

The Ontario Weekly Notes

Vol. III.

TORONTO, JUNE 5, 1912.

No. 38.

HIGH COURT OF JUSTICE.

SUTHERLAND, J.

MAY 23RD, 1912.

DILTS v. WARDEN.

Marriage—Action for declaration of Invalidity—Consent Minutes of Judgment—Refusal of Court to Pronounce Judgment—Amendments to Marriage Act—7 Edw. VII. ch. 23, sec. 8—9 Edw. VII. ch. 62.

In this action the plaintiff asked for a judgment or order declaring that the defendant was not her lawful husband, and for an injunction against his interfering with her, and for other relief in connection with the custody and control of their children.

SUTHERLAND, J.:—In her statement of claim the plaintiff alleges that, relying on the defendant's representation that he had obtained a divorce from a woman to whom he had been previously married, she went through a marriage ceremony with him on or about the 26th October, 1896, and that subsequently they lived together and cohabited. There are four children. She alleges further that she has learned that the defendant was not divorced before his marriage to her. In his statement of defence the defendant alleges that he did obtain such divorce.

At the trial, a paper writing indorsed "Minutes of Judgment" was filed, in which it is stated that the parties to the action have agreed that their "pretended marriage" should be "adjudged and declared a nullity upon the grounds set out in the plaintiff's statement of claim." There are other terms as to the custody of and access to the children and as to further interference with the plaintiff by the defendant; and the latter also agreed therein to pay the costs of the action, fixed at \$75. This writing purports to be signed by the parties to the action and to be witnessed by their respective solicitors.