

BUTLER v. BUTLER.

1910. September 15. MAASDORP, C.J.

Husband and wife.—Divorce.—Evidence on commission.

Where W lived at Ugie in East Griqualand, and was bringing an action for divorce against H *in forma pauperis*, leave was granted for her evidence to be taken on commission.

The applicant had obtained leave on the 5th July to sue the respondent *in forma pauperis* for divorce on the ground of adultery, and respondent had not entered appearance to defend. Applicant was living at Ugie in East Griqualand, and asked for her evidence to be taken on commission.

Brebner, for the applicant: Applicant is a necessary witness, but the expense of bringing her to Bloemfontein would be excessive. See *Eyth v. Eyth* (6 C.T.R. 33) and *Montgomery v. Montgomery* (20 C.T.R. 9).

[MAASDORP, C.J.: Will applicant's evidence refer to the alleged adultery?]

No; her evidence is only necessary to prove the marriage.

The Court gave leave for applicant's evidence to be taken on commission, and appointed the Resident Magistrate of Maclear as commissioner, the order to be subject to all just exceptions to the admission of the evidence at the trial.

Applicant's Attorney: *C. J. Reitz*.

