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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JUNE 30TH, 1920.

SYLVESTER v. SYLVESTER.

*Husband and Wife—Alimony—Circumstances Disentitling Wife to
—Adultery—Absence of Direct Proof—Circumstantial Evidence
—Findings of Fact of Trial Judge—Appeal—Rejection of
Evidence as to Conduct of Husband in Placing Temptation in
Way of Wife.*

Appeal by the plaintiff from the judgment of LATCHFORD, J., dismissing an action for alimony.

The appeal was heard by MULLOCK, C.J. Ex., SUTHERLAND and MASTEN, JJ., and FERGUSON, J.A.

W. R. Smyth, K.C., for the appellant.

R. S. Robertson, for the defendant, respondent.

SUTHERLAND, J., in a written judgment, said that the plaintiff in an action for alimony cannot succeed if she is found guilty of unchastity not condoned by the defendant. It is not necessary that the defendant should prove the actual fact of adultery. The evidence must, however, disclose circumstances from which the "fair inference" flows "as a necessary conclusion:" *Alexander v. Alexander and Amos* (1860), 2 Sw. & Tr. 95; *Loveden v. Loveden* (1810), 2 Hagg. Con. 1, 161 Eng. Repts. 648.

The learned trial Judge carefully considered and weighed all the relevant evidence before making his findings of fact; and, if his findings were not disturbed, the appeal could not succeed.

It was plain from the reasons for judgment of the trial Judge that he did not view the defendant's own conduct or testimony with much favour. That was not saying that the trial Judge did not credit the defendant in some definite respects, particularly where his evidence was corroborated in great part both by the plaintiff and the witness Morden and contradicted by them only in some incriminating details as to which both were concerned.