

The great difficulty in the way of the plaintiff arose from statements and admissions in her own testimony and statements by the witnesses Herron and Morden, which, coupled with the evidence by the witness Edith Herron and that of the defendant, led the trial Judge to make such definite findings of fact in regard to the conduct of the plaintiff as to disentitle her to relief.

In making a finding against the plaintiff with respect to the Morden incident, the trial Judge definitely accepted the testimony of the defendant and discredited that of the plaintiff and Morden. The learned Judge sitting in appeal (SUTHERLAND, J.) said that he had carefully read the evidence to see if it were possible to disturb this finding, having regard to the principles which appellate Courts are called upon to apply in considering findings of fact made by trial Judges: Colonial Securities Trust Co. Limited v. Massey, [1896] 1 Q.B. 38; Coghlan v. Cumberland, [1898] 1 Ch. 704; Dominion Trust Co. v. New York Life Insurance Co., [1919] A.C. 254, 257; but could not see that the learned trial Judge could, upon the evidence, have come to any other conclusion in the Morden matter.

It was urged that the trial Judge had improperly rejected evidence to shew the "standard and customs of living" of the plaintiff and defendant, alleged to be material and relevant on the question whether adultery had been committed. The husband's carelessness in regard to bringing men into his house to drink and leaving them with his wife, and encouraging her to drink, might be adduced in evidence, in an action for criminal conversation, in mitigation of damages, but it could not be relevant in an action for alimony, unless, at all events, it were alleged that he had knowledge of improper acts on her part as the result of his conduct, and had condoned them. Here it was not suggested that after the Morden incident he did anything to condone it.

The appeal should be dismissed, with the order as to costs appropriate in alimony cases.

MULOCK, C.J. Ex., agreed with SUTHERLAND, J.

MASTEN, J., agreed in the result, for reasons stated in writing.

FERGUSON, J.A., agreed in the result and with the reasons of MASTEN, J.

*Appeal dismissed.*