

MIDDLETON, J.

FEBRUARY 20TH, 1917.

*CROMARTY v. CROMARTY.

Husband and Wife—Alimony—Interim Allowance—Permanent Allowance—Time of Commencement—"Costs as between Solicitor and Client"—Obligation of Husband to Pay Wife's Costs—Indemnity of Solicitor for Wife.

Motion by the plaintiff to vary the minutes of the judgment in an action for alimony: see ante 342.

M. L. Gordon, for the plaintiff.

R. T. Harding, for the defendant.

MIDDLETON, J., in a written judgment, said that the plaintiff claimed permanent alimony from the date of the writ of summons, less any sum paid for interim alimony; but there was nothing to justify the claim. Where interim alimony has been ordered, permanent alimony runs from the date of the judgment only—following the English practice, which is set out in a Rule.

The learned Judge awarded the plaintiff "costs as between solicitor and client," and in his reasons for judgment expressed the hope that the plaintiff's costs might be liberally taxed so as to afford the plaintiff as near an approach to indemnity for costs properly incurred as was practicable. The learned Judge was now asked to embody in the formal judgment some provision going beyond the expression "costs as between solicitor and client." He could find no authority for so doing, and he did not think that he should in any way interfere with the responsible duty of the Taxing Officer in determining what costs were reasonably and properly incurred.

The obligation of the husband to pay his wife's costs rests upon his matrimonial obligation. She cannot impose upon him an obligation beyond what is reasonably necessary for the assertion of her rights; but the Taxing Officer ought to consider what has been done, in the endeavour to assert her rights, sympathetically rather than critically, and in the light of the fact that there is no other way in which the plaintiff's solicitor can secure payment, unless the wife encroaches on her alimentary allowance or her friends come to the rescue.

An endeavour must be made to afford the wife protection, but no undue burden must be cast upon the husband by any costs incurred through overcaution or extravagance upon the part of the wife.