

The Ontario Weekly Notes

VOL. XIII.

TORONTO, JANUARY 11, 1918.

No. 17

HIGH COURT DIVISION.

CLUTE, J.

DECEMBER 31st, 1917.

WEBB v. BULLOCH.

Husband and Wife—Action by Husband against Parents of Wife for Inducing her to Leave him and Alienating her Affections—Findings of Trial Judge—Damages.

Action against the parents of the plaintiff's wife for inducing her to leave him after the ceremony of marriage and for alienating her affections from him.

The action was tried without a jury at Brockville.

J. L. Whiting, K.C., and J. A. Jackson, for the plaintiff.

J. E. Jones, for the defendant William V. Bulloch.

W. B. Carroll, K.C., for the defendant Agnes Bulloch.

CLUTE, J., stated the facts at length, in a written judgment, and said that he accepted the evidence of the plaintiff throughout in preference to the statements of the defendants. The learned Judge found that the plaintiff married Dora B. Bulloch on the 14th September, 1915; that the allegation in the statement of defence to the effect "that she did not appreciate or realise what took place and that she was irrational and irresponsible mentally," was untrue. Until she became hysterical after the return of her parents after the marriage, and in the same evening, she was in her normal state both of mind and body and understood perfectly well what took place. It was at her instance that the marriage took place, the plaintiff not desiring that it should take place without the parents being informed of it beforehand. At the time of the marriage, the plaintiff was 30 years of age; the young

woman was 22. The only blameworthy action of the plaintiff was in yielding to her importunities to have the wedding without informing the parents. The defendants deliberately resolved to prevent the plaintiff from living with his wife, and for that purpose took her to Manitoba, and were responsible, if there was any change of mind on her part towards the plaintiff, for that change of mind. They were also responsible for and planned the obtaining of a so-called divorce in the State of Ohio. A decree of divorce was actually granted there.

The plaintiff had suffered grievous wrong, and was entitled to substantial damages.

The law had been so fully and admirably stated by Falconbridge, J. (now Chief Justice of the King's Bench), in *Metcalf v. Roberts* (1893), 23 O.R. 130, that it was not necessary to make any other reference.

The plaintiff was placed in a very difficult and awkward position, and so was his wife. She not being before the Court, no opinion was expressed as to the effect of the divorce, though it was formally pleaded by the defendant Agnes Bulloch.

The plaintiff's damages were assessed at \$5,000, and judgment was given in his favour for the recovery of that sum, with costs.

MIDDLETON, J., IN CHAMBERS.

JANUARY 5TH, 1918.

*RE GOTTESMAN.

Alien Enemy—Arrest by Immigration Officer—Application for Habeas Corpus—Immigrant Coming to Canada from United States after Commencement of War—Proclamation of September, 1914, not Covering Case of—Violation of Terms upon which Protection Granted—Deportation of Aliens who have not Acquired a Domicile in Canada—Power of Court to Interfere with Action of Immigration Officer—Immigration Act, 9 & 10 Edw. VII. (D.) ch. 27, sec. 23—War Measures Act, 1914, 5 Geo. V. ch. 2, sec. 11—Consent of Minister of Justice.

Motion on behalf of Zolton Gottesman for a writ of habeas corpus, he being detained under the warrant of an Immigration officer.

* This case* and all others so marked to be reported in the Ontario Law Reports.

D. C. Ross, for the applicant.

J. C. Mitchell, the Immigration officer, opposed the motion.

MIDDLETON, J., in a written judgment, said that the applicant was an Austro-Hungarian, and so an alien enemy. It seemed that at the outbreak of the war he was in the United States of America, for he said that in 1915 he applied for naturalisation in St. Louis, and then declared his intention of becoming a citizen of the United States. After that, he came to Canada, he did not say when or how, and registered as an alien enemy. In violation of the law, he left Canada without an exeat, and on his return was prosecuted and fined. On the 13th December, 1917, he was arrested by the Immigration officer, and under his warrant placed in the gaol at Welland, where he was when the application was made.

Owing to the war, the applicant will not be deported to Hungary, but he may be interned as an alien enemy, or he may be sent back to the United States, if that country is ready to assume his custody. In the meantime, the officer was awaiting instructions from Ottawa.

The application for the writ should be refused:—

(1) Because the applicant is an alien enemy, and cannot without the King's protection sue in this Court.

(2) Because he is not within the proclamation of the 2nd September, 1914, extending protection to alien enemies then residing in Canada.

(3) Because, had he been within the protection of the proclamation, he lost his right by his violation of the terms upon which protection was granted.

(4) Because, under the Immigration Act, 9 & 10 Edw. VII. (D.) ch. 27, sec. 23, the Court is forbidden to interfere with what is done by Immigration officers looking to the deportation of aliens who have not acquired a Canadian domicile in the sense defined.

(5) Because, under the War Measures Act, 1914, 5 Geo. V. ch. 2, sec. 11, the Court has no right to deal with the application without the consent of the Minister of Justice being first obtained.

Reference to *Sylvester's Case* (1702), 7 Mod. 150.

Motion refused.

CHAPTER I

THE EARLY HISTORY OF THE UNITED STATES

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