

was working this with the help of her children, and was in receipt of wages earned by her children and of \$10 per week which he was contributing under an order made by a magistrate. This, the defendant thought, ought to satisfy the plaintiff, even if he was in the wrong, which he denied. Then he counterclaimed, and asks that the farm and chattels might be declared to be his and might be put in his name, to prevent the plaintiff disposing of the same as her own.

Other defences were set up; those outlined were struck out by the Local Judge. Why was not explained. What was said was that the Judge at the trial could determine only the right to alimony, and must refer the quantum to the Master, and that these allegations only went to the quantum.

The learned Judge dissented from both statements. Unless driven to it by the conduct of the parties at the trial or the exigencies of the case, he never directed a reference to fix the amount of alimony. The amount properly payable could not be justly ascertained without some knowledge of the merits of the case, and wrong was frequently done by divorcing the trial from the reference and treating the reference as some mere mechanical process, such as the taking of a mortgage account. He had recently had an example in *Malcolm v. Malcolm* (1919), ante 93, 375, 46 O.L.R. 198, of the result.

The counterclaim should be dealt with in this action. Why have separate litigation? One airing of the domestic disputes should be enough.

The appeal should be allowed. In view of the default, the costs of this appeal should be in the cause. There should be no costs below.

ROSE, J.

JANUARY 28TH, 1920.

*SPARKS v. HAMILTON.

Promissory Notes—"Foreign Bills"—Action against Endorser—Defence of Want of Due Presentment, Notice, and Protest—Waiver of Notice—Conduct not Shewing Waiver of Non-presentment—Promise to Pay—Presumptive Evidence—Onus—Laches—Ignorance of—Note Payable at Office of Payees in Named City—Payees Ceasing to have Office there—"Proper Place" for Presentment—Presentment Dispensed with—Foreign Law—Tender before Action—Costs.

Action by the holders against the endorser of three promissory notes, made by A. J. Saunders, each for \$500, dated at Toronto,