to a son on the son's marriage, and had in turn exacted from her spouse the payment of a promissory note which he had made in her favour, that she left his bed and board, and brought this action for alimony.

The defendant had not only not objected to her return, but had in the most formal manner stated that she would be welcomed at any time to his home and arms and treated with all the consideration due to a wife by her husband.

The plaintiff sought to justify her decision to reject the defendant's offer by deposing that she found that her health was impaired by her husband's treatment. Her testimony in this regard was credited by the trial Judge "to a very considerable extent." She was considered to be in such a state that "she is afraid to go back," and "afraid that (should she do so) her health will be permanently injured." On these grounds, though not without doubt, the trial Judge came to the conclusion that alimony should be decreed.

But the mere apprehension on the part of the plaintiff that her health will be permanently affected in the event of her return to the defendant is not of itself sufficient to warrant the decree, nor is her conclusion that her health was affected by the treatment received from her husband. There was no evidence that her health was in fact impaired by anything that happened during the 6 or 8 months prior to her departure from her home. The testimony of the family physician on the point is negative. There is no finding—nothing indeed but her own conclusion—that her health will be affected, permanently or otherwise, should she return.

The facts did not bring her case within Lovell v. Lovell (1905-6), 11 O.L.R. 547, 13 O.L.R. 569; Bailey v. Bailey (1919), 45 O.L.R. 59.

The appeal should be allowed.

RIDDELL and MIDDLETON, JJ., agreed with LATCHFORD, J.

MEREDITH, C.J.C.P., was also of opinion, for reasons stated in writing, that the appeal should be allowed. He said also that the defendant should be ordered to pay all such costs as the Court had power to impose upon him.

Appeal allowed.