

REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Middleton, J.] GOODFRIEND v. GOODFRIEND. [March 1.

Husband and wife—Alimony—Desertion by husband—Amount—Husband's income.

Held, 1. The conduct of the husband in removing and taking up his residence with some of his own relatives, with whom his wife is not on good terms and cannot reasonably be expected to reside with, amounts to desertion on his part sufficient to found an independent action for alimony if he fails to provide for her maintenance.

2. The general rule in fixing permanent alimony in an alimony action is that the wife is entitled to one-third of the husband's income, subject to deduction in respect of any independent separate income the wife may have apart from her own earnings.

3. Where the husband is incapacitated by illness from earning anything, the wife's right of action for alimony is not to be based upon his former increased income which included earnings during health, but upon his present income from any source; nor can the corpus of his estate be charged with the deficiency required for the wife's maintenance.

Hutcheson, K.C., for plaintiff. *Whiting*, K.C., for defendant.

Falconbridge, C.J.K.B.,
Britton, J., Middleton, J.]

[March 7.

WARD v. SANDERSON.

Encroachment—Wall of building—Mis'take of title—Improvements—Statutory power to make vesting order and direct compensation—Payment to mortgagee.

Held, 1. In an action for encroachment in constructing the wall of a building partly over the boundary line upon adjoining lands, the court has a discretion, under Ontario Statute 1 Geo. V. c. 25, s. 33, to award a money compensation for the encroachment if made under the belief that the land encroached upon was