

The defendant has repeatedly offered in good faith to make a home for her; she has repeatedly declined, as her pre-requisite of a guarantee was not complied with. . . .

It is contended that the husband is living separate from the wife without any sufficient cause and under such circumstances as would have entitled her, by the law of England as it stood on the 10th June, 1857, to a decree for restitution of conjugal rights, and therefore, under our statute, she is entitled to alimony. *Nelligan v. Nelligan*, 26 O. R. 8, is cited for the proposition that the only bar to an action for alimony against a husband who is living separately from his wife is cruelty or adultery on the part of the applicant. Of course that is so, but it must first be shewn that the husband is so living separately without the consent of the wife.

Rae v. Rae, 31 O. R. 321, does not advance the case of the plaintiff, nor does *Ferris v. Ferris*, 7 O. R. 496. . . .

[Reference to 3 Bl. Com. 94; *McKay v. McKay*, 6 Gr. 380; *Gracey v. Gracey*, 17 Gr. 113; *Edwards v. Edwards*, 20 Gr. 392; *Keech v. Keech*, L. R. 1 P. & D. 641; *Fitzgerald v. Fitzgerald*, ib. 694, 698; *Burn's Eccl. Law*, 9th ed. (1842), vol. 3, p. 267; *Field v. Field*, 14 P. D. 26; *Brown & Bales Div. & Mat. Causes*, 7th ed., p. 81.]

The question whether a wife insisting upon such a guarantee from her husband, before coming again to live with him, is really calling upon him to resume marital relations, can have only one answer. . . . I can find no cause for this action for alimony; it is wholly unwarranted by the facts, and must be dismissed.

I suppose that I am bound by the authorities to direct the defendant to pay the actual cash disbursements of the plaintiff's solicitor, but I do it most reluctantly, and only because I must. It is putting an additional burden upon this unfortunate man, who has been doing his best to satisfy a dour, unreasonable woman.

APPENDIX.

SYMS V. MCGREGOR—MASTER IN CHAMBERS—OCTOBER 23RD.

Mortgage—Right to Assignment.—A motion for the plaintiff for summary judgment in an action for possession against the mortgagor, who had conveyed away the equity of redemption, was dismissed, the defendant being ready to pay on having an assignment of the mortgage to his nominee pursuant to R. S. O. 1897 ch. 121, sec. 2. *Semble*, distinguishing *Leitch v. Leitch*, 2 O. L. R. 233, 236, and following *Queen's College v. Claxton*, 25 O. R. 282, and *Wheeler v. Brooke*, 26 O. R. 96, that the section relied on applied. *H. E. Rose*, K.C., for the plaintiff. *L. F. Heyd*, K.C., for the defendant.