

husband from all his matrimonial obligations, and imposed upon her the full burden of the upbringing of both children, in consideration of the payment of a trifling sum.

Some principle is to be applied to agreements such as this entirely different from ordinary contracts. The agreement was drawn up hurriedly, signed apparently without further reflection and without real understanding of the effect, and without any independent advice. In the circumstances, it ought not to preclude the wife from asserting her rights.

The expected child was born in February, earlier than the date which had been mentioned; but the learned Judge found that the defendant was the father of it.

The wife sought to establish a waiver of the separation agreement by subsequent cohabitation; but the learned Judge found against her on that issue, and also on the specific matters which she set up as justifying her leaving her husband.

The husband's conduct, on the other hand, amounted to desertion, and the wife was entitled to alimony.

As the plaintiff has to maintain her two children, the alimony should be fixed at \$10 a week, which is more than the usual proportion of the husband's income, \$25 a week: it is not possible for the woman to maintain herself and her two children for less.

The learned Judge suggested that the solicitors should fix their costs at a sum within the defendant's power to pay.

ROSE, J.

APRIL 30TH, 1920.

DEVANEY v. McNAB.

Way—Easement—Interference with Right of Way—Fire-escape Overhanging Lane—Absence of Present Inconvenience—Apprehended Inconvenience in Future—Damages—Injunction.

Action by the executors of the will of John Albert Devaney, deceased, to recover damages for and an injunction against the obstruction of a way.

The action was tried without a jury at a Toronto sittings.

R. U. McPherson, for the plaintiffs.

R. S. Robertson, for the defendant.

ROSE, J., in a written judgment, said, after setting out the facts, that in Devaney's lifetime, a building at the corner of Bloor and Bathurst streets, in the city of Toronto, was used as an hotel. It extended northerly from Bloor street not more than 100 feet;