

THE HIGH COURT OF THE WESTERN PACIFIC
(CIVIL JURISDICTION)

BEFORE: The Honourable Mr Justice J. Bodilly
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Honiara in the British Solomon
Islands Protectorate on *Tuesday*
the *four* day of *July*
1969 at *nine* o'clock in *the*
the *fore* noon.

IN THE MATTER of The Guardianship of Infants Acts
1886 and 1925

AND

IN THE MATTER of BERNARD CHARLES ALLISON (an Infant)
AND: INGRID CHRISTINA ALLISON (an Infant)
BETWEEN: KAREN CHRISTINA ALLISON Plaintiff
AND: JOHN CHARLES ALLISON Defendant
(by original action)
BETWEEN: JOHN CHARLES ALLISON Plaintiff
AND: KAREN CHRISTINA ALLISON Defendant
(by counterclaim)

CORAM: J. Bodilly, Chief Justice

PRESENT: *Plaintiff/Defendants in person unrepresented*
Defendants/Plaintiff in person unrepresented

Applicant: Mrs Allison: Sworn on Bible.

I am asking for custody of the children. I am intending to
leave the Respondent and return to Wellington, New Zealand
and I want to take my children with me.

The two children are respectively born on 20.10.65
and the other 12.10.67. I put in the two birth certificates.
(Ex A and B). I and my husband are both New Zealanders.
The children are legitimate. I put in Marriage certificate. (c)
At that age I think that I should have the custody of my
children and I am better qualified than my husband on his
own. I do not think it would be right for the children to
be left in the care of a nurse maid. I work in the day and
we have a girl to look after the children. The little
boy goes to kindergarten in the mornings.

I finish work at four thirty p.m. and then I go home and see to the children.

My parents in New Zealand are both alive and they have offered me and the children a home. If I go to New Zealand I might have to work part time but not full time. I should contribute to the extent of what I earned towards my keep with my parents. The parents house is big enough to house myself, the children and my parents. At present I am earning as a steno \$2160 per annum and my husband is earning about \$5,500. The main reason why I say that the respondent is not qualified to take care of these young children is that he has no experience of looking after the children personally. I say that the respondent has on occasion been in the position of having to take care of the children himself, ~~but~~ ^{but} I have always been available though I do not say that occasionally I have not been out late at night. At present the atmosphere in our home is not such as is fit for the welfare of the children. But when my husband has been away from time to time the house ~~xxxxxxx~~ and children have been very happy. When he is at home the atmosphere is strained and the children unhappy.

I am here to claim custody of the children not to disparage my husband.

No XX by Resp.

App: I call no Ws.

Resp: Mr Allison: Sworn on Bible.

I say that if the children remain with me the position as regards them will remain unchanged. My wife works from 8 a.m. to 4.30.p.m. each day and except for the last few weeks she and I have been going to the club or hotel after leaving work until about 6.30 and then home by which time the children will already have been fed and put to bed. The children are taken care of by our house boy and his wife who live in a boyhouse nearby. The boy's wife is capable and comes over in the morning to look after the little girl. She dresses her etc and does all that is necessary. She also gets the little boy up and gets him ready for kindergarten at 8 a.m. Mostly my wife looks after the little boy. My wife usually takes him down to the kindergarten.

I should continue to employ my house boy and his wife so that in effect the situation would remain unchanged. I work in the Trading Co. At the end of two years I get two months paid leave and air fares to New Zealand. If my mother will still be alive I should take the children with me to New Zealand and spend my leave in my mother's house. I live in Wellington and so does my wife. If my mother who is a very old lady should die there would be no real reason for me to return to New Zealand and I expect I should spend my leave in Honiara. I should keep the children with me here. I agree that my salary is \$5,500 per annum. I say that if I were to have the custody of the children when Application leaves the matrimonial home I would take more interest in the children and would supervise their evening meals. I now take the children out of an evening in the car and on week ends accompany them about and entertain them. My wife also takes part in this equally. If I have to work late which I sometimes do I should make it a point to go home at 4.30 and stay with the children till their bed time and then return to the office to finish the office work. I could arrange that. The problem of sending the children out of the Protectorate to school will not arise for about six years if I am still employed here. My inclination is not to go back to New Zealand after my mother dies. I should go to Australia if I leave here. I should eventually go back to New Zealand ~~xxxxxxx~~ when I have made enough money.

I have seen Applicant's parents home. It is a good house. But her parents are intending to sell that and move to ^{TAPU} ~~Tataupe~~ and build another house there. I agree that ^{TAPU} ~~Tataupe~~ is a nice place and would be quite good for the children. We ourselves at one time thought of building a house there ourselves before we moved here. The only thing that prevented that was ^{lack of} suitable employment for myself. Applicants parents: . Father very old now and tends to get irritable with children. Mother fit. As long as they are content to keep the children I agree they would be all right.

XX by Resp.

I admit usually on ~~Saturday~~ ^{Saturday} afternoons I play a round of golf. I also work Saturday morning. I agree on Saturdays I get home about 7 to 7.30. Lunch time on Saturday depends on the golf draw. If I have to start early my lunch hour is short.

If the children were in my care I might give up golf. I deny that I play golf on ~~S~~undays as a rule. I admit I did ~~on~~ Sunday before last in a special match. I admit that when stacktaking is on I have to work on ~~S~~unday. That is only every six months and last ~~S~~unday I took the boy down with me to the store. ~~On~~ the afternoon I took the children out in the car. I admit that last ~~S~~unday was probably the first time I have taken the girl out on my own and abo^{ut} the third time I have taken the boy on my own. Otherwise I have been at home with them. I will admit that on Saturdays it is you who take the children round usually but it is not generally true of a ~~S~~unday. I admit that generally on a ~~S~~unday we are at home and look after the children jointly. I agree that you do the buying of the childrens food etc and we have a big deep freeze. There is always plenty of food available in the house. I will admit that we both used to go to the club nearly every evening for about the first six months till we got to know people. On those nights when we got home we found the children had already been looked after and put to bed. I deny that for ~~the~~ the last three months you have not been going to the club after work. Perhaps that has ~~been~~ the case for the last six weeks since these proceedings were instituted. That is true generally. I admit that we have been here for about seven months all told.

I have one witness to call.

DWI: Michael John Pfeiffer.
Honiara.

Sworn on Bible.

I do not know much about this matter. We have only been here for about five days. Two or three days ago the conversation concerned Mrs Allison's living with her parents. Mrs Allison said ~~to the~~ ⁱⁿ the effect that she would not or would not like to stay with her parents. I cannot say that the actual words were " I have no intention of living with my parents".

XX by App:

I will say that the conversation was not in a serious frame at all. I cannot say why you might have said that.

Respondent: I do not wish to address ct.

Applicant in reply: I also do not wish to address ct.

Oral judgment delivered.

Order for custody under section 3(3) of the Guardian of Infants act 1925¹⁹ issued in favour of Applicant with leave to remove the children to New Zealand. ~~the~~ Access at all reasonable times by Respondent to see children.

John B. Sully

Chief Justice
1st July, 1969.

Maintenance for the two children. (Parents cannot agree a figure)

Husband suggests \$6 per week. Wife says not enough.

Wife: I say \$15 per week.

Husband: Wife is expected to ~~to~~ do childrens sewing etc reasonably. Food is much cheaper in New Zealand and the state provides for each child up to the age of 16 \$1.50 per week social security.

Wife: I agree I shall draw \$1.50 for each child.

Husband: Kindergarten I will agree is customary for upper and middle class people in New Zealand but not the lower class who cannot afford it. I think that my wife wants to send the children to kindergarten only because she wants time off looking after them in order to work herself. If the children remained here I should like them to go ~~in~~ ~~at~~ kindergarten but I don't see why I should pay for them to go when my wife only wants to relieve herself of their burden.

Wife: I agree that it is not necessary for the children to go to kindergarten but before we came here when I was not working the boy was at kindergarten.

Husband: I agree he was going one morning a week. The place was a prekindergarten. A sort of play school.

Wife: I believe the cost of a kindergarten in New Zealand is \$8 per week. I think that the last year before state schooling starts at 5 years of age it is necessary to send a child to ~~xxxxx~~ kindergarten to prepare it for school.

Husband: Although my salary is \$5,500 per annum I have heavy commitments and incurred debts which are not yet paid off in coming here. I have an overdraft at the bank here also. My wife has recently withdrawn her contribution to the household and I have been hard pressed.

Decision; Maintenance at \$8 per week for the two children jointly to be paid monthly. Leave to apply to vary if circumstances alter.

Tracy B. B. B.

Note of Oral Judgment.

§ { This application comes before this Court under section 5 of the Guardianship of Infants Act 1886 and sections 1 and 3 of the Guardianship of Infants Act, 1925 both of which Acts, being Acts of general application in the United Kingdom, are applicable to the Protectorate by virtue of ~~the~~ section 15 of the ~~Western Pacific~~ Western Pacific (Courts) Order in Council 1961.

This is an unfortunate case. The Applicant and her husband, the Respondent, were married in Wellington, New Zealand, ~~in~~ on the 16th November, 1963. There are two children of the marriage, namely a son Bernhard Charles who was born on the 20th October, 1965, and a daughter Ingrid Christina ~~xxxxxx~~ who was born on the 12th October, 1967. Now the marriage is breaking up. It appears that the husband and wife are so far incompatible that the wife feels she is unable any longer to reside with her husband and is returning to New Zealand to live with her parents. This application is brought to enable the wife to take her children with her when she leaves shortly. At the present time the husband and wife are still residing together and it is expected that they ^{may} continue to do so until the wife leaves for New Zealand.

In cases of this kind by virtue of section 1 of the Guardianship of Infants Act 1925, the Court is obliged to ^{give} ~~have~~ paramount consideration to the welfare of the children to the subordination of all other considerations.

I must therefore subordinate the consideration that when the wife leaves the husband and returns to New Zealand, she will be the guilty party in the break up of this marriage; she will be deliberately deserting her husband and breaking up the matrimonial home. She has given no evidence to this court that such an action might be justified by any outrageous ^{conduct} on the part of her husband such as might justify her acts *in the eyes of the law.*

The case is made more difficult by the fact that as far as the evidence goes both parties appear to be normal and capable parents and both are clearly fond of the children. The husband has an adequate salary ^{on the other hand} and the wife is returning at the invitation of her parents to their house where, so far ^{as} a letter from her mother goes, it would appear that she and the children will have a good home. I must in the interests of the children choose between the two.

The husband says that if the children are left with him they will be looked after by a native house boy and ~~his~~ the houseboy's wife during the day and he himself will take care of them in the evenings. The wife says that she will probably take a part time job in order to contribute to her keep while living in her parents home but that when she is out at work her mother will take care of the children. ~~Next~~

Having regard to the age of these two children it seems to me infinitely preferable that they ~~should~~ should be under the personal care of their mother and in their grandparents home, rather than left to the care of two Melanesian servants throughout each working day. I feel confident that the husband would do his best for them but I ~~feel~~ ^{consider} that here in the Protectorate ^{almost} particularly, circumstances would be against his being able to give the children that care and attention which, at their tender ages, they should ~~enjoy~~ have.

In all the circumstances therefore and in spite of the wife's intended ~~matrimonial~~ matrimonial default, I will grant her the custody of the two children of the marriage and leave to take them ~~to New Zealand~~ out of the jurisdiction to New Zealand. The husband will be granted right of access at all reasonable times.

As regards the question of maintenance for the children. The parties have been unable to agree a suitable figure and, having heard their various contentions as to this, I consider that \$8 dollars per week jointly for the two children, payable monthly, will be adequate bearing in mind that under the social welfare legislation of New Zealand a further ~~\$3xxxxxxx~~ \$ 1.50 will be payable for each child on arrival in New Zealand. \$ 11 dollars per week for the two of them should in my opinion be ample for the time being. As the children grow older that figure may become insufficient and application can then be made to vary the maintenance *from time to time*.

This Order, both for custody and maintenance, is subject to section 3 of the Guardianship of Infants Act, 1925, to the effect that no liability ~~arises~~ arises under it while the wife continues to reside with the husband and lapses altogether if she continues so to reside for a period exceeding three months.

~~Dated this 1st day of July 1969~~

~~xChief Justicex~~
~~1st July 1969~~

§ [There will be no order as to costs, for although the wife has succeeded in her application ~~xxxxxxx~~ if she does as she intends and deserts the matrimonial home she will be the ~~partyxxxxxxx~~ wrongdoer and it would be most unjust to make the husband pay the costs of her application.

Dated this 1st day of July, 1969, at Honiara.

Timothy B. B. B.

Chief Justice.
1st July, 1969.

IN THE MATTER of The Guardianship of
Infants Acts 1886 and 1925

AND

IN THE MATTER of BERNARD CHARLES ALLISON
(an Infant)

AND: INGRID CHRISTINA ALLISON
(an Infant)

BETWEEN: KAREN CHRISTINA ALLISON
Plaintiff

AND: JOHN CHARLES ALLISON
Defendant
(by original action)

BETWEEN: JOHN CHARLES ALLISON
Plaintiff

AND: KAREN CHRISTINA ALLISON
Defendant
(by counterclaim)

ORDER for custody and maintenance of infants and for leave
to take children out of jurisdiction.

BEFORE: The Honourable Mr Justice J. Bodilly, Chief
Justice of the Western Pacific sitting at
Honiara in the British Solomon Islands
Protectorate on Tuesday the first day of
July, 1969.

APPLICATION having been made by KAREN CHRISTINA ALLISON (hereinafter referred to as the Applicant) that she is the mother of a certain infant named BERNARD CHARLES ALLISON and also of a certain infant named INGRID CHRISTINA ALLISON both of which infants JOHN CHARLES ALLISON of the British Solomons Trading Company Limited, Mendana Avenue, Honiara, her husband (hereinafter called the father), is the father and that this application is brought to enable the Applicant to take the said infants out of the jurisdiction of the Court.

AND the Judge having taken the oral evidence of the Applicant in support of her application filed in this cause,

and the oral evidence of the Respondent and the witness produced on his behalf in support of his Answer the Court having regard to the welfare of the aforesaid infants hereby orders that:

1. The legal custody of the said infants be committed to KAREN CHRISTINA ALLISON c/- E.V. Lawson Pty Limited, Mud Alley, Honiara;
2. The father shall, (subject to section 3 of the Guardianship of Infants Act 1925 to the effect that no liability shall arise whilst the Applicant continues to reside in the matrimonial home) pay or cause to be paid to KAREN CHRISTINA ALLISON, the Applicant, through the Registrar of the High Court of the Western Pacific, Honiara, aforesaid, the sum of four hundred and sixteen dollars (\$A416.00) Australian currency per annum in equal monthly instalments of thirty-four dollars sixty-seven cents (\$A34.67) for the maintenance of such infants until each respective child shall have attained the age of sixteen years or until further order;
3. There shall be leave to apply for variation of the said maintenance should the circumstances of the parties materially alter;
4. The father shall have access to the said infants at all reasonable times;
5. The Applicant shall be at liberty to permanently take the said infants to New Zealand out of the jurisdiction of this Court;
6. Either party shall give notice to the Registrar of any change of his/her address.

This Order shall lapse if the Applicant continues to reside in the matrimonial home for a period exceeding three months from the date hereof.

Dated at Honiara the first day of July, 1969.



Registrar of the High Court
of the Western Pacific.

IN THE HIGH COURT
OF THE WESTERN PACIFIC } 1969 No. 9
(CIVIL JURISDICTION)

IN THE MATTER of The Guardianship of
Infants Acts 1886 and 1925

AND

IN THE MATTER of BERNARD CHARLES ALLISON
(an Infant)

AND: INGRID CHRISTINA ALLISON
(an Infant)

BETWEEN: KAREN CHRISTINA ALLISON

Plaintiff

AND: JOHN CHARLES ALLISON

Defendant

(by original action)

BETWEEN: JOHN CHARLES ALLISON

Plaintiff

AND: KAREN CHRISTINA ALLISON

Defendant

(by counterclaim)

NOTE OF ORAL JUDGMENT DELIVERED

This application comes before this Court under section 5 of the Guardianship of Infants Act 1886 and sections 1 and 3 of the Guardianship of Infants Act, 1925 both of which Acts, being Acts of general application in the United Kingdom, are applicable to the Protectorate by virtue of section 15 of the Western Pacific (Courts) Order in Council 1961.

This is an unfortunate case. The Applicant and her husband, the Respondent, were married in Wellington, New Zealand on the 16th November 1963. There are two children of the marriage, namely a son Bernard Charles who was born on the 20th October 1965 and a daughter Ingrid Christina who was born on the 12th October 1967. Now the marriage is breaking up. It appears that the husband and wife are so far incompatible that the wife feels she is unable any longer to reside with her husband and is returning to New Zealand to live with her parents.

This application is brought to enable the wife to take her children with her when she leaves shortly. At the present time the husband and wife are still residing together and it is expected that they may continue to do so until the wife leaves for New Zealand.

In cases of this kind by virtue of section 1 of the Guardianship of Infants Act 1925, the Court is obliged to give paramount consideration to the welfare of the children to the subordination of all other considerations. I must therefore subordinate the consideration that when the wife leaves the husband and returns to New Zealand, she will be the guilty party in the break-up of this marriage; she will be deliberately deserting her husband and breaking up the matrimonial home. She has given no evidence to this Court that such an action might be justified by any outrageous conduct on the part of her husband such as might justify her act in the eyes of the law.

The case is made more difficult by the fact that as far as the evidence goes both parties appear to be normal and capable parents and both are clearly fond of the children. The husband has an adequate salary and on the other hand the wife is returning at the invitation of her parents to their house where, so far as a letter from her mother goes, it would appear that she and the children will have a good home. I must in the interests of the children choose between the two.

The husband says that if the children are left with him they will be looked after by a native house boy and the houseboy's wife during the day and he himself will take care of them in the evenings. The wife says that she will probably take a part time job in order to contribute to her keep while living in her parents home but that when she is out at work her mother will take care of the children.

Having regard to the age of these two children it seems to me infinitely preferable that they should be under the personal care of their mother and in their grandparents home, rather than left to the care of two Melanesian servants throughout each working day. I feel confident that the husband would do his best for them but I consider that here in the Protectorate, almost particularly, circumstances would be against his being able to give the children that care and attention which, at their tender ages, they should have.

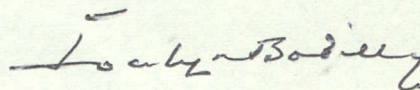
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question of maintenance for the children. The parties have been unable to agree a suitable figure and, having heard their various contentions as to this, I consider that \$8.00 per week jointly for the two children, payable monthly, will be adequate bearing in mind that under the social welfare legislation of New Zealand a further \$1.50 will be payable for each child on arrival in New Zealand. \$11.00 per week for the two of them should in my opinion be ample for the time being. As the children grow older that figure may become insufficient and application can then be made to vary the maintenance from time to time.

This Order, both for custody and maintenance, is subject to section 3 of the Guardianship of Infants Act, 1925, to the effect that no liability arises under it while the wife continues to reside with the husband and lapses altogether if she continues so to reside for a period exceeding three months.

There will be no order as to costs, for although the wife has succeeded in her application if she does as she intends and deserts the matrimonial home she will be the wrongdoer and it would be most unjust to make the husband pay the costs of her application.

Dated this first day of July, 1969, at Honiara.



Chief Justice