

that money to her husband; also that it was well understood that everything was hers, and not her husband's. The learned trial Judge accepted this testimony as trustworthy. The understanding deposed to did not appear to be based on any agreement, but to be simply an inference, in which the learned trial Judge agreed. His mind apparently was not directed to the idea that the transaction between the husband and wife might have been in the nature of a joint venture.

In the view of FERGUSON, J.A., the result turned on the proper inferences to be drawn from the acts of the defendants, accepting the finding of the learned trial Judge that the evidence of the defendants as to what they severally said and did was trustworthy. In accepting that finding, but refusing to adopt as binding the understanding of either of the defendants as told in the witness-box, or the inference of the trial Judge, there was no intention to depart from the usual practice of the Court of accepting the findings of the trial Judge, as to the credibility of the witnesses.

After an exhaustive statement of the facts and review of the evidence, and reference to the Married Women's Property Act, R.S.O. 1914 ch. 149, secs. 4 (2), 7 (1); Cooney v. Sheppard (1896), 23 A.R. 4; Laporte v. Cosstick (1875), 23 W.R. 133; and other authorities; the learned Justice of Appeal said that the effect of the Act was to enable a married woman who has separate estate to enter into partnership with her husband.

The defendants entered into a joint venture, without an express agreement as to the wife's share, and she was entitled to share equally with her husband therein.

Reference to *In re Simon*, [1909] 1 K.B. 201.

The original investment of \$500 by the wife was a capital contribution by her from her separate estate; and the profits and assets of the business over and above this original contribution are owned by the defendants equally.

The appeal should be allowed, and there should be a judgment for the plaintiff declaring that the defendants are equal partners in the business carried on in the name of William Morwick, and that his share in the partnership business and assets is liable to satisfy the plaintiff's execution.

MACLAREN and MAGEE, J.J.A., agreed in the conclusion of FERGUSON, J.A.

HODGINS, J.A., and CLUTE, J., dissented, reasons in writing being given by each of them.

Appeal allowed; HODGINS, J.A., and CLUTE, J., dissenting.