

BRITTON, J.

MARCH 10TH, 1913.

## NEY v. NEY.

*Husband and Wife—Alimony—Wife Leaving Husband's House—Offer to Return—Husband's Refusal to Receive her back—Unfounded Charges of Misconduct—Quantum of Alimony—Wife's Ability to Maintain herself—Custody of Children—Paternal Right—Welfare.*

Action for alimony.

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

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

BRITTON, J.:—The plaintiff and defendant were married at Toronto on the 5th 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 alleges that the plaintiff was of a peculiar disposition, and given to ungovernable fits of temper; that at times she was kind, and at other times abusive, to the children. The plaintiff admitted striking the defendant at least on one occasion, but said that she was provoked to do so by the defendant. There was a great deal of quarrelling between the two, and not wholly the fault of either one. . . .

On the 10th August, 1909, the defendant was due to return home from his work between five and six o'clock in the afternoon. Just before that time, the plaintiff, having given the children their supper, prepared to leave the house. According to her own story, she left the children in a back room, she going to a front room; and, when her husband entered by the back door, she went out of the house by the front door. The plaintiff told a neighbour that she intended to leave her husband. She went to a friend's house and remained away all night. The defendant, not finding the plaintiff, inquired of the neighbour, and got the information that the plaintiff had gone. He did not appear to be at all agitated or concerned, but simply remained all night with his children, and the next morning went with