

As no one appeared for the defendant on this motion, I am not aware whether the defendant has any intention of resisting the plaintiff's claim when the action actually comes to trial. Statements were made by the counsel for plaintiff which indicate that no defence will be offered.

The Attorney-General has been served with notice of trial pursuant to the Statute now forming part of the Ontario Marriage Act, R. S. O. 1914, ch. 148.

In the case of *Lawless v. Chamberlain*, 18 O. R. 296, my Lord the Chancellor stated that the Courts of this Province have jurisdiction to declare a marriage null and void *ab initio* where it is shewn to be void *de jure* by reason of the absence of some essential preliminary. In that case, it was held that there was no defect in the marriage, and the action was dismissed; and it has since been intimated in a series of reported decisions that this statement was a dictum only, and the contrary opinion has been more than once expressed.

The Attorney-General takes the view that our Courts have no jurisdiction to entertain an action brought for the purpose of declaring a marriage void which has been duly solemnized; unless the case can be brought under sec. 36 of the Marriage Act, and this motion is brought for the purpose of having that question determined.

The Attorney-General rests his right to intervene upon the provisions found in sec. 37 of the Marriage Act. The plaintiff now contends that this statute does not give the right of intervention claimed by the Attorney-General, save in cases falling under sec. 36. That section provides that where a form of marriage has been gone through between persons either of whom is under the age of eighteen years, without the consent of the parent or guardian, the Supreme Court shall have jurisdiction in an action brought by the party who was under the stipulated age, to declare and adjudge that a valid marriage was not affected or entered into, provided that the parties had not after the ceremony lived together as man and wife.

This section had its origin in an Act passed in 1907. Two years later, in 1909, the Act was amended by adding as sub-section to the original of sec. 36 the provisions now found in sec. 37, in a slightly amended form. In their original form the operation of these added sub-sections was no