

The Ontario Weekly Notes

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HIGH COURT DIVISION.

LATCHFORD, J.

MAY 18TH, 1920.

OWEN v. CRAVEN.

Marriage—Action for Declaration of Nullity—Evidence—Marriage Act, R.S.O. 1914 ch. 148, secs. 36 (1), 37 (4)—Notice to Attorney-General—Amending Acts, 6 Geo. V. ch. 32 and 9 Geo. V. ch. 35.

Action on behalf of an infant, by her father as next friend, for a declaration that a valid marriage was not effected when, without the consent required by the Marriage Act, R.S.O. 1914 ch. 148, and amendments thereto, she went through the form of marriage with the defendant, before a clergyman at Hamilton, where both parties resided, on the 6th August, 1918, a few months after she attained the age of 16 years.

The action was tried without a jury at Hamilton.

W. H. Furlong, for the plaintiff.

The defendant was not represented.

LATCHFORD, J., in a written judgment, said that the defendant was served with the writ of summons, but did not appear or defend. The Attorney-General did not intervene. In fact it did not appear in evidence that he was served with the notice of the trial, as required by sec. 37 (4) of the Marriage Act.

The only evidence given was that of the plaintiff herself. She deposed that the marriage was not consummated. Her evidence on the point was so improbable that, in the absence of any corroboration, the learned Judge was constrained to discredit it, and to hold the proof to be lacking that the parties had not lived together as man and wife. The proviso to sec. 36 (1) was not in this respect complied with.