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IN THE HIGH COURT OF AUSTRALIA

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*Gordon*

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v.

*Gordon*

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**REASONS FOR JUDGMENT**

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*Judgment delivered at*

*13 October 1955*

GORDON v. GORDON

JUDGMENT (ORAL)

DIXON C.J.  
WILLIAMS J.  
KITTO J.

JUDGMENT

DIXON, C.J: This is an appeal from a decree nisi in the husband's suit for dissolution of marriage on the ground of adultery. The suit was based on the allegation of a single act of adultery and the only question was one of fact. It is very unusual for this Court to interfere with a finding of fact on such a matter and the principles upon which the Court proceeds in a case where a finding of fact of this nature is challenged have recently been re-stated in *Patterson v. Patterson* 1953 89 C.L.R., 212.

But in the present appeal we think the finding of guilt should be set aside. No useful purpose would be served by examining the facts of the case which are very peculiar and have been fully discussed during the argument. It is enough to say that we are satisfied that upon the whole evidence the conclusion that adultery was committed is too unsafe to stand, having regard to the degree of proof required in such cases. Even accepting in full the view of the learned Judge's incredibility of the witnesses we think that the inference which he drew could not stand. We think that it was too unsafe and insufficiently established.

The appeal will be allowed, the decree nisi will be discharged and the suit dismissed. The appeal must be allowed with costs and the suit dismissed with costs.

Now would you tell us what we ought to do about this co-defendant who did not appeal? Neither of you appears for him; I am merely asking for assistance.

MR. MCGILL: He was not a party in the suit actually.

WILLIAMS, J: He was ordered to pay the husband's costs of course.

MR. MCGILL: Yes. I submit that if the decree is set aside, the judgment of the trial Judge should be set aside also.

KITTO, J: He was a party in the suit, Mr. McGill, he was - - -

MR. MCGILL: I am sorry, Your Honour, he was a party - he did not appear, he did not take an active part in the sense of being a litigant before the trial Judge.

KITTO, J: He announced his appearance in person.

MR. MCGILL: He sat in for most of the case and he was called by the wife as a witness.

DIXON, C.J: I am inclined to think, Mr. McGill, that the order against him should be set aside and be just left at that.

MR. MCGILL: Yes, Your Honour.

DIXON, C.J: The order against the co-defendant for costs will be set aside and no order will be made in his favor.

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