

Com. Pleas.]

TEEVENS v. SHIPMAN—KEAN v. CUDDAHEE.

[Co. Ct.]

jury. The facts were that on the 8th July, 1884, a suitor of the plaintiff's daughter went with a friend to the defendant, who was duly authorized to issue marriage licenses in Ontario, for the purpose of getting a license to marry the plaintiff's daughter who was only eighteen years of age. The applicant told the defendant that the girl was only eighteen years of age, and that the plaintiff was not consenting to the intended marriage. The defendant said he would make that all right, and interlined the words "does not" in the affidavit made to procure the license so as to make it read "Bernard Teevens is the person whose consent to said marriage is required by law, and the said Bernard Teevens *does not* consent to the said marriage." The affidavit was sworn to in that form, and the license then issued upon which the plaintiff's daughter was, on the 14th of July, married without her father's knowledge or consent.

On these facts being proved, the learned judge intimated that the action would not lie, but some other witnesses were allowed to be called who proved that after the marriage the daughter returned to the plaintiff's house, and remained there until the 28th July, when her father consented to the union, and she and her husband went to a priest of the Roman Catholic Church and had her former marriage blest, it having been performed by a Methodist Minister and the parties being Roman Catholics.

*M. F. Gorman*, for the plaintiff, urged that the defendant was liable, as without his illegal act the marriage could not have taken place. That the plaintiff had an absolute right to withhold his consent, and that there could be no right without a remedy for the breach of it. That the defendant's act was similar to that of one who entices away a servant. He cited the following authorities among others:—*Evans v. Walton*, L. R. 2 C. P. 615; *Maunder v. Venn*, 1 M. & M. 323; *Jones v. Brown*, 1 Esp. 217; *Brasyer v. McLean*, L. R. 6 P. C. 398; *Ashby v. White*, 1 Sm. L. C. 251-85; *Bonomi v. Backhouse*, 28 L. J. Q. B. 381; *Addison on Torts*, 39 *et seq.*; *Toms v. Whitby*, 35 U. C. R. 195-210; R. S. O. cap. 124, secs. 11 and 13.

The defendant did not appear, and was not represented at the trial.

CAMERON, C.J. C.P., *held*, that it did not necessarily follow from the illegal issue of the license that the parties would act on it by being married; nor did it necessarily follow from the marriage

that the girl would leave her father before coming of age. That the enticing away was the act of the husband and not of defendant, and that independently of the fact that the father consented to the union before the girl actually left his house, the action could not be maintained, but that the last fact put the matter beyond all question, and dismissed the action, but without costs, as defendant was not free from blame.

## COUNTY COURT OF ONTARIO.

### KEAN v. CUDDAHEE.

*Transcript from Division Court—Irregularity therein—Sale of lands thereunder—Jurisdiction—Title to land.*

A County Court Judge, sitting as such, has no authority to go behind the transcript and review the proceedings in the Division Court.

*Held*, that a return of *nulla bona* against the goods of the "defendant," there being more than one, is an irregularity, which would render the judgment void, but

*Held*, also, that as the lands had been sold, and the rights of the purchaser had intervened, the application must be refused, as there is no machinery to bring the sheriff's vendee before the Court, and the title to land would incidentally come in question.

This action was commenced by an attachment issued out of the Seventh Division Court of the County of Ontario against the defendants, as absconding debtors, and judgment was obtained therein.

This was made a judgment of the County Court of the County of Ontario by a transcript from the Seventh Division Court, and the lands were advertised and sold under this judgment, and the money paid over to the plaintiff.

The defendants (husband and wife, the land being in the latter's name) reside in Cleveland, Ohio, and had so resided since their departure from Canada, shortly before the commencement of the proceedings in the Division Court.

They now apply to set aside the judgment on the grounds: (1.) that the attachment was vexatiously and improperly issued; (2.) that they were not absconding debtors within the meaning of the Act; and (3.) that the transcript and judgment are irregular and defective, inasmuch as they set out that the bailiff returned *nulla bona* as to the "defendant," not saying which of them.