FERGUSON, J.A., read a judgment in which he said that the question was, not whether cruelty in any sense of the word had been established by the evidence, but whether that kind or degree of cruelty which the Courts have recognised as justifying a wife in leaving the bed and board of her husband had been established.

The plaintiff in an alimony action has not established what our law calls cruelty unless she has shewn that the defendant has subjected her to treatment likely to produce or which did produce physical illness or mental distress of a nature calculated permanently to affect her bodily health or endanger her reason, and that there is reasonable apprehension that the same state of things will continue: Lovell v. Lovell (1906), 13 O.L.R. 569; Whimbey v. Whimbey (1919), 45 O.L.R. 228.

Cruelty, within the meaning of the foregoing rule, may be established by a course of conduct in which the husband has not committed any one offence that, standing by itself, would justify a finding, as well as by the proof of some isolated act of assault of such a grave nature as clearly to establish injury to health or a reasonable apprehension that such act will be repeated and is likely to cause injury to health of mind or body: Mackenzie v. Mackenzie, [1895] A.C. 384; Kelly v. Kelly (1869-70), L.R. 2 P. & D. 31, 59.

The Court has never been driven off the ground that the plaintiff in an alimony action, claiming on the ground of cruelty, must establish danger to life, limb, or health: Evans v. Evans (1790), 1 Hagg. Con. 35. This is in accord with the modern decisions, such as those above cited and Russell v. Russell, [1895] P. 315, [1897] A.C. 395.

After a careful perusal of the evidence, the learned Judge said, he had arrived at the conclusion that neither the respondent's physical nor mental health had been affected by the acts complained of by her, and that she did not leave her husband's home because her health was affected or because she feared it would be affected, and that there was not in the evidence any ground for reasonable apprehension that if she had remained with her husband, or if she now returned to him, her health would have been or would be affected by the appellant's course of conduct towards her.

Of the many accusations of misconduct made by the respondent against the appellant, the one on which the trial Judge based his decree was that of unreasonable demands for sexual intercourse made and persisted in by the appellant. The learned Judge's finding in this respect was not supported by the evidence.

The appeal should be allowed and the action dismissed, with the order as to costs usual in actions for alimony.