

statutory covenants, giving the defendants the statutory time, twelve months, to redeem; but that they were not entitled to a decree containing the usual provisions for the sale of the land to satisfy their lien or charge, and it was not necessary to require the actual execution of a mortgage by the defendants in order to give the plaintiffs full relief.

*Stacpoole*, and *L. J. Elliott*, for plaintiffs. *Mulock*, K.C., and *Thorburn*, for the defendants.

Full Court.]·

[Nov. 16.

DITCH v. DITCH.

*Alimony—Separation deed—Proof of former marriage of plaintiff—Setting aside deed of wife on grounds of undue influence, lack of independent advice and mental weakness—Husband and wife—Acquiescence and delay before commencing action.*

A deed of separation executed by husband and wife, containing mutual covenants that they will thereafter live separate and apart from one another, that each will not thereafter compel the other to cohabit with, and will not disturb, trouble or molest the other and will not claim any of the property or goods of the other thereafter, unless it can be declared void for any reason such as fraud, duress, want of understanding on the part of the wife, lack of independent advice, misrepresentation or undue influence, if followed by an immediate separation, requires no other consideration to support it and is a complete defence to a subsequent action by the wife for alimony. *Hunt v. Hunt*, 31 L.J. 161; *Flower v. Flower*, 25 L.T.N.S. 902; *Marshall v. Marshall*, 5 P.D. 19, and *Clark v. Clark*, 10 P.D. 188, followed.

There was no evidence of any fraud, duress, misrepresentation or undue influence inducing the plaintiff to execute the deed, and the parties had been living apart for three years, but the trial judge held that she was not bound by it because of some weakness of mind—her husband having had her examined twice as to her sanity although pronounced sane—for lack of independent advice, and because of her distress of mind caused by her own recent revelation to the defendant of an alleged former marriage, which the trial judge found had not taken place. He also held that the deed was without consideration and therefore void.

*Held*, Richards, J.A., dissenting, that there was nothing in