

[HIGH COURT OF AUSTRALIA.]

ISAAC HADDON HUNTER APPELLANT;
 PETITIONER,

AND

EMILY HUNTER RESPONDENT.
 RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF
 NEW SOUTH WALES.

Husband and Wife—Divorce—Maintenance of children—Matrimonial Causes Act H. C. OF A.
 1899 (N.S.W.) (No. 14 of 1899), sec. 60. 1915.

Sec. 60 of the *Matrimonial Causes Act* 1899 (N.S.W.) provides (*inter alia*) that in any suit for dissolution of marriage the Court may make such orders as it deems just and proper with respect to the custody, maintenance and education of the children the marriage of whose parents is the subject of such suit.

SYDNEY,
 Aug. 12.

Griffith C J.,
 Isaacs,
 Higgins,
 Gavan Duffy,
 Powers and
 Rich JJ.

Held, that under that section a husband who has obtained a decree *nisi* for the dissolution of his marriage on the ground that his wife had not complied with a prior decree for restitution of conjugal rights, may be ordered to make payments for the maintenance of the children of the marriage the custody of whom has by the decree for dissolution of marriage been given to the respondent wife.

Special leave to appeal from the decision of the Supreme Court of New South Wales (*Gordon J.*) refused.

APPLICATION for special leave to appeal.

On 18th December 1914 on the petition of Isaac Haddon Hunter a decree for restitution of conjugal rights was made against his wife, Emily Hunter. On 30th April 1915, on the husband's petition, a decree *nisi* for dissolution of marriage was

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made on the ground of his wife's desertion by reason of her not having complied with the decree for restitution of conjugal rights. By the decree for dissolution of marriage it was further ordered that the wife should have the custody and control of the two children of the marriage. On 29th June 1915, on the application of the wife, an order was made by *Gordon J.* that the husband should pay into Court the sum of 7s. 6d. per week in respect of the maintenance and support of each of the children until each child should attain the age of fifteen years respectively. In his affidavit the husband stated that he was willing to support the children in his own home.

The husband now applied for special leave to appeal to the High Court from the decision of *Gordon J.*

Bertram, for the applicant. There is no authority under sec. 60 of the *Matrimonial Causes Act* 1899 to make an order for the maintenance of his children while in the custody of his wife where the wife has disobeyed a decree for restitution of conjugal rights and the husband has obtained a decree for dissolution of marriage on the ground of such disobedience, and where he is willing to support them in his own home. [He referred to *Chantler v. Chantler* (1); *Donohue v. Donohue* (2).] The section only authorizes an order in favour of a successful party to a suit.

[GRIFFITH C.J.—Sec. 60 is perfectly general in its terms.]

Per Curiam. Special leave to appeal will be refused.

Special leave to appeal refused.

Solicitor, *L. B. Bertram*.

B. L.

(1) 4 C.L.R., 585, at p. 592.

(2) 1 S.R. (N.S.W.) (D.), 1.*