

At the time of the removal to Gananoque, all outstanding liabilities were paid, and the wife then found herself in possession of \$376, which included \$90 rent of the farm for the first year. She used a portion of this \$376 in furnishing the house; and she has from time to time encroached upon what remained, so that now this fund is entirely exhausted. She has been keeping four boarders, and has not been able to make sufficient to maintain herself without resorting to the capital fund. The husband has received the second year's rent of the farm, \$140, and apart from this he has been maintained by the charity of his relatives.

When asked her plans for the future, the plaintiff said that she desired to have husband live with her in the village. This would necessitate getting rid of two of the boarders. She thinks that with the rental of the farm and the profit from the two remaining boarders she would be able to maintain her husband, who can do nothing for his own maintenance. It is quite obvious that she is mistaken in this, and that the result will be that the farm will be sold or incumbered and will ultimately be lost. It seemed to me that she would have been wiser if she allowed her husband to be maintained by his father until it could be ascertained whether he would ever be able to take up farming again; but she is not ready to assent to this.

I think that the plaintiff has done nothing to disentitle her to her rights, and that she has a right to be maintained by her husband. I think his conduct amounts to a desertion, and that he has no right to take up his own residence in a place where his wife cannot go, and then tell her to maintain herself.

I have not been referred to any case at all like this in its circumstances, and I have not been able to find any. The general rule is, that the wife is entitled to one-third of the income of the husband. His income will, of course, include his earnings. If the wife has an independent income, then this is to be taken into account in making her allowance; but I can find nothing to warrant the statement that the wife's share of the income is to be cut down by reason of her own earning capacity. Nor can I find anything that indicates that where the husband is by illness incapacitated from earning, the wife is entitled to resort to the corpus of his estate for her maintenance. I, therefore, conclude that the most I can give the wife, under the circumstances, is one-third of the rental of the farm, say, \$50 per annum. This should be paid to her quarterly. I do not think that any allowance should be made for arrears, because since the separation she has received and spent \$376, while her husband has only received \$140.