

## APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice  
Zafar Ali.

MRS. O'DONNELL (PETITIONER) Appellant

versus

O'DONNELL AND ANOTHER, Respondents.

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May 23.

Civil Appeal No. 1795 of 1925.

*Indian Divorce Act, IV of 1869, section 10—Adultery—  
proof of—Admission of—by respondent—uncorroborated—  
whether sufficient.*

In a suit by a wife for dissolution of marriage under section 10 of the Divorce Act, the District Judge found that cruelty had been proved but not adultery. The evidence of adultery consisted solely of the fact that the respondent, who had not been on good terms with his wife, informed her in letters, of his having committed adultery so that she might take proceedings and set him free to marry the co-respondent.

*Held*, that, although the admission unsupported by corroborative proof should be received with caution, if the Court after jealously scrutinising it holds that no ground exists for suspecting dishonesty or collusion and believes it to be true, it can act on the strength of that admission alone.

*Robinson v. Robinson* (1), per Cockburn C. J., followed.

*First appeal from the order of Lt.-Col. R. W. E. Knollys, District Judge, Ambala, dated the 31st March 1925, dismissing the petition for dissolution of marriage.*

JAGAN NATH, AGGARWAL, and BALWANT RAI, for Appellant.

*Nemo*, for Respondents.

## JUDGMENT.

SHADI LAL C.J.

Sir SHADI LAL C. J.—In this case, Mrs. O'Donnell of Simla seeks the dissolution of her marriage

with the principal respondent on the ground of adultery and cruelty. The District Judge finds that cruelty has been proved, but on the issue of adultery he has recorded his opinion against the petitioner, and has consequently dismissed her petition for divorce.

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Now, the charges against the husband, as mentioned in the petition, were to the effect that he had committed adultery with Miss N, a schoolmistress, and also with one Mrs. S. The District Judge holds that neither of these charges has been established, and, as Miss N. has not been impleaded as a respondent in this appeal, the learned counsel for the appellant has confined his arguments to the charge of adultery with Mrs. S.

The adultery complained of is sought to be proved by the admissions made by the husband in two letters, which he wrote to his wife in the summer of 1924. The first letter, which is dated the 14th of July, 1924, is in the following terms :—

“ I am writing to you perhaps for the last time to tell you that it is my intention never to live with you again, for the simple reason that there has come into my life “ a Mrs. S.” with whom I lived as man and wife at Delhi last year from the 31st July to 7th August. This lady is now in Calcutta, and as soon as you divorce me, it is my intention to marry her. We were unsuited for one another due no doubt to a great extent to me and, I trust that your next venture, if any, will be more successful than ours has been. Look after the boy who I hope turns out well.”

It appears that the husband did not receive any reply from the wife, and after waiting about a fortnight he wrote to her another letter on the 29th of July, 1924. In this letter he makes the following in-

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quiry :—Mrs. S. " writes from No. 2, Park Mansions, Park Street, Calcutta, enquiring whether you are taking out proceedings against me for divorce, as we intend as soon as the decree has been made absolute to

get married."

Now, it is beyond dispute that the respondent has made a definite and clear admission of his guilt, and the question is whether there is any valid reason for supposing that it does not represent the truth. When examined by the District Judge before the settlement of issues, he attempted to explain away his admission by saying that the statements contained in the letters were false, and that he had written the first letter in anger " at being brought into Court by my wife in Simla for a breach of the peace ". This explanation appears to me to be false. There can be no doubt that he was at Delhi during the week referred to in his first letter, and he admits that he met Mrs. S. at Delhi, though only once. He further admits that he knew the lady, and that he wrote to her about twice a month while she was living at 2, Park Mansions, Park Street, Calcutta. He, however, repudiates the charge of having committed adultery with her.

I entirely repel the suggestion that the principal respondent deliberately invented a false story, attributing immorality to himself and to a lady, said to be a mere acquaintance of his, for the purpose of merely teasing his wife. Nor do I see any reason for suspecting collusion between the husband and the wife. The plain fact is that, as stated in his own letters, he had contracted a liaison with Mrs. S. and was anxious to marry her. It is common ground that he was not on good terms with his wife, and he ac-

ordingly informed her of his having committed adultery, so that she might take proceedings for divorce and set him free to marry Mrs. S.

It may be conceded that, apart from the admission, there is little or no evidence to prove the charge of adultery, though the circumstantial evidence renders it probable that the admission is a true representation of facts. An admission of adultery, unsupported by corroborative proof, should, no doubt, be received with great caution; but if the Court, after scrutinising it jealously, holds that no ground exists for suspecting dishonesty or collusion and believes it to be true, it can grant divorce on the strength of that admission alone, although there might be no other evidence to corroborate it. The leading case on the subject is *Robinson v. Robinson* (1), in which Cockburn C. J., delivering the judgment of the Court, made the following observations:—"If there is evidence, not open to exception, of admissions of adultery by the principal respondent, it would be the duty of the Court to act on such admissions, although there might be a total absence of all other evidence to support them.

\* \* \* \* The admission of a party charged with a criminal or wrongful act has, at all times, and in all systems of jurisprudence, been considered as most cogent and conclusive proof; and, if all doubt of its genuineness and sincerity be removed, we see no reason why such a confession should not, as against the party making it, have full effect given to it in cases like the present". This exposition of the law has been endorsed in several judgments by the High Courts in India.

I am, therefore, of opinion that there is sufficient proof of the adultery complained of, and that the

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charge of cruelty also has been established. I would accordingly accept the appeal with costs and grant the petitioner a decree *nisi* for the dissolution of her marriage with the principal respondent.

ZAFAR ALI J.—I agree.

N. F. E.

*Appeal accepted.*

## APPELLATE CIVIL.

*Before Mr. Justice Tek Chand and Mr. Justice Agha Haida.*MUZAFFAR MUHAMMAD (PLAINTIFF) Appellant  
*versus*

IMAM DIN AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 2607 of 1923.

*Custom or Muhammadan Law—Alienation—Kambohs—resident in town and non-agriculturists—Onus probandi—Son-challenging father's sale of agricultural land.*

The father of the plaintiff, a *Kamboh*, residing at Lahore sold agricultural land in the Lyallpur district. The plaintiff brought a suit for the usual declaration, that the sale being without consideration and necessity was not binding on him. The trial Court held that the plaintiff, on whom the *onus* lay, had failed to prove that the vendor was governed by custom and not by Muhammadan Law. The facts found were that the ancestors of the plaintiff had from time immemorial lived in Lahore City and none of them had actually followed agriculture as a profession but that their main occupation had for generations been service or trade.

*Held*, that, in these circumstances, the *onus* of proving that this family was governed by agricultural custom was rightly laid upon the plaintiff, even though *Kambohs* are one of the dominant agricultural tribes of the Lahore district.

*Muhammad Hayat Khan v. Sandhe Khan* (1), *Nathu v. Rafiq Muhammad* (2), *Ghulam Muhammad v. Bura* (3), *Prem*

(1) 55 P. R. 1908, p. 274.

(2) 270 P. L. R. 1913.

(3) (1919) 54 I. C. 387.

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