

MASTEN, J.

JANUARY 23RD, 1919.

*BAILEY v. BAILEY.

Husband and Wife—Alimony—Wife Leaving Husband on Account of Cruelty—Offer to Receive her back—Bona Fides—Findings of Fact as to Cruelty—Dismissal of Action—Undertaking of Husband.

Action for alimony, tried without a jury at North Bay.

G. L. T. Bull, for the plaintiff.

G. A. McGaughey, for the defendant.

MASTEN, J., in a written judgment, said that the defendant was a bridge-foreman in the employment of the Canadian Pacific Railway Company, residing at North Bay. The parties were married on the 8th September, 1892. The plaintiff was 52 years of age, and the defendant probably about the same age. They had seven children.

The plaintiff was not at the time of the trial living with her husband. She left him on the 24th March, 1917, and this action was begun on the 2nd May, 1917.

The plaintiff, at the trial, firmly asserted that she had no notion of going back to live with her husband. The husband, on the other hand, offered to take back his wife and family at any time and desired them to return to his home and live with him. The learned Judge found that this offer was bona fide. As to its effect, see *Evans v. Evans* (1916), 27 O.W.R. 69, at p. 70, 11 O.W.N. 34, 35, and *Forster v. Forster* (1909), 1 O.W.N. 93.

The question therefore was, whether, upon the evidence, the plaintiff had shewn that the defendant had subjected her to treatment likely to produce and which did produce physical illness and mental distress of a nature calculated permanently to affect her bodily health or endanger her reason, and that there was a reasonable apprehension that the same state of things would continue so that there should be an absolute impossibility that the duties of the married life could be discharged.

The learned Judge had, with much doubt, arrived at the conclusion that the case had not been brought within the principles established in the jurisprudence of Ontario relative to the granting of alimony; the circumstances, he said, brought it very close to the line.

He found as a fact that the conduct of the defendant in his family had been habitually imperious, arrogant, and dictatorial, and at times mean and unreasonable, to such a degree that he