

This action, I will now dispose of.

If the matter had rested, as it was on, and after the 10th day of August, 1909, until the commencement of this action, the question of plaintiff's right to alimony would have been somewhat difficult, in view of the many decisions in actions for alimony.

The plaintiff voluntarily left her husband's house; under the circumstances mentioned, evidently intending that the defendant should believe that she did not intend to return.

She says she only intended to scare the defendant: but the defendant took her at her word.

Then, the plaintiff has not been in need of assistance from her husband, and has not asked for it.

It would be difficult under these circumstances, to say that the defendant was living apart from the plaintiff, without her consent, or against her wish.

The case, however, does not rest there.

The plaintiff, whether she is to any extent penitent or not; or whether for the sake of her children, now avows that she was always willing to live with the defendant; and, when giving her evidence at the trial, she said that she was willing to return to her husband.

It did appear a somewhat reluctant consent, but it was consent, all the same.

The defendant, in his statement of defence, charges the plaintiff with want of chastity, and names a man with whom the plaintiff "had formed an improper intimacy."

No evidence was offered to sustain this allegation. The plaintiff denied it.

Under these circumstances, with such a charge not withdrawn and not proved, the plaintiff would be entitled to alimony, without a willingness to return to her husband.

Even if the defendant offered to take the plaintiff back, still persisting in the unproved charges, the plaintiff would be entitled to alimony, and any offer, on her part, to return, would be dispensed with.

*Ferris v. Ferris*, 7 O. R. 496, although reported mainly on the question of costs, bears out my view.

But here the defendant is not willing to take the plaintiff back. He absolutely refuses to do so. He heard his wife's evidence as to her innocence.

He was not able to produce any evidence as to her guilt; and yet he refuses.