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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

MARCH 14TH, 1919.

*WHIMBEY v. WHIMBEY.

Husband and Wife—Alimony—Action for—Charge of Adultery of Wife Made in Defence—Making Unfounded Charge not a Ground for Awarding Alimony.

Appeal by the plaintiff and cross-appeal by the defendant from the judgment of MEREDITH, C.J.C.P., at the second trial of an action for alimony, in favour of the plaintiff for the recovery of alimony at the rate of \$15 a month from the date of the trial.

At the first trial, RIDDELL, J., gave judgment for the plaintiff; but, upon the defendant's appeal, a new trial was ordered: *Whimbey v. Whimbey* (1918), 14 O.W.N. 128.

The plaintiff appealed from the judgment of MEREDITH, C.J.C.P., upon the ground that the allowance was inadequate, and that alimony should run from the date of the issue of the writ of summons; and the defendant appealed upon the ground that, upon the facts disclosed, the plaintiff was not entitled to succeed at all.

The appeal and cross-appeal were heard by MAGEE and HODGINS, J.J.A., MIDDLETON, J., and FERGUSON, J.A.

T. H. Lennox, K.C., and C. W. Plaxton, for the plaintiff.

Gideon Grant, for the defendant.

MIDDLETON, J., read a judgment in which he said that the defendant by his defence charged the plaintiff with adultery. The trial Judge found that adultery had not been proved; and based the plaintiff's right to alimony upon the one ground that the defendant had made against his wife an unfounded charge of adultery.

* This case and all others so marked to be reported in the Ontario Law Reports.