CHRISTIANA MUNAH SIO, Appellant, v. **FRANCIS K. SIO**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 14, 1988. Decided: July 29, 1988.

1. A party who alleges a fact must prove it at the trial by the production of evidence, where the fact is denied by the opposite party.

2.Persons (a) who ought to be made parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitable affected by the judgment in such action, shall be made plaintiff or defendant therein.

3. Party litigants should not expect the court to do for them that which they are obligated to do for themselves.

4. It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage of justice.

5. A party litigant has the right to pray for judgment during trial, which the court must grant after the close of the evidence presented by an opposing party with respect to a claim or issue, if supported by law or the evidence, or at any time on the basis of admission.

6. If the court is satisfied that there is no genuine issue raised as to any material fact in a trial, it may grant summary judgment to any party entitled to it.

7. A plea which both denies and justifies is evasive and should not be encouraged or allowed.

8. A husband or wife may secure a judgment divorcing the parties and dissolving the marriage where as a result of incompatibility of temper the defendant is so extremely quarrelsome and intolerably pugnacious to the plaintiff that life together between plaintiff and defendant becomes dangerous to the plaintiff.

Appellee filed an action of divorce against the appellant, alleging incompatibility of temper by the appellant which placed his life and safety in danger. In her answer, the

appellant admitted that she and the appellee were incompatible, but she blamed this development on the appellee whom she accused of having a relationship with another woman. The appellant did not name the other woman, but promised to reveal the name at the trial.

After the evidence had been presented, the jury returned a verdict in favor of the appellee, declaring him entitled to a divorce. Judgment was rendered thereon, following the court's denial of the appellant's motion for a new trial. From this judgment, the appellant noted exceptions and prayed for an appeal to the Supreme Court.

The Supreme Court affirmed the judgment of the lower court, holding that the appellant had admitted, both in her answer and testimony, that she and the plaintiff were incompatible, a ground which the statute specifies as a basis for a divorce. The Court rejected the appellant's claim that another woman was involved in the problems existing between the appellant and the appellee, noting that not only had the appellant failed to name the woman in her answer, but that she had also not named the woman in her testimony or request that the woman be joined as a party to the suit as permitted by law. The Court observed that the appellant was obligated to produce evidence to substantiate her allegations of another woman and that having failed to do so, her defense could not be sustained.

The Court also dismissed appellant's other contentions of alleged errors by the trial judge in sustaining and overruling objections raised to certain questions propounded to witnesses. Finding that the trial judge committed no errors, the Supreme Court *affirmed* the judgment of divorce.

Stephen Dunbar and *Joseph Findley* appeared for appellant. *Philip A. Z . Banks, III,* appeared for appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

Dr. Francis Kronwre Sio, plaintiff in the court below, now appellee, filed an action of divorce in which he alleged incompatibility of temper by his wife, Christiana Mtmah Sio, defendant below, now appellant, in the Sixth Judicial Circuit Court, Montserrado County, in the May 1984 Term of said court.

The complaint alleged that appellee and appellee were married on the 19' day of July, 1969, and thereafter lived and cohabited together as husband and wife in tolerable

peace and happiness until the 12 th day of November, 1972, when, because of appellant's incompatibility of temper, she became extremely quarrelsome and intolerably pugnacious, to the extent of subjecting appellee to various forms of public and private disgrace, both in their home and in the streets, so that life between appellee and appellant, as husband and wife, was rendered a danger to appellee's life, health and safety.

Appellee also averred that in spite of efforts exerted by him from time to time in appealing to appellant to amend her ways, she continued to "exhibit her extremely quarrelsome and pugnacious behavior, including various such acts on July 19, 1983, when in one of her usual quarrelsome moods, defendant, without any provocation, proceeded to publicly disgrace plaintiff, subject him to many abuses, and making manifold accusations against plaintiff which were not true, but which was of the nature of putting even plaintiffs life in danger." Appellee further contended that he feared that should the marital relationship between him and appellant not be dissolved, his life, health and safety would be placed in further danger.

For her part, the appellant admitted in her answer that they were married on the 19 th day of July, 1969, and lived and cohabited together as husband and wife in tolerable peace, and happiness, but she averred that this ended on April 14, 1983, and not the 12th day of November, 1972, as appellee had averred in his complaint. Appellant further said that she had "remained obedient, quiet and faithful to her duties as wife," and accused appellee of being responsible for life between them being dangerous to her health and safety.

The appellant also alleged that appellee's habit of staying away from home had not been because of any unbecoming act of hers, but rather because appellee had a certain lady with whom he would rather be than to come home. However, instead of making this "lady" a party in the proceedings, or even mentioning her name so that perhaps the court could have, if necessary, *sua sponte* join her in these proceedings, she (appellant) promised not to reveal the lady's identity until during the trial.

In his reply to the answer, appellee averred that appellant having admitted that they both had been incompatible to the point that living together has become dangerous to her health and safety, dissolution of the marriage was in the interest of the parties. Of course, he denied moving out of their common abode because of an alleged "certain lady"; instead, he said, he moved out of the house because of the pugnacious behavior of appellant and her extreme quarrelsomeness.

After the presentation of evidence, a verdict was returned in favour of the appellee. After a motion for a new trial was denied, a final decree terminating the union was entered on the 13' day of August, A. D. 1985. From this final decree, the parties are before this Court on appeal.

In the Fifth Book of the Old Testament, that is, Deuteronomy, chapter 24, Verse 1, it is stated:

"When a man has taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he has found some uncleanness in her, then let him write her a bill of divorcement, and give it in her hand, and send her out of his house."

The records certified to us in this case reveal that although appellant denied categorically ever publicly abusing or disgracing appellee, or putting his life in danger, she admitted, however, the basic allegations in appellee's complaint. For example, in count two (2) of her answer, dated May 30, 1984, appellant admitted that on July 25, 1983, "a quarrel ensued between her and plaintiff and that since then, there has been no peace in the home, thereby making her life most unhappy, miserable and putting it in danger, despite defendant's concerted efforts to maintain peace and harmony in the home, so as to create a wholesome image for their three (3) children." Inadvertently, perhaps deliberately, appellant omitted indicating who was the aggressor in the quarrel of July 25, 1983. Undoubtedly, she would have done so had appellee been the aggressor.

In arguing his case, counsel for appellee stressed the point that the justification set up by appellant in her answer as her defense was badly pleaded in that she refused to identify in said answer, and to even state during the trial, who the certain lady was. It was incumbent upon her to identify the lady since she admitted being incompatible but justified her action on the ground that appellant was in love with this "certain lady."

In testifying in her own behalf, appellant emphasized, and produced witnesses to corroborate her testimony, that life for the couple had been for a long, long time everything but peaceful and happy. For example, while appellant was on the direct examination, 38 th day's jury session, Tuesday, August 6, 1985, sheet nine, the following question was put to her:

"Q. Madam witness, in your answer to the complaint you stated in count one, among other things that plaintiffs extreme quarrelsomeness and intolerable pugnacity has

rendered living between them dangerous to her health and safety. You confirm this allegation, am I correct?"

Her answer was an unqualified "yes".

On the same 38th day's jury session, sheet ten, while on the cross, the following question was put to her:

"Q. Tell us madam witness if, having confirmed all of the allegation in your answer that you and the plaintiff are incompatible and that your life and safety have been placed in danger and living together is a danger to your health, you still contest a separation that would bring peace and happiness to you?

The witness gave that following interesting answer, after an objection from her counsel was overruled by the trial judge:

A. Yes, I am fighting the case to go back together as husband and wife. He is my husband, I accept him, I tolerate him and I have a vow to keep."

Still on the 38th day's jury session, sheet ten, on the cross examination, the witness was again asked:

"Q. Madam witness, in your testimony in chief you stated that your husband was keeping another woman. Do you know this as a fact or that you were told this by someone"?

"A. Yes, I know this as a fact."

One other question put to the witness on the same 38 th day's jury session, sheet ten, was:

"Q. Madam witness, I assume you also know as a fact the name of the person with whom you allege your husband to be having a relationship with?"

To this very important question appellant also objected, claiming that the question was irrelevant and immaterial. Surprisingly, however, the trial judge sustained this objection. We feel that this question should have been answered, especially so since appellant had promised or had given notice in her answer that she would, during the trial, disclose the identity of this woman. It can be recalled that in her answer,

appellant admitted that she, like the appellee had also been incompatible, but justified her action on the ground of appellee's flirting with a certain lady whose name appellant reserved to herself, but promised to expose at the trial. See count 4 of the answer.

Under the principle of notice, the defendant, now appellant, should have given the name of this lady in her answer. The Civil Procedure Law, Rev. Code 1, states:

"Persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgment in such action shall be made plaintiffs or defendants therein." Civil Procedure Law, Rev. Code 1: 5.51(1)

The trial judge therefore committed an error in sustaining the objection to the question which sought to elicit from appellant the name and identity of the lady. Party litigants should not expect the court to do for them that which they are obligated and able to do for themselves. This Court held in *Tozoe v. Republic,* 22 LLR 113 (1973), at 116, quoting from *Blacklidge v. Blacklidge,* 1 LLR 371, 72 (1901), that "It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves.'"

Appellant tendered an eleven-count bill of exceptions, but most of the exceptions are in no way relevant or decisive in the determination of the issues that were raised or could have been raised. Under the Civil Procedure Law, appellee could have prayed for judgment during trial, which the court must grant after the close of the evidence presented by an opposing party with respect to a"claim or issue, and in accordance with the evidence, or at any time on the basis of admissions. Civil Procedure Law, Rev. Code 1: 26.2. To state this rule in another way, when the court is satisfied that there is no genuine issue raised as to any material fact in a trial, it will grant summary judgment to any party entitled to it. *Dennis v. Philips,* 21 LLR 506 (1973), text at 513. Besides counts nine, ten, and eleven which dealt with appellant's exceptions to the jury's verdict, the denial of her motion for new trial and her exception to the court's final judgment, respectively, the first eight counts dealt with objections to questions put to witnesses and the judge's ruling on them.

In the mind of this Court, the trial judge did not commit any reversible error in his

ruling on most of the questions enumerated in the bill of exceptions. In count one, for instance, the question was, how many children did appellee and appellant have, since appellee had accused appellant of being quarrelsome. Plaintiff, now appellee, objected and the judge sustained the objection because the number of children the couple had would not prove whether appellant was incompatible.

According to count two of the bill of exceptions, the following question was put to witness Togba Nah, one of appellee's witnesses:

"Q. I presume since you know too much that you even know about minor confusion which occurred between husband and wife in their bedroom, not so?,"

This question was objected to by appellee on the ground that the question had the tendency to entrap the witness. The judge sustained the objection. Not only was the judge right for disallowing this argumentative question, but he should have admonished the counsel to refrain from putting questions to the witness which had the tendency to insult or humiliate the witness.

In count four of the bill of exceptions, appellant also complained that the judge erred when he overruled her objection to a question put to her. The basis of the objection was that the judge overruled the objection without assigning any legal ground. Appellant objected on the ground that the question was irrelevant and immaterial. The question read thus:

"Q. Madam witness, in your testimony in chief, you stated that your husband was keeping another woman. Do you know this for a fact or is it that you were told by someone?"

The judge was right in permitting this question and overruling the abjection on ground that it was of irrelevant and immaterial. Other assignments of errors laid in the bill of exceptions are not worthy of a traverse.

This Court held in *George v. George,* 9 LLR 33 (1945), text at 40, and quoting from an earlier case, *Ditchfield v. Dossen,* 1 LLR 492 (1907), that this type of plea, one which both denies and justifies, is evasive and should not be encouraged and allowed.
While appellant's plea and testimony denies being incompatible, she justified her action, of which appellee has complained on the ground that appellee was in the habit of living with a "certain lady". This raised the issue of recrimination. However, the trial judge correctly disregarded this argument and contention.

Though the plea of recrimination is a defensive plea in an action of divorce for adultery, it should be borne in mind that a plea of recrimination is in its nature a "cross-action" where the party taking advantage of is, under our statutes, required not only to prove, but to show that the act of adultery complained of in said plea was committed within three years of the filing of the action for divorce and that said acts were not forgiven. The statute provides: "In an action brought to obtain a divorce on the ground of adultery, the co-respondent, if known, shall be named in the complaint and made a party to the action as co-respondent. A copy of the complaint shall be served on him or her, as the case may be. The co-respondent may file a special appearance or may appear to defend such action insofar as the issues affect such co-respondent and may serve an answer with respect thereto." Domestic Relations Law, Rev. Code 9: 8.3(1) (c), 8.3 (5), and 8.4 (1). Under this same Act, it is also provided that a husband or wife may procure a judgment divorcing the parties and dissolving the marriage "where as a result of incompatibility of temper the defendant is so extremely quarrelsome and intolerably pugnacious to the plaintiff that life together between plaintiff and defendant becomes dangerous to the plaintiff." *Ibid.,* 8.1(d).

Under the same Act mentioned *supra,* section 8.1 (d), it is provided that when a spouse is intolerably pugnacious, extremely quarrelsome and aggressive towards the other, grounds for divorce exist in favour of the appellee. While admitting in her answer to the truthfulness of the averments of the complaint, the appellant pleaded justification and accused the appellee of adultery, but clearly indicated her conniving and condonation by refusing to name or identify the so-called "certain lady" in either her answer or during the trial.

From a careful scrutiny of the records in this case we have observed that appellant's brief, bill of exceptions and her pleading do not raise any pertinent issue or issues.

In view of all we have said herein and the authorities cited, it is our opinion that the judgment of the court below should be, and the same is hereby affirmed with costs against appellant. And it is hereby so ordered.

Judgment affirmed.