

Record No. 5472

**In the
Supreme Court of Appeals of Virginia
at Richmond**

ROSINA CALMA

v.

CEZAR CALMA

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5472

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 28th day of February, 1962.

ROSINA CALMA,

Appellant,

against

CEZAR CALMA,

Appellee.

From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

Upon the petition of Rosina Calma an appeal is awarded her from a decree entered by the Circuit Court of the City of Norfolk on the 7th day of November, 1961, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Cezar Calma was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed 7-21-61.

OLIVE C. GLOCK, D. C.

BILL OF COMPLAINT.

To the Honorable Clyde H. Jacob, Judge of the aforesaid Court:

Your complainant respectfully represents as follows:

1. That your complainant and the defendant were married on August 27, 1954 at Ingleside, New Jersey; that your complainant is a white person and the defendant is not a white person within the meaning of Section 20-54 of the Code of Virginia, your complainant being a Caucasian, and the defendant being a Philippino.

2. That there were no children born of the aforesaid marriage.

3. That the defendant wilfully deserted and abandoned your complainant on the 7th day of September, 1959, without just cause or provocation, and the parties have been separated continuously since said date.

4. That the defendant is a member of the Armed Forces of the United States, and that the parties hereto are over 21 years of age.

5. That the parties last cohabited in the City of Norfolk, Virginia.

6. That the parties were domiciled in and were actual *bona fide* residents of the State of Virginia at the time of the commencement of this suit, and have been domiciled in and have been actual *bona fide* residents of the State of Virginia for more than one year next preceding the commencement of this suit.

WHEREFORE, your complainant prays that she be awarded a divorce a *vinculo matrimonii*, or an annulment, according to the evidence; and that she may have such
page 2 } other and further relief as the nature of her case
may require or to equity may seem meet.

ROSINA CALMA.

Sworn and subscribed to before me this 20th day of July, 1961. My commission expires: February 19, 1965.

HARRY GANDERSON
Notary Public.

HARRY GANDERSON, p. q.
305 E. Little Creek Road
Norfolk 5, Virginia.

* * * * *

page 3 }

* * * * *

ANSWER.

Defendant for answer to the bill of complaint says:

1. That he admits the allegations of Paragraphs 1, 2, 4, 5 and 6.
2. That he denies the allegations of Paragraph 3 of the bill of complaint.

WHEREFORE he prays that the bill of complaint be *dismissed*.

CEZAR CALMA
By HOWARD I. LEGUM
Of Counsel.

HOWARD I. LEGUM
FINE, FINE, LEGUM &
SCHWAN, p. d.
720 Law Building
Norfolk, Virginia.

Filed 8-2-61.

HELEN M. ROMULUS, D. C.

* * * * *

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* * * * *

DECREE OF REFERENCE.

This cause came on this day to be heard upon the bill of complaint duly filed—the process duly served upon the defendant—the answer of the defendant—and was argued by counsel.

Upon consideration whereof, it is adjudged, ordered and decreed that this cause be and the same is hereby referred to Edward W. Wolcott one of the Commissioners of this Court, who is directed to take testimony and report his findings to the Court pursuant to the provisions of the order entered by this Court relative to the procedure in divorce suits on the 29th day of January, 1952.

HARRY GANDERSON, p. q.

(on back)

Enter Aug. 8, '61.

C. H. J.

* * * * *

page 5 }

* * * * *

REPORT OF EDWARD W. WOLCOTT COMMISSIONER
IN CHANCERY.

To the Honorable Judge of the aforesaid Court:

The undersigned Commissioner in Chancery, to whom the above styled cause was referred by Decree of Reference entered herein on the 8th day of August, 1961, and pursuant to Agreement of Counsel, did, on the 17th day of August, 1961, proceed to take the testimony and to make the inquiries ordered by the Decree.

Your Commissioner attaches the Depositions taken at said hearing.

All witnesses who testified at said hearing did personally appear before your Commissioner at the time they testified. At said hearing, Mr. Harry Ganderson, appeared as Counsel for Complainant and Mr. Howard Legum, appeared as Counsel for Defendant.

Your Commissioner now proceeds to respectfully report unto the Court as follows:

1. WHETHER OR NOT THE PARTIES ARE PROPERLY BEFORE THE COURT:

All necessary parties are properly before the Court.

2. JURISDICTION AND VENUE:

The Complainant, on the date this suit was instituted was domiciled in and was then and had been an actual *bona fide* resident of the City of Norfolk, State of Virginia, for at least one year next preceding the commencement of this page 6 } suit.

The parties to this suit last cohabited together in the City of Norfolk, Virginia.

This Court has jurisdiction to hear and determine this cause.

3. THE RACE OF THE PARTIES:

The Complainant is member of the white race and the Defendant is a Philippino of the malayan race.

4. WHETHER OR NOT LEGAL GROUNDS FOR DIVORCE EXIST:

The parties to this suit were married in Ingleside, New Jersey on August 27, 1954.

In view of this Court's previous ruling involving the same parties as are participants in the subject action, see *Calma v. Calma*, Docket 3704-C and R., 5 of Depositions hereto attached; there being no additional evidence which would warrant a different finding here, your Commissioner reports that the marriage between the parties to this suit is one not recognized as a valid marriage in the Commonwealth of Virginia, being in violation of Section 20-54, Code of Virginia 1950 as amended.

Respectfully submitted this 30th day of October, 1961.

EDWARD W. WOLCOTT

Commissioner in Chancery for
the Circuit Court of the City of
Norfolk, Virginia.

Rosina Calma.

Fee for this report to Edward W. Wolcott, Commissioner in Chancery, paid by Counsel for the Complainant	\$25.00
Fee to Stenographer, paid by Counsel for the Complainant	\$12.50

Your Commissioner hereby certifies that pursuant to the terms and provisions of Section 8-256 of the 1950 Code of Virginia, he did on the 30th day of October, 1961, notify Mr. Harry Ganderson, Attorney at Law, 305 E. Little Creek Rd., Norfolk Va. and Mr. Howard Legum, Attorney at Law, Law Bldg., Norfolk, Va., by mailing to them a copy of page 7 } the foregoing report, that the same would be filed in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, on the 30th day of October, 1961.

EDWARD W. WOLCOTT
Commissioner in Chancery.

Dep.
page 8 }

* * * * *

Filed 10-30-61.

OLIVE C. GLORK, D.

DEPOSITIONS.

The Depositions of witnesses taken before Edward W. Wolcott, a Commissioner in Chancery for the Circuit Court of the City of Norfolk, Virginia, pursuant to Agreement of Counsel at the offices of Wolcott, Wolcott & Payne, 1108 Maritime Tower, Norfolk, Virginia, on the 17th day of August, 1961 at 4:00 P. M. to be read as evidence on behalf of the Complainant in the above entitled suit, now pending in the Circuit Court of the City of Norfolk, Virginia.

Present: Mr. Harry Ganderson, appeared as Counsel for Complainant.

Mr. Howard Legum, appeared as Counsel for Defendant.

Dep.
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ROSINA CALMA,
the Complainant herein having first been duly sworn according to law, deposes and says:

Rosina Calma.

Examined by Mr. Ganderson:

Q. State your name please?

A. Rosina Calma.

Q. And you are the Complainant in this divorce action now pending in the Circuit Court of the City of Norfolk, Virginia which was filed on July 21st, 1961?

A. Yes.

Q. Where were you born Mrs. Calma?

A. In Uln, Germany.

Q. And when were you born?

A. May 13th, 1930.

Q. And when were you married Mrs. Calma?

A. August 27th, 1954.

Q. Where?

A. In Ingleside, New Jersey.

Q. To whom?

A. Cezar Calma.

Q. He is the Defendant in this action?

A. Yes, sir.

Q. What is his present occupation?

A. SD-2 in the Navy.

Q. He is over twenty-one years of age too isn't he?

A. Yes.

Dep. Q. How long have you been living here in the page 10 } City of Norfolk, State of Virginia?

A. Since July, 1956.

Q. And your husband has been living here since when?

A. July, 1956.

Q. And both of you have been living here continuously as a matter of fact haven't you?

A. Yes.

Q. Mr. Calma was also served by personal service in this case wasn't he?

A. Yes.

Q. You are making this your permanent home in the State of Virginia?

A. Yes.

Q. You are a resident of and domiciled in the State of Virginia for more than one year next preceding the institution of this suit on July, 1961?

A. Yes.

Q. Mrs. Calma, what is the race of your husband?

A. The what?

Q. The race, what race is he?

A. Malayan, not caucasian.

Rosina Calma.

- Dep. Q. *If fact, he is of Philippino nationality?*
page 11 } A. Yes.
 Q. You are a member of the white race?
 A. Yes.
Q. You were married in the State of New Jersey?
A. Yes.
Q. Where those marriages were permitted?
A. Yes.
Q. And from there you came—both of you came to the State
of Virginia?
A. Yes.
Q. Where you have resided since you were married?
A. Yes.
Q. Are you living with your husband at this time?
A. No.
Q. When did you last live together as husband and wife?
A. In September, 1959.
Q. About what date, do you recall?
A. September 7th.
Q. It was right after Labor Day?
A. Yes.
Q. Who left whom?
A. My husband left me.
Q. Would you state to the Court under what circumstances
he left you?
A. He left me the first time in May, 1959, and
Dep. then we went together again. We went to visit my
page 12 } friends in Georgia and he left me again.
 Q. Did he return home?
A. Yes, he came home to the house to pick up his belong-
ings and letters.
Q. What date?
A. September 7th, 1959.
Q. And that was at the same address you previous testified
to in the City of Norfolk, Virginia?
A. Yes.
Q. When did you return from Georgia?
A. I returned the same day, an hour later.
Q. That was in the afternoon?
A. Yes.
Q. And when you returned he was not there?
A. No.
Q. Did you find any trace of his having been there?

Rosina Calma.

A. Yes he was there because his belongings were gone?

Q. Did you give him any reason for leaving?

A. No.

Q. Do you know why he left?

A. I don't really know. He just said he couldn't stand it any more and he left.

Q. Have you lived with him since September 7th, 1959?

A. No.

Q. Were there any children born of the marriage?

A. No.

Dep. Q. And you have lived continuously separated page 13 } and apart since September, 1959?

A. Yes.

Q. Mrs. Calma, I hand you a paper writing which is identified as stipulation which was dated August 1st, 1961 and ask you whether that is the stipulation which you signed which is between you and your husband?

A. Yes.

Q. And you would like to have these introduced into evidence and made a part of these proceedings?

A. Yes.

By Mr. Ganderson: I offer this stipulation in evidence.

By the Commissioner: It will be marked Complainant's Exhibit "A."

By Mr. Ganderson: (resuming)

Q. Answer Mr. Legum.

By Mr. Legum: I have no questions.

Examined by the Commissioner:

Q. Mrs. Calma you are the same Rosina Calma who was a Defendant in a divorce action instituted by your husband in the Circuit Court of the City of Norfolk in 1960, are you not?

A. Yes.

Dep. Q. And your husband is presently in the United page 14 } States Navy?

A. Yes.

Q. And what was the address that you and your husband last lived together as man and wife?

A. 1504 East Ocean View Avenue.

Q. Norfolk, Virginia?

Violette Williams.

A. Norfolk, Virginia.

And further this deponent sayeth not.

VIOLETTE WILLIAMS,

a witness called to testify on behalf of the Complainant, having first been duly sworn according to law, deposes and says:

Examined by Mr. Ganderson:

Q. State your name please?

A. Violette Williams.

Q. Where do you live Mrs. Williams?

A. 1504 East Ocean View Avenue.

Q. Norfolk, Virginia?

A. Norfolk, Virginia.

Q. In fact you are the landlord of the Complainant here, Mrs. Rosina Calma?

A. That is right.

Q. You have known Mr. and Mrs. Calma for some time have you not?

A. Yes, they moved in in November, 1958.

Dep. Q. They have, Mrs. Calma and her husband, so
page 15 } far as you know have been living in the State of
Virginia since that date haven't they?

A. Yes, sir.

Q. Mrs. Calma has made, so far as you know, her permanent home here in the State of Virginia?

A. That's right.

Q. Do you know Mr. Calma?

A. I know him.

Q. Do you know whether they are living together?

A. They are not.

Q. Do you know when they last lived together as husband and wife?

A. The last time I saw Mr. Calma was Labor Day when he came in and took his mail.

Q. Do you know if he took anything else with him?

A. Yes. His clothes and belongings.

Q. Do you recall what date and year that was?

A. September 7th, 1959.

Q. You actually saw him when he came to the house and got his things?

A. Yes. He came an hour before Mrs. Calma returned, but he came with his car and she came by plane.

Q. He, in fact, had left her before, when was that?

A. In May, 1956.

Violette Williams.

- Q. They went together again?
 Dep. A. Yes.
 page 16 } Q. Do you know whether or not, as far as you
 know, she gave him reason for leaving?
 A. As far as I know, I don't think so.
 Q. Do you know whether they have lived together since
 then?
 A. No they have not.
 Q. They have been living separate and apart?
 A. As far as I know yes.
 Q. And you live in the same building they do and you would
 know?
 A. Yes. I live upstairs.
 Q. Answer Mr. Legum.

By Mr. Legum: I have no questions.

Examined by the Commissioner:

- Q. There were no children born of this marriage were
 they?
 A. No.

And further this deponent sayeth not.

page 17 } State of Virginia,
 City of Norfolk, to-wit:

I, Edward W. Wolcott, a Commissioner in Chancery for the
 Circuit Court of the City of Norfolk, Virginia, do certify that
 the foregoing Depositions of ROSINA CALMA and VIO-
 LETTE WILLIAMS were duly sworn to and taken before
 me in my City and State aforesaid on the 17th day of August,
 1961, at 4:00 P. M., for the purpose set forth and mentioned
 in the caption, and at the time and place therein stated.

Given under my hand this 25th day of August, 1961.

EDWARD W. WOLCOTT
 Commissioner in Chancery.

page 18 } COMPLAINANT'S EXHIBIT "A."

Virginia:

In the Circuit Court of the City of Norfolk.

Rosina Calma,

Complainant,

v.

Cezar Calma,

Defendant.

In Chancery No. 5723-C.

STIPULATION IN ACCORDANCE WITH TITLE 20,
PARAGRAPH 109 OF THE 1950 CODE OF
VIRGINIA.

THIS AGREEMENT, Made and entered into this 1st day of August, 1961, by and between Rosina Calma, party of the first part, hereinafter called "Wife" and Cezar Calma, party of the second part, hereinafter called "Husband."

WHEREAS, the parties hereto are husband and wife, having married on August 27, 1954 at Ingleside, New Jersey; and

WHEREAS, marital difficulties have arisen between the parties, and the Wife has instituted divorce proceedings in the Circuit Court of the City of Norfolk, Virginia, which suit is now pending; and

WHEREAS, the parties desire in this agreement to determine the property rights in their respective properties, now owned or hereafter acquired, and to make settlement of all rights, if any, which either of the parties has or may have against the other, or the property of the other, for maintenance, support, alimony, attorney's fees and all other matters.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises, and other good and valuable considerations hereinafter set out, the parties covenant and agree as follows:

1. The Wife hereby waives all rights to alimony and agrees to pay her own counsel fees and Court costs in this cause.

2. The Wife agrees that she will not incur any debts in the name of the Husband.

page 19 } 3. The parties agree that this agreement shall be presented to the Court for approval and shall be

made a part of any divorce decree which may be entered in this cause.

Witness the following signatures and seals:

CEZAR CALMA	(Seal)
ROSINA CALMA	(Seal)

State of Virginia:

City of Norfolk, to-wit:

I, Harry Ganderson, a Notary Public in and for the City and State aforesaid, do certify that Rosina Calma, whose name is signed to the foregoing writing, bearing date on the 1st day of August, 1961, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 2nd day of August, 1961.

HARRY GANDERSON
Notary Public.

My Commission expires Feb. 19, 1965.

State of Virginia,

City of Norfolk, to-wit:

I, Louis H., a Notary Public in and for the City and State aforesaid, do certify that Cezar Calma, whose name is signed to the foregoing writing, bearing date on the 1st day of August, 1961, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 4th day of August, 1961.

LOUIS H.
Notary Public.

My Commission expires: July 6, 1962.

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* * * * *

Filed 11-3-61.

HELEN M. ROMULUS, D. C.

EXCEPTIONS TO REPORT OF COMMISSIONER IN
CHANCERY.

NOW COMES the complainant, by counsel, and excepts to the Report of the Commissioner in Chancery dated October 30, 1961, on the following grounds;

1. That the previous ruling in *Calma v. Calma*, Docket No. 3704-C, does not involve the same issues as the pending case, in that Cezar Calma was the complainant in the former proceedings praying for a divorce, or in the alternative an annulment, and that Honorable Moses Ehrenworth, Commissioner in Chancery in the former proceedings, at page 26 of the Report, held that "the complainant has failed to establish either cruelty or desertion as alleged in the Bill of Complaint, and, therefore, recommends that the complainant be denied the divorce sought by him in these proceedings"; that in the pending action Rosina Calma is the complainant who prays for a divorce on the grounds of defendant's wilful desertion and abandonment of her.

2. That the Commissioner erred in failing to make a finding of fact or a recommendation in the Report as to the complainant's allegations in support of her prayer for a divorce from the defendant, in that the Commissioner is required by law to report to the Court "whether or not legal grounds for divorce exist."

3. That the evidence on the issue of complainant's prayer for a divorce supports a finding and a recommendation that the complainant, Rosina Calma, is entitled to a divorce from the defendant, Cezar Calma.

4. That the Commissioner erred in that the evidence supports a finding that the parties were neither domiciliary nor residents of the State of Virginia at page 21 } the time of said marriage; that the marriage between the parties hereto, a white person of the Caucasian race and a Philippino of the non-Caucasian race, is valid in the State of New Jersey where the parties were married, thereby constituting a valid marital status for the determination of the complainant's prayer for divorce.

5. That the Commissioner erred in failing to award the complainant a divorce, or in the alternative an annulment, as prayed for, all in violation of the Constitution of the Commonwealth of Virginia and the Amendments to the Constitution of the United States of America.

ROSINA CALMA
By HARRY GANDERSON

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(DRAFT OF DECREE AS TENDERED).

DECREE.

THIS CAUSE, wherein process was duly served on the defendant, came on this day to be heard upon the Bill of Complaint, the Answer of the defendant, the Depositions taken and filed herein, the Report of Edward W. Wolcott, Commissioner in Chancery, the Exceptions of the complainant to said Report, and was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court independently of the admissions of the parties or otherwise, that the parties were married on the 27th day of August, 1954, in the City of Ingleside, State of New Jersey; that the said parties were not domiciled in, nor residents of, the State of Virginia at the time of said marriage; that the complainant is a white person of the Caucasian race and the defendant is a Philippino of the non-Caucasian race; that the said marriage, contracted and celebrated in the State of New Jersey is valid under the laws of the State of New Jersey; that on the date this cause was instituted the complainant and the defendant were domiciled in, and were then and had been actual *bona fide* residents of the State of Virginia for at least one year next preceding the commencement of this suit; that the parties to this suit last cohabited together in the City of Norfolk, State of Virginia; that the defendant is a member of the Armed Forces of the United States, and that the parties are both over 21 years of age; and the said defendant did on the 7th day of September, 1959, wilfully desert and abandon the complainant without just cause, which desertion and abandonment has been continuous and uninterrupted until the filing of this suit; that there were no children born of the aforesaid marriage, and there are no property rights, vested or inchoate, existing between the parties hereto.

page 23 } UPON CONSIDERATION of which the Court is of the opinion that the complainant is entitled to the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND

DECREED that the marriage between the parties hereto, celebrated in the State of New Jersey be, and the same is hereby recognized as a valid marriage, and the said marriage is hereby granted full faith and credit for the purpose of granting the complainant the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the parties hereto, Rosina Calma and Cezar Calms, are divorced *a vinculo matrimonii*, and that the said marriage be, and the same is hereby, dissolved.

And it further appearing to the Court that the parties hereto have executed a Stipulation which was introduced into evidence and that said Stipulation is fair and equitable and the Court does hereby approve said Stipulation and makes it a part of this decree; IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that no alimony be awarded the complainant and the complainant shall pay her own counsel fee and Court costs in this cause.

And the Court doth hereby adjudicate the property rights of the parties to this suit, and does ORDER, ADJUDGE AND DECREE that henceforth, the rights of either party hereto in the property of the other are terminated.

And this cause is to be stricken from the docket.

Enter this order:

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* * * * *

(DECREE AS ENTERED.)

DECREE.

THIS CAUSE, wherein process was duly served on the defendant, came on this day to be heard upon the Bill of Complaint, the Answer of the defendant, the Depositions taken and filed herein, the Report of Edward W. Wolcott, Commissioner in Chancery, the Exceptions of the complainant to said Report, and was argued by counsel.

UPON CONSIDERATION WHEREOF, the report of said Commissioner in Chancery is approved and the exceptions are overruled; and it appearing to the Court independently of the admissions of the parties or otherwise, that the parties were married on the 27th day of August, 1954, in the City of

Ingleside, State of New Jersey; that the said parties were not domiciled in, nor residents of, the State of Virginia at the time of said marriage; that the complainant is a white person of the Caucasian race and the defendant is a Philippino of the non-Caucasian race; that the said marriage, contracted and celebrated in the State of New Jersey is valid under the laws of the State of New Jersey; that on the date this cause was instituted the complainant and the defendant were domiciled in, and were then and had been actual *bona fide* residents of the State of Virginia for at least one year next preceding the commencement of this suit; that the parties to this suit last cohabited together in the City of Norfolk, State of Virginia; that the defendant is a member of the Armed Forces of the United States, and that the parties are both over 21 years of age;

page 23 } UPON CONSIDERATION of which the Court
is of the opinion that the complainant is not entitled to the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the marriage between the parties hereto, celebrated in the State of New Jersey be, and the same is hereby not recognized as a valid marriage in the State of Virginia and the said marriage is not hereby granted full faith and credit for the purpose of granting the complainant the relief prayed for, and the parties are hereby enjoined from cohabiting as husband and wife in the State of Virginia.

And it further appearing to the Court that the parties hereto have executed a Stipulation which was introduced into evidence and that said Stipulation is fair and equitable and the Court does hereby approve said Stipulation and makes it a part of this decree; IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that no alimony be awarded the complainant and the complainant shall pay her own counsel fee and Court costs in this cause.

And the Court doth hereby adjudicate the property rights of the parties to this suit, and does ORDER, ADJUDGE AND DECREE that henceforth, the rights of either party hereto in the property of the other are terminated.

And this cause is to be stricken from the docket.

Enter this order: 11-7-61.

C. H. J., Judge.

Seen:

HARRY GANDERSON, p. q.

Seen:

H. I. LEGUM, p. d.
Of Counsel.

page 24 }

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Filed 11-8-61.

VIRGINIA MANNING, D. C.

SUPPLEMENTAL REPORT OF EDWARD W. WOLCOTT
COMMISSIONER IN CHANCERY.

To: The Honorable Judge of the Aforesaid Court:

The undersigned, Commissioner in Chancery, filed his report together with the depositions and exhibits filed in evidence in the above Court on the 30th day of October, 1961. Supplementing that report, your Commissioner now wishes to add the following:

5. OTHER MATTERS PROPERLY RAISED BY THE
PLEADINGS, ETC.:

There were no children born of the marriage between the Complainant and the Defendant.

Your Commissioner reports and recommends as follows:

(a) That the Defendant be required to pay the costs of this suit including a fee to Mr. Harry Ganderson, Attorney for the Complainant, in the sum of \$200.00 subject to any credit heretofore paid by him.

(b) That the Complainant stated that the Defendant is a member of the Armed Forces of the United States.

(c) The Complainant was born in Ulm, Germany on the 13th day of May, 1930, and is unemployed.

(d) The Defendant's birthplace is unknown. He is over the

age of twenty-one years and is a member of the United States Navy.

page 25 } (e) That the Separation Agreement filed here-
with and marked as "Complainant's Exhibit A"
be ratified and confirmed by the Court.

Respectfully submitted this 7th day of November, 1961.

EDWARD W. WOLCOTT
Commissioner in Chancery for
the Circuit Court of the City of
Norfolk, Virginia.

* * * * *

page 26 }

* * * * *

Filed 11-29-61.

VIRGINIA MANNING, D. C.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of the City of Norfolk,
Virginia:

Rosina Calma, complainant, hereby gives notice pursuant to the provisions of Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia, of the appeal from the final decree entered in the above-styled cause on the 7th day of November, 1961, and assigns as error the rulings of the Circuit Court of the City of Norfolk in the cause herein, as follows:

1. In failing to hold that neither the laws nor the public policy prohibiting intermarriage between Caucasians and non-Caucasians in the Commonwealth of Virginia are applicable under the evidence to the marriage celebrated by the parties in the State of New Jersey.

2. In failing to—

(a) Make a finding of fact; and

(b) Enter a decree of divorce dissolving the marriage of the parties hereto.

3. In failing to—

- (a) Make a finding of fact; and
- (b) Enter a decree annulling the marriage of the parties hereto.

4. In overruling the complainant's Exceptions to the Report of the Commissioner in Chancery that the previous case in said Court, "*Cezar Calma, Complainant v. Rosina Calma, Defendant*," Docket No. 3704-C, does not involve the same issues as the instant case.

page 27 } 5. In refusing to sign the "Statement of Proceedings in the Trial Court," making the previous case, "*Cezar Calma, Complainant v. Rosina Calma, Defendant*," Docket No. 3704-C, a part of the Record in the instant case.

6. In failing to rule that the marriage celebrated in New Jersey is required to be given full faith and credit by Article IV, Section 1, of the Constitution of the United States of America.

7. In failing to recognize the marriage celebrated in New Jersey as valid in Virginia, in violation of the Constitution of the Commonwealth of Virginia.

8. In failing to recognize the marriage celebrated in New Jersey as valid in Virginia, in violation of the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States of America.

9. In failing to award an *annulment*, or in the alternative, a divorce, in violation of the privilege and immunities provisions of Article IV, Section 2, and of Section 1 of the Fourteenth Amendment of the Constitution of the United States of America.

ROSINA CALMA
By HARRY GANDERSON.

.

STATEMENT OF PROCEEDING IN THE TRIAL COURT.

The trial Court, in passing upon the Exceptions of the complainant to the Report of Honorable Edward W. Wolcott, Commissioner in Chancery, took judicial notice of a prior case involving the same parties, in the case styled as, "*Cezar Calma, Complainant v. Rosina Calma, Defendant*," Docket No. 3704-C, which prior case is mentioned in the Report of the said Commissioner in Chancery, and the Court does here-

by expressly make as a part of the Record in this case, the said case under the style of "*Cezar Calma, Complainant v. Rosina Calma, Defendant*," Docket No. 3704-C.

Entered this day of November, 1961.

.....
Judge.

Seen:

HARRY GANDERSON, p. q.
HOWARD I. LEGUM, p. d.

Refused not made a part of the record in this case.

C. H. J.

Nov. 27, '61.

I, W. R. Hanckel, Clerk of the Circuit Court of the City of Norfolk, Va., do hereby certify that I received the said statement on the .. day of November, 1961.

.....
Clerk.

PROCEDURE IN DIVORCE AND ANNULMENT SUITS
INSTITUTED ON OR AFTER APRIL 12, 1949 IN THE
CIRCUIT COURT OF THE CITY OF NORFOLK OR
THE COURT OF LAW AND CHANCERY OF THE
CITY OF NORFOLK.

• • • • •

"(8) The report of the Commissioner should state (1) whether or not the parties are properly before the Court; (2) the race of the parties; (3) whether or not legal grounds for divorce exist; * * *"

• • • • •

A Copy—Teste:

W. R. HANCKEL, Clerk
By VIRGINIA MANNING, D. C.

Rosina Calma.

CEZAR CALMA

v. Chancery Case #3704-C

ROSINA CALMA

Depositions of witnesses taken before Moses Ehrenworth, Esquire, Commissioner in Chancery, by agreement of counsel as to time and place, at his office, Kresge Building, Norfolk, Virginia, May 6th, 1960, at 10:30 o'clock A. M., to be read as evidence in the above entitled cause, pending in the Circuit Court of the City of Norfolk, Virginia.

Appearances: Messrs. Fine, Fine, Legum, Weinberg & Schwan (by Mr. Legum), attorneys for the complainant.

Mr. Harry Ganderson, attorney for the defendant.

Dep.
page 2 }

* * * * *

ROSINA CALMA,
the Defendant, called as an adverse witness, having been first duly sworn, was examined and testified as follows:

* * * * *

Dep.
page 18 }

* * * * *

CROSS EXAMINATION (Adv.)

By Mr. Ganderson:

* * * * *

Dep.
page 33 }

* * * * *

Q. At the time your husband came here to Norfolk, what was his employment?

Cezar Calma.

A. With the U. S. Navy.

Q. Where was he stationed immediately preceding his coming to Norfolk?

A. In New York City.

Q. How long had he been in the Navy at that time?

A. I believe ten years, eight or ten years.

* * * * *

Dep.
page 38 }

* * * * *

CEZAR CALMA,

the defendant, having been first duly sworn, was examined and testified as follows:

Dep.
page 39 } DIRECT EXAMINATION.

By Mr. Legum:

Q. Your name is Cezar Calma?

A. Yes, sir.

Q. Where do you live?

A. I live at 465 Dillingham Boulevard, Norfolk.

Q. What is your occupation?

A. U. S. Navy.

Q. What rating?

A. Second class.

Q. What?

A. Petty Officer.

Q. What is your rating?

A. Steward.

Q. How old are you?

A. Thirty-four.

Q. When were you born?

A. I was born December 22nd, 1925.

Q. Where were you born?

A. I was born in Florida Balanca.

Dep. Q. What state?

page 40 } A. Pampanga.

Q. What country?

A. Phillipines.

Q. What was your father's name?

Cezar Calma.

A. My father's name was Tenodes Calma.

Q. What was your mother's name?

A. Aurea.

Q. What was her maiden name?

A. Yusi.

Q. Were both your mother and father Filipinos?

A. Yes, sir.

Q. You are a Filipino?

A. Yes, sir.

Q. After you married your wife in Inglewood, New Jersey, on August 27th, 1954, when did you and she come down to Norfolk to live?

A. July, 1956.

Q. Have you and she lived continuously in Norfolk, Virginia, since that time?

A. Yes, sir, we did.

Q. Were any children born of your marriage?

A. No, no children.

Q. Are you and she now living together?

A. No, we are not living together.

Dep. Q. In what city and state did you last live to-
page 41 } gether?

A. Norfolk, Virginia.

• • • • •

Dep.
page 48 }

• • • • •

CROSS EXAMINATION.

By Mr. Ganderson:

• • • • •

Dep.
page 51 }

• • • • •

Q. Your parents live in the Phillipines?

A. Yes.

Q. Your grandparents, are they living together?

Cezar Calma.

A. They are all dead.

Q. On your mother's side, were your grandparents Filipinos?

A. Yes.

Q. They were born in the Phillipine Islands?

A. Yes.

Q. On your father's side, were your grandparents born in the Phillipines?

Dep. A. Yes.

page 52 } Q. Both of your grandparents on both sides were Filipinos?

A. Yes.

Q. And you are presently a Filipino?

A. No, I am a naturalized citizen of the United States.

Q. When did you become naturalized?

A. December, 1946, in Honolulu.

Q. Did you have any relatives in this country?

A. No.

Q. When did you first come to this country?

A. March, 1949.

Q. Were you in the Navy at that time?

A. I was in the Navy.

Q. Where did you enlist in the Navy?

A. I enlisted in the Navy in the Phillipines.

Q. When?

A. September, 1949.

Q. Were you transferred to the United States on your request?

A. No. I was transferred first in Honolulu, and then on board a ship, and that is the first time I entered the United States.

Dep. Q. Where have you been stationed since you left Honolulu?

page 53 } A. I was stationed on board a ship about fifteen months. When I got off the ship I came over here.

Q. What ship were you on?

A. USS Anderson. When I got off the ship I was transferred to the New York Naval Shipyard to another ship.

Q. What ship was that?

A. USS P. C. 1182. I was stationed on that ship almost four years, and during that time is when I met my wife.

Q. Have you received orders for transfer from Norfolk?

A. Yes.

Q. When did you receive orders for transfer from Norfolk?

A. When I got off that ship.

Cezar Calma.

Q. What ship?

A. The 1182. I got orders to get transferred to another ship stationed here in Norfolk.

Q. What ship?

A. The USS Duxbury.

Q. Were you a member of the Armed Forces during World War II?

A. No, I was not.

Q. This ship you have been transferred to, is that based in Norfolk?

Dep. A. The last one was based in Norfolk.

page 54 } Q. Now, what ship are you attached to?

A. I am not on a ship stationed at the base.

Q. You haven't received any orders that would take you away from Norfolk?

A. No.

Q. Where, if anywhere, are you going after June 1st, 1960? Do you plan to continue living here?

A. Yes. I had planned to continue living here if our marriage worked out. If I got transferred to somewhere else I intended to buy a house and would eventually come back to Norfolk.

Q. You are definitely coming back to Norfolk?

A. If they transfer me.

Q. You contemplate coming back here?

A. Yes, and if I get transferred I can take her with me and when everything is over I intend to live in Norfolk.

* * * * *

EXTRACTS FROM REPORT OF MOSES EHREN-
WORTH, COMMISSIONER IN CHANCERY, FILED
IN THE CIRCUIT COURT OF THE CITY OF NOR-
FOLK ON SEPTEMBER 30, 1960, IN THE CASE OF
CEZAR CALMA V. ROSINA CALMA, CHANCERY
DOCKET NUMBER 3704 C.

REPORT OF MOSES EHRENWORTH COMMISSIONER
IN CHANCERY.

To the Honorable Judges of said Court:

Your Commissioner now proceeds to report to the Court
as follows:

1. WHETHER OR NOT THE PARTIES ARE PROPERLY BEFORE THE COURT.

All necessary parties are properly before the Court.

2. JURISDICTION AND VENUE.

On the date this suit was instituted the Complainant and the Defendant were domiciled in, and were then and page 2 } had been actual *bona fide* residents of the State of Virginia for at least one year next preceding the commencement of this suit (R., pp. 3, 41, 42).

The parties to this suit last cohabited together in the City of Norfolk, Virginia (R., pp. 11, 12, 40, 41).

This Court has jurisdiction to hear and determine this cause.

3. THE RACE OF THE PARTIES.

The Complainant is a member of the Filipino race and the Defendant is a member of the white race (R., pp. 40, 69, 70).

4. WHETHER OR NOT LEGAL GROUNDS FOR ANNULMENT EXIST.

PLEADINGS.

This suit was instituted on November 9th, 1959, on which date the Complainant (husband) filed his Bill of Complaint alleging that the Defendant (wife) had been guilty of "cruelty causing the enforced separation of the parties on the 15th day of May, 1959."

On November 25th, 1959, the Defendant filed her Answer to the Bill of Complaint denying the allegations of cruelty and enforced separation as alleged in the Bill of Complaint. The Defendant did not file a Cross-bill.

On April 19th, 1960, the Complainant, by leave of Court, filed an Amended Bill of Complaint seeking an annulment of the marriage entered into between the parties. The grounds therefor as alleged in said Amended Bill of Complaint are, in substance, as follows:

1. That the Complainant, a Filipino, and the Defendant, a white person, entered into a marriage prohibited by Section 20-54 of the Code of Virginia.

2. That the Mexican divorce decree obtained by the Defend-

ant from her former husband was invalid due to "failure of domicile and residence requirements," and therefor, the Defendant was "not legally capable of contracting a marriage with your Complainant."

page 3 } In addition, the Amended Bill of Complaint sought a decree of divorce upon the following grounds:

1. That the Defendant was guilty of wilful desertion.
2. That the Defendant was guilty of "cruelty causing the enforced separation of the parties."

On May 4th, 1960, the Defendant filed an Answer to the Amended Bill of Complaint in which Answer the Defendant asserts:

1. That Title 20-54 of the Code of Virginia was not applicable to the facts in this cause, and, if applied, would violate the Constitutional rights of the Defendant.
2. That the Mexican divorce decree obtained by her from her former husband was valid and binding, thus enabling her to contract a valid marriage with the Complainant.

* * * * *

page 7 }

* * * * *

While our Courts have held that the full faith and credit clause of the Constitution of the United States does not apply to a divorce obtained in a foreign country, our Courts have also held that judgments of Courts of foreign countries are recognized in the United States because of the comity due from one nation to another, its Courts and judgments; and a decree of divorce granted in a foreign country by a Court having jurisdiction, will be given full force and effect in the United States (17A, Am. Jur., page 141).

* * * * *

page 8 }

* * * * *

VALIDITY OF MARRIAGE.

It is contended by Counsel for the Complainant that the marriage between the Complainant (a Filipino) and the Defendant (a white person) is invalid since such marriage is prohibited by Title 20-54 of the Code of Virginia.

Title 20-54 of the Code of Virginia provides as follows:

It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian. For the purpose of this chapter, the term "white person" shall apply only to such person as has no trace whatever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons. All laws heretofore passed and now in effect regarding the intermarriage of white and colored persons shall apply to marriages prohibited by this chapter.

The following facts are clearly, and without con-
page 9 } tradiction, established by the evidence in this case:

- (a). The Complainant is a Filipino.
- (b). The Defendant is a white person.
- (c). The parties to this suit were married in Ingleside, New Jersey, on the 27th day of August, 1954.
- (d). That neither of the parties had, prior to their marriage, been domiciled in or residents of the State of Virginia.

It is first contended by Counsel for the Defendant that the Complainant, though admittedly a Filipino, is not of the non-Caucasian race. This contention, in the opinion of your Commissioner, cannot be upheld.

* * * * *

page 10 }

* * * * *

While some of the ethnographers have, by inference at least, indicated that there are *some* Filipinos who have *some* Caucasian blood, such person, if existant, would nevertheless be prohibited from entering into marriage with a white per-

son in the State of Virginia since Title 20-54 (excepting certain Indians) defines a "white person" to be a person who *"HAS NO TRACE WHATEVER OF ANY BLOOD OTHER THAN CAUCASIAN."*

* * * * *

page 11 }

* * * * *

Can there be any question as to the public policy in Virginia regarding marriages between persons prohibited from entering into marriage by Title 20-54 of the Code of Virginia? Section 20-54 expressly prohibits such intermarriages.

Section 20-59 makes the violation of Section 20-54 a felony punishable by confinement in the penitentiary for not less than one nor more than five years.

Section 20-57 declares such marriages to be absolutely void without any decree of divorce or other legal process.

Section 20-50 provides for the registration of all individuals as Caucasian, Negro, Mongolian, American Indian, Asiatic Indian, Malay or any mixture thereof, or any other
page 12 } non-Caucasic strains; and Section 20-51 makes the filing of a false registration a felony punishable by confinement in the penitentiary for one year.

* * * * *

page 15 }

* * * * *

In the light of the public policy of the State of Virginia so strongly and firmly established by the Virginia Statutes and the decisions of our Supreme Court, does it make any difference in what State the marriage ceremony is performed? True it is that but for the marriage the question would become moot. It is not the lone fact of marriage which would create the conditions sought to be prevented by the public policy, but the actual living together in the State of Virginia in the relationship of husband and wife by persons prohibited from entering into marriage in Virginia which creates the problems sought to be avoided and prevented by the public policy.

Your Commissioner voices the opinion that if such marriages are to be recognized in the State of Virginia it would constitute an invitation to certain organizations and indi-

viduals to cause to migrate into the State persons of interracial marriages, for the sole purpose of weakening and eventually destroying the public policy of this State.

* * * * *

page 16 }

* * * * *

For the reasons heretofore stated, your Commissioner is of the opinion that a decree should be entered in this cause declaring that the marriage entered into between the parties to this suit is not recognized as a valid marriage in the State of Virginia.

In reaching this conclusion, your Commissioner is not unmindful of the effect of such a decision upon the parties to this suit and others similarly situated, particularly the American Soldiers who, while stationed in Japan and Korea, entered into marriage with Japanese and Korean girls. However, when left with the choice of either eliminating and striking down the well founded and firmly established public policy of Virginia or alleviating the position of those situated as the parties to this suit find themselves, there is but one choice and that is to uphold the public policy of Virginia. *Heflinger v. Heflinger*, 136 Va. 289; Tarr 1. Tarr, 184 Va., 443.

5. WHETHER OR NOT LEGAL GROUNDS FOR DIVORCE EXIST.

* * * * *

page 26 }

* * * * *

Your Commissioner is of the opinion that the Complainant has failed to establish either cruelty or desertion as alleged in the Bill of Complaint, and, therefore, recommends that the Complainant be denied the divorce sought by him in these proceedings.

6. OTHER MATTERS PROPERLY RAISED BY THE PLEADINGS, ETC.

No children were born of the marriage between the Complainant and the Defendant (R 11).

7. AGE, PLACE OF BIRTH, OCCUPATION OF PARTIES.

The Complainant was born in Pampanga, Phillipines, is thirty-four years of age, and is a member of the United States Navy (R 39, 40).

The Defendant was born in Ulm, Germany, is thirty years of age, and is presently unemployed (R 2, 13).

Respectfully submitted,

MOSES EHRENWORTH
Commissioner

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

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