

1943

Present: Moseley S.P.J.

TODD v. TODD.

IN THE MATTER OF A PETITION UNDER THE CEYLON DIVORCE
JURISDICTION ORDER IN COUNCIL, 1936.

*Divorce—Respondent's adultery with X—Admission by respondent—Ceylon
Divorce Jurisdiction Order in Council, 1936.*

In an action for divorce on the ground of respondent's adultery with X,
the Court may act on the admission of respondent, provided it has no
reason to doubt the genuineness of the admission.

THIS was a petition for divorce under the Ceylon Divorce Jurisdiction
Order in Council 1936, and the Ceylon (Non-domiciled parties)
Divorce Rules, 1936.

F. C. W. VanGeyzel, for the petitioner.—The chief item of evidence
against the respondent is her admission of adultery with X contained in
a letter by her to the petitioner. This, though not evidence against X

(*Eliyatamby v. Eliyatamby*¹) is, it is submitted, evidence against her, even if uncorroborated, provided the Court is satisfied that it is genuine and was not made for the purpose of the suit—*Robinson v. Robison and Lane*²; *Williams v. Williams and Padfield*³; *Le Marchant v. Le Marchant and Ratclif*⁴.

The petitioner's proof, however, goes further than that and corroborates the admission inasmuch as a hotel register shows that both the respondent and X stayed at the same hotel and so had opportunities for misconduct, and there is also evidence from which the inference is irresistible that X kept the respondent in funds ever since she left the petitioner.

Cur. adv. vult.

August 3, 1943. MOSELEY J.—

This is a husband's suit for dissolution of marriage on the ground of the wife's adultery with X. The latter was not made a co-respondent in the suit, since it appeared to the Court that there was no evidence against him except the confession of the respondent. The question for decision is whether the Court should act on such a confession, where it is not corroborated by other evidence. Three letters written by the respondent to the petitioner were put in evidence in one of which she stated that she had lived with X in Colombo. That an opportunity of so doing had occurred was indeed indicated by the production of a hotel register which makes it appear that X spent one night at a hotel where the respondent was staying at the time. In another letter, written from South Africa, she stated that she was living under X's protection and was being supported by him. She expressed their intention of marrying as soon as her release from the present marriage may be obtained.

Several authorities were brought to my notice which go to show that the Court may in a proper case act on such evidence. In *Williams v. Williams and Padfield*⁵ Wilde J.O. referred to the great danger of relying entirely on such confessions. "In each case" said the learned Judge "the question will be, whether all reasonable ground for suspicion is removed". This authority was followed by Hannen P., in *Le Marchant v. Le Marchant and Ratclif*⁶ where it was considered that the confession by the wife was beyond doubt *bona fide* and the Court felt bound to act upon it.

In the present case it may well be that the main object of the respondent's admissions was to facilitate the obtaining of her freedom. The letters are extremely frank and I have no reason to doubt the genuineness of the admissions. There is no suggestion of collusion.

There will be a decree *nisi* returnable in six months.

Decree nisi entered.

¹ 27 N. L. R. 396.

² 27 L. J. P. 91.

³ 13 L. T. R. 610.

⁴ 34 L. T. R. 610.

⁵ 13 L. T. R. (N.S.) p. 610.

⁶ 34 L. T. R. (N.S.) p. 367.