

an unpleasant case, and, I am happy to say, one of not frequent occurrence in this Province. It has been conducted on both sides with great ability, and with a singular amount of discretion and good judgment, the Counsel on both sides seeming desirous to avoid as much as possible anything calculated unnecessarily to wound the feelings of either party. My duties now, gentlemen, are exceedingly light; yours are of a far more responsible character. A good deal has been said by the Counsel for the defendant concerning a popular opinion which, he seems to think, is pressing in upon this case, restraining him in the discharge of his duties under the conviction that in the contest in which his client is engaged he has not "a fair field and no favor." I feel satisfied that none of you, gentlemen, will knowingly or willingly, permit any such considerations to weigh with you; and if these things are so outside, I can only entreat you, believing even the best men will sometimes be almost imprecipitable influenced by them, to fairly and impartially determine this cause, according to the rules of law and the evidence as heard and laid down in this Court, entirely unswayed by the expression of any opinions which you may have heard. It cannot be disguised, that, although the pecuniary amount involved is comparatively small, the result of this cause must have a material bearing upon the future condition of husband and wife. It is, no doubt, gentlemen, the duty of Counsel, to put the facts as detailed in evidence in the strongest light, and this is just one of those causes which calls forth the highest talent they possess; at the same time neither you nor I must or should be governed in our judgments by feeling or prejudice. This, with us, must be simply, a dull, dry question of contract, and as such we must endeavour to decide it. It is alleged, that the defendant in this cause, by his wife, contracted with the plaintiff for the supply of necessaries, &c., &c. If the plaintiff did so contract, then this Court is the legitimate tribunal, and you are the proper persons to see him righted. If the contrary has been shewn, or this claim is not sustainable in law, then it is our duty, no matter what may be the consequences, regardless of prejudices and feeling and all outside issues, or the effect on one side or the other, manfully and firmly, to give our judgments accordingly, setting ourselves against all popular feelings, fearlessly and honestly, under our oaths, dealing justly in the matter, leaving public feelings to be soothed as best they may, reckless of all improper considerations, discharging faithfully our duties. This being the nature of the case, what is the law? When a man marries a woman, and takes her to his bosom and his home, and they live as man and wife, she goes abroad clothed with a certain authority, the law giving her credit for all necessaries for herself; and such as she may purchase the law will imply is with her husband's sanction. When a wife lives apart from her husband, ceases to be a member of his family, no longer sits at his board and continues not to be the partner of his bed, then the ordinary relations cease, and they become extraordinary; and the law, discouraging, so far as it can, such extraordinary relations, and acting on the policy of trying to keep man and wife united, declares that whoever treats and deals with her *does so at his own peril*. This is not my language, but that of learned Judges who have occupied seats on the Bench for years. When, therefore, a man comes in seeking to enforce such a claim as this, the burden of proof is on him to shew that she is justified in living separate from her husband. What are the circumstances which will justify her, and clothe her with this *agency of necessity*—for that is it, *necessity* that she shall not be left to starve. If the husband turns his wife out, sends her abroad, she is of *necessity* an agent, and may apply for meat, drink, and clothing, suitable to her position; and a contract therefor entered into by her is binding on the husband, and may be recovered. Or, if the husband treats his wife with such cruelty that she cannot remain with him without reasonable apprehension of danger to life or personal violence, then she may leave his roof, and will do so clothed with authority. But, gentlemen, while I lay down the law thus to you, I must warn you that mere incompatibility of temper in itself, no matter how much to be regretted, will not justify this leaving. It is not necessary for me to speak to you of the ordinary moral duties existing between husband and wife, but I may say that I do not look upon this case as an exception to the general—the almost universal—rule, that when difficulties arise of this nature, culminating in violence or separation, there is more or less blame on both sides. Mrs. Julia Hunter may have been a favored child; she may have been a petted daughter in her father's house; she may have assumed her marriage vows without an adequate knowledge of the checks to happiness which so often exist; she may have anticipated, instead of a home of mutual and kindly dependence, one of complete independence;—or, on the other hand, when Mr. Hunter married her, he may not properly have recognized those delicate attentions which a young wife would naturally expect—(and probably gratitude for the many cares of his family bestowed upon him may have influenced him—for he was certainly a most faithful son and kind brother)—and his sentiments may not have been such as they might have been if he had roughed it more with the world. He may not have been a man calculated to make a sensitive and delicate girl happy; he may have expected to have everything entirely subservient to his own will, to reign supreme, his word a law, and to receive more than he had a right to expect, particularly without a return—all this may have been. Still, gentlemen of the Jury, everything, reasonably or humanly speaking, seemed in this marriage to promise the ordinary amount of happiness attendant upon wedded life—social position not unequal, relationship and ages suitable and proper—her character irrefragable—and not a breath raised against her as a virtuous woman, and the husband bearing the reputation of a fair and honorable man, singularly industrious, his conduct toward his mother and sisters having been tender and magnanimous. Surely, I say, we had a right to expect at least the usual run of

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