

There is here, the plaintiff's unqualified consent to return to her husband, and the defendant's unqualified refusal to receive her. Under these circumstances the plaintiff is entitled to judgment for alimony, with costs.

As to amount; the plaintiff is not in need—upon her own statement she has earned money and saved it, and can continue to do so. The amount should not be large, and I fix it until otherwise ordered at \$4 a week.

As to the custody of the children, I am of opinion that in this case, the paternal right must prevail.

The boy, Marshall, was born on the 6th December, 1906, and so is over six years of age.

The girl, Dorothy, was born on the 1st day of July, 1908, and is four and a half years old.

It is important that these children should, if possible, be kept together, and in the house and home where defendant has his residence.

The defendant must so arrange that the children shall be so kept by him. He is able to do it; I believe him quite sincere in his desire to have the children, and to maintain, and educate them for their good.

I do not doubt the love of the plaintiff for her children; but she is not, at present, in such a home of her own as is necessary for the welfare of these children.

To secure such a home, and maintain it, as would be necessary, would trench upon plaintiff's resources to such an extent, as greatly to embarrass her. Even with the sacrifices the plaintiff would be willing to make, the children could not be as well cared for with her, working, as she must, to maintain them, as in a properly organized household, where the defendant would be with them during reasonable hours apart from his working time.

Then it must not be forgotten that the plaintiff took the choice of abandoning these children, when much younger than at present, to the defendant.

Whether to "scare" her husband or not, the act of 10th August, 1909, was not a kind or motherly one.

On the other hand, I have considered the argument that defendant admittedly was convicted at Whitby of an offence, which was greatly to his discredit.

The defendant says he was improperly convicted. However that is, I have considered the case as if the offence was committed.