

FRIND V. FRIND.—MIDDLETON, J.—JUNE 1.

Husband and Wife—Alimony—Evidence—Adultery—Cruelty—Desertion—Dismissal of Action—Costs—Rule 388.]—An action for alimony, tried without a jury at Toronto. MIDDLETON, J., in a written judgment, said that the action presented many peculiarly unpleasant and unfortunate features. He found against the contention that the defendant had been guilty of adultery. The conduct of the husband and of the young woman mentioned in the evidence was imprudent and objectionable, but the situation was brought about by the detective employed by the wife and was not the result of any plot between the parties charged. There was no evidence shewing such cruelty as would entitle a wife to alimony, even under the liberal rule approved in *Lovell v. Lovell* (1906), 13 O.L.R. 569. The wife is stronger and larger than the husband, and never was in any jeopardy at his hands. The case was simply one in which agreement and marital happiness seemed impossible, but in which there was no such misconduct on the husband's part as justified the wife in leaving his home. The husband had behaved very badly, and the wife was not free from blame. The action should be dismissed, but the defendant must pay the plaintiff's disbursements: Rule 388. If the wife is ready to return, and the husband does not now provide a proper and suitable home for her and receive her as his wife, he will be guilty of desertion, and a new action may be brought. This judgment is upon the assumption that the husband is ready and willing to perform his duty and to receive and care for his wife as required by law. H. H. Dewart, K.C., and J. M. Ferguson, for the plaintiff. A. C. McMaster and W. A. Skeans, for the defendant.

RE ONTARIO BANK.—MIDDLETON, J., IN CHAMBERS—
JUNE 1.

Company—Winding-up—Disallowance of Claims by Referee—Affirmance by Judge—Application for Leave to Appeal Refused—Winding-up Act, R.S.C. 1906 ch. 144, sec. 101.]—Motion by claimants for leave to appeal from an order of MASTEN, J., confirming the report of a Referee disallowing the claims in the course of a reference for the winding-up of the bank. MIDDLETON, J., in a written judgment, said that, before the claimants reach the discussion of the legal difficulties in their way, they have to