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HON. MR. JUSTICE BRITTON.

MARCH 10TH, 1913.

NEY v NEY,

4 O. W. N. 935.

Alimony—Desertion of Husband by Wife—Offer to Return—Refusal to Receive—Accusation of Infidelity by Husband—No Evidence Tendered in Support—Custody of Children—Welfare—Prior Conviction of Defendant — Paternal Right — Access by Mother—Terms.

BRITTON, J., *held*, that a wife was entitled to alimony even where she had deliberately deserted her husband and children, where she had been guilty of no other misconduct and offered to return but defendant refused to receive her.

Ferris v. Ferris, 7 O. R. 496, followed.

That defendant was entitled to the custody of the two children of the marriage, as he had not disentitled himself in any way, and the welfare of the children would be better served thereby.

Order for access by plaintiff to children at reasonable intervals.

An action for alimony, tried at Toronto without a jury.

L. F. Heyd, K.C., for the plaintiff.

T. C. Robinette, K.C., for the defendant.

HON. MR. JUSTICE BRITTON:—The plaintiff and defendant were married at Toronto on the 5th day of May, 1906, lived together as man and wife, and two children—a boy and girl—were born.

Almost from the first, the married life of these parties was not a happy one.

The plaintiff in her evidence charges the defendant with cruelty and abusive language, but in her statement of claim the charge is that of abandoning the plaintiff; and, without just cause, refusing to live with, and maintain her.

The defendant is a mechanic, and had provided a comfortable residence, well enough furnished.