

***Briginshaw v Briginshaw* (1938) 60 CLR 336; HCA 34 (30 June 1938) – High Court of Australia**

‘Civil cases’ – ‘Evidence’ – ‘Standard of proof’

Proceedings: Petition for divorce on the ground of adultery.

Facts: The applicant sought a dissolution of his marriage to his wife on the ground of her adultery.

Issue/s: What is the standard of proof required in civil matters?

Decision and Reasoning: In explaining the civil standard of proof, Dixon J stated that ‘when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence...It cannot be found as a mere mechanical comparison of probabilities’. His Honour went on to explain that the standard is one of ‘reasonable satisfaction’:

‘But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency’.