

win Smith at the time of his death." Such an issue might be sufficient if the executors of Mrs. Smith were asserting a claim, but the present is quite a different case.

What T. F. H. D. must take upon himself to establish is, that he — not simply the estate of Mrs. Smith — is entitled.

The appeal must be allowed, with costs, to the appellant (and the executors) in any event. The order will be amended by striking out in paragraph 1 all the words after the words "Goldwin Smith" where they first occur, and substituting the following "is the property of T. F. H. D. as against the Art Museum of Toronto."

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DIVISIONAL COURT.

SEPTEMBER 27TH, 1912.

KARCH v. KARCH.

4 O. W. N. 65.

*Husband and Wife — Alimony — Quantum of Allowance — Custody of Children — Desertion.*

Action for alimony for custody of children and order for their maintenance by defendant. Defendant, an industrious, thrifty man, addicted to no bad habits, and with a yearly income of some \$900, left home on account of the quarrelsome tendencies and lack of interest in his welfare by plaintiff. At the trial of the action he refused to return.

KELLY, J., *held*, 22 O. W. R. 534; 3 O. W. N. 1446, that while plaintiff's conduct was not blameless, it was not such as to disentitle her to alimony, defendant refusing to live with her.

*Nelligan v. Nelligan*, 26 O. R. 8. and

*Forster v. Forster*, 14 O. W. R. 796, referred to.

Judgment for plaintiff for \$5 per week alimony, with costs of action. Defendant to have custody of children, plaintiff to be allowed to visit them weekly.

DIVISIONAL COURT dismissed plaintiff's appeal without costs.

Appeal by the plaintiff from a judgment of HON. MR. JUSTICE KELLY, 22 O. W. R. 534; 3 O. W. N. 1446.

The appeal to Divisional Court was heard by HON. SIR JOHN BOYD, C., HON. MR. JUSTICE LATCHFORD and HON. MR. JUSTICE MIDDLETON, on 27th September, 1912.

H. Guthrie, K.C., for the plaintiff, appellant.

W. E. S. Knowles, for the defendant, respondent.

THEIR LORDSHIPS (V.V.), dismissed the appeal without costs.