

times quarrelled and separated and come together again. The plaintiff, to support her allegation of cruelty, relied chiefly on what occurred on a certain Saturday night in July, 1918. She was, no doubt, injured on that occasion in a quarrel and bodily encounter. The defendant was a cripple, and he was also injured. The learned Judge was unable to conclude that what happened on that night established sufficient ground to entitle her to alimony. She was the aggressor in a quarrel for which she was responsible, and in which, owing to his deformity and consequent incapacity, the odds were against him. Because of the part she then and in many of their other quarrels and troubles took, her rights were not distinguishable from those of the plaintiff in *Warring v. Warring* (1813), 2 Phillim. 132, where the Court, being unable to say that either party (husband or wife) was free from blame, refused relief to the wife, believing that her own conduct did not give her a title to complain, and suggested that her own behaviour might have been responsible for the evils of which she complained.

In *Payne v. Payne* (1905), 10 O.L.R. 742, the judgment was in favour of the defendant in an alimony action where it was found that the defendant's acts were not of such an excessive and intemperate character as to render it unsafe for his wife to live with him, and that the conduct complained of was provoked by the wife herself.

The facts of the present case brought it within the scope of these decisions, and were convincing against the merits of the plaintiff's claim.

The action should be dismissed; the defendant should pay such costs as are provided for by Rule 388.

SUTHERLAND, J.

JULY 16TH, 1919.

SYLVESTRE v. SCHWARTZ.

*Vendor and Purchaser—Agreement for Sale of Land—Possession Taken by Purchaser—Default in Payment of Instalments of Purchase-money—Action for Rescission, Damages, Forfeiture, and Possession—Tender of Overdue Instalments after Action Brought—Payment into Court—Judgment for Vendor for Amount Paid in—Failure of Action in other Respects—Costs—Rules 313, 314.*

Action by the vendor for a declaration that an agreement for the sale and purchase of land was rescinded, for damages, a declara-