

or her former marital position. . . . But nothing short of full reconciliation will suffice; therefore if the guilty party does not consent to be forgiven there is no condonation."

Applying this yardstick to the circumstances of this case, it seems clear to me that even if the petitioner had the intention to forgive and remit his wife's wrong, she was certainly not reinstated into her former marital position and this was principally due to the contumacious and unwise behaviour of the wife who, knowing that she was on trial, so to speak, made it appear as if she did not care to be forgiven. How else can one explain her retort to her husband on the occasion of the visit of her brother or, if her story is to be believed, her deliberate refusal to have sexual intercourse with the petitioner, the one thing which may have been conclusive proof of condonation? It was therefore not a matter of surprise to find that the relationship so soon after her return home deteriorated to such a degree as to account for these proceedings.

In my view, therefore, the husband must succeed and I accordingly declare that the marriage had and solemnised between the parties on April 23rd, 1960 be dissolved by reason of the adultery committed by the respondent on June 20th, 1963. I therefore grant the petitioner a decree nisi. In all the circumstances there will be no order as to costs.

Decree nisi granted.

HARDING v. WILLIAMS and PELHAM

SUPREME COURT (Bankole Jones, C.J.): June 5th, 1964
(Civil Case No. 27/64)

- [1] **Tort—defamation—slander—slander of women—statements imputing unchastity:** Imputations of sexual immorality and incestuous conduct on the part of a woman will constitute imputations of unchastity within the meaning of the Defamation Act, 1961, s.3, and will therefore be actionable *per se* (page 64, lines 26–35).

The plaintiff brought an action against the defendants to recover damages for slander.

The plaintiff contended that the defendants slandered her by imputing that she was a person of immoral habits and guilty of

incestuous conduct. The defendants denied the use of the words alleged to have been spoken by them.

Statute construed:

Defamation Act, 1961 (No. 32 of 1961), s.3:

The relevant terms of this section are set out at page 63, lines 16-18.

McCormack for the plaintiff;

Benjamin-Wyndham for the defendants.

BANKOLE JONES, C.J.:

The plaintiff claims damages for slander against the defendants jointly and severally. The claim is brought under recent local legislation, the Defamation Act, 1961. Section 3 of this Act reads as follows:

"Words spoken and published after the passing of this Act which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable. . . ."

The allegation of slander and the words relied on as constituting such slander are to be found in para. 3 of the statement of claim which reads:

"On December 16th, 1963, the defendants falsely and maliciously spoke and published of and concerning the plaintiff, the following words:

'Lord have mercy pan Alice, me nor day keep waite man and syrian man dem. Me papa nor take me virgin oh. Are nor born pekin for me papa oh. Ah bo, you nor shame, me and me mamma nor keep one man.'

The said words were published in the public highway at Peeler Street in the Village of Wellington in the hearing of Abayomi Hall, Abiose Jones, Joseph Williams, Claudius Harding, a Mr. Norman and numerous persons who were then standing by."

Paragraph 4 sets out the imputation of the words complained of as follows:

"The defendants meant by the said words that the plaintiff was a person of immoral habits and had been guilty of incestuous and dishonourable conduct, and also was a person unfit to associate with respectable persons."

At the trial, the plaintiff gave evidence and called only Abayomi Hall and Abiose Jones. Their evidence, taken as a whole, was that

the words complained of, or words substantially of the same effect, were used by the defendants of and concerning the plaintiff. According to the plaintiff, both defendants used these words or substantially the same words. According to the witnesses, they were used only by the first defendant. They did not hear the second defendant use the words alleged or any such words because they were not present at the time it was alleged by the plaintiff that they were so used by her.

The defendants in their pleading deny the use of any of the words imputed to them. However, in her evidence the first defendant swore in examination-in-chief that she said to the plaintiff, among other things: "Thank God, you nor tell me say nah me papa ah born pekin for." The second defendant and the witness Cecilia Wilson also swore that the first defendant used these same words or words to the same effect to the plaintiff.

It was conceded by counsel on both sides that the words alleged used were in law and in fact slanderous and that it was a question of fact for the court to decide whether they were used by the defendants, or either of them, of and concerning the plaintiff. I find no difficulty in coming to the conclusion on the evidence that the plaintiff has proved her case. I accept her evidence without reservation as well as that of her witnesses. The first defendant and her witnesses admitted her use of part of the offending slanderous words and it appears to me proved that she used not only these words but the rest of the words alleged by the plaintiff of and concerning her. I find that she used all the words alleged by the plaintiff, and substantially the same words were used by the second defendant with the clapping of hands in derision and in order to attract public attention to the plaintiff for the purpose of bringing her to public scandal, hatred, ridicule and contempt and clearly imputing that the plaintiff was a person of immoral habits and has been guilty of incestuous conduct.

There now remains the question of the assessment of damages. In all the circumstances, I think this was a wicked slander and I award the plaintiff the sum of £150 jointly and severally against the defendants. On the question of costs, I award the plaintiff the sum of 35 guineas.

Judgment for the plaintiff.