

## HIGH COURT DIVISION.

MASTEN, J., IN CHAMBERS.

MAY 22ND, 1917.

## WHIMBEY v. WHIMBEY.

*Discovery—Alimony—Production of Documents by Defendant to Shew Assets—Preliminary Question of Liability—Trial of, before Quantum of Alimony Ascertained—Reference.*

Appeal by the plaintiff from an order of the Master in Chambers dismissing a motion by the plaintiff for a better affidavit of documents from the defendant in an action for alimony.

C. W. Plaxton, for the plaintiff.

E. E. Wallace, for the defendant.

MASTEN, J., in a written judgment, said that the particular documents production of which was sought, were mortgages shewing the defendant's assets.

The learned Judge had considered the case of *Allin v. Allin* (1916), 9 O.W.N. 411; but it seemed to him that each case of this kind must depend on its particular facts, and the discretion of the judicial officer as to how it can be most conveniently determined. In a simple case, and where the means of the parties and the assets of the husband are slight, he subscribed fully to the method of procedure outlined in *Allin v. Allin*. But it seemed to him that in the present case, as there was a grave question to be tried as to the right of the plaintiff to any alimony, and as the assets of the defendant were considerable, the more advantageous course would be, first to try the preliminary question of the defendant's liability to pay alimony, and then leave it to the Master to fix the amount if the plaintiff was found entitled.

Appeal dismissed. Costs in the cause to the defendant.

Reference to *Hick v. Hick and Kitchin* (1864), 12 W.R. 444, n.