

A STRANGE DIVORCE CASE

RUSH VS RUSH

At Wednesday's sitting of the Supreme Court before his honour the Chief Justice, a divorce case was heard in which Julia Kate Rush petitioned for a judicial separation from her husband, Alphonsus Rush, on the ground of cruelty.

Mr A. de B. Brandon appeared for the petitioner, and Mr H. S. Fitzherbert for the respondent.

The petitioner was the first witness. She deposed that she was married to Rush in May, 1882, at the Hutt. They went to the Wairarapa on a honeymoon trip, and when they returned she went to her mother's to stay until a house then being built by her husband was finished. About a fortnight after marriage he abused her when they were driving into Wellington, and two weeks later again they quarrelled because there was no likelihood of there being issue of the marriage. After this he on one occasion called her a barren pig. About a year after marriage he threw her down because she contradicted him. He had a bad temper and was in the habit of telling lies. When she returned home from a visit to his people at Palmerston North in 1885 he quarrelled with her, and a little later in the year he threw her down and bruised her because they had an argument as to the amount of liquor a certain measure could hold. When the Wellington-Manawatu railway was opened she went to Palmerston North. When she came back her husband asked her as they drove home from the railway station how she had enjoyed herself. She said "pretty well", and he asked her "Are you sure". She said yes, but she would have enjoyed herself more if she had been better treated by his people. Rush said she did not care for him or his people. He then took hold of her and nearly threw her out of the trap. When they arrived at the gate he said he should not go home with her. On the 19th January of this year he accused her of helping his brother-in-law to buy the place he was living in so that he (Rush) should not have it. Witness contradicted him and said it was only his imagination. Rush told her to go inside, and she refused because she knew he would knock her about if she did. They were standing near the door, and he pushed her and she fell inside, and he dragged her along the passage to the kitchen. He

subsequently threw her against the wall, and then sitting down, pulled her across his knees and put his arm across her throat, keeping her there till she was nearly choked. Witness' mother was there all the time. On the 3rd February Rush had a dispute with the boy Harvey, and turning on witness, threw her backward on to the chairs. She got up, and he threw her down twice, nearly stunning her. Witness was bruised on the face and body, and was unable to do any work for some time. This was on a Thursday and she left her husband on the Tuesday. She was advised not to leave until she saw Mr Wardell. She saw Mr Wardell on the Monday, and he advised her to go home again, take a witness with her, and ask her husband if he would agree to a separation. She did so, and her husband said he would not agree to a separation; she could take what course she liked. She told him Mr Wardell had told her to take her things and leave the house. He replied that she was not to take anything until he got someone to see that she did not take anything that belonged to him. Next morning she left the house, came to Wellington during the day, and returned in the evening to her mother's house, where she stayed. She slept with her husband on the Thursday night, but not after.

Cross examined: Knew John Taylor before she married Rush. Did not tell him she got married to Rush to please her mother, and that she hated him (Rush). Knew Mr Harry McKenzie, Taylor's brother-in-law before she was married. Did not frequently meet him at Taylor's house. When she was married they went to the Wairarapa. When they came back to the Hutt she stayed at her mother's house for a month, during part of which, however, she came to Wellington, and stayed at Taylor's in Wellington, where she met McKenzie. Neither Mr nor Mrs Taylor spoke to witness about her being familiar with McKenzie. She cohabited with her husband while at her mother's house. He did not stay at the house, and only came there once. Did not know that her mother objected to him staying there. He did not complain of this and say it was very hard to be done out of his marital rights. One of the troubles between them was that there was no issue. Dr Collins examined witness and saw there could be no issue unless she underwent an operation.

Witness was not aware when she was married that she was incapable of having children. She was willing to have the operation performed, but he said he had not got the money to spare. It would have cost £5. The boy Harvey was about twenty-one years old. On the 19th January there was a dance at the Hutt, and witness asked her husband to take her. He said he was too tired. They were outside at the time, and her husband had been haymaking. They did not quarrel about that, but about her husband saying she was helping her brother-in-law to buy the place. She did not stand in the doorway and say she should not go in; and he did not push her aside in order that he might go in. He knocked her down.

Mr Fitzherbert: "Did he not take you on his knee, now, and put his arm around you to make it up?"

Witness: "Trying to choke me - to make it up?" Cross examination continued: She slept with her husband that night, and he quarrelled with her all night.

Mr Fitzherbert: "It takes two people to make a quarrel, you know?" - Witness: "Well he said unkind things to me". Cross examination continued: She made it up after this, and stayed with him, thinking he would be better. Her husband did not accuse her of telling Harvey his business secrets. The dispute with Harvey was about some broken harness. Mr Rush, senior, had not censured her for her conduct with Harvey. Her husband had no cause to be jealous of Harvey. Her home was a comfortable one, but she was in fear of her life. He had tried to see her since she left him, but she would not make it up with him. It was not on the advice of her mother that she should leave him, and she said it was not.

Elizabeth Pyke, mother of the petitioner, gave evidence corroborative of Mrs Rush's, as to the respondent's conduct. He used to accuse her of light conduct with other men - altogether without reason, so far as witness knew. He used to get into violent passions about mere trifles.

Cross examined: The arrangement before marriage was that Mr Rush should stay at witness' house after the marriage, and Mr Rush came there twice, and then had a tiff with his wife. Mrs Rush married the respondent at her own wish. Had seen him knock her about twice. She (Mrs Rush) did not try to scratch him. Rush frequently said he would kill his wife, and witness was

afraid he would. Witness did not write to Mr Rush, senior, asking him to come up and see Mrs Rush. Witness did not dissuade her daughter from going back to her husband. Mrs Rush had a good home with a magnificent garden, a piano, and everything she could wish for. Witness did not speak to her husband about the matter until very recently, because it would have made matters worse, and he was against the marriage in the first place.

John Harvey, formerly in the employ of the respondent, denied that he had called Rush a "b..... liar" when he had the row on the 19th February. Rush knocked his wife down twice because she said something, and witness picked her up. Rush was always grumpy, witness thought. He several times told her to "go to the devil" when she spoke to him.

Cross examined: Witness was not twenty-one years of age. When he went to Palmerston North about twelve months ago he told Mrs Rush he was going there. He did not get any letter from her while he was there. He was on the platform when she came in by the train. Did not know she was coming up - it was the day the Manawatu railway was opened. He went with her up to Mr Rush senior's house. Witness was not with Mrs Rush two hours that day. He was in the garden with her for not more than ten minutes. There were a number of people in the house. Mrs Rush stayed there two or three days. On the next day she and the witness went for a walk in the cemetery for about two hours. Did not remember wiping his hands on Mrs Rush's apron. When he had the row with Rush the latter did not say he would have him in the dairy whispering to his wife. Could only remember two or three occasions on which Rush had knocked his wife down. Excepting these occasions they lived a pretty comfortable home. Re-examined: The garden at Mr Rush's at Palmerston North was open to the street. Left Rush's house on the Thursday evening when he had the row with Rush.

This closed the petitioner's case.

The question of condonation was briefly argued, Mr Brandon submitting that the petitioner was so stunned by the assault made upon her on the 19th February that she was not able to think for herself. His honour did not appear to think he could infer that, and pointed out further that the act of sleeping with her husband was not shown to be involuntary.

Mr Fitzherbert then opened his case, and called evidence as follows:-

Alphonsus Rush, the respondent, gave evidence that when he and his wife returned from their honeymoon she went to her mother's to stay for a few days. Witness did not object to this, but presently Mrs Rush came into town to stay with Mr John Taylor, and he did not object to that. He had to get a note from Mrs Pyke, her mother, giving his wife permission to come and live with him. She then came to live with him. They had frequent misunderstandings. His wife, when she got in a temper, used to scratch him, and he had to hold her. She never complained of being hurt, however. On the night of the 19th January there was a dance at the Hutt. Witness came home very tired after a day's haymaking. His wife stood in the doorway, and would not allow him to go in till he promised to go to the ball. She hung onto his coat and tore it, and afterward she made it up and sat on his knee after mending his coat. He pushed her down in coming into the house. It was absolutely false to say he took her on his knee roughly. He would not do such a thing, for he was very fond of her - or used to be. She was always more or less lovable after a tiff. On the 3rd February Harvey wanted to take Mrs Rush to the races in trap witness had. Witness objected. On that evening he saw Harvey wiping his hands on Mrs Rush's apron, and heard them whispering in the dairy in the dark. Witness had a talk with Harvey afterward about his having let the horse run away during the day, and Harvey called him a b..... liar!

Mrs Rush interfered and took Harvey's part. Witness pushed her away twice and she fell down. She was stunned; that was a horrible lie. They had supper together, and went to bed later on. That was on a Thursday, and on the next day Harvey said he would leave, and asked for his money - £8 odd. Witness had not got the money, but he came into town and borrowed it. On Monday morning - he and his wife having slept together in the meantime - he said "I've got Harvey's cheque, and he can go." His wife replied "And I'll go to." Witness did not think she was in earnest, but when he came home in the evening he found that both she and Harvey had their things in a trap to go away. Witness went and fetched some neighbours to show them that she was going away. He was on best terms with his wife from the Thursday up till then, and on the Tuesday she left. On the 25th of

the month she came to see him. His father and step-mother were in the garden; and witness and his wife went away into a private part of the garden; and witness and his wife went away into a private part of the garden, where they stayed for some two or three hours. She said she was sorry for what had happened, and that she would come back. After tea the mother-in-law came in, and "it was all up a tree". He went to milk the cows, and his wife came down and kissed him, and said she was going home. On Easter Monday he saw her in her mother's house. She told him to come again in a month. He went and saw her, and she said she would come back if she would pay Mr Brandon's costs.

His honour asked Mrs Rush whether this was true.

Mrs Rush said it was nearly all false; what was said about the costs was false.

His Honour suggested at this juncture that the parties might come to an arrangement.

Mr Rush said he objected to a divorce because he was a Roman Catholic and could not get married again. He objected to paying maintenance because there was no issue, and he thought it cruel that he should have to pay for a woman who did not live with him.

The respondent, in cross examination, denied that he tried to throw his wife out of the trap when she came back from Palmerston. He never threatened her. He had not got a temper at all - he had two charts of his head, both of which showed he had no temper. Mrs Rush had a very bad temper; there was no getting away from it.

The respondent's evidence being concluded, Mr Fitzherbert again raised the question of condonation. His Honour held that there had been condonation and dismissed the petition.

The matter of costs was left to be argued in Chambers.

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