

[HIGH COURT OF AUSTRALIA.]

MALONEY APPELLANT;
RESPONDENT,

AND

MALONEY RESPONDENT.
PETITIONER,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

Husband and wife—Divorce—Habitual drunkenness and neglect of duties—Question of fact—Appeal—Matrimonial Causes Act 1899 (N.S.W.) (No. 14 of 1899), sec. 13 (b).

H. C. OF A.
1908.

SYDNEY,
November 30.

Griffith C.J.,
Barton and
Isaacs JJ

The question whether a wife has during three years and upwards been a habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them within the meaning of sec. 13, sub-sec. (b) of the *Matrimonial Causes Act* 1899 is a question of fact, and where in a suit by the husband for dissolution of marriage on the ground of such drunkenness and neglect of duties on the part of the wife there is a conflict of evidence, and the evidence of the petitioner, if believed, is sufficient to establish his case, a decision of the Judge in favour of the petitioner will not be disturbed on appeal.

Decision of *Simpson J.* (3rd April 1908), affirmed.

APPEAL from a decision of *Simpson J.* in the Supreme Court of New South Wales, Matrimonial Causes Jurisdiction.

This was a suit by the respondent John Maloney for dissolution of his marriage with the appellant on the ground that she had during three years and upwards been a habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them. A great deal of evidence was given on

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both sides. The petitioner gave evidence which, if believed, abundantly established the charges of misconduct, and his evidence was to a certain extent corroborated by other witnesses. The wife denied the charges and called witnesses in support of her case, but the learned Judge accepted the version of the petitioner, and found all the issues in his favour, granting a decree *nisi* for dissolution of marriage with the custody of the children.

From this decision the wife now appealed, *in formâ pauperis*.

Fealy (solicitor), for the appellant, referred to *Osborne v. Osborne* (1).

P. K. White, for the respondent, was not called upon.

GRIFFITH C.J. The point involved in this case is entirely a question of fact. The suit was heard before a Judge of very great experience in divorce matters. He heard the evidence of both sides, and therefore was in a position to say which was the more worthy of credence. There was a conflict of evidence. The appellant's contention is that the whole case made by the respondent was false. There can be no doubt that witnesses on one side or the other were lying. The learned Judge who heard and saw the witnesses believed the petitioner, whose evidence, if believed, was ample to establish the charges of misconduct laid in the petition. It was, indeed, impossible for him on that evidence to come to any other conclusion. The appeal must be dismissed.

BARTON and ISAACS JJ. concurred.

Appeal dismissed.

Solicitor, for the appellant, *D. Fealy*.

Solicitor, for the respondent, *J. W. Abigail*.

C. A. W.