

MAGEE, J.A., in a written judgment, said that the defendant appealed from the judgment granting alimony to the plaintiff. The trial Judge had set forth with considerable detail the evidence and his conclusions on the facts, and found the defendant to have been chargeable with assaults, ill-temper, and cruelty, causing physical and mental illness to the plaintiff, and that eventually he deserted her. The defendant, appealing to this Court, was under the disadvantage of having been discredited by the trial Judge, who had what must in this case have been the great advantage of seeing and hearing both parties and being assisted thereby in coming to a conclusion as to the physical condition of the plaintiff and the probability of her assertions as to the character and acts of the defendant. Wherever their testimonies conflicted, the trial Judge accepted hers, and indeed appeared to accept it throughout. In the face of his findings of fact, even upon the injury to the wife's health, as to which there was no medical evidence whatever, it would be of little use to enter into details as to whether one would come to the same conclusions as to the different episodes and incidents alleged against the defendant, some at least of which would appear improbable and strained. On the recognised principle of the weight to be attached to the conclusions of a trial Judge in cases of conflicting testimony and the credence to be given to witnesses, this Court would not be justified in disturbing the findings of fact in this instance. If they are granted, the conclusions of law would appear to be warranted.

However hard upon the defendant the conclusion may be, the judgment cannot, on recognised principles, be interfered with.

The appeal should be dismissed.

MEREDITH, C.J.O., in a written judgment, said that the case was distinguishable from *Bagshaw v. Bagshaw*, *infra*, in that there was here the finding that was wanting in that case, and there was evidence to support the finding. It was true that it was the testimony of the respondent only, but it was believed by the trial Judge, and there was no reason for reversing the finding.

The appeal should be dismissed.

FERGUSON, J.A., in a written judgment, said that, untrammelled by the finding of the trial Judge and unbiassed by the opinions of his associates, he would have concluded that the plaintiff had not established cruelty within the meaning of the rule re-stated and considered in *Bagshaw v. Bagshaw*, *infra*.