

Divorce

Dr. N.G. Dastane vs Mrs. S. Dastane on 19 March, 1975

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In England, a view was at one time taken that the petitioner in a matrimonial petition must establish his case beyond a reasonable doubt but in *Blyth v. Blyth* [1966] A.E.R. 524 at 536, the House of Lords held by a majority that so far as the grounds of divorce or the bars to divorce like connivance or condonation are concerned, "the case, like any civil case, may be proved by a preponderance of probability". The High Court of Australia in *Wright v. Wright* 1948, 77 C.L.R. 191 at 210, has also taken the view that "the civil and not the criminal standard of persuasion applies to matrimonial causes, including issues of adultery". The High Court was therefore in error in holding that the petitioner must establish the charge of cruelty "beyond reasonable doubt". The High Court adds that "This must be in accordance with the law of evidence", but we are not clear as to the implications of this observation.

