

F. A. Hough for plaintiff.

HON. MR. JUSTICE LENNOX:—On the 11th day of September, 1911, Reverend S. James Allin, then of Windsor, pronounced the defendant and plaintiff man and wife. The plaintiff, Minnie Malot, swears that there were no witnesses present. The names "Fernie Allin" and "V. May Allin" appear as witnesses on the marriage certificate, but the whole of the writing upon the certificate is manifestly in the same hand. At the time of the marriage, or alleged marriage, the plaintiff was only a little over 13 years of age, and the defendant, it is said, was less than nineteen. They were married upon a license, and if the Attorney-General's department should inquire into how the license was obtained and punish somebody, it might check the commission of perjury in the future. This is a very disgraceful case, and it would have given me pleasure to learn from Mr. Allin how he was so woefully deceived as to the ages of these children and about the witnesses, but when I spoke of getting him to Court by 'phone, I learn that he has been removed to another sphere of usefulness.

The action is brought to have the marriage declared null and void, and for this the authority of 1 George V., ch. 32, is relied upon. The evidence of the plaintiff to prove that the marriage was not consummated and her manner of giving evidence were both unsatisfactory; the story she tells is a difficult one to believe, and yet may be that as it is the only evidence I ought to accept it. I have not yet finally made up my mind as to this. There is no reason why the defendant should not be subpoenaed and examined.

But in any case my jurisdiction to give judgment depends upon the constitutionality of the Act referred to and this question after a good deal of consideration I do not as yet feel prepared to determine affirmatively. If counsel for the plaintiff will communicate with the Attorney-General's department I will appoint a day for argument.