

The defendant contended that, upon the evidence, adultery was abundantly proved; and that the making of an unsuccessful attempt to establish adultery as an answer to a claim for alimony was not in itself a ground for granting alimony—at any rate unless it was shewn that the plaintiff's health was thereby jeopardised.

Reference to *Russell v. Russell*, [1897] A.C. 395; *Lovell v. Lovell* (1906), 13 O.L.R. 569, 571 (per Moss, C.J.O.), 579 (per Meredith, J.A.).

The latter case had gone further in favour of the wife than any case since *Russell v. Russell*; but it fell far short of establishing the proposition that pleading adultery as an answer to an action for alimony, and attempting unsuccessfully to support the plea by evidence, in itself constituted a ground for alimony.

In the present case no endeavour was made to shew that the defendant's conduct in this respect affected the plaintiff's health; she was not a woman whose health was likely to be affected by the proceedings in the action; she did not say that it was so affected, nor was the fact found at the trial.

In this view of the case, the action failed; and it was unnecessary to deal with the other questions raised; but the learned Judge did not desire to be taken as concurring with the finding of fact that the adultery had not been adequately proved by the admissions of the plaintiff and her witness Alderson, apart from the defendant's testimony.

MAGEE, J.A., agreed with MIDDLETON, J.

HODGINS, J.A., also agreed, but expressed no opinion as to whether adultery was proved.

FERGUSON, J.A., agreed in the result, for reasons briefly stated in writing.

*Plaintiff's appeal dismissed; defendant's appeal allowed.*