

be used for a crop of corn that year. The defendant claims that having no place to put the crop, he left it in the field, feeding it to his cattle as he could, but that in that way one-half of his crop was lost. He himself could not give any idea of the amount of his crop, except that it was a good one, nor of its value, nor of his loss. The learned trial Judge appears to have arrived at the sum of \$96 by computing the crop as 12 tons to the acre, and worth \$2 per ton in the field, and the loss at one-half the crop. But the same expert witness, whose valuation the learned Judge accepts in this regard, only puts the difference between the use or non-use of a silo as from 4 to 20 or 30 per cent. in favour of the former, which perhaps, he means to be exclusive of the loss from vermin and birds, but he apparently considers the main loss of leaving the corn in the field to be the exposure to the weather, which he puts at 20 per cent. or more, if till late in the season. The defendant made no effort to dispose of any of the corn, nor, so far as appears, to increase his stock of cattle for the purpose of using it. It appears that it is unusual to sell corn, but it does not appear that farmers or others might not be ready to buy. The defendant did nothing to minimize his loss, and singularly enough, grew as much corn the following year, having no silo. Taking his statement that he lost half the corn, there is no evidence that such loss was the result of not having the silo. Upon the evidence \$40 would, I think, cover all that the plaintiff should pay.

The judgment should, I think, be varied by reducing the damages on the counterclaim to that amount. With that exception the appeal should be dismissed, but without costs.

HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE HODGINS agreed.

HON MR. JUSTICE LENNOX.

JUNE 30TH, 1913.

MALOT v. MALOT.

4 O. W. N. 1577.

*Statute—Validity of Marriage—1 Geo. V. c. 32—Constitutionality of—Evidence—Refusal to make order.*

LENNOX, J., refused to make an order in an action to have a marriage declared null and void under the provisions of 1 Geo. V. c. 32. upon the ground that he was neither convinced as to the truth of the evidence tendered nor of the constitutionality of the statute.