

names of the persons to whom the circular had been sent and the name of the person who had "advised" the defendants of the fact alleged, this information being relevant to and important on the pleaded defences of *bonâ fides* and privilege.

Grayson Smith, for plaintiffs. *MacInnes*, for defendants.

Divisional Court.] PAYNE v. PAYNE. [Nov. 10, 1905.

*Husband and wife—Alimony—Cruelty—Insufficient evidence of
—Non-revival of prior condoned acts.*

The Courts scrutinize very closely retaliatory acts of alleged violence and cruelty on the part of a husband arising out of the wife's headstrong and irritating conduct, and will refuse, unless such acts are accomplished by intemperate and excessive violence to call them acts of cruelty, and as effective in reviving prior condoned acts of cruelty and misconduct.

In 1895 the plaintiff and defendant, who prior thereto had been living together, were married, but thereafter only lived together at intervals, the plaintiff living apart from her husband and carrying on, what she called a hospital for pregnant women. In 1904 on the defendant insisting on it, the plaintiff returned to her husband's house, everything going on satisfactorily until the plaintiff desired to carry on the alleged hospital business in the house, which the defendant refused to consent to. The plaintiff then rented a house for herself, and during the defendant's temporary absence, stripped the house of nearly all the furniture, removing it to her own house. This greatly incensed the defendant, and on the plaintiff using foul and abusive language to him, he committed, as the plaintiff alleged, an aggravated assault on her, and by his conduct rendering it unsafe for her to live with him, and reviving prior condoned acts of misconduct and cruelty.

Held, that the defendant's acts were not of such an excessive and intemperate a character as would render it unsafe for the plaintiff to live with him and revive the said prior condoned acts, for not only did it appear that the alleged assault was grossly exaggerated, but was provoked on by the plaintiff herself, whose whole object was to goad the defendant into acts of violence which would justify the bringing of an action for alimony.

Middleton and Faulds, for appellant. *E. Meredith, K.C.*, and *Tooth*, for respondent.