

FEBRUARY 24TH, 1906.

## DIVISIONAL COURT.

## LOVELL v. LOVELL.

*Husband and Wife—Alimony—Cruelty not Amounting to Personal Violence—Threats—Wife Leaving Husband—Justification—Condonation—Findings of Trial Judge—Appeal.*

Appeal by defendant from judgment of BOYD, C., 6 O. W. R. 621, awarding permanent alimony to plaintiff.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., CLUTE, J.

G. H. Watson, K.C., for defendant.

J. King, K.C., for plaintiff.

FALCONBRIDGE, C.J.:—The Chancellor's findings of fact are amply supported by the evidence as it appears in black and white, without reference to any question of demeanour of witnesses, as to which he pronounces in favour of plaintiff.

Every case of this nature is to be "decided upon the facts held by the Judge to be proved, and the relation of such facts to the whole married life of the parties to the suit:" per Lord Halsbury, L.C., in *Russell v. Russell*, [1897] A. C. at p. 420.

The Chancellor has, to my mind, demonstrated conclusively that these facts bring the case well within the lines of the leading decisions, which he cites and from which he makes apposite quotations.

The appeal must be dismissed with costs.

CLUTE, J., gave reasons in writing for the same conclusion, referring at some length to the leading authorities, which are set out in the former report.

STREET, J., dissented, giving elaborate reasons in writing. He referred first to sec. 34 of the Judicature Act; then to the words of Lord Herschell in *Russell v. Russell*, [1897] A. C. at pp. 456-7: "I think it may confidently be asserted