Bombay High Court
John Over vs Muriel Alleen Isidore Over on 14 October, 1924
Equivalent citations: (1925) ILR 49 Bom 368
Author: Marten
Bench: L Shah, Kt., Marten, Fawcett
JUDGMENT Lallubhai Shah, Kt., Acting C.J.

1. When this matter came before us on June 20 last, we directed the District Court to record further evidence as to the alleged adultery, and to examine the petitioner. The District Court has recorded further evidence. The petitioner has been examined on oath now, and his son also has given evidence. The respondent, the wife of the petitioner, has not appeared at any stage of the proceedings. The Setters written by the wife to the petitioner are on the record. On the strength of the letters and the evidence given by the petitioner and his son, the learned District Judge has expressed his opinion that the adultery of the respondent with another person not known is proved. He held the letters written by the respondent to be conclusive.

2. The matter is now before us, and the learned pleader for the petitioner supports that view. The respondent has not appeared. In the evidence given by the petitioner, he stated that the respondent had committed adultery with one person named in the evidence in 1922: but there was no further evidence about it. He also stated that she had misconducted herself with four or five men before she left his house. That also is not supported by any evidence. It appears that she ultimately loft her husband's house in January 1923,. and has not returned.

3. The principal question in the case is whether the letters written by the wife are sufficient in the circumstances of this case to justify the finding of adultery on the part of the respondent with an unknown person.

4. The learned pleader for the petitioner has informed us that he is not in a position now to prove the alleged adultery with the particular person named in the evidence in September 1922, as one of his two witnesses is dead, and the other is out of India. Nor is he in a position to establish his statement as to adultery with four or five persons before she left Kirkee. We have, therefore, to decide the case on the basis of the alleged adultery of the respondent with an unknown person after she left her husband in the beginning of 1923.

5. Before dealing with this question, I desire to refer to the necessity for great caution which has been recommended in the English cases on. this point, to guard against the reasonable possibility of collusion between the husband and the wife.

6. In the case of Robinson v. Robinson and Lane (1859) 1 Sw. & Tr. 362 the observations of Cockburn C.J. who delivered the judgment of the full Court, at pages 393 and 394, are very important:

Now the evidence, as has been before observed, consists entirely of admissions made by the wife herself; and here a question presents itself, as to how far the admissions of a wife charged with

adultery, unsupported by any confirmatory proof, can be acted upon as conclusive evidence on which to pronounce a divorce....

But as this Court is not a Court of ecclesiastical jurisdiction, nor bound in cases of divorce a vinculo by rules of merely ecclesiastical authority, it is at liberty to act, and bound to act, on any evidence legally admissible, by which the fact of adultery is established; and if therefore there is evidence, not open to exception, of admissions of adultery by the principal respondent, it would he the duty of the Court to act on such admissions, although there might be a total absence of all other evidence to support them. No doubt the admissions of a wife unsupported by corroborative proof should be received with the utmost circumspection and caution; not only is the danger oil collusion to be guarded against, but other sinister motives which might lead to the making of such admissions, if, though unsupported, they could effect their purpose, are sufficient to render it the duty of the Court to proceed with the utmost caution in giving effect to statements of this kind....

Nevertheless, if, after looking at the evidence with all the distrust and vigilance with which, as we have said, it ought to be regarded, the Court should come to the conclusion, first, that the evidence is trustworthy, secondly, that it amounts to a clear, distinct, and unequivocal admission of adultery, we have no hesitation in saying that the Court ought to act upon such evidence, and afford to the injured party the redress sought for. 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.

7. In Williams v. Williams and Padfield (1865) L.R. 1 P. & D. 29 at p. 31 with reference to the case, it is pointed out:

The case cited is an authority for the proposition that the Court may act on the admissions of the wide although they are not supported by any other evidence. But I entirely concur with the observations of the Lord Chief Justice as to the great danger of relying entirely upon such admissions. In each case the question will be whether all reasonable ground for suspicion is removed.

8. There observations of the Lord Chief Justice have been referred to in Arnold v. Arnold (1911) 38 Cal. 907.

9. We have, therefore, to consider whether in this case all reasonable ground for suspicion is removed. It is quite true that our attention has not been drawn to any case in which the adultery of a wife with an unknown person has been accepted as a fact on the strength of the admissions of the wife only. In the present case, however, on a consideration of all the circumstances, I have come to the conclusion that all reasonable ground for suspicion is removed, and that there is no collusion between the husband and the wife.

10. The parties were originally married in 1902, and a decree for divorce was obtained by the present petitioner on the ground of adultery of his wife with another person in 1918. The decree was made absolute in 1919. The parties remarried in December 1920.

11. According to the evidence of the petitioner and his son the conduct of the wife in September 1922 was apparently open to objection, and she ultimately left the house of the husband in the beginning of 1923. Thereafter she wrote three letters, which are Exhibits 17, 18 and 19 in the case. In the first letter she says:

I wrote to you when leaving Pindi and told you that I had no intention of returning to you.

You know how utterly miserable I am with you, so I have placed a definite gulf between us by living with another man.

I have no intention of ever returning to you. A divorce under the circumstances is your only sensible act and also kind.

12. In the other two letters she deliberately evaded giving any indication of her whereabouts, and practically confirmed what she had stated in the first letter, that she had been living with another man and had no intention of returning to the petitioner. I do not see any reason whatever in this case to suspect collusion. I have dealt with this case at some length in view of the difficulty which we have felt on account of there being no other corroborative evidence of the admissions of the wife. But, having regard to the circumstances, as disclosed in the evidence, I see no reason to doubt the genuineness of the admissions made by the wife, and in the words of Cockburn C.J. it is our duty to act upon such admissions, although there might be a total absence of all other evidence to support them.

13. The question whether in a given case the Court should consider the admissions of the wife as to adultery sufficient must necessarily depend upon the circumstances of that case. The fact that admissions are accepted as sufficient in one case can afford no reason whatever for accepting them in another case. The general considerations which would and should guide the Court are indicated in the judgment of Cock-burn C.J.; and subject to those considerations each case must be dealt with on its own facts and circumstances.

14. I would, therefore, confirm this decree.

15. I may add that after writing my judgment. I have had the advantage of reading the judgment of ray learned brother Marten and I desire to make it clear that in divorce cases great care and caution are necessary in dealing with the admissions of parties and it is only the exceptional circumstances of a given case that could justify the Court in acting upon the admissions of a party as to adultery without any corroboration. Generally speaking as a matter of prudence it is desirable to insist upon evidence corroborative of the admissions.

Marten, J.

16. This matrimonial case presents exceptional features. It is a husband's petition founded on the alleged adultery of his wife with some person unknown. He has already been divorced from her once, viz., by a decree nisi passed by me on August 12, 1918, on the Original Side of this High Court, which decree was made absolute on March 3, 1919. He, however, married her again on December 22, 1920, at Poona. She left him from September 8, 1922, to October 7, 1922. It would appear that her husband then thought he had cause to complain of her conduct with a Captain Chamberlain who had been living with them, but who, the petition states, has since gone to Australia, What exactly the petitioner alleges took place between Captain Chamberlain and the respondent is by no means clear on the evidence taken before the learned District Judge. But the petitioner deposes that he condoned "the offence" with Captain Chamberlain, and it is clear from the evidence of his son that there were disputes between the husband and wife over the ratter's conduct with Captain Chamberlain.

17. Shortly afterwards, viz., about January 1923, the respondent left the petitioner again, and this time for good. She wrote to him in March 1923 from Rawalpindi stating that she was not returning to the petitioner. Then in May 1923 she wrote to say that she was living with another man and did not intend to return, and the letter ended: I have no intention of returning to you, a divorce under the circumstances is your only sensible act and also kind." She then gave her address as c/o Miss Reynolds, Presidency General Hospital, Calcutta. Accordingly the petitioner instructed his legal adviser to write to the respondent there asking for her address, and also the name and address of the man she was living with. Her reply to that letter was: "I have no intention of giving the name or any information concerning the man I have been living with. That is no concern of Mr. Over's." At the same time she wrote to her husband: "Your letter received. No wily tricks of yours to get the name of the man I have lived with or the address by which you would find out will go down with me. 1 am not giving you any chance of getting damages, so you might as well give up the idea. I shall not write again and I tell you now finally that I am never coming back to you. I do not care to ask you for favours but should certainly like you to divorce me to know that I was quite free from you...."

18. Under those circumstances this present petition was filed under Section 10 of the Indian Divorce Act, 1869, for a dissolution of the marriage of 1920 by reason of the wife's adultery with an unknown man. The petition did not, as it ought to have done, ask the Court to excuse the petitioner under Section V of the Act from making the alleged adulterer a co-respondent to the petition. This can be done under Sub-section (2) if the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it. In the present case the petitioner has made no efforts to discover the name of the adulterer beyond asking his wife for the name. Nor did. he even know where his wife was then living. Her address in the petition is given as "c/o Miss La Franc, Presidency General Hospital, Calcutta", but it does not appear why the name of Miss La Franc has been substituted for the name of Miss Reynolds. Service of his petition appears to have been effected by registered post on the respondent "c/o Miss La Franc", but the postal packet has been returned "Refused".

19. However, as the previous letters found the respondent, I am not prepared to say that this service by registered post should be rejected notwithstanding the difference in the names of the addressee. Nor, on the other hand, am I prepared to overrule the discretion of the learned trial Judge in

excusing, as I must assume he did, the absence of the name of the co-respondent under Section 11 of; the Act. But I may express the hope that this case will be looked upon as an exception and not as the rule, and that the learned District Judges will not lightly excuse a party from making any enquiry which he can reasonably be asked to make, nor if necessary from effecting personal service of the petition, should circumstances render that course desirable in preference to the practice often prevailing in our Courts of service by registered post.

20. Unfortunately this petition has been heard by two successive trial Judges, and this is not as satisfactory a mode of trial as if the case had been heard throughout by one Judge. The petition was originally decided by Mr. Waterfield on affidavit evidence. This mode of trial we refused to accept in the present case and directed a remand. The oral evidence on the remand was taken by Mr. Wild. The letter from the District Judge giving his views on the evidence purports to come from Mr. Wild, but is signed by Mr. Weston, the present Acting District Judge. I should, however, infer that the opinion expressed is that of Mr. Wild and not of Mr. Weston.

21. The learned trial Judges do not seem to have felt any difficulty in this case and to have considered that the wife's letters were conclusive. It was indeed argued before us that, in a suit on a contract, the Court would normally grant a decree if the defendant had written a letter admitting the breach and the sum due, and therefore a different standard ought not to be adopted in this undefended divorce case having regard to the above letters. This argument seems to me to show a complete misapprehension of the duties of the Court in dealing with divorce cases. The Court is there dissolving a marriage solemnised between persons professing the Christian religion, and its duties are of a totally different character from those in suits connected with the sale and barter of goods.

22. The sole jurisdiction of the District Court to dissolve Christian marriages is to be found in the Indian Divorce Act, 1869, and it is incumbent on the Court strictly to follow the statutory directions therein given. The District Court has no inherent jurisdiction in this respect, and its predecessors did not even have the old ecclesiastical jurisdiction of divorce a mensa et thoro which was conferred on the Supreme Court of Bombay by the Supreme Court Charter 1828. I need not, however, go into the history of the divorce jurisdiction in India and England. That is explained in Wilkinson v. Wilkinson (1923) 47 Bom. 843. Turning then to the 1869 Act, Section 7 enacts:

Subject, to the provisions contained in this Act, the High Courts ami District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

23. Section 12 provides that:

Upon any such petition for the dissolution of a marriage, the Court shall' satisfy itself, so far as it reasonably can, not only as to the facts alleged, but. also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same.

24. Section 13 provides that:

In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,.. then and in any of the said cases the Court shall dismiss the petition.

25. Section 14 provides in effect that it is only in case the Court is satisfied on the evidence that the case of the petitioner has been proved, and does not find any connivance or collusion, that the Court is to pass a decree. No doubt Section 45 provides that "Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure." But that provision, in my opinion, does not override the express directions in Sections 7, 12, 13 and 14 to which I have already alluded.

26. Some reference was made, during the course of the case, to Section 58 of the Indian Evidence Act, and it was suggested that this section would render the letters of the respondent sufficient evidence, or as the trial judgment describes them, conclusive. That section runs:

No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are doomed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

27. That section normally relates to agreed statements of facts made between both parties to save time and expense at a trial. But on the facts here there is no agreement to admit facts. Further, as no pleading has been put in by the respondent, it cannot be said she has made any such admission in her pleading.

28. Moreover, in my opinion, this section has in general no application to divorce cases. I have never yet heard it even suggested that an English Divorce Judge would grant a divorce merely on an agreed admission of misconduct by the parties or their attorneys. If any such attempt was made, it would in all probability result in the suit being dismissed for collusion.

29. But in fact this section is controlled by Section 2 of the Indian Evidence Act, which provides that "nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India, and not hereby expressly repealed ". Now the Indian Evidence Act was passed in 1872, and 'Consequently the Indian Divorce Act, which was passed in 1869, was already in force at the date of the Indian Evidence Act. Consequently the express provisions laid down in Sections 7, 12, 13 and 14 of the Indian Divorce Act as to the requisites for a decree for divorce cannot, I think, be overridden by any such Section as 58. On the other hand, I think these letters are clearly admissible in evidence as admissions within the meaning of Sections 17, 18 and 21 of the Indian Evidence Act. (See also Rutherford v. Richardson [1923] A.C. 1 at p. 6.) But although a document may be admissible in evidence, the weight to be attached to it is quite another matter, and that is the real point of difficulty here.

30. The evidence before us in support of the petition practically rests on three main points, viz., (1) the alleged worthless character of the respondent and her past immorality; (2) her desertion of her husband and family; and (3) the letters written by her after her last desertion. There is no corroborative evidence of the wife's statement that she is living in adultery with another man. Captain Chamberlain is alleged in the petition to have gone to Australia. No other man's name is even suggested by the petitioner. Beyond her own letters there is nothing to show even, where she is living nor whether alone or with any man. The case, therefore, is a very exceptional one in which to grant a decree and demands the greatest care and caution in approaching it.

31. The general rule of practice adopted in the English Divorce Courts is thus stated in Halsbury, Vol. XVI, p. 478, Article 981:

The evidence of the husband or the wife alone must be corroborated, either by a witness, or, at least, by strong surrounding circumstances, especially (the presence of witnesses notwithstanding) where a respondent has made admissions, or a confession; and even where a correspondent has also confessed, a decree will be granted only if the Court is satisfied that there is no ground for suspicion.

32. No doubt in Robinson v. Robinson and Lane (1859) 1 Sw. & Tr. 362, it was laid down that a decree can be granted on the mere confession of a wife. But it is to be observed that in that case, although the wife's diary was alleged to admit misconduct, the Court was not satisfied that it did, and so the petition was in fact dismissed. So in one sense the judgment was obiter. Further that case was decided as long ago as 1859 when the divorce jurisdiction of the Court had only been in force for some two years, viz., since the Matrimonial Causes Act 1857. The Court had, therefore, little or no experience of such cases to go on. As already stated, I think that such a confession is admissible in evidence, and I agree that there is no rule of law which absolutely precludes the Court from acting upon it. But as a rule of prudence the practice of the Divorce Courts has been in general not to act upon such confessions, unless corroborated.

33. The pleader for the petitioner was unable to assist us by reference to any authority, and I think that all the cases cited came from the Bench. The nearest ease I have been able to find is Getty v. Getty [1907] P. 334. The head-note there rather states the effect of the decision than what the learned Judge actually said, but it runs as follows:

Although it is the general practice in matrimonial cases not to act and grant relief upon uncorroborated confessions of adultery, there is no absolute rule of practice and no rule of law precluding the Court from acting upon such uncorroborated evidence. The true test seems to be whether the Court is satisfied from the surrounding circumstances in any particular and exceptional case that, the confession is true. If so satisfied, it is open to the Court to grant relief, notwithstanding' the absence of independent corroborative testimony.

34. That was a very peculiar case, in which the husband and. wife had been separated for several years. Subsequently the wife became a Christian Scientist, and in consequence she admitted that she had been unfaithful to her husband some nineteen years previously but she refused to give the name of the man or any particulars about the alleged, adultery. She, however, made certain statements to

her solicitor, Mr. Lupton, who was called by the petitioner at the trial and who was compelled. by the Judge to answer certain questions as to whether she had admitted the adultery to him and what her reason was for refusing to give the name of the man. The learned Judge said that the solicitor's statement seemed to him very strong corroboration of the confession, and he proceeded (p. 338):

If Mr. Charles Lupton had not boon called, I should have found myself with only the confession of the respondent, written more than two years ago and not since repeated, unless as implied by her saying in effect that the money due to her by the terms of the marriage settlement was not any longer her money. If it had not been for the evidence of Mr. Charles Lupton, I should have felt very great difficulty in acting upon the respondent's confession; but, having heard his evidence, I am of opinion that all doubt of its genuineness and sincerity has been removed, and that the respondent so dealt with her solicitor as to show that this was nut an untrue confession, but that out of mercy towards, or through fear of the result to, the m:tn, she was not going, to use a colloquial expression, to give him away. Having now, as I say, sufficient evidence before me to remove from my mind all reasonably ground for suspicion, I am satisfied that the wife's confession was true, having been confined lung afterwards to her own solicitor, when she told him in effect that the adultery was committed shortly after she arrived in England, that it was not continued, but that out of fear for the consequences to the man she did not wish to disclose his name.

35. In the present case we have no such corroborative evidence as the learned Judge had in that case. We have, however, a reason for the respondent wishing to shield the man, viz., that he should not be exposed to a claim for damages. In the previous petition in 1918, there had been a claim for Rs. 10,000 damages against the then co-respondent Lieut. Hunt, though in fact I awarded no damages at the trial.

36. The only case referred to by the pleader for the petitioner was an unreported case decided by me in which, according to him, I had granted a divorce on merely a letter written by a wife who had left her husband. It is curious that the pleader should know of this unreported case although, he was unable to refer the Court to the ordinary authorities on the subject. But if it is thought by the Bar at Poona or elsewhere that this High Court will normally grant divorces on suitable letters written by a wife, they may take it that this is an entire misapprehension on their part, and that neither in the case alluded to nor in the present case is it to be taken that this Court intends to lay down any such practice. This illustrates the difficulty of giving the benefit of the doubt to a petitioner in a case near the line, for somebody else may use it as a starting point for some even more doubtful case, or else try to induce some other Judge to think that a definite rule of practice has been laid down.

37. The petitioner's pleader did not have the file produced from the Original Side as he might have done, and so my learned brothers have not seen the particulars of that case. But I have since seen the file, and my notes of evidence and judgment, and the real circumstances arc as follows: The suit was that of Mitchell v. Mitchell, No. 3444 of 1919. There the husband was an English soldier who had gone to fight first in. Mesopotamia and then on the Indian frontier, but on returning home found his wife's manner completely changed. On his return from the frontier she denied him marital access, and subsequently she admitted to her husband that she had committed adultery with a private in another regiment. The husband was shortly afterwards transferred to Bombay. Ho asked

his wife to go there, and said ho was prepared to condone her past offence. She, however, declined saying that if she came back he would always throw the past in her face. {Subsequently she left him altogether and wrote a letter, somewhat similar to the one we have in the present case, intimating that she was living with another man although, she did not actually mention his name. In that case the private was made a co-respondent but neither he nor the wife entered an appearance. The petitioner appeared in person and I cross-questioned him at considerable length. My notes of evidence have recalled this witness to my recollection. I remember that he gave his answers as an English soldier should, direct and to the point, and I was completely satisfied that what he told me was true. That being so, I held that there was no rule of law which absolutely prevented me from accepting his evidence corroborated as it was by the letters of the wife, and that though I thought the case was near the line, I ought to grant him a decree.

38. The decision I gave in that case can, if necessary, be supported by Williams v. Williams and Padfield (1865) L.R. 1 P. & D. 29. There the wife when challenged with adultery confessed it on the spot to the mother of the co-respondent. So there was this additional circumstance, besides the letters which were afterwards written by her. Moreover, this additional circumstance, if believed, tends to negative the risk of collusion which is a serious one in many undefended divorce cases.

39. If in the present case there was any corroborative evidence by the husband, e. g., if the respondent while living with her husband had boon challenged by him with her conduct and had confessed to adultery with a particular man with whom it afterwards appeared she had gone away, the case would be quite different. The difficulty, in the present case is, as I have said, that we have merely her letters to go on as to her adultery with some unknown man.

40. There are certain passages in the evidence taken on remand which would tend to suggest that the lady had committed adultery with Captain Chamberlain and with several other persons. The petitioner there stated:

In 1922 Captain Chamberlain came to slay with us. I had reason to complain of his behaviour with respondent. While I was away from Kirkee I received a letter in September 1922 from respondent saying that she was leaving me and not returning. I returned to Kirkee and she came back. I thus condoned the offence with Captain Chamberlain. I tried to reform respondent; but in January 1923 she again left me and took my daughter. Before she loft I had suspicions that she was corresponding with Captain Chamberlain, and I heard that ho had given her Rs. 6,000 to enable her to rejoin him.

41. Then later on he stated:

She has misconducted herself with four or live men. I have heard that she is now married.

42. In my opinion the learned trial Judge ought never to have allowed loose statements like these to appear on the depositions. When we asked counsel what "offence" Captain Chamberlain was alleged to be guilty of, he replied misbehaviour. And when we asked what the misbehaviour consisted of, he practically was unable to answer. Similarly, when the pleader was asked how did the witness know that the respondent had misconducted herself with four or five men he could only answer that it was

merely hearsay, and what the witness meant by saying "I have heard that she is now married" is left in complete obscurity. I think the Judge should have at once asked the witness what he meant by these statements, and what were his means of knowledge. The Judge would then have been able to decide how far the witness was speaking from his personal knowledge and how far he was merely repeating hearsay which of course is not evidence. We did give the pleader an opportunity of considering whether he was in a position to prove adultery against Captain Chamberlain or anybody else, because if so the subsequent desertion by the wife might revive the adultery notwithstanding its condonation. (See Copsey v. Copsey [1905] P. 94.) But, having regard to Sections 22 and 10 of the 1869 Act and to the necessity in general for the desertion to be for a period of two years or upwards in order to constitute a matrimonial offence on which certain decrees could, be obtained, it may be that this suit would be premature if it was founded on that ground, inasmuch as a period of two years has not expired in the present case.

43. We are accordingly left to decide this case on the record in its present state which to me is far from satisfactory. But my learned brothers are satisfied on the evidence that the confession of the wife is true, and under the circumstances I do not think I ought to differ from them. My mind has fluctuated a good deal during the course of the case, but one statement in the respondent's last letter to her husband is I think just sufficient to turn the scale in favour of the petitioner. I refer to the letter in which she alludes to the wily tricks of her husband, and states she is not going to give him any chance of getting damages. I have already stated that in the previous divorce case in which Lieut. Hunt was a co-respondent, the present petitioner had claimed. Rs. 10,000 damages. So although I did not award any damages to the petitioner, that claim may have caused annoyance to the guilty parties at the time. The wife would doubtless recollect this, and I think it unlikely that she would write to her husband in this way on the subject of damages, if in fact there was no man against whom a claim could be made. On looking at the former petition I see that the wife was there described as "until recently a Nursing Sister in Military service now discharged". The co-respondent Lieut. Hunt was described as "In the service of East African Hallways, now on leave". On looking at my notes of evidence, which I have thought it permissible to do under the peculiar circumstances of this case, I find that the parties were first married as long ago as 1902, and that their matrimonial troubles first began during the war when without the knowledge of her husband the wife joined up as a Military nurse and subsequently went to East Africa. That affords some explanation of the origin of the trouble which she has caused to her husband who appears to have been most considerate to her throughout. It may also explain why she gave an address by reference to a hospital at Calcutta. It is not, however, suggested that she has since had anything more to do with Lieut. Hunt.

44. Under all the circumstances then of this exceptional case, I agree with my Lord the Chief Justice in thinking that the decree nisi may be confirmed.

45. But I wish, to add this. I am very struck with the difference in the way in which divorce work is done in the District Courts, as compared with the normal criminal and civil work. In the latter, and particularly in the criminal work, we usually get every assistance. If, for instance, a criminal case depended on an accomplice's evidence, then the trial Judge would be sure to deal carefully with the question whether there was any corroborative evidence. In practice the confession of a guilty party

in a divorce case ought to be treated on somewhat similar lines of caution to those of an accomplice's evidence in a criminal case. And yet in the present case it was accepted almost as a matter of course. If this was the only instance of the kind, I would have regarded it as an exception. But in Wilkinson v. Wilkinson (reported on other points in 47 Bom. 843) and again in Hewson v. Hewson , this Court has had to comment adversely on the loose way in which divorce cases are at present conducted in the trial Courts. If it is once realised that an ex-parte case is sometimes the most difficult of all cases to decide because there is no counsel for the respondent to point out the deficiencies in the petitioner's case, and consequently it is loft to the Court for itself to detect them, I feel sure that no cause will be given to us in the future for making adverse comments such as those which I have thought it my duty to make in the present case. The ideal which all we Judges, who have to exercise this difficult jurisdiction of Divorce, should, I think, aim at, is well expressed by Lord Sumnor in Russell v. Russell [1924] A.C. 687, where he says (p. 736):

The question cannot have been entirely absent in litigation until the last three or four years, and we know that in that period at any rate many decrees have been granted after and in consequence of the admission of a husband's evidence, which, if applicable, this rule would have excluded. It is no answer to say that a husband's evidence of non-access has only been admitted to save expense and time. That is not the way in which matrimonial jurisdiction is or ought to be exercised. Decrees of dissolution of marriage are to be made only upon strict proof. Consent to decree, direct or indirect, is inadmissible, nor is there any one present to make admissions, if the suit is undefended. In such cases the Judge must, and I doubt not does, watch vigilantly to see that the evidence on which he acts is such only as he is entitled to receive, and the rule in Goodright's Case (1777) 2 Cowp. 591, if it applies at all, is a striking one which could hardly be overlooked. The fact that both parties are equally anxious to get a divorce is precisely a reason why the Judge should be absolutely strict as to proof. No consideration of. saving time and trouble can be a legitimate ground for admitting illegitimate evidence.

Fawcett, J.

46. I concur with the judgment of the learned Chief Justice.

47. In my opinion the circumstances in the present case justify the Court in acting on this respondent's admission of adultery with an unknown man though there is no corroborative evidence on the point. I think that the Court can safely act on the respondent's admission as the real truth, and that all reasonable ground for suspicion of collusion is removed by the tone of the respondent's letters, her evident desire to shield the adulterer, and the history of her past conduct and relations with the petitioner as disclosed in the evidence Omitting what my learned brother Marten has pointed out to have been improperly allowed on the record).

48. At the same time, I agree that this is an exceptional case, and that the Courts should not (as a matter of prudence) ordinarily act on such confessions, without some corroborative evidence.