

## SUPREME COURT OF ONTARIO.

1ST APPELLATE DIVISION.

JUNE 26TH, 1913.

NEY v. NEY.

4 O. W. N. 1536.

*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* (24 O. W. R. 193; 4 O. W. N. 935) 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 disintitiled 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.

SUP. CT. ONT. (1st App. Div.) dismissed an appeal by plaintiff from above judgment.

Appeal by plaintiff from judgment of HON. MR. JUSTICE BRITTON (24 O. W. R. 193; 4 O. W. N. 935), in an action for alimony.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

L. F. Heyd, K.C., for plaintiff (appellant.)

J. M. Godfrey, for defendant (respondent.)

HON. MR. JUSTICE HODGINS:—The motion on which the order was made had been referred to the trial Judge, and although the writ of *habeas corpus* only affected the child Marshall Ney, the order covers the case of both children, Marshall Ney and Dorothy Ney; the former now six years of age, and the latter now four and a half years.

The effect of the order is that the father is given the custody of the children. The mother is to have access to them at reasonable intervals, and the children are to be maintained by their father in a home, where together they