

The case, therefore, must go to trial, and the appeal should be dismissed; but the appellant should have leave to enter a conditional appearance.

Costs of the appeal to be costs to the plaintiffs in the cause, unless the trial Judge should otherwise order.

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MASTEN, J.

NOVEMBER 1ST, 1918.

CONWAY v. CONWAY.

*Husband and Wife—Alimony—Permanent Allowance—How Payable—Lump Sum—Annual Payments.*

An action for alimony.

Trial without a jury at Chatham.

O. L. Lewis, K.C., for the plaintiff.

The defendant was not represented.

MASTEN, J., in a written judgment, said that the plaintiff had established her case, and was entitled to alimony. The only question reserved for consideration was the prayer of the plaintiff that she might be awarded a lump sum in lieu of monthly instalments of alimony.

The practice was settled by Spragge, V.-C., in *Hagarty v. Hagarty* (1865), 11 Gr. 562, where it was determined that the Court will not, on grounds of public policy, award a lump sum for alimony in lieu of periodical instalments.

The learned Judge said that he was bound by this case; and the reasoning upon which it was founded seemed to be as forcible now as it was when it was decided. It was there said that the ordinary rule of the Court was to decree alimony to be paid quarterly, and reference was made to the fact that alimony may be allotted for the maintenance of a wife from year to year. While the more ordinary practice in our Courts had been to award a monthly allowance, the learned Judge said that he knew of nothing binding in that regard; and, considering all the circumstances of this case, the fact that the parties had been living apart for two years, the exceedingly meagre allowance which the husband had made the plaintiff during that time, and the evidence establishing the probability that the defendant had now absconded from Ontario, it might properly be directed that the alimony be paid yearly at the rate of \$360 per annum, and be computed from the date of the issue of the writ of summons; the first payment to be payable forthwith.

Judgment accordingly, with costs.