

The defendant has not objected to the plaintiff taking possession of any of the chattels that belonged to him. She has not objected, so far as appears, until the commencement of this action, to the plaintiff residing with her in the house upon the premises; only she asks that he do not interfere with her and her sons, or her hired help, in their work. The plaintiff left voluntarily. Upon the evidence, I must find that the plaintiff has not at all times conducted himself properly towards his wife and family. It may be, and I think it is so, that, considering the temperament and disposition of the plaintiff, he has not at all times been treated as he should be by a wife and children. They say that, if they shewed resentment, it was under great provocation; and that is partly true. I decline to grant any injunction at the present stage of the case. From the plaintiff's evidence and his emotion on the witness-stand, I think he will not, in the event of no reconciliation being effected, force himself upon his family, but will, as he is able to do, earn his own living apart from his very capable wife and family.

The action will be dismissed, without costs. The counter-claim will also be dismissed without costs.

DIVISIONAL COURT.

OCTOBER 2ND, 1911.

BROWN v. CITY OF TORONTO.

Highway — Nonrepair — Injury to Pedestrian — Negligence of Municipal Corporation — Action — Three Months' Limitation — Notice of Accident — Omission to Give — Damages.

Appeal by the plaintiff from the judgment of BRITTON, J., 2 O.W.N. 982, dismissing the action.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

S. H. Bradford, K.C., for the plaintiff.

H. L. Drayton, K.C., and H. Howitt, for the defendants.

THE COURT dismissed the appeal without costs.

RE McLAREN—MIDDLETON, J.—OCT. 2.

Will—Construction—Gift to Class—Period of Distribution.]
—Motion by the executors and trustees under the will of James William McLaren for an order declaring the true construction