

**Arnold Vs. Arnold**

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**Court :** Kolkata

**Decided On :** Jan-31-1911

**Reported in :** (1911)ILR38Cal907,13Ind.Cas.491

**Judge :** Woodroffe; and Carnduff, JJ.

**Appellant :** Arnold

**Respondent :** Arnold

**Judgement :**

**Woodroffe, J.**

1. In this case the petitioner asks for the dissolution of her marriage with the respondent on the grounds of adultery and cruelty. He has been served with a notice by the petitioner. But he has entered no defence on either of the charges and he does not appear in this appeal. Adultery has been sought to be proved in this case both by admissions oral and documentary and other acts from which it is contended adultery should be inferred. In particular in a letter of 23rd April, 1910, which wrote to the petitioner, he Writes as follows : 'I believe that you are charging me with, adultery with a certain lady in the Company and cruelty in Calcutta, both of these charges I am bound to admit to, as you have probably secured substantial proofs as to the cruelty which has occurred during passion I sincerely regret. I shall not defend the case under the circumstances.' I have no doubt that 'the lady in the Company' is Miss Kneller, There has been no question of any

other.

2. Another letter has been proved dated the 30th November 1910 in which with other things he states 'I can't go away without writing and wishing you good-bye. I would have said good-bye personally, only I suppose my presence would have been distasteful to you. I am sorry we have finished up like this. I know I am losing & good woman, for I believe you to be good and trust you will always try and be so.'

3. From the evidence of McGarth it appears that the respondent was very fond of Miss Kneller, a member of the Company and on one or two occasions he asked McGarth not to speak to his wife about it.

4. Mr. Smith, the Manager of the Bandmann Opera Company, states that he himself had charged both the respondent and Miss Kneller with the intimacy alleged to exist between them and that, neither denied it. Subsequently both of them left the company. The evidence of Mr. Bury, Manager of the Empire Theatre, is that in consequence of the relationship existing between the parties the petitioner asked him for a separate room. Mr. Justice H(sic)rington in his Judgment states that 'the petitioner gave her evidence in a frank and straightforward manner and I have no doubt that each fact to which she spoke was truly, stated by her.' One of such facts was that there was no collusion. Nor is there any ground for suspecting collusion in this case. The learned Judge, however, adds 'but the question is, are the facts she has proved sufficient to justify the inference that on any of the occasions' she has spoken to adultery was committed?' If the learned Judge was not satisfied as regards the evidence tendered, I think that under the circumstances of this case, the petitioner might have been given an opportunity to produce such further evidence as the Court thought was necessary, as I have stated no collusion is proved or suggested. In the preset case admissions have been proved. Doubtless, caution is required in cases of Divorce to see that there is no collusion and an admission must be examined from this point of view. But if, as here, there is no reason to suspect collusion an admission may be as cogent evidence in these as in any other cases. In *Robinson v. Robinson* (1859) 1 Sw. & Tr. 362, Sir Alexander Cock-burn says: 'The Divorce Court is at liberty to act and is

bound to act on any evidence legally admissible by which the fact of adultery is establishes. If, therefore, 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 these 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 to 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.' It is to be observed that the learned Chief Justice says that it is the duty of the Court to act on admissions although there might be a total absence of all other evidence to support them. The present case is stronger. Not only is there no reason to suspect collusion but the evidence which has been given supports and corroborates the written admission of the respondent. Evidence, has also been given of acts from which the Court was asked to draw the inference of adultery It is unnecessary to consider whether these facts, if they stood alone, would be sufficient to prove the alleged adultery. However they may be and guarding myself from being supposed to say that they are insufficient, it is sufficient to say that I have no doubt that the admission contained in the letters of the respondent are truthful admission of facts. In my opinion, the acts of adultery and cruelty charged have been proved. I would therefore reverse the judgment of Mr. Justice Harington and pass a decree nisi or dissolution of marriage with costs.

**Carnduff, J.**

5. I agree, and have nothing to add to the judgment which has been delivered by my learned brother.

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