

ants until 7th October, after defendants had written a letter stating that the engine was not suitable for the work.

G. Lynch-Staunton, K.C., and W. D. Swayze, Dunnville, for plaintiff.

L. F. Heyd, K.C., and J. F. Macdonald, Dunnville, for defendants.

MACMAHON, J., held upon the evidence that defendants were not liable, and dismissed the action, but, as there was a misunderstanding between Dashwood and defendants as to the arrangement upon which the engine was to be removed and tested, he dismissed it without costs.

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DECEMBER 17TH, 1903.

DIVISIONAL COURT.

LINTNER v. LINTNER.

*Husband and Wife—Husband Detaining Wife's Property—Action of Detinue—Proof of Demand and Refusal—Evidence of Conversion.*

Appeal by defendant from judgment of FALCONBRIDGE, C.J., in favour of plaintiff in an action of detinue. The plaintiff was the wife of defendant. On 21st October, 1902, she left her husband under circumstances which, according to her contention, entitled her to alimony. When she left, there remained in the dwelling house in which they had lived, and in which the husband continued to live, and on the farm on which the dwelling house was situated, personal property belonging to the wife, consisting of household furniture, etc., and a number of cows and sheep. The claim was for the detention of this property and for pecuniary damages for the detention. At the trial no evidence was given either of a refusal by defendant to deliver the property to plaintiff or of any demand of it by her before action, but plaintiff endeavoured to shew that on 27th November, 1902, after the commencement of the action, there had been a demand and refusal, and contended that this was sufficient to entitle her to recover, upon the authority of *Blackley v. Dooley*, 18 O. R. 381, *Morris v. Pugh*, 3 Burr. 1242, *Wilson v. Girdlestone*, 5 B. & Ald. 847, and *Thorogood v. Robinson*, 6 Q. B. 769.

R. S. Robertson, Stratford, for defendant.

J. P. Mabee, K.C., for plaintiff.