

Province of Ontario

SUPREME COURT.

Latchford, J.]

REID v. AULL.

[16 D.L.R. 766.]

1. Trial—Publicity—Hearing in camera.

An order for a trial in camera should not be made in an action for annulment of marriage.

Scott v. Scott, [1913] A.C. 417; *Daubney v. Cooper* (1829), 10 B. & C. 237, 109 Eng. R. 438, applied.

G. H. Watson, K.C.; for plaintiff. The defendant was not represented.

ANNOTATION ON THE ABOVE CASE FROM DOMINION LAW REPORTS.

The case of *Reid v. Aull*, *supra*, stands squarely on the case of *Scott v. Scott*, [1913] A.C. 417, in refusing a motion for a secret hearing to annul a marriage.

Although the *Scott* case treats of two interesting principles of the law of England, namely, (a) the open Court, and (b) the right to publish the Court's doings, the purpose of this annotation is to define and discuss the open Court only.

The open Court is as clearly and jealously guarded a right as is the independent Parliament. The following quotation from the historian Hallam is approved by Lord Shaw in the *Scott* case:—

"Civil liberty in this kingdom has two direct guarantees: (a) the open administration of justice according to known laws truly interpreted and fair constructions of evidence, and (b) the right of Parliament, without let or interruption, to inquire into and obtain redress of public grievances. Of these, the first is by far the more indispensable; nor can the subjects of any state be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise: [1913] A.C. 477.

"The three seeming exceptions which are acknowledged to the application of the rule prescribing the publicity of Courts of justice are

(a) in suits affecting wards;

(b) in lunacy proceedings;

(c) in those cases where secrecy (as in trade-secret trials) is of the essence of the cause": [1913] A.C. 482.

The first two depend upon the principle that the jurisdiction over wards and lunatics is exercised by the Judges as representing the sovereign as *parens patriæ*, and the transactions are truly *intra familiam*.