

Privy Council Appeal No. 49 of 1921.

Maurice Day Baldwin - - - - - *Appellant*

v.

Mary A. M. Baldwin - - - - - *Respondent*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC
(APPEAL SIDE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 4TH JULY, 1922.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

MR. JUSTICE DUFF.

[*Delivered by* VISCOUNT HALDANE.]

Their Lordships do not think it is necessary to call upon the respondent in this case.

The proceedings are brought under Articles 189 and 190 of the Civil Code of Quebec. Under Article 189 a husband and wife may respectively demand a separation on the ground of outrage, ill-usage or grievous insult, and by Article 190 :—

“ The grievous nature and sufficiency of such outrage, ill-usage and insult are left to the discretion of the Court, which, in appreciating them, must take into consideration the rank, condition and other circumstances of the parties.”

That makes a distinction between the case of a separation on the ground of adultery, which is a thing as of right, and the case we are dealing with, which is one of discretion. It makes it all the more desirable that the matter should be dealt with upon the spot by the Courts of the place where the events happened, Courts which are cognisant of the social standards which obtain there. It is of course true that a right of appeal is given to the King in Council, and if any case were brought before their Lordships in which they thought injustice had been done the

appeal would be entertained freely ; but for the reasons which have been given, in a case of this kind their Lordships are reluctant to interfere with the discretion exercised by the Court below in a matter into which discretion enters. It is true that this case is complicated very much by the fact that the trial Judge decided differently from the Court of Appeal, and that it was only by a majority of one that the Court of Appeal have decided as they did to reverse his judgment. There are therefore three judges each way. But one thing that has influenced the decision of their Lordships is that there is a specific incident in the case, the Miss Oakes incident. Their Lordships have scrutinised the evidence, they have scrutinised the judgment of Mr. Justice Howard and the judgment of the Court of Appeal, and they think the trial Judge was not justified in regarding Miss Oakes's evidence in the way he did. It is not necessary to go into the reasons for that. There is nothing in the inconsistencies of which the trial Judge speaks which amounts to anything when one comes to deal with them carefully from the point of view of evidence, and their Lordships think the probabilities are vastly in favour of the truth of the story told by Miss Oakes. Taking that view, an incident is established which is of itself of great importance, an outrage or insult, not the less such because the wife did not know of it at the time. When she came to know of it, which she did in good time for the purposes of these proceedings, she was entitled to say that a life with a husband who had behaved in such a manner was a life which ought not to be forced upon her within the meaning of Articles 189 and 190 of the Code. There are other things which are also against the husband. On the other hand, there has been a great deal of exaggeration of view in this case, probably on both sides. The Judges appear on occasions to have approached the consideration of the evidence with a very strong feeling one way or the other. Their Lordships do not mean that they have not given the best consideration they could to the evidence, but in giving that consideration there has generally been some point of view which ruled the scope of the outlook on the details. Their Lordships think that is present in Mr. Justice Howard's judgment, and perhaps there are some traces of it in the judgments of the Court of Appeal. However that may be, for the reasons given their Lordships are unable to advise His Majesty to interfere with the judgment of the Court of Appeal of Quebec.

In their Lordships' opinion this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

MAURICE DAY BALDWIN

v.

MARY A. M. BALDWIN.

DELIVERED BY VISCOUNT HALDANE.

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