

JOHNSON V. MEDLAR—KELLY, J.—FEB. 17.

Money—Dispute as to—Sums Handed by Plaintiff to Defendant—Purpose for which Intended—Evidence—Deposit in Bank—Findings of Fact of Trial Judge—Counterclaim.]—Action by Mary Johnson and the executors of the will of her deceased husband, William Johnson, against Martha Medlar, Andrew Medlar, and the Merchants Bank of Canada, for a declaration as to the ownership of certain sums of money deposited by Martha Medlar in the Merchants Bank of Canada to the joint credit of herself and Mary Johnson. There was a counterclaim by the defendants the Medlars. The action and counterclaim were tried without a jury at Chatham. The Merchants Bank of Canada were not represented at the trial; the plaintiffs admitted that the bank had no interest in the result. KELLY, J., in a written judgment, said that the main dispute was as to a sum of \$1,450 which Martha Medlar received from Mary Johnson in the summer of 1917, a short time after the death of William Johnson. Mary Johnson said that she gave Martha Medlar the money to keep for her (Mary). Martha said that the money was given to her for Mary's funeral expenses, when she should die—she was then 75 years old, and was blind. Later on, other moneys passed into Martha's hands. Upon an examination of the evidence, the learned Judge found that the plaintiff Mary Johnson was entitled to \$1,050 and interest; and that the defendants were entitled to recover upon their counterclaim \$294.92 and interest. Mary Johnson should recover the balance of the \$1,050 and interest after deducting \$294.92 and interest, with costs. J. S. Fraser, K.C., for the plaintiffs. O. L. Lewis, K.C., for the defendants the Medlars.

THOM V. THOM—KELLY, J.—FEB. 17.

Husband and Wife—Alimony—Evidence—Cruelty—Finding of Trial Judge—Dismissal of Action—Costs—Rule 388.]—An action for alimony, tried without a jury at a Toronto sittings. KELLY, J., in a written judgment, said that to support her claim for alimony the plaintiff alleged several acts of wrongful conduct by the defendant, in respect of which and every one of which she failed. Any differences between her and the defendant were largely traceable to her own conduct, and not to his, though he was on many occasions provoked by her unreasonable attitude towards her duties as a wife and mother. They were married in 1893 and had had 11 children, 10 of whom were still living, the youngest being a little more than two years old. The defendant earned \$22