on the one hand and want of prompt action on the other brought about the disaster.

There was nothing to suggest that the respondent was guilty of ultimate negligence, nor to lead to the supposition that the jury's answer would have been different if the question of onus had been expressly left to them.

The case was like Herron v. Toronto R.W. Co. (1912), 28 O.L.R. 59, where each negligence arose and existed unchanged until the moment of collision, and was "concurrent and simultaneous negligence of similar character by both parties."

It was unnecessary to discuss the contention that the charge to the jury should have pointed out that the statutory provision applied to both and put each in the wrong unless he could satisfy the jury that he was free from blame. The answers really amount to such a finding; and the appeal should be dismissed.

MACLAREN, J.A., and LATCHFORD, J., agreed with HODGINS, J.A.

FERGUSON, J.A., was of opinion, for reasons stated in writing, that there should be a new trial. The jury not having answered questions 10 and 11, the real meaning of their answers to the other questions was left in doubt.

MAGEE, J.A., agreed with FERGUSON, J.A.

Appeal dismissed; MAGEE *and* FERGUSON, JJ.A., *dissenting.*

FIRST DIVISIONAL COURT. APRIL 18TH, 1918.

FRIND v. FRIND.

Husband and Wife—Alimony—Evidence—Adultery—Cruelty—Desertion—Dismissal of Action—Appeal—Costs.

Appeal by the plaintiff rom the judgment of MIDDLETON, J., 12 O.W.N. 245, dismissing an action for alimony.

The appeal was heard by MACLAREN and MAGEE, JJ.A., CLUTE, J., and FERGUSON, J.A.

J. M Ferguson and J. P. Walsh, for the appellant.

A. C. McMaster and W. A. Skeans, for the defendant, respondent.