

HILL v. HILL.

1910. September 1. MAASDORP, C.J., and WARD, J.

Husband and wife.—Prayer for general relief in claim for decree of divorce on ground of desertion allowed to stand for prayer for nullity of marriage.

Where W had obtained an order calling on H to restore conjugal rights, and on the return day it appeared from a newspaper report that H's wife by a former marriage was still alive, leave was granted to W to prove by affidavit that H's wife was still alive at the time of his going through the marriage ceremony with W, and to give notice to H that on the 15th November she would apply for a decree of divorce or nullity of marriage.

The plaintiff had obtained on the 15th June an order calling on the defendant to restore conjugal rights by the 27th August, or to show cause why a decree of divorce should not be granted on this day. It appeared from the newspaper reports that the defendant had been arrested in England on a charge of bigamy, but that the police had withdrawn the charge on the ground that the defendant had produced a letter from his mother, written before his marriage with the plaintiff, asserting that his wife was dead, and that consequently the prosecution would fail to establish the charge.

P. U. Fischer, for the plaintiff: In view of the expense incurred hitherto, may not the present pleadings be allowed to stand for pleadings in an action for nullity of marriage under the clause of the prayer asking for general relief?

The defendant was in default.

MAASDORP, C.J.: Leave is granted to the plaintiff to produce proof by affidavit on the 15th November of the first marriage and of the fact that defendant's first wife was alive at the time

of his marriage with the plaintiff, notice to be given to defendant that plaintiff will apply for a decree of divorce or nullity of marriage.

WARD, J., concurred.

Plaintiff's Attorney: *C. J. Reitz.*

