

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 the 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 the 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 organised 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 the 10th August, 1909, was not a kind or motherly one.

On the other hand, I have considered the argument that the defendant admittedly was convicted at Whitby of an offence which was greatly to his discredit. The defendant says that he was improperly convicted. However that is, I have considered the case as if the offence was committed. This is a painful case; both parties are to some extent under a cloud. Apart from this offence, the defendant's reputation and character are good.

I do not think that the husband, by anything he has done, "has abandoned his right" to the custody of his children.

I have endeavoured to consider the rights and feelings of the mother, as well as of the father, the welfare of the children, their surroundings, the chances for education and improvement—in short, I have looked at this case having in mind the cases cited and other reported cases; and my conclusion is, that the mother must restore the boy to the father; and the order will be that the father will have the custody of the children.

The order will make provision for the access of the mother to the children, so that she may see them at reasonable intervals, and at convenient times.

The children will be maintained by their father in a home where, together, they and their father will reside.

Subject to what may be said in settling the terms of the