition as relevant authority in Divorce. This case is the new relevant authority in divorce that a man domiciled in a country of many races and creeds, such as Ceylon, may change his religion and therefore the system of matrimonial law to which he becomes subject. If, for example, he marries according to Christian rites, and then, having embraced Islam contracts a polygamous marriage with another woman, notwithstanding the continued existence of the monogamous marriage, the polygamous marriage is lawful. Therefore, if the polygamous marriage is lawful any maritial relation as in this case, between the husband of the Christian marriage and the wife of the polygamous marriage is *NOT ADULTERY.*

3. Cheni v. Cheni (1965) P. 85 show that the intention of the parties to a marriage at the time of the marriage is in fact irrelevant to its legal character. So is their wishes.

Cheni v. Cheni (1965) P. 85 is the authority for the propositions: A marriage originally polygamous or potentially polygamous could become monogamous.

Attorney-General v. Reid (1965) is the reverse of Cheni v. Cheni (1965). That is to say in Cheni v. Cheni (1965) a potentially polygamous marriage had by the date of the proceedings become monogamous. In Attorney-General of Ceylon v. Reid (1965) a marriage which started as a monogamous one had turned into a polygamous marriage at the time of the proceedings. I must emphasize in no uncertain terms that the reasoning of the Privy Council in Attorney-General v. Reid (1965) only applies to countries like Ceylon and The Gambia, that is to say, the decision is only binding on courts under the hierachy of the Privy Council, like The Gambia Court of Appeal.

4. *The Conflict of Laws by R.H. Graveson 5th Edition* 1965: Page 203 "*A. THE NATURE OF CHRISTIAN MARRIAGE:* English matrimonial law is founded on the conception of the christian marriage. The classic exposition of this concept is found in Hyde v. Hyde (1868) R. 1 P. and D 130.

In fact it is maintainable that the concept of "Christian marriage" should be confined to the purpose for which it was introduced in Hyde v. Hyde, namely, the subject matter of matrimonial jurisdiction. That precedent does not of itself justify the application of the concept either to the formation or the recognition of marriage in the absence of matrimonial proceedings.

Note 14. To confuse the issue, it appears from Ohochuku v. Ohochuku (1960) 1 W.L.R. 183 that a Christian marriage may nevertheless be polygamous, but as such would not be within the divorce jurisdiction of the High Court.

This work was published in 1965, before the decision in Attoreny-General v. Reid (1965) but it can be seen that most legal writers had anticipated that decision.

5. *Cases decided in India.* Attorney-General v. Reid (1965) itself contains numerous authorities decided in India before that case all of which laid down the law as their Lordships stated in their decision in Attorney-General of Ceylon v. Reid (1965).

6. *John Jiban v. Abinash Chandra* (1939) 2 *CAL.* 12. Held in Calcutta that a married Christian domiciled in India, after his conversion to Islam, is governed by Muhammedan Law, and is entitled, during the subsistence of his marriage with his former wife, to contract a marriage with another woman according to Muhammadan rites.