

SECOND DIVISIONAL COURT.

FEBRUARY 7TH, 1919.

WILEY v. WILEY.

*Husband and Wife—Alimony—Costs of Unsuccessful Appeal by
Wife—Disbursements—Rule 388.*

Motion by the plaintiff to vary as to costs the order made by this Court on the 15th. January, 1919, dismissing an appeal by the plaintiff in an action for alimony from the judgment at the trial dismissing the action.

The motion was heard by RIDDELL and LATCHFORD, JJ.,
FERGUSON, J.A., and ROSE, J.

W. S. Middlebro, K.C., for the plaintiff.

W. H. Wright, for the defendant.

RIDDELL, J., reading the judgment of the Court, said that the Court, in dismissing the appeal, said nothing as to costs; and the Registrar, quite properly, followed the rule that, where nothing is said about costs, they follow the event, and settled an order dismissing the appeal with costs.

The Court did not doubt its power to award the costs of an appeal against an unsuccessful plaintiff appealing in an alimony action; but the practice had been to award her disbursements according to Rule 388: *McIlwain v. McIlwain* (1916), 35 O.L.R. 532; *Whimbey v. Whimbey* (1918), 14 O.W.N. 128, 158.

There was not sufficient in the present case to justify the Court in departing from this rule.

The order should be varied accordingly; no costs of this motion.

SECOND DIVISIONAL COURT.

FEBRUARY 7TH, 1919.

SNITZLER ADVERTISING CO. v. DUPUIS.

*Account—Open Contract—Settled Account—Opening up—Absence
of Fraud or Mistake—Scope of Reference—Construction of
Judgment—Appeal from Master's Certificate.*

Appeal by the defendant from the order of MIDDLETON, J., 14 O.W.N. 78, allowing an appeal from the certificate of the Local Master at Sandwich of his ruling or direction that the plaintiffs should bring in and file certain details of accounts.