

88, 1935

In the Privy Council.

No. 25 of 1934.

ON APPEAL FROM THE SUPREME COURT  
OF ALBERTA (APPELLATE DIVISION).

BETWEEN

CORA LILLIAN McPHERSON - - - (*Plaintiff*) *Appellant*

AND

ORAN LEO McPHERSON - - - (*Defendant*) *Respondent*.

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT  
OF ALBERTA (APPELLATE DIVISION).

BETWEEN

CORA LILLIAN McPHERSON - - - (*Plaintiff*) *Appellant*

AND

ORAN LEO McPHERSON - - - (*Defendant*) *Respondent.*

RECORD OF PROCEEDINGS.

No. 1

**Amended Statement of Claim.**

*In the  
Supreme  
Court of  
Alberta.*

IN THE SUPREME COURT OF ALBERTA.

JUDICIAL DISTRICT OF EDMONTON.

Between

CORA LILLIAN McPHERSON - - - - - (*Plaintiff*)

and

ORAN LEO McPHERSON - - - - - (*Defendant*)

No. 1.  
Amended  
Statement  
of Claim,  
11th  
October  
1932.

AMENDED pursuant to Rule 259 this 1st day of November, A.D. 1932.

"R. P. WALLACE" C.S.C., J.D.E.,

10

FURTHER AMENDED pursuant to the order of A. Y. Blain, Esq., K.C.,  
M.C., this 15th day of November, A.D. 1932.

(Sgd.) R. P. WALLACE,  
C.S.C., K.C.A.

1. The plaintiff is the wife of the defendant Oran Leo McPherson and is presently residing at the City of Edmonton, in the Province of Alberta. The defendant Oran Leo McPherson is the Minister of Public Works in the Government of the Province of Alberta and resides at the said City of Edmonton.

20

2. The plaintiff and the defendant Oran Leo McPherson were legally married on the 21st day of April, 1908, at Ashley in the state of Illinois, one of the United States of America.

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*continued.*

2a. The issue of the said marriage consists of four sons as follows :

Eugene McPherson, aged 18 years,  
Coran McPherson, aged 16 years,  
Moffat McPherson, aged 14 years,  
Keith McPherson, aged 7 years,

all of which children of the said parties are now in the custody and control of the defendant.

2b. During the Winter of 1929-1930, the defendant began and up to the present time has continued treating the plaintiff with great unkindness and cruelty and has conducted himself during the said period in a manner grossly insulting and intolerable to the plaintiff and of such a character that the plaintiff could not reasonably be expected to be willing to live with him after he had been guilty of the same, namely :— 10

By harbouring, keeping, maintaining and co-habiting with, in the family home of the said parties, and at other places in the Provinces of Alberta and British Columbia, and the State of Montana, one of the said United States of America, one Mrs. Helen Mattern ; by compelling the plaintiff to appear in the company of the Defendant and the said Helen Mattern on many of the said occasions ; by participation in incessant quarrels and disputes with the plaintiff over domestic matters ; by engaging in relations with the said Helen Mattern in the plaintiff's presence or immediate whereabouts, of a very disloyal, indecent and immoral character ; by constantly urging, insisting and demanding that the plaintiff leave the defendant's home and do separate from him ; by frequently urging the plaintiff to commit, or to give the appearance of committing an act or acts upon which an action for divorce at the suit of himself against the plaintiff might be maintained and otherwise, all of which led to the health of the plaintiff both mentally and physical becoming seriously impaired. 20

2c. The unkindness, cruelty and abuse above referred to, the plaintiff bore with, being unwilling to expose the said unhappy private relations to the public, particularly by reason of the defendant's station and position in life as aforesaid, and hoping that time would produce a favourable change, and that the defendant's career as a public man might not be endangered or impaired, but her forbearance brought no improvement in the conduct of the defendant towards her. 30

2d. During all the period of the married life of the plaintiff and defendant and until the judgment of divorce hereafter referred to, the plaintiff discharged all of the duties of a wife to the defendant, and she has by her personal exertions contributed in a great degree to the accumulation of the property which the defendant now owns, consisting of one or more farms, and house properties, and other forms of wealth aggregating in or about the sum of \$40,000.00. 40

2e. The plaintiff has no means of living except by her daily labour and unless relief can be afforded by this Honourable Court, she will be reduced to great distress.

2f. The plaintiff is unable to do heavy work and has no funds which will enable her to carry on this action.

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ment, 1st  
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3. The defendant Oran Leo McPherson on or about the 17th day of March, 1931, commenced an action against the plaintiff in the Supreme Court of Alberta, Judicial District of Edmonton, No. 22420, claiming a Judgment or Decree dissolving the aforesaid marriage.

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4. On or about the 22nd day of April, 1931, at a hearing which was held in the Law Library of the Court House in the City of Edmonton, in the Province of Alberta, a Decree Nisi was granted in the aforesaid action, No. 22420, which said Decree was pronounced as a result of evidence given by the Defendant Oran Leo McPherson, which said evidence was  
10 false to the knowledge of the said defendant Oran Leo McPherson and was given by him with the intention of deceiving the court and for the purpose of inducing the said court to pronounce a Decree Nisi or Judgment dissolving the said marriage upon the expiration of a period of three months, and the said false evidence so given by the defendant Oran Leo McPherson did deceive the said court and did induce the said court to pronounce the said Decree or Judgment, and the said Decree or Judgment was pronounced or granted by the said court upon the said false evidence so given by the defendant Oran Leo McPherson, and the said Decree or Judgment was obtained by fraud, and the defendant Oran Leo McPherson thereby perpetrated a fraud  
20 upon the said court.

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*continued.*

5. The defendant Oran Leo McPherson further continued the said fraud upon the said court by applying on or about the 28th day of July, 1931, to the said court and obtaining from it a Decree Absolute dissolving the said marriage, the defendant Oran Leo McPherson then well knowing that the evidence which he had given on the said 22nd day of April, 1931, was false and that the said Decree Nisi had been obtained by fraud and that the said court had been deceived and that in granting the said Decree Absolute the said court was relying on the said false evidence as being true.

6. The said false evidence given by the defendant Oran Leo McPherson  
30 which so misled the said court and induced it to pronounce the said Decree or Judgment dissolving the marriage between the plaintiff and the defendant Oran Leo McPherson consisted among other things in—

(a) The defendant Oran Leo McPherson falsely stated under oath to the court that there had been no collusion between the plaintiff and the defendant whereby the necessary evidence of adultery had been obtained whereas the truth was that during the year 1930 and the month of January, 1931, it was discussed, understood and agreed by, between and among the plaintiff, the defendant and one Mrs. Helen Mattern that the plaintiff  
40 should commit adultery with one Leroy Mattern, for the express purpose of providing the necessary evidence to enable the defendant Oran Leo McPherson to obtain the said Decree or Judgment, and the evidence of adultery given at the hearing of the said action No. 22420 was the direct and sole result of the aforesaid discussions, understandings and agreements, and the defendant Oran Leo McPherson, the said

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Mrs. Helen Mattern and the plaintiff did agree and\* collude, the one with the other, to create and\* furnish the said evidence so given by the said defendant.

- (b) The defendant Oran Leo McPherson falsely stated under oath to the said court that there had been no condonation of the act or acts of adultery complained of, whereas the truth was that there had been by the defendant Oran Leo McPherson condonation of, complete acquiescence in, encouragement of and arrangement for the commission of the said act or acts of adultery complained of. 10
- (c) The defendant Oran Leo McPherson further falsely stated under oath before the said court that there had been no agreement whereby the necessary evidence of adultery should be provided by the plaintiff for the defendant Oran Leo McPherson to enable him to obtain the said Decree or Judgment from the said court in the said action, whereas the true facts are that during the year 1930 it had been agreed between the plaintiff, the defendant Oran Leo McPherson and the said Mrs. Helen Mattern that the plaintiff should go away from Edmonton early in December, 1930, for the aforesaid purpose but this arrangement was later changed to take place in the month of January, 1931, and this plaintiff did on the 19th day of January, 1931, pursuant to and conforming with the terms and details of an agreement made between this defendant, this plaintiff and the said Mrs. Helen Mattern, go to Saskatoon in the Province of Saskatchewan and did furnish the evidence produced at the hearing of the said action No. 22420. 20

7. Among many other things this plaintiff was induced to enter into the aforesaid agreement with the defendant Oran Leo McPherson upon the agreements, promises and representations of the defendant Oran Leo McPherson that he would among other things— 30

- (a) Make this plaintiff a reasonable monthly allowance for maintenance and support until this plaintiff should re-marry;
- (b) That this plaintiff was to be given the care and custody of Keith McPherson, one of the children of the plaintiff and the defendant Oran Leo McPherson, as soon as the defendant Oran Leo McPherson should marry the aforesaid Mrs. Helen Mattern;
- (c) That it was the desire of the defendant Oran Leo McPherson to marry the said Mrs. Helen Mattern and that he, the said defendant Oran Leo McPherson did not desire to have the plaintiff as his wife any longer, but that it was impossible for the defendant Oran Leo McPherson because of the fact that he was a Minister in the Government of the Province of Alberta to be the one to furnish the necessary evidence for a divorce. 40

8. The defendant Oran Leo McPherson did, pursuant to agreement (a) specifically set out in the next preceding paragraph, pay this plaintiff a reasonable monthly allowance for maintenance and support from about the month of January, 1931, until the month of August, 1932, but has since August, 1932, failed refused and neglected to fulfil the said promise and agreement.

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*continued.*

9. The defendant Oran Leo McPherson did in or about the month of July, 1932, marry the said Mrs. Helen Mattern but the defendant Oran Leo McPherson has since the date of the marriage failed neglected and  
10 refused to give the care and custody of the said child Keith McPherson to the plaintiff.

10. The Plaintiff was further influenced and persuaded to enter into the aforesaid unlawful agreement with the defendant Oran Leo McPherson to furnish to the defendant Oran Leo McPherson the said necessary evidence of adultery for the purpose of enabling the defendant Oran Leo McPherson to obtain the said Decree or Judgment dissolving the said marriage between the Plaintiff and the Defendant Oran Leo McPherson by the incessant demands and harrassing and nagging of the plaintiff by the defendant Oran Leo McPherson and the said Mrs. Helen Mattern, which demands,  
20 harrassing and nagging partially mentally unbalanced the plaintiff, and it was while in this mental condition that the plaintiff consented to the agreement so proposed to her and did provide the said evidence which the defendant Oran Leo McPherson falsely presented to the said Court.

11. The Defendant Oran Leo McPherson further perpetrated a fraud upon the said court by failing to disclose to the said court that he was barred by his own conduct with the said Mrs. Helen Mattern, from legally obtaining a divorce, and if the evidence of the conduct of the defendant and the said Mrs. Helen Mattern, had been disclosed to the said court by the said defendant Oran Leo McPherson, the said court would not have pronounced  
30 the Decree or Judgment so granted.

12. The Defendant Oran Leo McPherson further perpetrated a fraud upon the said court by failing to disclose to the King's Proctor the facts of his own conduct with the said Mrs. Helen Mattern, and if the true facts of the conduct of the defendant Oran Leo McPherson with the said Mrs. Helen Mattern had not been suppressed but had been given to the King's Proctor the said court would not have pronounced the Decree or Judgment so granted.

13. The whole proceedings in Action No. 22420 hereinbefore referred to were a fraud upon the said court and should be set aside.

40 14. In or about the years 1929 and/or 1930, the defendant and the said Helen Mattern unlawfully, fraudulently, and maliciously conspired, agreed together, and combined between themselves, by unlawful means to procure their respective marriages to be dissolved so that they might marry each other, and to cause the marriage contract between the plaintiff and defendant to be broken and to cause the plaintiff's marital rights, and

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No. 1.  
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11th  
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1932—  
*continued.*

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ment, 1st  
November  
1932.

status as the wife of the defendant, and as the mother of the said children, under the Laws of Alberta, to be taken from her.

15. In pursuance of the said conspiracy the defendant, and the said Helen Mattern did the following overt acts, namely :—

- (a) The Defendant and the said Helen Mattern did falsely and maliciously assert and declare and cause it to be believed, that the plaintiff had lost her affection for the defendant and had become enamoured of the said Leroy Mattern, and that she had been guilty of various acts of immorality and misconduct with the said Mattern and they did accordingly speak, write, and publish, and widely circulate the said slander, and other slanders, the details of which are to the plaintiff at present unknown. 10
- (b) The Defendant and the said Helen Mattern caused and induced the said Leroy Mattern to unlawfully entice and procure the plaintiff against her will to depart and remain absent from her home ;
- (c) The Defendant and the said Helen Mattern did unlawfully cause, induce and procure the plaintiff against her will to depart and remain absent from her home.
- (d) The Defendant and the said Helen Mattern did by misrepresentation, threats, undue influence and promises persuade and induce the said Leroy Mattern, and this plaintiff to enter into the collusive agreement or understanding more particularly referred to in paragraph 6 hereof, and to give the appearance of committing an act, or acts, upon which an action for divorce by the defendant against the plaintiff, and also an action for divorce by the said Helen Mattern against the said Leroy Mattern might be maintained. 20
- (e) The Defendant and the said Helen Mattern did cause the happy domestic relations theretofore subsisting between the Plaintiff, and the Defendant to be broken down and destroyed, and to be replaced by feeling of hatred and contempt. 30
- (f) The said defendant and the said Helen Mattern by misrepresentation, threats, undue influence and promises, did cause, persuade and induce the plaintiff to believe that she should leave her home and become separated from her husband and that she should commit an act or acts, or give the appearance of committing an act, or acts, upon which her marriage to the defendant might be dissolved.
- (g) The defendant with the assistance and counsel and at the instigation of the said Helen Mattern, did treat the defendant with the unkindness and cruelty mentioned in Paragraph 2*b* hereof, with the result that the health of the plaintiff both mental and physical became seriously impaired to the extent that she was not of sound mind when agreeing to the collusive arrangement mentioned in Paragraphs 6 and 7 hereof. 40

16. By reason of the premises the said marriage contract has been broken and the plaintiff's marriage to the defendant has been absolutely dissolved and she has been deprived of all her marital rights and status as the wife of the defendant as provided in the various Statutes and laws in force in the Province of Alberta, including particularly the custody and society of her said four sons and the society and support of the defendant, and as a result she has suffered grave loss, damage and injury.

*In the  
Supreme  
Court of  
Alberta.*

No. 1.  
Amended  
Statement  
of Claim,  
11th  
October  
1932—  
*continued.*

Amend-  
ment, 15th  
November  
1932.

17. The said action mentioned in Paragraphs 3 and 4 hereof was not heard or tried in open Court and the witnesses in the said proceedings before the said Court, were not sworn or examined orally in open Court as required by law, but instead the said action was tried and heard and the witnesses were sworn and examined in camera in a private room of the said Court House and during the noon recess on the said date, all of which was contrary to law in that behalf made and provided.

18. By reason of the matters alleged in the next preceding paragraph, the said Court and the Learned Judge thereof who presided on the said occasion, had no jurisdiction, power or authority to hear or determine the said action, or to make the said Decree Nisi and the said Court, and the Learned Judge thereof who presided upon the application for a Decree Absolute had no jurisdiction, power or authority to make such latter mentioned Decree and the same are, therefore, void and of no effect.

WHEREFORE THE PLAINTIFF CLAIMS—

(a) That all Orders, Decrees and Judgments pronounced in action No. 22420 in this Honourable Court declaring or intended to declare the marriage of the plaintiff and the defendant Oran Leo McPherson to be dissolved be vacated, set aside and rescinded, and that a new trial of the said action be ordered.

Amend-  
ment, 1st  
November  
1932.

(a1) A declaration that the said Decree Nisi and the said Decree Absolute in the said Action No. 22420 are null and void and an order accordingly.

Amend-  
ment, 15th  
November  
1932.

(b) Alimony and Interim Alimony.

(b1) Interim disbursements.

(b2) A decree of judicial separation.

Amend-  
ment, 1st  
November  
1932.

(b3) Damages in the sum of \$25,000.00 in respect of the matters alleged in Paragraphs 2a. to 2f. both inclusive and paragraphs 14 to 16 both inclusive of the amended Statement of Claim.

(c) Costs of this action.

(d) A Decree restoring to the plaintiff her marital rights.

(e) Such further and other relief as the nature of the case may require.

*In the  
Supreme  
Court of  
Alberta.*

DATED at Mundare, in the Province of Alberta this 11th day of October, 1932, AND DELIVERED by H. A. WHITE, Solicitor for the plaintiff, whose address for service is in care of WILLIAM REA, Barrister, etc., C.P.R. Building, Edmonton, Alberta.

No. 1.  
Amended  
Statement  
of Claim,  
11th  
October  
1932—  
*continued.*

ISSUED out of the office of the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton, at Edmonton, Alberta, this 11th day of October, 1932.

“ R. P. WALLACE ” C.S.C.A., J.D.E.  
(SEAL).

No. 2.  
Amended  
Statement  
of Defence,  
24th  
October  
1932.

No. 2.

Amended Statement of Defence.

IN THE SUPREME COURT OF ALBERTA.

JUDICIAL DISTRICT OF EDMONTON.

Between

CORA LILLIAN MCPHERSON - - - - - (Plaintiff)

and

ORAN LEO MCPHERSON - - - - - (Defendant)

1. The plaintiff is not the wife of the defendant and does not reside at Edmonton in the Province of Alberta.

1(a). The defendant did not during the winter of 1929 and 1930, or at any other time treat the plaintiff with unkindness or cruelty and has never conducted himself in a manner insulting and intolerable to the plaintiff, or of such a character that the plaintiff could not be expected to be willing to live with him and in particular the defendant never harboured, kept, maintained or co-habited with one Mrs. Helen Mattern as alleged in paragraph 2(b) of the amended Statement of Claim or at all. The defendant never compelled the plaintiff to appear in his company and in the company of the said Helen Mattern. The defendant never participated in incessant quarrels and disputes with the plaintiff over domestic matters. The defendant never engaged in relations with the said Helen Mattern of a disloyal, indecent or immoral character as alleged in paragraph 2(b) of the amended Statement of Claim or at all. The defendant never urged, insisted or demanded that the plaintiff leave his home and separate from him. The defendant never urged the plaintiff to commit or to give the appearance of committing any act or acts upon which an action for divorce at the suit of himself against the plaintiff might be maintained, nor did the defendant in any other way treat the plaintiff with unkindness or cruelty and no acts of the defendant led to the health of the plaintiff, either mental or physical being impaired.

Amend-  
ment, 9th  
November  
1932.

1(b). The defendant never was guilty of any unkindness, cruelty and abuse to the plaintiff and the plaintiff did not bear with any unkindness, cruelty and abuse from the defendant. The plaintiff never was unwilling to expose her private relations to the public, and had no regard in her actions for the defendant's career. The conduct of the defendant towards the plaintiff was at no time unkind or cruel.

1.(c) The plaintiff did not discharge the duties of a wife to the defendant during the period of her married life and she has not contributed in any degree to the accumulation of any property which the defendant now owns.

10 1.(d) The defendant denies that the plaintiff has no means of living except by her daily labour and that she will be reduced to great distress unless relief is afforded by this Honourable Court. The defendant denies that she has no funds wherewith to carry on this action.

2. The hearing of the action in paragraph 3 of the Statement of claim referred to was not held in the Law Library of the Court House in the City of Edmonton. The Decree Nisi pronounced in the said action was pronounced not only as a result of the evidence given by the defendant herein, but as a result of all the evidence given by the defendant herein, but as a result of all the evidence given therein, including the evidence of the defendant  
20 herein. The said evidence of the defendant herein was not false to the knowledge of the said defendant and was not given by him with the intention of deceiving the Court or for the purpose of inducing the Court to pronounce a decree nisi or judgment dissolving the marriage between the plaintiff and the defendant upon the expiration of a period of three months but was given in support of the allegations made in the Statement of Claim in the said action. The said evidence of the defendant herein was not false and did not deceive the said Court and did not induce the said Court to pronounce the said Decree Nisi or judgment. The said decree or judgment was not pronounced or granted upon any false evidence given by the defendant herein  
30 and was not obtained by fraud and the defendant did not perpetrate a fraud upon the said Court.

3. The defendant did not continue the fraud alleged in paragraph 4 of the Statement of Claim or any fraud upon the Court by applying to and obtaining from the said Court a decree absolute dissolving the said marriage; and the defendant neither on the 28th day of July, 1931, nor at any time knew that the evidence which he had given on the 22nd April 1931 or at any time was false nor that the said decree nisi had been obtained by fraud nor that the said Court had been deceived nor that in granting the said decree absolute the said Court was relying upon any false evidence as being true.

40 4. No false evidence was given by the defendant at the said hearing and the Court was not misled nor induced to pronounce the said decree or judgment dissolving the said marriage by any false evidence given by the Defendant. The Defendant did not falsely state under oath or otherwise that there had been no collusion between the plaintiff and the defendant whereby the necessary evidence of adultery had been obtained. It is not

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Alberta.*

No. 2.  
Amended  
Statement  
of Defence,  
24th  
October  
1932—  
*continued.*

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ment, 9th  
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1932.

and was at no time true that during the year 1930 and the month of January 1931 it was discussed, understood and agreed by between and among the plaintiff, the defendant and one Mrs. Mattern, or by, between and among the defendant and any other person or persons whatsoever that the plaintiff should commit adultery with one Leroy Mattern or with any person or persons for the express purpose of providing the necessary evidence to enable the defendant to obtain the said decree or judgment nor for any purpose whatsoever. The evidence of adultery given at the hearing of the said action was not the result of such alleged or of any discussions, understandings and agreements between the defendant and any other person or persons whatsoever. The defendant did not conspire or collude or agree\* with the said Mrs. Helen Mattern, and the plaintiff, or with any other person or persons whatsoever to create\* or furnish the said or any evidence given by the defendant or by any person or persons whatsoever. The defendant did not falsely state to the said Court that there had been no condonation of the act or acts of adultery complained of and it is not and was at no time true that there had been any condonation of acquiescence in encouragement of and (or) arrangement for the commission of the said or of any act or acts of adultery complained of. The defendant did not falsely state under oath or otherwise before the said Court that there had been no agreement whereby the necessary evidence of adultery should be provided by the plaintiff for the defendant to enable him to obtain the said decree or judgment and it is not and was not at any time true that during the year 1930 or at any time it was agreed between the plaintiff, the defendant and the said Mrs. Helen Mattern or between the defendant and any other person or persons whatsoever that the plaintiff should go away from Edmonton early in December 1930 or at any time or times for the aforesaid purpose. No change was made in any arrangement and no arrangement was made such as alleged in paragraph 6 (c) of the Statement of Claim and the plaintiff did not on the 19th January 1931, nor at any time or times go to Saskatoon in the Province of Saskatchewan and furnish the evidence produced at the hearing of the said action pursuant to and (or) conforming with the terms of any agreement made between the defendant, the plaintiff, and the said Mrs. Helen Mattern, or between the defendant and any other person or persons whatsoever.

5. The plaintiff was not induced to enter into the said alleged agreement or into any agreement whatsoever with the defendant upon any agreements, provisos and (or) representations of the defendant and particularly upon any agreement, promise and (or) representations such as are set out in paragraph 7 (a), (b) and (c) of the Statement of Claim. The defendant did not agree, promise and (or) represent that he would make the plaintiff a reasonable monthly allowance for maintenance and support or otherwise until the plaintiff should re-marry or until any time or times whatsoever. The defendant did not agree, promise and (or) represent that the plaintiff was to be given the care and custody of Keith McPherson either when the defendant should marry the said Mrs. Helen Mattern or should marry any other person or at any other time or times. The defendant at no time

represented to the plaintiff that it was his desire to marry the said Mrs. Helen Mattern or any other person whatsoever, nor that he did not desire to have the plaintiff as his wife any longer nor that it was impossible for the defendant because of the fact that he was a Minister in the Government of the Province of Alberta or for any other reason to be the one to furnish the necessary evidence for a divorce.

6. The Defendant submits as a matter of law that the allegations contained in paragraphs 2 (b), 2 (c)\* and 5 to 16 inclusive of the Statement of Claim are scandalous, frivolous and embarrassing and that the same disclose no cause of action and should be expurged from the Statement of Claim.

7. The Defendant did not pursuant to the agreement in paragraph 7 (a) of the Statement of Claim, or pursuant to any agreement pay to the plaintiff any monthly allowance for maintenance and support from the month of January 1931 until the month of August 1932 or for any time and the defendant has not since August 1932 or at any time failed, refused and neglected to fulfil the said alleged or any promise and agreement. No such promise or agreement as alleged was ever made by the Defendant with the Plaintiff or with anyone on her behalf or for her benefit.

8. The Defendant has not since July 1932 or at or since any time or times failed, neglected and (or) refused to give the care and custody of the child Keith McPherson to the Plaintiff. No agreement or arrangement to do so has ever been made by the Defendant with the Plaintiff or anyone on her behalf.

9. The Plaintiff was not influenced or persuaded to enter into the said alleged agreement with the defendant to furnish the evidence of adultery as in the Statement of Claim set out by any demands, harassing and nagging of the plaintiff by the defendant and the said Mrs. Helen Mattern or by the defendant and (or) any other person or persons whatsoever. No such agreement was ever made by the plaintiff with the defendant. The plaintiff was not partially or at all mentally unbalanced by any demands, harassing and (or) nagging of the defendant and the said Mrs. Helen Mattern, or by any demands, harassing and (or) nagging of the defendant and the said Mrs. Helen Mattern, or by any demands, harassing and (or) nagging of the defendant either alone or with any other person or persons whatsoever. The plaintiff was not at any material time partially or at all mentally unbalanced. It was not while in any such mental condition that the plaintiff consented to any agreement proposed to her. No agreement as alleged was proposed to the plaintiff. The Plaintiff did not provide the said\* any evidence as in paragraph 10 of the Statement of Claim alleged and the defendant did not falsely present the said or any false evidence to the said Court.

10. The Defendant did not perpetrate any fraud upon the said Court and particularly did not do so by failing to disclose to the said Court that he was barred by his own conduct or otherwise from legally obtaining a divorce. No conduct of the defendant barred him from obtaining a divorce.

*In the  
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Court of  
Alberta.*

No. 2.

Amended  
Statement  
of Defence,  
24th  
October  
1932—  
*continued.*

\*Amend-  
ment, 9th  
November  
1932.

\*Sic.

*In the  
Supreme  
Court of  
Alberta.*

No. 2.  
Amended  
Statement  
of Defence,  
24th  
October  
1932—  
*continued.*  
\*Amend-  
ment, 9th  
November  
1932.

11. The defendant did not perpetrate a fraud upon the said Court by failing to disclose to the King's Proctor any facts relating to his conduct with the said Mrs. Helen Mattern or with any person or persons whatsoever. There was nothing in the relationship between the defendant and the said Mrs. Helen Mattern that it was important or material for the King's Proctor to know.\* The proceedings in the said action No. 22420 were not a fraud upon the said Court and should not be set aside. The defendant and Helen Mattern never conspired by unlawful means or any means to procure their respective marriages to be dissolved for the purpose of marrying each other or for any other purpose, nor to cause the marriage contract between the plaintiff and defendant to be broken, not to cause the plaintiff's marital rights and status as the wife of the defendant and as the mother of the said children to be taken from her. 10

12. There was no conspiracy between the defendant and the said Helen Mattern and the defendant and the said Helen Mattern did no acts in pursuance of any conspiracy and in particular they did not do any of the acts alleged in paragraph 15 of the Statement of Claim.

13. Neither the defendant nor the said Helen Mattern did falsely and maliciously or at all assert and declare or cause it to be believed that the plaintiff had lost her affection for the defendant and had become enamoured of the said Leroy Mattern or that she was guilty of acts of immorality or misconduct with the said Mattern and they did not speak, write publish or widely circulate any slander of the plaintiff. 20

14. The defendant and the said Helen Mattern did not cause or induce the said Leroy Mattern to unlawfully or at all entice and procure the plaintiff against her will or at all to depart and remain absent from home. The defendant and the said Helen Mattern did not cause, induce or procure the plaintiff against her will or at all to depart or remain absent from her home.

15. The defendant and the said Helen Mattern did not by any means induce Leroy Mattern and the plaintiff to enter into any collusive agreement or undertaking, nor induce them to give the appearance of committing an act, or acts upon which an action for divorce by the defendant against the plaintiff, or an action for divorce by the said Helen Mattern against the said Leroy Mattern might be maintained. Neither the defendant nor the said Helen Mattern caused the domestic relations between the plaintiff and the defendant to be broken down or destroyed. 30

16. The said defendant and Helen Mattern never by any means caused, persuaded or induced the plaintiff to believe that she should leave her home or become separated from her husband, or that she should commit any acts or give the appearance of committing any acts upon which her marriage to the defendant might be dissolved. The defendant did not treat the plaintiff with unkindness or cruelty and no act of the defendant was instigated by the said Helen Mattern, nor done with her assistance as counsel. 40

Amend-  
ment, 9th  
November,  
1932.

17. The health of the plaintiff never became seriously impaired and she was at all material times of sound mind. There was no agreement, collusive or otherwise between the parties with respect to the divorce proceedings or the evidence upon which it was obtained.

18. The marriage contract between the parties was broken by the plaintiff and the dissolution of the marriage between the plaintiff and the defendant was a consequence of the plaintiff's own acts.

18. (a) The action referred to in paragraph 3 of the amended Statement of Claim was heard in open Court and the witnesses were sworn and examined orally in open Court as required by law.

18. (b) The action referred to in paragraph 17 of the amended Statement of Claim was not tried and heard nor were the witnesses sworn and examined in camera or during the noon recess. Even if the allegation in paragraph 17 of the amended Statement of Claim were true, which the Defendant does not admit, but denies, the decree nisi was a valid and binding judgment of the Court and the learned Judge who presided on the occasion of the granting of the Decree Nisi had jurisdiction to determine the said action and did in fact determine it and the Judge who presided upon the application for the Decree Absolute had such jurisdiction to make such decree and both such decrees are in full force and effect.

19. The defendant submits that as a matter of law the statement of claim discloses no cause of action maintainable by the plaintiff; or, alternatively, that the discretion of the Court should be exercised to strike the same from the files of the Court as scandalous or (further alternatively) as disclosing no cause of action which under the circumstances as pleaded in the statement of claim should be entertained by this Honourable Court.

DATED at Edmonton, Alberta this 24th day of October, A.D. 1932 and filed by WOODS, FIELD, CRAIG & HYNDMAN, 316 McLeod Building, Edmonton, Alberta, Solicitors for the defendant, whose address for service is in care of his said solicitors.

### No. 3.

#### Reply and Joinder of Issue.

1. The plaintiff joins issue with the defendant as to Paragraphs 1 to 19 both inclusive, of the Amended Statement of Defence.

2. In reply to Paragraph 2 of the Amended Statement of Defence, the plaintiff says that the said Court could not and should not have decreed the dissolution of the said marriage except upon the evidence of the defendant.

*In the  
Supreme  
Court of  
Alberta.*

No. 2.  
Amended  
Statement  
of Defence,

24th  
October  
1932—

*continued.*

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ment, 9th  
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ment, 21st  
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*In the  
Supreme  
Court of  
Alberta.*

No. 3.  
Reply and  
Joinder of  
Issue, 22nd  
November  
1932—  
*continued.*

3. In reply to Paragraph 3 of the Amended Statement of Defence, the plaintiff says that the defendant well knew that the evidence he had given at the trial of the said action, on or about the 22nd day of April 1931, was false and that the said Decree Nisi had been obtained by fraud, and he well knew that the said Court had been deceived, and he well knew that the said Court in granting a Decree Absolute was relying upon the said false evidence as being true.

4. In reply to Paragraph 6 of the Amended Statement of Defence, the plaintiff denies that the allegations contained in Paragraphs 2 (b) 2 (c) and 5 and 16 inclusive, or any of them, are scandalous or frivolous or embarrassing, or that the same disclose no cause of action, or that they should be expunged from the Statement of Claim. 10

5. The plaintiff denies that the action referred to in Paragraph 3 of the Amended Statement of Claim was heard in open Court and she further denies that the witnesses at the said trial were sworn or examined orally in open Court as required by law.

6. In answer to Paragraph 18 (b) of the Amended Statement of Defence, the plaintiff denies that the said Decree Nisi was valid or binding, or was a valid or binding judgment of the said Court, and she further denies that the Learned Judge who presided on the occasion of the granting of the said Decree Nisi had any jurisdiction, power or authority to determine the said action, and she further denies that he did in fact determine it, and she further says that if it was so determined, that such determination was null and void. 20

7. The plaintiff denies that the Statement of Claim discloses no cause of action maintainable by the plaintiff, and she further denies that the discretion of the Court should be exercised to strike the same from the files of the Court as scandalous or disclosing no cause of action.

DATED at Edmonton, Alberta, this 22nd day of November, A.D. 1932, and DELIVERED by H. A. White, Solicitor for the Plaintiff, whose address for service is in care of William Rea, Barrister, etc., C.P.R. Building, Edmonton, Alberta. 30

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## No. 4.

## Order for trial of Issue.

*In the  
Supreme  
Court of  
Alberta.*

THE HONOURABLE MR. JUSTICE EWING MONDAY the 28th day of  
IN CHAMBERS EDMONTON November, A.D. 1932.

No. 4.  
Order for  
trial of  
Issue, 28th  
November  
1932.

UPON application by Counsel on behalf of the plaintiff by way of  
appeal from the order for directions herein made by A. Y. Blain, Esq.,  
K.C., Master in Chambers at Edmonton on Monday the 14th day of  
November, 1932, in so far as the said order directed that the action be  
set down for trial at a sittings to be held at the City of Edmonton without  
10 a jury on the 5th day of December 1932, and in so far as it refused an order  
to the plaintiff to examine certain witnesses on commission, in presence  
of Counsel for the defendant, upon hearing what was alleged by Counsel  
aforsaid and Counsel consenting thereto;

1. IT IS ORDERED that the issue raised by paragraphs 17 and 18 of  
the amended Statement of Claim and by paragraphs 18 (a) and 18 (b) of  
the amended Statement of Defence be heard and determined at a sittings  
to be held for the trial of actions without a jury at the City of Edmonton  
on the week commencing the 12th day of December.

2. IT IS FURTHER ORDERED that all further questions raised by the  
20 plaintiff's application aforsaid be reserved for further argument and  
consideration after the determination of the issue above referred to.

3. IT IS FURTHER ordered that the costs of and incidental to the  
determination of the said issue be in the discretion of the Trial Judge  
herein.

A. F. EWING, J.

APPROVED as to form,  
G. H. VAN ALLEN,  
per T. COHEN.

ENTERED this 2nd day of December, A.D. 1932.  
30 R. P. WALLACE,  
C.S.C.A.

## No. 5.

## Opening of proceedings at trial.

No. 5.  
Opening of  
proceedings  
at trial, 16th  
December  
1932.

Evidence and Proceedings at trial of this action before The Honourable  
Mr. Justice EWING at the Court House, Edmonton commencing at 10.00 a.m.  
Friday, December 16th, 1932.

Mr. Geo. H. Van Allen, K.C., Mr. H. A. White and Mr. T. Cohen, Counsel  
for Plaintiff.

Mr. S. B. Woods, K.C., Counsel for Defendant.

40 Mr. Woods : It is agreed that your Lordship may look at the proceed-  
ings on the files of the Court in the original action Number 22420.

*In the  
Supreme  
Court of  
Alberta.*

No. 5.  
Opening of  
proceedings  
at trial,  
16th  
December  
1932—  
*continued.*

THE COURT : Is that the agreement ?

Mr. VAN ALLEN : Yes, my Lord.

THE COURT : What do you mean by that ? That they are to be treated as evidence in this action ?

Mr. WOODS : Yes my Lord.

Mr. VAN ALLEN : I intend to put it in in a little while, My Lord. Your Lordship doubtless remembers the outline of the case from the Appeal from the Master on Motion for Directions ?

THE COURT : Yes I have some recollection.

Mr. VAN ALLEN : I would like to take a moment to refresh your Lordship's memory. In the first place it is an action by a divorced wife brought against her husband to set aside the decree of divorce on four grounds : Firstly, on the ground of collusion. Secondly, on the ground of connivance and misconduct on her part which matters were denied before the Trial Judge and which the plaintiff says amounted to a fraud and which vitiate the judgment of that Court. 10

THE COURT : You say it was denied on the trial of the former actions ?

Mr. VAN ALLEN : Yes, by the plaintiff in that action. The plaintiff denied there was any collusion or connivance. And the third ground is that the plaintiff himself was guilty of such misconduct which if it had been brought to the attention of the Court the Court would have exercised its discretion not to grant the divorce. And, fourthly, on the ground that the trial was illegally held in camera. 20

Then there is another ground of action, assuming the divorce to be set aside—an action for Judicial Separation and interim alimony.

And there is an action by the plaintiff against the defendant founded on conspiracy—conspiracy between the defendant and another party to bring about a breach of the plaintiff's marriage contract with the defendant, and in respect of that cause of action damages are claimed, as appearing in the Statement of Claim, in the sum of \$25,000. 30

Now your Lordship, the issue with which we are concerned particularly today is the issue referred to in your Lordship's Order of the 28th of November, 1932—the fourth ground for setting aside the divorce judgment, namely, the matters raised by Paragraphs 17 and 18 of the Amended Statement of Claim pertaining to this secret hearing or hearing in camera. That is the issue to which we are confined here.

We will open our case for the plaintiff by reading to you extracts from the examination of the defendant for discovery.

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## No. 6.

**Extracts from examination for Discovery of Defendant Oran Leo McPherson.***In the  
Supreme  
Court of  
Alberta.*

“ 1. Q. The REPORTER : Have you been sworn for this examination ?—  
A. Yes, sir.”

“ 2. Q. Mr. VAN ALLEN : Mr. McPherson, you are the defendant in  
this case ?—A. Yes, sir.”

“ 3. Q. And you hold the office of Minister of Public Works of the  
Province of Alberta ?—A. I do.

“ 4. Q. You were married to the Plaintiff in this present action on the  
10 21st of April, 1908 ?—A. Yes.

“ 5. Q. By a legal marriage ?—A. Yes.

“ 6. Q. And I believe this document is the Marriage Certificate ?  
(Producing).—A. Yes, sir.”

No. 6.  
Extracts  
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Discovery of  
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(Document referred to put in and marked Exhibit 1).

Certificate of Marriage between Plaintiff and Defendant, filed as Exhibit 1.

“ 7. Q. And this that I am showing you is a photograph of Mrs.  
McPherson, is it not ?—A. Yes.”

Photograph of Plaintiff, filed as Exhibit 2.

“ 8. Q. And then, Mr. McPherson, on the 17th of March, 1931, you  
20 brought an action for divorce against the present plaintiff, for the dissolution  
of the said marriage ?—A. Yes, sir.”

Statement of Claim in divorce action, dated March 17, 1931, filed as  
Exhibit 3.

Mr. VAN ALLEN : Have you any objection to my putting in the complete  
record in the other case as an exhibit ? I want to refer to certain of these  
things.

Mr. WOODS : I don't see that you are entitled to that at present. I  
want to confine the examination to this issue. Subject to any objection  
that I may have to make, you may mark it.

30 Mr. VAN ALLEN : I am submitting now the Pleadings filed in the  
divorce action between this witness as plaintiff, and the plaintiff in this  
action as defendant, Number 22420, from the Court files.

Mr. WOODS : All right ; if you say they are those documents, they are.  
You are simply submitting them here. They can be looked at by the Trial  
Judge, if he wants.

Mr. VAN ALLEN : Yes. It is the Court Record.

Mr. WOODS : I am perfectly agreeable to the Trial Judge looking at  
those documents, or any portion of them, if he desires to do so.”

Court Record in Suit Number 22420 filed as Exhibit 4.

40 “ 10. Q. Mr. VAN ALLEN : Now, Mr. McPherson, that action led to a  
Decree Nisi, I believe, on the 22nd of April, 1931 ?—A. Yes.

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*continued.*

“ 11. Q. Mr. McPherson, as Minister of Public Works of this Province, you have charge of the public buildings of the Province, I believe?—  
A. Yes, this Department has charge of maintenance of public buildings.

“ 12. Q. Including the Court House?—A. Yes, sir.

“ 13. Q. Including this Court House?—A. Yes.

“ 14. Q. I am producing to you here what purports to be a plan of this Court House, from the Department of Public Works. I am perfectly willing, if there is a later plan, that should be substituted.

Mr. WOODS : Well, put it in for what it is worth. It is a plan given you by the Department of Public Works, as being a plan of the second floor of the Court House, of May, 1908. 10

(Plan referred to put in and marked Exhibit 5.)”

Plan of Second Floor of Provincial Court House, Edmonton, filed as Exhibit 5.

Mr. VAN ALLEN : There is apparently one structural change. Next to the District Court Room there is a jury room which is now the private office of The Honourable Mr. Justice Ford and there is some difference in the benches as far as we can ascertain.

Mr. WOODS : There is some change in the little room which adjoins the Judges' Library. 20

Mr. VAN ALLEN : Well I pointed that out. And this little room here (indicating) is used as a cloak room I believe.

Mr. WOODS : I am quite willing and I have no doubt my friend is quite willing that Your Lordship should take cognizance of your judicial knowledge of the lay-out of this building.

THE COURT : As I pass along I may take a view.

Mr. VAN ALLEN : (Reading) :

“ 15. Q. The trial of the divorce action we have been referring to took place in this Court House, I believe?—A. Yes, sir.

“ 16. Q. The solicitors for yourself on that occasion, I believe, were Messrs. Lymburn, Reid & Cobbledick?—A. Yes; Mr. Mayne Reid acted for me. 30

“ 17. Q. Mr. Mayne Reid, K.C., acted as your counsel on the trial?—A. Yes, correct.

“ 18. Q. And I understand that the presiding Judge was the Honourable Mr. Justice Tweedie?—A. Yes, sir.

“ 19. Q. I have been informed, Mr. McPherson, that the trial of the action took place before Mr. Justice Tweedie in the Judges' Library of this building; is that so?—A. I have since been told that that is the room in which it was held. The room, as I remember it, was one leading on directly from the top of the stairs going up to the second floor.” 40

I wish to stop at the word “Floor.” I am not putting in the rest of his answer.

Mr. WOODS : I will ask your Lordship to read the rest of the answer. I do not see how you can split up an answer.

Mr. VAN ALLEN : I am not being bound by the rest of the answer.

THE COURT : I have read it and whatever value may be attached to it I will attach it.

Mr. VAN ALLEN : I do not care what your Lordship reads as long as it is not binding upon me.

THE COURT : No.

Mr. Van Allen continues to read from examination :

10 " 21. Q. You remember, Mr. McPherson, at the head of the stairs there are a pair of double doors. Do you remember going in those doors?—A. Well, I wouldn't identify whether those were double doors or single doors. I remember, in a general way, that I went directly up the main stairs, and on into a room beyond.

" 22. Q. Straight on into the room beyond?—A. Yes.

" 23. Q. And do you remember, in getting into that room, you passed through an inside corridor?—A. No, I don't even remember that.

" 24. Q. But, when you did get into the room, do you remember that it was a library; there were a lot of law books there?—A. There were 20 some books, and a large table in the centre of the room.

" 25. Q. And chairs around the table?—A. Yes.

" 26. Q. That is the room you were in?—A. Yes.

" 27. Q. Now my learned friend is very familiar with the building, and this plan shows a room marked 'Judges Room' at the West end. Am I safe in concluding that that was the room in which the divorce action was tried?—A. Well, I would say that that is the general location. I don't know whether the plan has been changed since this original draft.

" 28. Q. Then I will have to ask you to tell me definitely later, if not today, if that is the room, and you can easily ascertain that by refer- 30 ence to the plans in your own office.—A. What I mean to say, Mr. Van Allen, is that this is the general location. Whether this is the same exact room, or whether there is any difference, I can't say.

" 29. Q. The room marked 'Judges' Room' is the general location of the room in which the action was tried?—A. Yes, quite.

" 30. Q. There is this much that we can be certain about, can't we, that it certainly was not one of the regular court-rooms of the building? —A. I simply repeat that it was the room directly in from the head of the stairs, and that is all that I can tell you about what room it is.

" 31. Q. Well, I would like it definitely identified, on either this plan 40 or some other plan which is on record.—A. Well, that is the location right there, directly in front of those stairs.

" 32. Q. The 'Judges' Room' here is the location?—A. Yes.

" 33. Q. And the witnesses were sworn and heard there, Mr. McPherson? —A. Yes.

" 34. Q. The Judge sat down at the table, the big table you referred to?—A. Yes.

*In the  
Supreme  
Court of  
Alberta.*

No. 6.  
Extracts  
from  
examina-  
tion for  
Discovery of  
Defendant  
Oran Leo  
McPherson,  
16th  
December  
1932—  
*continued.*

*In the  
Supreme  
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Alberta.*

No. 6.  
Extracts  
from  
examina-  
tion for  
Discovery of  
Defendant  
Oran Leo  
McPherson,  
16th  
December  
1932—  
*continued.*

- “ 35. Q. And the clerk sat down to that same table?—A. Yes.
- “ 36. Q. And the court reporter down to the same table?—A. Yes.
- “ 37. Q. The witnesses were sworn there?—A. Well, I would only presume so.
- “ 38. Q. You were sworn there?—A. I was sworn there.
- “ 39. Q. You were the first witness?—A. Yes.
- “ 40. Q. So that the others would also be sworn there?—A. I presume they were; I don't remember differently, at least.
- “ 41. And they gave their evidence there; all the witnesses gave their evidence there?—A. Yes.
- “ 42. Q. And generally the trial was heard and disposed of then and there?—A. Yes.”
- “ 48. Q. Now let us get the names of those who were present. There was Mr. Justice Tweedie?—A. Yes.
- “ 49. Q. And Mr. Mayne Reid?—A. Yes.
- “ 50. Q. And the court reporter?—A. Yes.
- “ 51. Q. Mr. Powell. And the court clerk, Mr. Mason?—A. Yes. That is the tall man?
- “ 52. Q. Yes, the tall man?—A. Yes.
- “ 53. Q. And you were there, of course?—A. Yes.
- “ 54. Q. And then there was a man named Hammick, who was one of the witnesses?—A. Well, I wish you would make that a little more explicit, as to when you mean that all those people were there.
- “ 55. Q. Well, we will leave Hammick out. The ones I have mentioned were all there to begin with?—A. Yes.
- “ 56. Q. And you were the first witness called?—A. Yes.
- “ 57. Q. And you gave your evidence?—A. Yes.
- “ 58. Q. And, after you were called, there was a man named Hammick called and sworn?—A. Yes, Hammick was a witness.
- “ 59. Q. He followed you, I believe?—A. I believe that was the order.
- “ 60. Q. And then, after Hammick, there was another witness, named McKenzie?—A. I don't remember the man's name. It was, I believe, a hotel clerk from Saskatoon.
- “ 61. Q. He was the next witness?—A. Yes.
- “ 62. Q. And the last witness?—A. Yes; there were just the two, in addition to myself.
- “ 63. Q. Was anyone else in the room, other than those that we have mentioned, and the three witnesses?—A. Not to my recollection. There was passage in and out of the room; I believe the clerk would be the man—there was someone at least who went out to bring in the first witness.
- “ 64. Q. That is, the tall man, Mason?—A. I take it that he did that, and they were passing in and out after the other witness, and I believe they retired. I don't remember whether he stayed in after he gave his evidence or not, but there was passage in and out. I don't know whether there was anyone else there or not.

10

20

30

40

"65. Q. After you gave your evidence, Mason went outside and called Hammick in?—A. Well, I say that I presume that he did.

"66. Q. That is your recollection?—A. Yes.

"67. Q. Then, after Hammick finished testifying, he left?—A. I have just said that I don't know that that is the case.

"68. Q. Then, when Hammick was through testifying, Mason called in McKenzie, the last witness?—A. The other witness, yes.

"69. Q. You cannot tell me, however, whether Hammick heard McKenzie's evidence or not?—A. I couldn't say; I have no recollection.

10 "70. Q. Now was there anyone in addition to the Judge, clerk and stenographer, your counsel and yourself, and your two witnesses, in there on that occasion?—A. I don't remember whether there was or not. One doesn't keep track of those things."

"73. Q. Mr. McPherson, there are one or more orderlies employed in this building. Are they employed by your Department?—A. Yes, I think so—that is, offhand, I think so.

"74. Q. As part of your maintenance staff?—A. I think that they are a part of our maintenance staff. That is subject to correction."

20 "79. Q. Mr. VAN ALLEN: Mr. McPherson, can you tell me whether or not the Honourable Mr. Justice Tweedie wore a gown on the occasion in question?—A. No, I can't. I didn't take very much interest in the scenery."

"81. Q. And can you tell me whether or not the clerk, Mr. Mason, wore a gown?—A. No, I couldn't.

"82. Q. Did your Counsel, Mr. Reid, wear a gown?—A. I couldn't tell you that. He may, or may not have.

"83. Q. The door that you entered was the door going straight up from the stairway?—A. Yes, sir.

30 "84. Q. Do you remember the Judge arriving?—A. My recollection is that the Judge came in through the North end of the room. There may not be even a door in the North end of the room, but that is my recollection.

"85. Q. That is the door opposite to the one you came in?—A. No; that would be at right angles.

"86. Q. Here is a door over here (indicating on plan). You think he came in that door?—A. Yes, my recollection is that he came into the room from this end.

"87. Q. From the North end?—A. Yes, from the North end.

40 "88. Q. From the door at the point marked 'B'?—A. Well I don't know which side of the room it would be in.

"89. Q. Diagonally opposite the one you came in?—A. Well, perhaps. I just know generally that it was in the other end of the room.

"90. Q. You went into the room somewhere in the vicinity of the door where I put the letter 'A'?—A. Yes."

*In the  
Supreme  
Court of  
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No. 6.

Extracts  
from  
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tion for  
Discovery of  
Defendant  
Oran Leo  
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*continued.*



*In the  
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No. 7.  
Discussion,  
16th  
December  
1932.

No. 7.

Discussion.

Mr. WOODS: As your Lordship is aware, the Trial Judge we are concerned with is here to-day and he is taking trials in another Court and he is waiting until he is called.

THE COURT: He is proceeding now and will come when called?

Mr. WOODS: Well I understood my friend was not calling him and I am not and I suppose he is going to make a statement.

Mr. VAN ALLEN: My Lord, I submitted a statement of facts to be agreed upon but was met with a closed door. I was told to call my witnesses and they would be cross-examined. I am going to decide who my witnesses will be. 10

Mr. VAN ALLEN: I wish to draw to your Lordship's attention that the original Statement of Claim which is filed in the other action, Number 22420 bears this certificate: "This Statement of Claim is issued by Lymburn, Reid & Cobbleidick, 822 Tegler Building, Edmonton, Alberta, Solicitors for the Plaintiff who resides at Edmonton, Alberta and whose address for service is Care of Lymburn, Reid & Cobbleidick and is addressed to the defendant whose residence so far as known to the plaintiff is Edmonton, Alberta." 20

I also wish to take from the File Exhibit Number 4 a letter dated June 22nd, 31 and addressed to R. P. Wallace, Esquire, Clerk of the Court, Edmonton, from Messrs. Lymburn, Reid & Cobbleidick, reading:

"Dear Sir, *Re* Oran Leo McPherson vs Cora Lillian McPherson, S.C. No. 22420. Mr. R. P. Richards has requested that he may be allowed to borrow and use the exhibits which were produced by us on behalf of the plaintiff in the above action.

"In so far as the consent of the plaintiff is necessary for Mr. Richards to borrow these documents, we hereby give that consent, Yours faithfully, Lymburn, Reid & Cobbleidick." 30

This is the official stationery of Messrs. Lymburn, Reid & Cobbleidick and on the upper left corner we find the name of The Honourable Mr. Lymburn and ostensibly the names of that firm and I ask you to take judicial notice of the fact pursuant to well established rules that The Honourable J. F. Lymburn was at that time the Attorney-General of Alberta.

Mr. WOODS: I have not the faintest notion of what this has to do with the question of jurisdiction and in so far as any assistance it may be to your Lordship is concerned I am willing to agree it is a notorious fact that Mr. Lymburn is the Attorney-General. But I object to things being put on the record that apparently have not anything to do with the issue. 40

Mr. VAN ALLEN: Well that remains to be seen.

I would ask Your Lordship to take judicial notice of the fact that during the Year 1931 Mr. George Burwash Henwood was the Deputy Attorney General of Alberta.

THE COURT : I think that is quite correct.

Mr. WOODS : That is admitted with the same reservation from me.

Mr. VAN ALLEN : I am now going to submit a certified transcript of the evidence in the divorce action certified by Mr. T. A. Powell, Supreme Court Reporter.

Certified transcript of evidence and proceedings at trial of divorce action  
10 Number 22420, filed as Exhibit Number 6.

Mr. VAN ALLEN : I will ask my friend Mr. White to read that evidence to the Court.

Mr. WOODS : Is there any advantage in taking up the time of the Court in reading this evidence ?

THE COURT : Are those books brought here in connection with this issue (referring to books on barristers' table) ?

Mr. VAN ALLEN : Yes, My Lord.

THE COURT : Then I rather take it I will have to reserve my decision and I might as well read the transcript afterwards.

20 Mr. VAN ALLEN : In our view the evidence that came out on that occasion is very pertinent to this issue and I would like to have it brought to Your Lordship's attention, but if your Lordship thinks it will be better to let it stand—

THE COURT : I have no right, of course, to prevent you reading the evidence if you want to, but reading the evidence myself I can give better attention to that pertinence which you suggest it has than if it were read here.

Mr. VAN ALLEN : That is quite satisfactory, My Lord, as long as it is understood you will read it.

*In the  
Supreme  
Court of  
Alberta.*

—  
No. 7.  
Discussion,  
16th  
December  
1932—  
*continued.*

30

---

No. 8.

Evidence of Thomas Arthur Powell.

THOMAS ARTHUR POWELL being called as a witness on behalf of the plaintiff was duly sworn.

Mr. VAN ALLEN : I would like the reporter to make a note that it is agreed between the parties and with Your Lordship's consent that the reporter report his own evidence.

THE COURT : That is agreed.

Mr. WOODS : It was my suggestion.

Plaintiff's  
Evidence.

—  
No. 8.  
Thomas  
Arthur  
Powell.  
Examina-  
tion.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 8.  
Thomas  
Arthur  
Powell.  
Examina-  
tion—  
*continued.*

THOMAS ARTHUR POWELL was examined by Mr. Van Allen and testified as follows :

Q. When were you first appointed Court Reporter?—A. 7th November, 1904.

Q. Have you been in the service of the Government ever since?—  
A. Yes, sir.

Mr. WOODS : I suggest you confine it to the one matter and not go over the history of Mr. Powell. The jurisdiction of this Court does not depend upon when Mr. Powell was appointed.

Mr. VAN ALLEN : I will endeavour to save my friend's tender feelings in delay as much as possible and I will direct the witness to the issues immediately. 10

Q. When did you come to Edmonton?—A. Early in 1918. I am not sure whether it was early in February or March.

Q. Have you been an official Court Reporter here ever since?—A. Yes.

Q. How many court reporters are there reporting in the Supreme Court?—A. Three—Mr. McCleish, Mr. Ellis and myself.

Q. What system do you follow as to reporting Supreme Court cases?—A. There is a system of pivoting around the Civil courts which are held every week. We each take turns in the Supreme Court Civil sittings. 20

Q. Coming to the week of April 20, 1931, whose turn was it in this room?—A. Mr. Ellis'.

Q. And leaving you and Mr. McCleish available for other work?—  
A. Yes.

Q. I believe that you reported the evidence in the action for divorce of McPherson v McPherson referred to in this case?—A. Yes, sir.

Q. Will you tell his Lordship the circumstances under which you came to report that case?—A. I was in my office between 12.30 and 1.00 o'clock perhaps closer to a quarter to one on the day of the trial. I was cleaning something up before I went home as I did not want to break off before going for lunch and that is why I was there after half past twelve. Mr. Wallace Mason, an assistant clerk, came in and said there was a divorce trial right away. I asked where Mr. Ellis was and I was answered to the effect he had gone to lunch. I picked up my notebook, went upstairs into the Supreme Civil Court room and sat down at the table. 30

Q. Was there anybody in this room when you arrived?—A. No.

Q. Vacant?—A. Yes.

Q. How long did you remain here?—A. I do not suppose I remained over five minutes.

Q. And then what?—A. I picked up my book and started going down to the office preparatory to going home. I got half way down the stairs and a heard a voice saying : " Where are you going ? " I turned around and saw it was Mr. Mason speaking. I said I was going home. He said : " Aren't you going to take this divorce action ? " I said there was not a divorce action as I had been up into the court room and it was empty, and he said : " It is being held here " or " will be held here " and 40

he was standing in the doorway to the Judges' consulting room at the head of the stairs. I turned around, went into the Judges' Library and sat at the long table. That is the room where the appeal court Judges consult. I sat in the middle of the table facing west.

Q. How many sets of doors did you have to go through?—A. There were the double doors, and then through the corridor and into the room.

Q. You went through two doors?—A. Yes.

Q. Who was there when you arrived?—A. Mr. Mason. I am not sure whether Mr. Reid was in there then but if not he came in within a moment or two afterwards. I did not know who the plaintiff was until he was given the oath.

Q. Was the Judge there when you arrived?—A. No.

Q. Did you see the Judge enter the room?—A. Yes.

Q. From what door did the Judge enter the room?—A. From the north door—from the Appellate Court Room.

Q. Did you notice whether the clerk Mr. Mason was gowned?—A. I did notice. He was not gowned.

Q. Did you notice whether the Honourable Mr. Justice Tweedie was gowned?—A. Yes. He was not gowned.

Q. Where did the Honourable Mr. Justice Tweedie take his seat?—A. At the end of the table nearest to the north door.

Q. And I suppose when the learned Judge took his seat then the trial proceeded?—A. Yes.

Q. And you reported the evidence?—A. Yes.

Q. And this transcript Exhibit 6 is a true transcript of the evidence you took?—A. Yes, sir.

Q. Were all the three witnesses sworn and heard in that room on that occasion?—A. Yes, sir.

Q. Who else was in the room besides the Judge, the clerk, the reporter, Mr. Reid and the three witnesses?—A. No one that I could see.

Q. Mr. Powell, you are familiar with the set of double doors at the head of the stairs?—A. Yes.

Q. Would you describe to the court just in a word or two what those doors are like?—A. Identical with these; perhaps not as large (referring to doors in Supreme Civil Court Room).

Q. Do they close automatically?—A. Yes. They are self closing.

Q. In all your experience as a Court Reporter in this building had you ever seen Mr. Mason acting as a clerk of the court before?—A. No.

Q. Can you say whether the witnesses were all called in at the beginning of the trial or were they called in as required?—A. They were all called in as required.

#### CROSS-EXAMINATION BY MR. WOODS.

Q. I am informed by Mr. Justice Tweedie that—

Mr. VAN ALLEN: I object to that form of question. My friend puts the witness in a difficult and embarrassing position by saying "I am

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 8.  
Thomas  
Arthur  
Powell.  
Examina-  
tion—  
*continued.*

Cross-  
Examina-  
tion.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 8.  
Thomas  
Arthur  
Powell.  
Cross-  
Examina-  
tion.—  
*continued.*

informed by Mr. Justice Tweedie." I submit that is an improper way to address a question.

THE COURT: Oh in cross examination I think counsel may lay the foundation for a question by making what he alleges is a statement of fact.

Mr. WOODS: I am informed by Mr. Justice Tweedie that at the inception of the proceedings he stated that he was sitting in open Court—made that announcement—do you remember that announcement being made?—A. I believe he did make some remark to the effect "this is a sitting of the court" or "we will consider this is a sitting of the Supreme Court," something to that effect. 10

Q. My information is that he stated he was sitting in open court—announced it. Does that correspond with your memory?—A. I could not say it does not. He may have said that.

Q. Do you remember anybody coming into the Judges' Library or the room that you called the Judges' consulting room during the course of the proceedings, other than the witnesses that were called in and other than the Court?—A. No. My face was towards the West.

Q. So it would be quite likely if anybody came in and went out again you might not see them?—A. Quite likely. 20

No. 9.  
John Rae.  
Examina-  
tion.

No. 9.

**Evidence of John Rae.**

JOHN RAE being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Van Allen and testified:

Q. I believe you have been Sheriff in the Edmonton Judicial District since 1931?—A. I have.

Q. Before that you were assistant sheriff for many years?—A. Assistant sheriff from 1913 to 1918.

Q. So that from 1913 to the present you have continuously had an office in this building?—A. 19 years and four months. 30

Q. You are familiar with the layout of the building?—A. Yes.

Q. I believe you have a sort of supervisory control over the building, as sheriff?—A. It is commonly understood that way.

Q. That takes you all over the building I suppose?—A. Yes, I am all over the building every day.

Q. I am showing you Exhibit 5 which has been put in as a plan of this building. The plan shows on the four corners a public court room?—A. It does.

Q. Then there is an outer corridor I believe on the second floor from which access is gained to all the public court rooms?—A. There is a 40 corridor right round the stair well.

Q. And is it not so that access may be had from that corridor direct into each of the four court rooms?—A. Yes.

Q. At the east end of the building, at the east end of the public corridor what do you find there?—A. At the east end we have a judges' room—a trial judges' room.

Q. And what else?—A. There is a corridor between—an inside corridor—between the Judges' room running from the door in the Civil Court to the door in the Criminal Court.

10 Q. Is that inside corridor a public corridor or private corridor?—A. The door has a brass plate on it marked "private."

Q. That is the door from the public corridor to the private corridor?—A. The corridor is used largely by solicitors, court officials, in recess at trials and used by the bar to enter the court room on many occasions. This door is very seldom used into this court room.

Q. What have you to say—there is a trial judges' room and a room on either side?—A. Yes.

Q. And that section consists of four rooms. What have you to say as to whether or not that is a public or private section of the court house?

20 Mr. WOODS: My Lord, that is a matter of law. My friend, I do not think, has a right to ask your Lordship to take Mr. Rae's statement about that. You see, the provisions of the law with regard to the right of access of the public to any place where a Judge is holding Court in this Province, coming down to-day as they do from the Northwest Territories, are special to this Province and they are matters for your Lordship's determination, the facts being disclosed, and not for Mr. Rae or anybody else to decide.

THE COURT: I suppose that perhaps to some extent "privacy" may be a question of fact and I suppose if it is the opinion of this witness may have some value. I do not know.

30 Mr. WOODS: It would not be possible for this witness or indeed any witness to give an interpretation of the law, and my friend's question is put in such a way as to involve that. That is to say what right has the public? Well it is not a question that this witness can answer—the rights of the public are laid down in the Statute.

THE COURT: I do not see the relevance of it but on the supposition that some question of fact may be involved in the matter of privacy or otherwise the opinion of this witness may or may not be of some value but I will not shut out the question. (Question read.)—A. There is absolutely no doubt about the Judges' room and the two Jury rooms being private. The corridor has on occasions been used by the public many times—the  
40 corridor in front of the Judges' room.

Q. Mr. VAN ALLEN: Now coming to the west end of the building the west end of the public corridor. What rooms do you find there?—A. In the centre we have—first of all entering from the outside from the top of the stairway there is a double door.

Q. Describe those doors, please?—A. There is a double door. The right hand door as you enter from the outside corridor is worked on a

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 9.  
John Rae.  
Examina-  
tion—  
*continued.*

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 9.  
John Rae.  
Examina-  
tion—  
*continued.*

large Yale spring at the top of the door and automatically closes as one enters. The left hand door has a brass plate on it marking it private.

Q. In large black letters?—A. A brass plate with large black letters, yes.

Q. And in practice is that door swinging or is it bolted?—A. It is bolted; the left hand side of the door. The left hand side is not used only in exceptional cases. The right hand side of the door is open all the time. That is it can be opened all the time.

Q. And as you pass through those doors into what sort of a room do you arrive?—A. There is a corridor with the stair well coming up from the inside corridor downstairs. The stair well takes up part of the corridor. There is part of a hallway inside the door from which there is a door into what is known as the Judges' library. The Judges' library is used as quarters for the Appellate Division whilst sitting here and also for the use of the Judges of both Supreme Court and Master in Chambers. 10

Q. There is a library there I believe?—A. There is a library there.

Q. And a large consulting table?—A. A large table in the centre.

Q. Is that the room in which the Judges of Appeal consider their judgments?—A. I don't know what they consider. I know they use the room. 20

Q. It is available for them if they want it?—A. Yes, it is their quarters available for all Judges and the Master in Chambers.

Q. What access is allowed to the public to that inner corridor that you have just referred to?

Mr. WOODS: Your Lordship will take my objection if my friend is entrenching upon what the law is? Probably he does not know what the Statutory provisions are. There is a statutory provision in force here which has come down from the Northwest Territories. That states in terms that wherever there is a court being held in any place, it matters not where it is, that is a matter for the Judge to decide, that that place—that the public shall have access to that place. So my friend's question is under a misapprehension. 30

Mr. VAN ALLEN: I wish my friend to understand that I am under no misapprehension.

THE COURT: I will take the answer subject to Mr. Woods' objection.

Q. (Question read.)—A. Generally speaking the public are not allowed in that corridor. Sometimes the Judges' Library has been used for purposes which require the attendance of outsiders and they have been allowed in, but as a general rule if the orderlies or myself or any official of the Court House see any of the public opening that door and going in we will check them. 40

Q. You will exclude them?—A. Yes.

Q. If a member of the bar or members of the public wish to see a Judge who is in the room, what is the procedure?—A. He is announced. The only Supreme Court Judge who has a room in there outside of the

Library is Mr. Justice Ford and it is customary to announce anyone to Mr. Justice Ford before allowing them entrance.

Q. By means of —?—A. Either myself or the orderlies whoever happen to be there.

Q. Is that part of the duty of the orderlies?—A. The orderlies are for that purpose, among others.

Q. To escort —?—A. To see that the public do not overstep their privileges.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 9.  
John Rae.  
Cross-  
Examina-  
tion.

CROSS-EXAMINATION BY MR. WOODS.

10 Q. You told us about the doors into the corridor at the west end?—

A. Yes.

Q. You said they had Yale spring locks?—A. At the top of the right hand door as you enter. If you look on the corridor side of the door you will find a large Yale spring—an automatic spring.

Q. But that the door is open subject to that spring?—A. Yes.

Q. And just as the doors to this Court are opened?—A. Yes. If it was not for the spring the door would remain opened. There is no lock on the door.

Q. Do they run both ways?—A. Only inwards.

20 Q. And is there a little catch on the bottom that keeps it open if you want to set the catch?—A. Not that I can recall, Mr. Woods. I do not think there is anything to keep that door open.

Q. I am just asking for information. I do not personally think it matters very much?—A. I do not think there is anything to keep it open.

Q. I know in those spring doors in my house when you push them open fully they stay open of their own weight?—A. Well it is my opinion there is nothing to keep that door open after you enter.

30 Q. And, just to get the matter correct for what it is worth, the announcing of people going to see Mr. Justice Ford or any of the Judges of the Court of Appeal when they happen to be in there is pretty well honoured by its breach. I mean to say lots of people go upstairs and walk by that door. There is no orderly by that door and they walk in if they want to see him on personal affairs?—A. I would say the principal offenders are the members of the bar.

Q. And you may put me down as one of them.—A. I have no doubt you have offended at times.

40 Q. When you speak of my having to be announced to see the Chief Justice or Mr. Justice McGillivray I would have to go downstairs to see the gentleman in front of the door and ask him to go up and announce me?—A. I have no doubt barristers go in when there is no orderly around, frequently.

Q. Ordinarily there is no orderly at that door?—A. Well I have only two orderlies in the Court House and one is at that door most of the time and the other has all the work to do upstairs.



*In the  
Supreme  
Court of  
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Plaintiff's  
Evidence.

No. 9.  
John Rae.  
Re-Exami-  
nation.

Q. I mean there is a mark on a room "private, solicitors' room" and anybody goes in there and they do not ask anybody's permission?—  
A. That is true.

RE-EXAMINATION BY MR. VAN ALLEN

Q. When the Appellate Division Court Room is not in use do you keep it locked?—A. The door is locked. The outside door of the Court Room is locked invariably. Sometimes we open it and it may stay open all day. If a case is not finished it will stay open.

Q. Now the doors to this room are what are called swing doors. There are no hinges to the doors?—A. No.

Q. Both swing both ways?—A. One to the right and one to the left.

Q. The doors leading up into this corridor from the head of the stairs are not such doors as this. One of them has a handle on?—A. I don't think so.

Q. Will you please look just to make certain?—A. I think—it may be that the right hand door has a handle. I have been around here so long that I could not tell you.

Q. Mr. Woods: Don't you lock all the doors of the Court rooms when the rooms are not in use?—A. Not always. Sometimes we do not know when a Court room is going to be required and invariably the Appeal Court room is locked but the other court rooms may be open all the time.

10

20

No. 10.  
Wallace  
F. H.  
Mason.  
Examina-  
tion.

No. 10.

Evidence of Wallace F. H. Mason.

WALLACE F. H. MASON, being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Van Allen and testified:

Q. I believe you have been assistant clerk in this court for some twenty years?—A. Yes.

Q. What hours are you on duty at noon here?—A. I generally go to lunch from one to one fifteen.

Q. You go to lunch late, in other words?—A. Yes.

Q. Now in connection with the trial for divorce, the action of McPherson v McPherson, I believe you acted as the clerk in that case?—  
A. I did.

Q. Is it customary for you to act as a clerk in this Court House? Is that your usual work?—A. It is not my usual work. I occasionally do.

Q. Were you requested to act as clerk on this occasion?—A. Yes.

Q. By whom?—A. Mr. Wallace.

Q. Mr. Wallace is the clerk?—A. Yes.

Q. And who made the arrangement for the stenographer?—A. I told Mr. Powell.

30

40

Q. And did you show Mr. Powell where the trial was to take place?  
—A. No, I just told him that the case was on.

Q. Do you remember telling him where it would take place—what room?—A. No I do not.

Q. You don't remember that?—A. No.

Q. Mr. Justice Tweedie presided?—A. Yes.

Q. Where did the trial take place?—A. In the Judges' Library.

Q. In this building?—A. Yes.

10 Q. About what time in the day would you say that was?—A. I think it was about 12.30 or 12.00.

Q. And you acted as clerk throughout the proceedings?—A. Yes.

Q. You saw and heard the witnesses sworn?—A. Yes.

Q. And were they sworn in that room?—A. Yes.

Q. Mr. McPherson himself was the first witness I believe?—A. Yes.

Q. Where were the other two witnesses Hammick and McKenzie while he was giving his evidence?—A. They were outside the library door.

Q. In the public corridor or the inside private corridor?—A. They were in the inside corridor.

20 Q. That is to say they were waiting immediately outside the door of the Judges' Library?—A. Yes.

Q. And who called them in to give their evidence?—A. I did.

Q. As they were required?—A. Yes.

Q. I believe that Hammick was the next witness after Mr. McPherson?  
—A. Yes.

Q. Did Hammick remain to hear McKenzie's evidence?—A. I think so.

Q. Mr. Mason, can you tell me whether anybody else was present except the Judge, the clerk, the stenographer and the three witnesses?  
A. Mr. Reid.

30 Q. Anyone else beyond him?—A. No.

Q. Did you wear a gown?—A. No.

Q. Did you hear Mr. Mayne Reid counsel for the plaintiff object to the trial taking place in that room?—A. Not to my knowledge.

Q. Did you hear the plaintiff Mr. McPherson object to the trial taking place in that room?—A. Not to my knowledge.

Q. Did either of them complain in any way of the trial taking place there under those circumstances?—A. No.

Q. I am showing you what purports to be a docket of the Supreme Court and I find an entry on page 447 of Volume Number 1 for 1931.

40 Who made that entry?—A. I did.

Q. And then over here on page 438 on April 20th I notice an entry. By the way who keeps this book?—A. The clerk that is acting.

Q. What are their names?—A. Mr. Henderson, Mr. North, Mr. Bartlett.

Q. Now I would like to put in these dockets. There are five dockets and just referring briefly—I want to shorten this as much as I can.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

—  
No. 10.  
Wallace  
F. H.  
Mason.  
Examina-  
tion—  
*continued.*

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 10.  
Wallace  
F. H.  
Mason.  
Examina-  
tion—  
*continued.*

I want to refer briefly to the entries of these dockets. It would cause a little inconvenience to call all the clerks.

Mr. WOODS: Very good. I do not know what bearing the other four have.

Mr. VAN ALLEN: This shows that on April 20th, 1931, which was Monday, the Honourable Mr. Justice Boyle was sitting in this room, until 5.30. On April 21st, Mr. Justice Ewing, your Lordship, was presiding here in an action *Bachelor v. McKay*. Your Lordship sat from 10.00 a.m. to 5.15. Then on Wednesday, April 22nd, 1931—

THE COURT: I see the drift of your evidence but I would have to get the dates more closely. Your purpose is to show that at the time this trial was held Court rooms were available? 10

Mr. VAN ALLEN: Yes all the court rooms were available—all the court rooms were available. That is what I am going to show. This book shows that on Wednesday, April 22nd, 1931, your Lordship sat in this room and the Court rose at 12.10 p.m., and there are no other entries here for that date. If there are no other entries—I am a little in advance of my story. As I understand it those dockets are more or less the minute books of what proceeds in the Courts?—A. Yes.

Q. And there is a clerk here to take down the proceedings and the names of the witnesses and the times and the names of the Judge, clerk, counsel and reporter and all that?—A. Yes. 20

Q. And if there are no entries at all for a given day or given period, would that indicate to you that the Court room is not in use?—A. Yes. There is an entry there for the 22nd.

Q. But if there were no entries for a given time would that indicate the court room was not in use?—A. Yes.

Q. As I understand it the clerk of the court and his various assistants are all under the Department of the Attorney General?—A. Yes.

Q. Do you know Mr. J. W. McClung, Barrister?—A. Yes. 30

Q. Am I right in this, that he is a solicitor in the Attorney General's Department?—A. Yes.

Mr. WOODS: At page 447 — A. Yes.

Q. That is your entry of the proceedings in this case?—A. Yes.

Q. Mr. VAN ALLEN: I suppose the reason you inserted it later on is because there was not room on that date; you put it in later on I understand?—A. Yes two or three days later.

Q. THE COURT: Do I understand that the entries were made several days later in this book?—A. They were made on a separate sheet of foolscap and pasted in. 40

Mr. VAN ALLEN: Mr. Mason says this entry was inserted two or three days later and written on a separate sheet of paper and pasted in the book at page 447.

THE COURT: It could not be pasted in in chronological order. It was pasted in at the place it would be if it took place at the time they pasted it in.

## CROSS-EXAMINATION BY MR. WOODS.

*In the  
Supreme  
Court of  
Alberta.*

Q. The writing is your writing?—A. Yes.

Q. And was it written on the 22nd of April?—A. Yes it was.

Q. By you?—A. Yes.

Q. In pursuance of your duties as acting clerk of the court at the time?—A. Surely. Plaintiff's  
Evidence.

Q. And then the piece of paper shown here with your writing on it was put in at the place page 447. Was that because there was no room?—A. No, the book was in use that day, here. No. 10.  
Wallace  
F. H.

10 Q. The book that we have here was in use before some other Judge?—A. Yes, Mr. Justice Boyle. Mason.  
Cross-  
Examina-  
tion.

Q. Mr. Mason, do you remember any announcement being made and any statement being made by the trial Judge at the opening of these sittings as to sitting in Court or sitting in open Court or anything of that kind?—A. Yes. He declared it to be open Court.

Q. And you were in charge to see that it was open Court?

Mr. VAN ALLEN: Well —

Mr. WOODS: Did you leave the door of the room open?—A. I did.

Q. All the time?—A. Yes.

20 Q. Do you remember whether the Judge in any way indicated to you that you were not to leave the door of the room open all the time. Or do you remember anything more?—A. Yes. I was going to shut it and he told me to leave it open.

Q. I do not know whether you can assist me on this, but my instructions are from Mr. Reid that this took place on a Friday, wasn't it?

Mr. VAN ALLEN: Wednesday.

Mr. WOODS: He tells me a special day was set by Mr. Justice Tweedie because he had a witness coming from Saskatoon for the hearing. Do you know anything about that?—A. No.

30 Q. Did Mr. Mayne Reid see you about that?—A. No.

Q. You know Miss Little?—A. Yes.

Q. Do you remember her coming in there during the proceedings?—A. No.

Q. You don't remember that?—A. No.

Mr. VAN ALLEN: Something was said about a door?—A. Yes.

Q. Which door?—A. The door from the library.

Q. The door from the inner corridor to the library?—A. Yes.

Q. That was the door you opened?—A. Yes.

40 Q. Was anything said about the other doors leading into the public corridor?—A. No.

Q. Did you open those doors?—A. No.

Q. Mr. WOODS: You have told the court what the Judge told you?—A. There is the outer door leads into the public corridor and the inner door of the library, I was going to shut the inner door because there were witnesses outside in the corridor.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 10.  
Wallace  
F. H.  
Mason.  
Cross-  
Examina-  
tion—  
*continued.*

Q. And it is that door he told you, when you were going to shut it, he told you to leave it open?—A. Yes.

Q. And he did tell you or announce when he opened these proceedings that he was sitting in that room in open court?—A. Yes.

Q. And he announced it to you?—A. He announced to everybody in the room.

Q. To everybody in the Court?—A. Yes.

Q. I don't suppose the Judge went out to see whether you had obeyed his instructions of not?—A. I do not think so.

THE COURT: He is endeavouring to prove that at the time the trial was held in the library one or more court rooms were available for that purpose. Do you admit that? 10

Mr. WOODS: I am willing to admit that.

Mr. VAN ALLEN: Do I understand it that the defendant admits that on the occasion of the trial of the action in question there were one or more court rooms in this building available for use?

THE COURT: That is what I understand to be the admission.

Mr. VAN ALLEN: One or more public court rooms available. That is my understanding of the admission.

THE COURT: That is what I understand. 20

Court docket pages 440 to 447 inclusive, filed as Exhibit 7.

No. 11.  
Richard  
Pollock  
Wallace.  
Examina-  
tion.

No. 11.

**Evidence of Richard Pollock Wallace.**

RICHARD POLLOCK WALLACE, being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Van Allen and testified:

Q. You are clerk of this Court?—A. Yes.

Q. And I believe you have held that office since 1920?—A. Yes.

Q. Also Registrar of the Appellate Division?—A. Yes.

Q. And you have supervision and control over your assistant clerks? —A. Yes. 30

Q. In your experience as clerk of this Court have you learned of any actions other than the McPherson action having been tried in the Judges' Library? Do you know of any, as clerk?—A. Yes I believe I do. You refer to other actions?

Q. Other actions—trials of actions?—A. I think I remember of some bankruptcy work being done.

Q. Being disposed of there?—A. Yes, some bankruptcy work.

Q. By Mr. Justice Tweedie?—A. Yes.

Q. Any others?—A. Well not to my knowledge. 40

Q. You have never heard of it?—A. No I have not heard of any other actions. But I should point this out, that there might be without my knowledge.

Q. And do I understand that you have never heard of any other divorce case having been tried in that room?—A. Not to my recollection.

Q. Where are divorce cases usually tried in this building? In this room?—A. Well most of them are in this room, yes.

Q. When are the majority of them tried—what part of the week?

—A. Well the majority of them perhaps are tried on Monday afternoon  
10 but there are quite a number of exceptions to that.

Plaintiff's  
Evidence.No. 11.  
Richard  
Pollock  
Wallace.  
Examina-  
tion—  
continued.

## CROSS-EXAMINATION BY MR. WOODS.

Q. How long is it since you have been here as clerk?—A. Since 1920.

Q. Were you the clerk of the Court when Mrs. McCaul got a divorce from the late Mr. McCaul?—Yes.

Q. Do you remember Judge Beck took that case in his own room?  
—A. Yes.

Q. And were you the clerk of the court when Mr. Harry H. Robertson, the late Mr. Harry H. Robertson—when his wife got a divorce from him? That is later than Mr. McCaul's divorce?—A. Yes I was clerk of the court  
20 then.

Q. I think it was Mr. Justice Hyndman heard that?—A. I do not remember that.

Q. But that was held in a Judge's private room?—A. Quite possibly.

Mr. VAN ALLEN: What Judge?

Mr. WOODS: I think Mr. Justice Hyndman.

Q. Do you remember Mr. Munroe a lawyer at Stettler when his wife got a divorce?—A. I remember that case coming up.

Q. And Mr. Justice Tweedie held that case in his own chambers?  
—A. I don't remember it but it is quite possible.

30 Q. And you were clerk of the court when Mrs. Mattern got her divorce from her husband?—A. Yes.

Q. That was after this case and that was held by Mr. Justice Tweedie in the same place that this was?—A. Yes I had heard it was held there. I was not present.

Q. I have argued cases before the Court of Appeal in the Judges' Library. You know that has been done?—A. Arguments are sometimes heard in that room on some branches of the case.

Q. And apart from bankruptcy matters—trials are held by Mr. Justice Tweedie as Bankruptcy Judge in his chambers often, aren't they?—A. Yes.

40 Q. But apart from bankruptcy matters have you any experience of other trials being held by Judges in their private chambers?—A. Well I could not say.

Q. Do you have anything in your memory?—A. I have not anything in my memory and I am scarcely ever present myself during the course of these proceedings.

Cross-  
Examina-  
tion.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 11.  
Richard  
Pollock  
Wallace.  
Cross-  
Examina-  
tion—  
*continued.*

*Q.* But it very well might happen that a trial would be held by a judge in his own room?—*A.* Quite possibly, quite possibly, and I would know nothing about it and it is quite possible that that is so.

*Mr. VAN ALLEN:* And I suppose you could not stop it if you wanted to?—*A.* No I don't think I could.

*Q.* My friend has mentioned about the divorce of the late Mr. McCaul?—*A.* Yes.

*Q.* The late Mr. McCaul was an exceedingly eminent member of the Bar. Is that not so?—*A.* Yes he had that reputation.

*Q.* And the late Mr. H. H. Robertson whose divorce has been referred to—he also was quite an eminent member of the Bar?—*A.* Yes I would say so. 10

*Q.* And the late H. H. Munroe of Stettler was also a very well known member of the bar—of the country bar?—*A.* I could not say as to Mr. Munroe but I believe he practised for some years in Stettler.

*Q.* He was clerk of the court there for some time was he not?—*A.* I don't know. Mr. Bennett of Stettler was.

*Q.* And did you know that the Mattern case was tried in the Judge's Library?—*A.* Well I was not present during the hearing of the Mattern case but I did hear afterwards. 20

*Q.* That it was tried there?—*A.* I think I heard afterwards that it was tried there. Someone told me so but I am not saying positively whether it was or not. I was not there.

*Q.* *Mr. WOODS:* Of course you do not know how many of these trials in Judges Chambers in divorce cases may have taken place in Calgary?—*A.* Oh no I could not say.

*Q.* Or any other parts of the Province?—*A.* Oh no I could not say.

*Q.* You are just speaking of Edmonton?

*Mr. VAN ALLEN:* I notice in Exhibit 7, the Supreme Court Docket page 508, there is an entry of the trial of the Mattern case action number 22687 and the witnesses were Helen Irene Gordon Mattern, Lawrence A. Hammick, and those two only, and on the opposite page 509, July 28, 22420 we find the proceedings in connection with the Decree Absolute in the McPherson case?—*A.* Yes. 30

*Q.* Did you know at the time that the Mattern case was to be tried in a private room or did you learn about it afterwards?—*A.* I learned about it afterwards. I did not know at the time at all.

*Q.* But beyond these four cases, three eminent lawyers and another divorce case in which the lady has since become the wife of the defendant in this particular action, beyond those, can you tell me of any cases that you know of where they are heard in anything but a public court? When I say a public court I mean a court room like this one?—*A.* Well I have no recollection of that. 40

*Q.* *Mr. WOODS:* I do not think my friend's question should be put in that way because it is misleading to a witness—wherever a Judge holds a court—

Mr. VAN ALLEN : I meant in a court room like this—a physical court room like this. Have you heard beyond these four cases of any divorce case being tried in other than a court room like this?—A. Well I have no immediate recollection of it.

Q. You have never heard of the common fry having their divorce cases tried in anything but a room like this?—A. No.

Mr. VAN ALLEN : I would next like to put in a letter from John D. Hunt, Clerk of the Executive Council to myself.

Mr. WOODS : Subject to my objection. I do not think that the letter is relevant and I have not any other objection. I have no doubt that is the signature.

Letter dated November 18, 1932, from John D. Hunt, Clerk of the Executive Council to Plaintiff's solicitor, filed as Exhibit 8.

Mr. VAN ALLEN : I would like to tender in evidence a certified copy of Order in Council Number 44627 certified to be a true copy of John D. Hunt clerk of the Executive Council. This Order in Council is in the following language (Reading).

Certified copy of Order in Council Number 446/27 dated Monday April 25, 1927, filed as Exhibit 9.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 11.

Richard  
Pollock  
Wallace.  
Cross-  
Examina-  
tion—  
*continued.*

20

No. 12.

Evidence of Cora Lillian McPherson.

No. 12.  
Cora Lillian  
McPherson.  
Examina-  
tion.

CORA LILLIAN MCPHERSON, being called as a witness on her own behalf and having been duly sworn was examined by Mr. Van Allen and testified :

Q. You are the plaintiff in this action?—A. I am.

Q. You were married in 1908 to the defendant?—A. Yes.

Q. This Marriage Certificate Exhibit 1—

Mr. WOODS : I am objecting. This obviously has no relevance to the issue before your Lordship and we might as well thrash that out now as well as any other time. The issue is entirely confined to the facts alleged in paragraph 17.

THE COURT : I quite agree, but the Court is always in this difficulty—you do not know what evidence a witness is going to give, nor do you know to what it is specifically directed until it is all in, and consequently it is very difficult to shut out evidence on the ground of irrelevancy.

Mr. WOODS : I am drawing your Lordship's attention now to the fact that I am objecting to the evidence. The marriage is not in issue. It is impliedly admitted and there is no possible object in putting in these questions and I am asking your Lordship to keep that in mind.

Q. Mr. VAN ALLEN : This is a Marriage Certificate, Exhibit 1?—A. Yes.

40



*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 12.  
Cora Lillian  
McPherson.  
Examina-  
tion—  
*continued.*

Q. And this is a photograph of yourself, that is Exhibit 2?—A. Yes.

Q. You were sued for divorce?—A. Yes.

Q. And dissolution of that marriage?—A. Yes.

Q. What notice if any did you receive of the time or place of the trial?

Mr. WOODS : I object.

A. I received the Statement of Claim.

Mr. WOODS : We are not concerned with any other issue than—

THE COURT : I am inclined to agree with Mr. Woods as to the features and definite issue that we are to try. It may be that some facts which you propose to adduce may have some connection with that and where there is any doubt about it I think I am entitled to the benefit of that doubt. I confess some of this evidence, the bearing of it I do not see at all, on the issues involved. 10

Mr. VAN ALLEN : With great respect, My Lord, my submission is that any witness who can give any evidence which has a bearing of any kind on the secrecy with which the divorce action was tried is material. Now the real complaint that the plaintiff makes with respect to the issue now under consideration is that it was tried in a sort of hole-in-the-corner way and that is illegal.

THE COURT : If you allege that apart from the way of holding it in camera—if you allege that there were active efforts made by the parties to make that trial a secret trial— 20

Mr VAN ALLEN : Not just that. As your Lordship has observed from reading paragraphs 17 and 18, we set out that the case was heard and determined in camera; that the witnesses were called, sworn and heard in camera contrary to law. Now then, sir, I would submit with great respect that any evidence which has a bearing on the surrounding circumstances of that secret hearing is material. Now somebody conceived the idea of having this case heard in camera. It is to your Lordship's knowledge quite an unusual thing. After twelve years of experience in the Court House the Clerk was only able to think of one or two cases, and Mr. Woods suggested the other cases to him. We all know that actions are triable in this room or rooms like this. Now it is these surrounding circumstances which I submit are admissible and relevant. 30

THE COURT : Well the doubt that is in my mind is created by these circumstances, that if it were in fact a closed court, and it could only be so I suppose either by the direct or express or implied direction of the trial Judge, arising perhaps out of legal circumstances—but if it was a closed court within the meaning of the law then you have all the legal results that may flow from that condition. But the fact that somebody did not get notice to attend, the fact that you might bring half a dozen witnesses to say "Oh if we had known that court was going to be open we would have attended for the purpose of hearing" that would not affect your legal position in the slightest degree, would it? 40

Mr. VAN ALLEN : I am not so certain. Personally my inclination is to agree with what your Lordship has said, but one has to consider that a case like this might conceivably get before other courts and I might say that I deliberated for a considerable time as to whether or not this evidence was admissible and relevant. But I do not want to get to the Supreme Court of Canada or the Appellate Division and be told that there is an estoppel against me. Now that is the position, or that there has been a waiver, and for that reason in order to prevent any such eventuality I submit I should be allowed to tender evidence touching the surrounding circumstances of this action.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 12.  
Cora Lillian  
McPherson.

Examina-  
tion—  
*continued.*

Mr. WOODS : The one issue before your Lordship, and it is a single issue, it is the issue raised by paragraphs 17 and 18 of the Amended Statement of Claim—it is one issue and that issue is an issue of jurisdiction alone. Your Lordship will look at that. That is Section 17 of the Statement of Claim. (Reading paragraphs 17 and 18) And there is added (a). The original Statement of Claim did not claim that at all. The original statement of claim simply claimed that by reason of certain matters alleged therein that the Court should now void the proceedings in the first action. There was an amendment of that claim and these are among the amendments and it is because of this issue raised by that amendment, of jurisdiction alone, and as to whether because of there being no jurisdiction the declaration should be made by the Court that the proceedings were null and void and of no effect that we are here today. Now my friend proposes to ask the plaintiff in this action, who was a defendant in the former action, and who was a person who did not appear in answer to the statement of claim in a former action, as appears before your Lordship here by a reference to the proceedings in the former action which we agreed shall be open to your Lordship to look at—she was a person who did not ask for any notice of proceedings. She was served with a statement of claim and it was notified to her that if she was to defend or ask for a notice of the proceedings she was to take certain steps within a certain time mentioned. Now she did not do that and that being so what possible bearing can it have upon the jurisdiction of that court as to what this person has to say in the box about this matter or any other? I ask your Lordship, I am taking the responsibility of speaking to the question, and that I am satisfied if we open the door here, I do not know where my friend will stop. The question and answer are not relevant to the issue before your Lordship.

THE COURT : I agree with a great deal that Mr. Woods has said. Of course it is alleged in paragraph 17 of the statement of claim that the action was not heard or tried in open Court. What is an open Court I suppose is one of those questions of mixed law and fact. I think perhaps it is not altogether a question of law. I think anything that bears upon that is admissible. I dislike shutting out evidence on the ground of irrelevance unless it is clearly irrelevant. I think the plaintiff's counsel should confine himself to questions which may seem to bear some relevance to the issue before the Court. I do not know what questions you are going on to ask. Perhaps we had better meet them as they arise.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 12.  
Cora Lillian  
McPherson.  
Examina-  
tion—  
*continued.*

Mr. VAN ALLEN: My question will be confined strictly to the so-called secret hearing—what this witness knows about it. She is not going to give any evidence pertaining to any of the other grounds upon which we say this judgment should be set aside.

THE COURT: Does she know anything about the action or the trial of it? That perhaps may develop.

Mr. VAN ALLEN: That is the question I directed to the witness to which my friend objected.

THE COURT: Subject to Mr. Woods' objection you may proceed with the examination of the witness.

Mr. VAN ALLEN: What notice if any did you have of the time or place of the trial of the divorce action in McPherson v. McPherson number 22420?—A. The only papers I received at all were the statement of claim—nothing else at all.

Q. Did you ever receive any notice either verbally or in writing of the time or place of that trial?—A. I did not.

THE COURT: Do you suggest, Mr. Van Allen, that she was entitled to any notice?

Mr. VAN ALLEN: Oh no, no. I am not suggesting it.

Q. Do not answer this question until my friend has had a chance to state any objection he wishes. Did you in the summer of 1931 see the defendant in this action in Winnipeg? 20

Mr. WOODS: This is quite a surprise. It is exactly contrary to the Order. This is a matter of jurisdiction. If the witness is going into anything else I certainly— The whole matter is open and the whole action is open. Your Lordship suggested, as I understand, on the application that was made by way of appeal from the Master in Chambers, it was obvious and was suggested whether we would not agree to have this issue of jurisdiction decided first because if it was decided in favour of the plaintiff that was an end of the whole thing—a pure matter of jurisdiction—and if it was decided in favour of the plaintiff it was decided there would not be any action against the defendant in respect of the other matters because they would still be married, and it sounded very sensible to Mr. Field, and I think he was correct. Now we agree to have this matter segregated and try this question of jurisdiction alone on the mere legal issue. Now my Lord to roam far afield we will be here three days because I want to cross examine that plaintiff over a series of matters. 30

THE COURT: I quite understood as Mr. Woods has stated, that is, that the question of whether or not the trial was held in camera, and if it were so held what the legal effect of so holding it would be were questions that would be argued before me, and I have thought, perhaps from the certificate of the trial Judge as to what the facts were. I did not consider at the moment that a large volume of evidence which might perhaps on some technical ground be deemed to have some relevance would be offered because if that is to be done this particular matter should be tried with the general action. 40

Mr. WOODS: The question asked of this witness now by Mr. Van Allen is whether some time during the summer of 1931 she saw the defendant in Winnipeg. These proceedings took place in April 1931.

THE COURT: My difficulty in shutting out that question is this, suppose for the sake of argument that at that time Mr. McPherson saw Mrs. McPherson in the course of conversation said to each other: "We will hold a court in camera" and the court was held in pursuance of that conversation—assume that to be the fact—

Mr. WOODS: But it was after the 22nd of April, 1931.

10 THE COURT: Then my argument will be put the other way. That is, if afterwards one said to the other: "This court was held in camera and no publicity has attached to it," I would hesitate about shutting out that evidence although I think it has very little if any relevancy because after all it is not a question of what anybody says or a question of opinion. It is the legal result from the set of conditions, the set of facts, here established.

Mr. WOODS: As long as it is understood that the evidence of my friend from what he indicated has something to do with the holding in camera—now my Lord I object to the question anyway. I object to it on the ground that the witness should not be asked questions of this character in view of the arrangement made and I object to it also on the ground  
20 that a conversation that took place between two people of an event has not any bearing on the action. But I would like to have it understood that we are not going to roam into anything else that had not to do with the place where the case was held.

Mr. VAN ALLEN: I assure your Lordship I intended nothing else.

Q. Did you see the defendant in Winnipeg?—A. I did.

Q. In what month, do you remember?—A. Early in July 1931.

Q. How did you come to see him?

Mr. WOODS: Well that has not anything to do with it.

30 Mr. VAN ALLEN: My friend need not worry, my Lord.

Mr. WOODS: It opens up a completely new field, my Lord.

A. (The Witness): He was on route to Ottawa and stopped—

Mr. VAN ALLEN: Well never mind that. During the time you saw the defendant was anything said regarding the trial of the divorce action between you and the defendant?—A. I asked him if the divorce were through and if it was very disagreeable to him, and he said it was.

Q. Did you ask him about any particulars?—A. He was rather evasive as to particulars but he said it had been with as little publicity as possible.

40 Q. When did you first hear that the divorce action had been tried in a private room?—A. After I started this action.

NO CROSS EXAMINATION.

*In the  
Supreme  
Court of  
Alberta.*

Plaintiff's  
Evidence.

No. 12.  
Cora Lillian  
McPherson,  
Examina-  
tion—  
*continued.*

**No. 13.**

**Discussion.**

No. 13.  
Discussion.  
16th  
December  
1932.

Mr. VAN ALLEN : The plaintiff rests upon this issue, my Lord.

Mr. WOODS : Will your Lordship have Mr. Justice Tweedie make a statement? I am asking for that.

THE COURT : I understood the arrangement was in the first instance that Mr. Justice Tweedie should certify to the relevant facts. Later, I understood that by arrangement he was to be called. Mr. Van Allen now says that he does not propose calling him.

Mr. Woods : I will call him, my Lord. 10

Mr. VAN ALLEN : Just by way of explanation. It is quite true we felt at one time that a certificate might be obtained from the learned trial Judge and Mr. Field actually attempted to prepare something but he found he was getting into hot water and wrote me a letter he could not do it, and to shorten things I served notice to admit. My learned friend Mr. Woods told me that he would not reply and as far as we were concerned we would have to call our witnesses and he would have an opportunity to cross examine.

Mr. WOODS : Might I point out the ingenuous admissions he asked. It is that no member of the public have access to the court room during the proceedings of the said trial. Now in my estimation of the law in this 20 country all the public had access to that room.

THE COURT : By reason of the fact that it was in law—

Mr. WOODS : That it was an open court.

Mr. VAN ALLEN : With a barbed wire fence around it.

Mr. WOODS : I asked that Mr. Justice Tweedie be permitted to make a statement. I have called him and I think a statement is all that is necessary.

THE COURT : As I understand it Mr. Justice Tweedie is merely to give a viva voce statement that he might have made by certificate?

Mr. WOODS : Yes. 30

Mr. VAN ALLEN : I was agreeable to a certificate being obtained from the Honourable Mr. Justice Tweedie but that went off because Mr. Field wrote me a letter saying he could not prepare a statement and to leave it alone. Now if there ever was such an arrangement that arrangement is off and as far as I am concerned Mr. Justice Tweedie has been called by counsel for the defendant, with all that implies. I am satisfied the learned Mr. Justice Tweedie should make an unsworn statement. That suits me perfectly but I do reserve the right to cross examine the witness.

THE COURT : I understand that both counsel are agreed that Mr. Justice Tweedie should make an unsworn statement? 40

Mr. WOODS : Instead of being subject to the indignity of being sworn. I happened to be a witness for the first time a while ago and after considera-

tion the counsel decided that they take my evidence without being sworn and I think if both parties agree it is quite competent.

THE COURT : I understand that to be the agreement by counsel both for the plaintiff and for the defence, that Mr. Justice Tweedie shall make an unsworn statement and that no objection will be taken to the fact that he has given his evidence not under oath.

Mr. VAN ALLEN : That is satisfactory to me, my Lord, but in all other respects the status will be that of a witness.

*In the  
Supreme  
Court of  
Alberta.*

No. 13.  
Discussion.  
16th  
December  
1932—  
*continued.*

No. 14.

Defendant's  
Evidence.

Evidence of Mr. Justice Tweedie.

No. 14.

Mr. Justice  
Tweedie.

10

The Honourable Mr. Justice TWEEDIE : What statement do you want ?

Mr. WOODS : I want a statement of your memory of the circumstances in connection with action number 22420 which appears in this trial docket. On page 447 of this procedure book there appears notes of action number 22420 before Mr. Justice Tweedie. And there is an account of a trial and the witnesses called and Decree Nisi granted, three months, custody of the children granted the plaintiff. There has been evidence given here that that trial took place in the Judges' Library in the Court House in Edmonton here, that is the Library at the end of the hall on the second floor, and the issue before his Lordship has to do with the fact as to whether the holding of that trial in that place as the trial was held robbed you of jurisdiction to make that decree. And we would like your statement as to what happened. —A. The trial in that case was conducted in every respect similar to other trials except it was not held in one of the trial Court rooms, either civil or criminal, or in the Appeal Court or the Judges' room. It was held in the Judges' Library. So far as other trials are concerned it was conducted in the same manner.

20

Q. There has been evidence given here sir, of the fact that at the opening of that trial you announced that you were sitting in open Court. Do you remember that?—A. Yes I do.

30

Q. What did you say, according to your memory?—A. I declared myself to be sitting in open Court, by reason of the fact that it was not held in the court room and it was in the library.

Q. And there has been evidence given here by Mr. Mason that during the course of that trial you asked him to keep the door open—the door into the room and leading from the Judges' Library into the corridor outside. Do you recollect?—A. I have no distinct recollection but I may have said it if Mr. Mason says I did.

Q. Do you remember Mr. Mayne Reid acting for the plaintiff, and my instructions are that he asked you to fix this day, which was a Wednesday, to fix a special day. He asked you at the beginning of the week to fix that day because he had a witness coming from Saskatoon and prior to the

40

*In the  
Supreme  
Court of  
Alberta.*  
—  
Defendant's  
Evidence.  
—  
No. 14.  
Mr. Justice  
Tweedie—  
*continued.*

holding of the trial you did fix that special sitting to meet his request?—*A.* Yes, now that you mention that fact, I recall it.

*Q.* There has been evidence given here by the clerk of the court of certain other cases of this character where trials in divorce proceedings were held in Judges' Chambers. Have you any information on that subject?

—*A.* Oh yes I have heard similar proceedings were adopted by Mr. Justice Beck, Mr. Justice Hyndman and myself. I remember very distinctly I tried a divorce action in the Circuit Judges' room.

*Q.* The Circuit Judges' room there?—*A.* Yes, those who are travelling. I could give Mr. Van Allen all the particulars privately if he would care to get them. It was a case in which a gentleman and his wife obtained a divorce from him in the United States. She subsequently was married in an Eastern City and she was a prominent woman and the man himself wanted to get married, he would not rely on the American divorce and he did not want to have any publicity given which might affect her or her family, and that is the reason it was held in there. 10

*Q.* And you hold your bankruptcy proceedings quite constantly in there?—*A.* Yes I hold them in this room and in the Criminal Court room, the Appellate Division court room, the Judges' Library and the visiting Judges' room. I hold perhaps four-fifths of them in the visiting judges' room. 20

*Mr. VAN ALLEN:* Was any application made to you for the trial of the McPherson divorce action in that room or any private room?—*A.* No, I selected the place myself.

*Q.* That was hardly usual to have the case tried in that kind of a room?—*A.* No. It was no more usual than the case which I tried in the visiting judges' room under the circumstances, the case which was tried by Mr. Justice Beck in his own room.

*Q.* And it was your Lordship who proposed that this trial take place in the room in which it was actually heard?—*A.* I selected the room, yes. 30

*Q.* The date for trial had been arranged in advance by Mr. Reid?—*A.* Yes.

*Q.* So that your Lordship knew it was coming up before you?—*A.* Yes.

*Q.* The arrangement to have the trial held in that room was not because the other court rooms were unavailable?—*A.* No not that I recall.

*Q.* Or because of the nature of the evidence to come out?—*A.* Well the nature of the evidence—no.

*Q.* Because you did not know the evidence?—*A.* Oh yes. We know the nature of the evidence in divorce cases beforehand, because divorces can be granted only on one ground and that is because of sexual relations between the respondent and co-respondent. That is one class of case in which we do know the evidence in advance. 40

*Q.* May I ask you if your Lordship made the arrangements for hearing in this room to save the feelings of the plaintiff in view of his position?—*A.* Well I imagine that would be it, to lessen the publicity but not for the purpose of excluding any person who might have a right to attend at the hearing.

Q. I am not suggesting that.—A. But I think that is correct.

Q. It is correct to say it was done to save Mr. McPherson's feelings and to avoid publicity in his case as a public man?—A. No, not to save Mr. McPherson's feelings but perhaps to lessen the publicity by reason of the position which Mr. McPherson occupied in this Province and his relation to the public.

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Court of  
Alberta.*

Defendant's  
Evidence.

—  
No. 14.  
Mr. Justice  
Tweedie—  
*continued.*

10 Q. When you proposed that the hearing take place in that room did either the plaintiff or his counsel Mr. Reid object?—A. Not to my knowledge. I do not think they knew where I was going to hold it until about perhaps within four or five minutes of the time I held it because I had not decided where I was going to hold it until I was prepared to go on with the hearing.

Q. I am referring to the beginning of the trial when they did say that your Lordship was going to sit in the Judges' Library, did either the plaintiff or his counsel make any objection to having it held there?—A. No, none that I recall.

Q. Would it be fair to say that they acquiesced in having it disposed of there?—A. Well I went on with the trial and they took part in the proceedings and said nothing.

20 Q. Was any formal order made by your Lordship providing for a trial in that room?

THE COURT: You mean previous order?

Mr. VAN ALLEN: Previous or later.

THE COURT: Well later.

30 Q. Mr. VAN ALLEN: You have no recollection of signing such an order?—A. No. I followed exactly the same procedure as I do in other cases. When I come up and I am in the visiting Judges' room counsel come in and ask me in the morning where we will sit today and I say we will sit in the criminal court room or sit in the Appellate Division room. There is no formal order taken out and never has been and I have followed that practise ever since I have been on the bench.

Q. All three witnesses were heard and sworn in that room before your Lordship?—A. Yes.

Q. And the Decree Nisi was pronounced then and there?—A. Yes.

Q. I don't suppose the case was one that had to be tried in a private room?—A. No.

Q. There was no absolute necessity for hearing it in a private room?—A. No none.

Q. All the witnesses were grown men?—A. Yes.

40 Q. The plaintiff a member of the Legislature and Minister of the Crown and capable of stating his evidence in open Court?—A. Yes.

Q. And the next witness, a detective, he would be quite capable of stating his evidence in an open Court?—A. Yes.

Q. And the third witness, the hotel clerk, a grown man?—A. Yes.

Q. All he had to say was that certain people registered, and that is all?—A. Yes.



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Mr. Justice  
Tweedie—  
*continued.*

Q. And no reason why all of these witnesses could not have given their evidence in this room in the presence of the public?—A. Not the slightest.

Q. The evidence given was probably what we might call the usual evidence in these cases?—A. Yes—statutory offence.

Case for Defence closed.

Mr. VAN ALLEN : I have no rebuttal.

Court adjourns till 2.00 p.m.

At 2.00 p.m. Court resumes.

Argument was then had.

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20th  
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1932.

No. 15.

10

**Formal Judgment.**

Before the Honourable Mr. } Tuesday the 20th day of December,  
Justice EWING. } A.D. 1932.

The issue raised by paragraphs 17 and 18 of the amended Statement of Claim and paragraphs 18 (a) and 18 (b) of the amended Statement of Defence herein having come on for hearing and determination before this Court on the 16th day of December 1932, in presence of Counsel for the plaintiff and defendant, upon hearing read the pleadings and upon hearing the evidence adduced and exhibits filed and what was alleged by Counsel aforesaid and judgment having been reserved until this day 20 and the same coming on this day for judgment;

This Court Doth Order and Adjudge that the action of the plaintiff so far as concerns the said issue so raised be and the same is hereby dismissed with costs.

(Sgd.) R. P. WALLACE, C.S.C.A.

Entered this 28th day of  
December, A.D. 1932.

R. P. WALLACE, C.S.C.

Approved as to form only,

H. A. WHITE,  
Per GEO. H. VAN ALLEN,  
Sol. for Plaintiff.

30

Dec. 28/32.

## No. 16.

## Reasons for Judgment.

*In the  
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On March 17th, 1931, the above named defendant commenced an action in this Court, Number 22420, for a divorce from the plaintiff above named. No defence or demand of notice was filed and the action came on for trial at Edmonton on April 22nd, 1931. The defendant in that action was not represented at the trial which was conducted in the manner hereinafter set out. The Decree Nisi was granted at the close of the trial and on the 28th day of July, 1931, the usual Decree Absolute was granted  
10 and duly entered.

On the 11th day of October, 1932, the plaintiff in the present action commenced these proceedings claiming inter alia a declaration that the said Decree Nisi and Decree Absolute are null and void. Several grounds are alleged in support of this claim, among them being the allegations set out in paragraphs 17 and 18 of the Amended Statement of Claim, which are as follows :

“ 17. The said action mentioned in Paragraphs 3 and 4 hereof was not heard or tried in open Court and the witnesses in the said proceedings before the said Court, were not sworn or examined orally in open Court as required by law, but instead the said action was tried and heard and the witnesses were sworn and examined in camera in a private room of the said Court House and during the noon recess on the said date, all of which was contrary to law in that behalf made and provided.  
20

“ 18. By reason of the matters alleged in the next preceding paragraph, the said Court and the Learned Judge thereof who presided on the said occasion, had no jurisdiction, power or authority to hear or determine the said action, or to make the said Decree Nisi and the said Court, and the Learned Judge thereof who presided upon the application for a Decree Absolute had no jurisdiction, power or authority to make such latter mentioned Decree and the same are, therefore, void and of no effect.”  
30

The defendant replied to these allegations in paragraphs 18 (a) and 18 (b) of his Amended Statement of Defence, which are as follows :

“ 18 (a) The action referred to in paragraph 3 of the amended Statement of Claim was heard in open Court and the witnesses were sworn and examined orally in open Court as required by law.

18 (b) The action referred to in paragraph 17 of the amended Statement of Claim was not tried and heard nor were the witnesses sworn and examined in camera or during the noon recess. Even if the allegations in paragraph 17 of the amended Statement of Claim were true, which the defendant does not admit, but denies,  
40 ~~the decree nisi was a valid and binding judgment of the Court and the learned Judge who presided on the occasion of the granting of~~

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the Decree Nisi had jurisdiction to determine the said action and did in fact determine it and the Judge who presided upon the application for the Decree Absolute had such jurisdiction to make such decree and both such decrees are in full force and effect."

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*continued.*

On November 28th an Order was made directing that the issue raised by the above mentioned paragraphs be heard and determined at the sittings of this Court commencing December 12th, 1932, and this issue was accordingly tried before me on December 17th last.

The facts given in evidence in connection with the trial of the divorce action Number 22420, are as follows: The trial was held on Wednesday, April 22nd, 1931, in a room on the second floor of the Court House at Edmonton known as the Judges' Library. The trial Judge was not the Judge presiding over the regular sittings in Edmonton for that week. The reporter was Mr. Powell, who says that he was not the regular reporter for that week according to the system of rotation of work employed by the reporters. Mr. Powell says that as he was leaving the Court House on his way to lunch he was requested by the Assistant Clerk, Mr. Mason, to act as reporter for this particular trial. Mr. Mason says that at the request of Mr. Wallace, Clerk of the Supreme Court, he acted as Clerk at the trial but that he seldom acts in that capacity. 20

Considerable stress was laid on the nature of the entrance to the Judges' Library. There is a public corridor running round the entire second floor of the Court House. On one side of this corridor is the well of the main stairway and on the other side of the corridor are the doors opening into the various rooms. Immediately in front of the top of the stairway and across the corridor are double doors, that is to say, each door swings on its own jamb and when both are closed they meet in the centre. The south door is not used and is kept fastened while the north door, which is used and which opens inward has a self closing device attached. The door which is fastened has a brass plate on which the word "private" is engraved. There is no sign on the door which is used. These doors lead into a narrow hall and across this hall and almost opposite to the entrance is an ordinary door opening into the Judges' Library. The Sheriff states that no Orderly is ever posted at these doors. The Library is a large room with a large library table in the centre. The trial Judge entered the library through the north door opening from the Appellate Court room and took his seat at the head of the table. He then announced that he was sitting in open Court. There were present in the library, in addition to the trial Judge, the Clerk, the reporter, the plaintiff in the action and his counsel. The witnesses were called as they were required. The Clerk was about to close the door leading from the library into the hallway but was directed by the trial Judge not to do so. It is admitted that one or more of the regular Court rooms were at that time available for the trial. The trial Judge gave evidence at the present trial and by request of both counsel his evidence was not taken under oath. He states that he selected the library as the place of trial on his 40

own motion and without any intention of shutting anybody out. The date of the trial had been arranged in advance at the request of counsel for the plaintiff to accommodate a witness who was being brought from Saskatoon.

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I have recited these details because it was argued that they all affect the question of whether or not the trial was held in camera. The right of a Court to sit in camera was exhaustively reviewed by the House of Lords in *Scott vs. Scott*, 1913, A.C. 417. In that case Viscount Haldane said :

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*continued.*

10           “ But unless it be strictly necessary for the attainment of justice there can be no power in the Court to hear in camera either a matrimonial cause or any other where there is a contest between the parties. . . .

          “ The question is by no means one which consistently with the spirit of our jurisprudence can be dealt with by a Judge as resting on his mere discretion as to what is expedient. The latter must try it as one of principle and as turning not on convenience but on necessity.”

In the same case Earl Loreburn said :

20           “ I cannot think that the High Court has an unqualified power in its discretion to hear civil proceedings with closed doors. The inveterate rule is that justice shall be administered in open Court.”

30           Lord Halsbury and Lord Atkinson also delivered judgments in the same case. All concur in the general principle of the necessity of an open Court but some apparent differences of opinion as to the nature and effect of certain exceptions. These exceptions do not concern the case at bar. It will be noted that in the *Scott* case an Order had previously been made “ That the cause be heard in camera.” Our Divorce Rule Number 7 provides that except as provided in the divorce rules the general rules of practice shall apply to divorce actions. The divorce rules make no reference to the question of holding trials in camera but Rule 393 of our Rule of Court is in part as follows :

          “ In the absence of an agreement between the parties and subject to these rules the witnesses at the trial of an action or at an assessment of damages shall be examined viva voce and in open Court.”

40           The law now seems settled that in the trial of a civil action, subject to certain exceptions indicated in *Scott vs. Scott*, supra, which have no application here, and further subject to certain other exceptions set out in our Rules such as the Rule with reference to exclusion of witnesses, trials shall be held in open Court.

It is argued by both counsel that this statement of the law should be read in connection with Section 88, ss. 1 of the Northwest Territories Act which is as follows :

          “ Every Judge of the Supreme Court shall have jurisdiction power and authority to hold Courts whether established by Ordinance

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*continued.*

of the Legislative Assembly or not, at such times and places as he thinks proper and at such courts as sole judge to hear all claims, disputes and demands whatsoever except as herein provided, which are brought before him and to determine any questions arising thereout, as well of fact as of law, in a summary manner; and such courts shall be open public courts."

It will be noted that Section 88 has other subsections dealing with juries. The whole section was declared not to be in force in this Province by the Legislature of Alberta in the Jury Act being 1931, Chapter 8, Section 48. The probable reason why ss. 1 was not omitted from the repealing Section was because it was thought that it had already been carried into our Provincial law by the general terms of Section 18 of the Judicature Act. This section is as follows :

"The Court shall have generally all the jurisdiction, powers and authority which prior to its organization were by any law, order or regulation vested in or capable of being exercised by the Supreme Court of the Northwest Territories within the Province."

Section 88 above mentioned was no doubt passed to meet pioneer conditions in a country where few Court Houses existed but this fact cannot control or alter the plain meaning of the language used. It would appear from this section that the trial Judge had the power to hold the trial in question at such time and place as he thought proper. But apart from Section 88 altogether I am of the opinion that the trial Judge had the right to hold Court at any place in the Court House selected by him and that such place thereby became an open public Court. The sole question to my mind is whether or not anything was done which would have the effect of converting the court so held into a closed court or a court in camera. No order was made declaring the court closed. The trial Judge openly declared himself to be sitting in open Court. No one was ejected and no one was denied access. But it is argued that under all the conditions above set out it was virtually a closed court. I cannot accede to this contention. The court is not obliged to give public notice of the time and place of every session. In *Rex vs. Lewes Prison*, 1917, 2 K.B. at p. 271, Lord Reading said :

"I think the words 'in open court' means a court to which the public have a right to be admitted."

The right of the public is the right of access and in the case at bar access was not denied to anyone. If it were necessary to go further I would say that I think it a fair inference from the evidence that if anyone who was interested had made the proper inquiries he could have discovered the time and place of the trial. He could then have exercised his legal right to enter the library regardless of the sign "private" on the unused door. Had he done so it is clear from the evidence that no one would have attempted to interfere with him. Even if any misguided Orderly had tried to prevent the entry of a spectator the latter would have his remedies

against the Orderly but I do not think that the action of the Orderly would have destroyed the jurisdiction of the Court.

Trials are sometimes held in the rooms of the Court House other than the regular court rooms for the mere purpose of convenience. It is given in evidence that some trials and many bankruptcy cases are held in such rooms for convenience and without the slightest thought of excluding anybody. Although not given in evidence I understand that the Court of Appeal itself not infrequently holds sittings in this very library. This, I assume, is also done for the purpose of convenience and certainly not with the idea of shutting anyone out.

I am, therefore, of the opinion that the court in question was not held in camera but was an open court within the meaning of the Rule in that behalf. Having come to this conclusion it is not necessary to consider the further question of what would have been the effect on the judgment of the learned trial Judge if the court had been held in camera.

The plaintiff's action in respect of the issues raised at this trial is therefore dismissed with costs.

A. F. EWING, J.

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*continued.*

**No. 17.**

**Notice of Appeal.**

TAKE NOTICE that the above named plaintiff intends to appeal, and does hereby appeal to the Appellate Division of the Supreme Court of Alberta, at the next sittings thereof to be holden at the Court House, at the City of Edmonton, in the Province of Alberta, from the judgment of the Honourable Mr. Justice Ewing, dated the 20th day of December, A.D. 1932, and entered on the 28th day of December, A.D. 1932, after the trial of the issues in the said judgment referred to, on the following grounds, namely:—

1. The said judgment is against law, evidence, and the weight of evidence.

2. The Learned Trial Judge erred in holding that Section 88 of the North West Territories Act, or any part thereof, is in force in Alberta, in any way or to any extent whatever.

3. Alternative, if the said Section 88, or any part thereof was carried into the Laws of Alberta by the Judicature Act, R.S.A. 1922, Chapter 72, the said Judicature Act and the said Section 88 of the North West Territories Act, must be read in conjunction with the Judicature Ordinance of the North West Territories, and the Rules of Court made by and pursuant to the said Ordinance, and also in conjunction with the Consolidated Rules of Court of Alberta made pursuant to the said Judicature Act, and the learned Trial Judge erred in not so holding.

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Appeal,  
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ary, 1933—  
*continued.*

4. The Learned Trial Judge erred in not holding that the Honourable Mr. Justice Tweedie, a Judge of the Trial Division of this Honourable Court, who tried the divorce action mentioned in the pleadings, had no jurisdiction, power or authority to hear and/or determine the said action for divorce, under the circumstances set forth in the evidence.

5. The Learned Trial Judge erred in holding that the said Judge had any right, power, authority or jurisdiction whatever to hold the said Court at any time or place selected by him, and that such place became an open public court.

6. The Learned Trial Judge erred in not holding that, upon the 10 evidence, the said trial was not held in open Court and by reason thereof the said Decree Nisi and the said Decree Absolute were and are null and void, and should be set aside, discharged and vacated.

7. The Learned Trial Judge erred in not holding that the Court held by the said, the Honourable Mr. Justice Tweedie, was not an open public court or an open Court within the meaning of the Statutes and Rules in that behalf.

8. Such other grounds as may appear.

And further take notice that upon the hearing of the said appeal, the appellant will, pursuant to this notice, move the said Court for a reversal 20 of the said judgment, and for judgment declaring that the said Decree Nisi and the said Decree Absolute in the said divorce action, are null and void, and ordering and directing that the same be vacated, set aside and rescinded with costs, including an order as to the costs of this appeal, or for a new trial of this action insofar as the said issues are concerned, including an order as to the costs of this appeal, or for such further or other judgment or order as to the said Court may seem meet in the premises.

DATED at Edmonton, Alberta, this 7th day of January, A.D. 1933.

HARRY A. WHITE,  
Solicitor for the Appellant (Plaintiff).

30

To R. P. WALLACE, Esq.,  
Registrar of the Appellate Division,  
Edmonton, Alberta.

To R. P. WALLACE, Esq.,  
Clerk of the Supreme Court, Edmonton.

To WOODS, FIELD, CRAIG & HYNDMAN,  
Solicitors for the Defendant (Respondent).

No. 18.

Agreement as to Contents of Appeal Book.

IT IS AGREED that the contents of the Appeal Book shall be as follows :

- 1. Amended Statement of Claim,
- 2. Amended Statement of Defence,
- 3. Reply and Joinder of Issue,
- 4. Order of Ewing, J. dated November 28th, 1932,
- 5. The evidence and proceedings at the trial of the issue pursuant to the said Order,
- 6. The exhibits, excepting Exhibits 2, 3, 4, 5, 6 and 7,
- 7. The reasons of judgment of the Honourable Mr. Justice Ewing,
- 8. Formal Judgment of the Honourable Mr. Justice Ewing,
- 9. Notice of Appeal,
- 10. This Agreement,
- 11. Clerk's Certificate.

DATED at Edmonton, Alberta, this 10th day of January, A.D. 1933.

H. A. WHITE per G. H. VAN ALLEN

Solicitor for the Plaintiff.

WOODS, FIELD, CRAIG & HYNDMAN

Solicitors for the Defendant.

In the Supreme Court of Alberta (Appellate Division).

No. 18. Agreement as to contents of Appeal Book, 10th January 1933.

No. 19.

Formal Judgment.

IN THE SUPREME COURT OF ALBERTA.

APPELLATE DIVISION.

Between

CORA LILLIAN MCPHERSON . . . . . Plaintiff

and

ORAN LEO MCPHERSON . . . . . Defendant

Before The Honourable The CHIEF JUSTICE of Alberta.  
The Honourable Mr. Justice CLARK  
The Honourable Mr. Justice MITCHELL  
The Honourable Mr. Justice LUNNEY.  
The Honourable Mr. Justice MCGILLIVRAY

Tuesday the 21st day of February, 1933.

No. 19. Formal Judgment, 21st February 1933.

This case coming on for hearing before this Court on Monday the 6th and Tuesday the 7th day of February, 1933 by way of appeal by the Plaintiff



*In the  
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from the judgment of the Honourable Mr. Justice Ewing dated the 20th day of December, 1932, in presence of Counsel for all parties, upon reading the pleadings and proceedings herein and the judgment appealed from and what was alleged by Counsel aforesaid, and judgment having been reserved until this day;

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Formal  
Judgment,  
21st  
February  
1933—  
*continued.*

This Court Doth Order and Adjudge that the said appeal be and the same is hereby dismissed with costs.

R. P. Wallace, J., C.S.C.

Registrar.

Entered this 28th day of  
February A.D. 1933.

R. P. WALLACE,  
C.S.C.A., K.C.A.

Approved as to form only  
H. A. White, per G.H.V.  
Sol. for plaintiff.

10

No. 20.  
Reasons for  
Judgment  
(a) Harvey,  
C.J.A.

No. 20.

**Reasons for Judgment.**

(a) HARVEY, C.J.A.

The Appellant relies on *Scott v. Scott*, 1913 A.C. 417 as authority for the contention that the judgment in this action is a nullity, or at least, that it should be set aside, but I can find nothing in the judgment that warrants such a view. 20

In so far as the actual decision went, for which alone, it has been said time and again that any case is an authority, it only held that no liability attached to the parties who published the proceedings in the case, which had been ordered to be tried in camera, on the ground, in the main, that the order for trial in camera was made without authority and was, therefore, of no effect. The logical consequence of that was that the trial, though ordered to be held in camera, was not held in camera at all, for though the public were not present they had a right to be if any of them had chosen to exercise that right. It does not follow from that that the trial was a nullity but rather the contrary. 30

There is no suggestion in any of the reasons for judgment that the validity of the trial could be questioned because of the erroneous order to hold it in camera. It cannot be thought that this feature could have been overlooked.

In *Smart v. Smart* 1892 A.C. 425, the Privy Council affirmed a judgment pronounced at trial in which as appears from a report in 25 C.L.J. 597 the trial Judge had excluded the reporters and the public. This feature is not discussed in the judgment but in a judgment which has just been rendered by this Division and not yet reported, *Beattie v. United States Fidelity &* 40

*Guarantee Co.*, it is pointed out that the Court will take notice, of its own motion, of any ground of public policy. So that if it had been considered that the fact of the public having been excluded from the trial vitiated the judgment it would not have been upheld as it was throughout, for it hardly seems possible that the fact would not have been known to the Appellate Courts.

But assuming that *Scott v. Scott* should be taken as establishing that unless in the exceptional cases to which reference is made or other exceptional case specified by proper authority as for example criminal cases under the authority of Section 645 of the Criminal Code, divorce trials as well as all other trials must be held in open Court, it seems clear that the place where the trial is held, cannot alone, if at all, be the determining factor. While "in camera" originally meant in the Judge's Chamber there can be no doubt that a trial can be held "in camera" in the largest and most open Court room by the Judge ordering the public to be excluded.

The expression "in camera" does not arise here and the only question is whether the place where the trial was held was an open Court or whether on the contrary the public were excluded. They certainly were not excluded by any order, on the contrary the trial Judge declared he was sitting in open Court. Naturally that declaration would not convey any information to the public who were not there, but on the other hand it shows that if any member of the public desired to be present no objection would be made, in other words that it was not closed to public admission.

The case of *Kenyon v. Eastwood* (1888) 57 L.J. K.B. 455 on which the appellant relies is not one of general application. It was dealing with the special authority conferred on an inferior Court Judge to commit a person to jail, which the Statute required to be exercised "by an order made in open Court." The order in question was made in the Judge's private room adjoining the Court room which was fitted up with jury box and other accompaniments of a Court room. Although the door between the two was open it was held that the private room was not the "open Court" within the contemplation of the Statute. It would seem that that decision was based on the particular terms and purpose of the Statute, and I would not feel disposed to follow it for general application.

In *Kimber v. The Press Association* 1893 1 Q.B. p. 65 the Court was also dealing with a particular Statute which provided that "the room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed to be an open Court for that purpose; and it shall be lawful for such Justice or Justices in his or their discretion to order the Court to be closed to the public." It was stated p. 70: "The only meaning of the section is that the Court is not to be deemed to be an open Court if the Justices exercise their discretion by ordering it to be closed to the public . . . No order to close the Court was made by the Justices in the present case and it is clear that the proceedings were in open Court."

It is similar where the Judge exercises the discretion given him under section 645 of the Criminal Code by ordering the public to be excluded. The Court room, which has all the accompaniments of an open Court and has

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No. 20.  
Reasons for  
Judgment  
(2) Harvey,  
C.J.A.—  
*continued.*

been an open Court up to the time the order is made thereupon ceases to be an open Court.

Even though in the present case the learned Judge's purpose, to which the then plaintiff was no party, in sitting where he did was to lessen publicity, that purpose would probably have been as effectively served by using one of the ordinary Court rooms at the hour at which the trial was held and Mr. Van Allen agrees that a trial under those circumstances would have been in open Court. It certainly would not have been in open Court on the ground that the public attended for the public would have been unaware of where and when the trial was being held and there is no other reason one can see why the public did not attend where the trial was in fact held. 10

I agree with the view of the judge appealed from that the plaintiff has failed to show that the trial was not held in open Court and I would, therefore, dismiss the appeal, with costs.

(b)  
Clarke, J.

(b) CLARKE, J.

It is not contended that the Plaintiff was in any way prejudiced by reason of the matters complained of in connection with the trial of the action. I, therefore, concur in the result reached by the other members of the Court.

(c)  
Mitchell, J.

(c) MITCHELL, J.  
I concur.

20

(d)  
Lunney, J.

(d) LUNNEY, J.  
I concur.

(e)  
McGillivray,  
J.

(e) MCGILLIVRAY J.

This is an appeal from a judgment of Ewing J. The important question involved in the appeal is as to whether or not in the circumstances of this case, the presiding judge in a divorce action, can be said to have been sitting in open court.

The facts of the case briefly are as follows. An action was commenced by the respondent, seeking a divorce from his wife, the appellant. The appellant did not file a defence or a Demand of Notice and was not represented at the trial, the conduct of which is now brought into question. At the close of the trial which took place on the 22nd April, 1931, a decree nisi was granted and on the 28th day of July, 1931, a decree absolute was granted and entered. It is common ground and it has been emphasized by counsel for the respondent, that since the granting of the decree absolute the respondent has married again. This fact is worthy of notice only in that it emphasizes the importance to the respondent of the decision which the court has to make. It of course can have no weight as a determining factor since this court does not shrink from assuming responsibility nor does it refrain from giving what it conceives to be a proper judgment because it may result in hardship to one of the parties concerned. In *Dawsons Limited vs.* 30 40

*Bonnin*, 91 L.J.P.C. 215, Viscount Haldane said : “ Hard cases must not be allowed to make bad law.”

The facts having to do with the conduct of the divorce trial are stated by Ewing J. As his reasons for judgment have not been reported, I repeat his statement of the facts so that this judgment may be intelligible if it should happen to be reported. Ewing J. says :—

10 “ The facts given in evidence in connection with the trial of the divorce action Number 22420, are as follows : The trial was held on Wednesday, April 22nd, 1931, in a room on the second floor of the Court House at Edmonton known as the Judges’ Library. The trial Judge was not the Judge presiding over the regular sittings in Edmonton for that week. The reporter was Mr. Powell, who says that he was not the regular reporter for that week according to the system of rotation of work employed by the reporters. Mr. Powell says that as he was leaving the Court House on his way to lunch he was requested by the Assistant Clerk, Mr. Mason, to act as reporter for this particular trial. Mr. Mason says that at the request of Mr. Wallace, Clerk of the Supreme Court, he acted as Clerk at the trial but that he seldom acts in that capacity.

20 “ Considerable stress was laid on the nature of the entrance to the Judges’ Library. There is a public corridor running around the entire second floor of the Court House. On one side of this corridor is the well of the main stairway and on the other side of the corridor are the doors opening into the various rooms. Immediately in front of the top of the stairway and across the corridor are double doors, that is to say, each door swings on its own jamb and when both are closed they meet in the centre. The south door is not used and is kept fastened while the north door, which is used and which opens inward has a self closing device attached.

30 has a brass plate on which the word “ private ” is engraved. There is no sign on the door which is used. These doors lead into a narrow hall and across this hall and almost opposite to the entrance is an ordinary door opening into the Judges’ library. The Sheriff states that no Orderly is ever posted at these doors. The Library is a large room with a large library table in the centre. The trial Judge entered the Library through the north door opening from the Appellate Court room and took his seat at the head of the table. He then announced that he was sitting in open Court. There were present in the library, in addition to the trial Judge, the Clerk, the reporter, the plaintiff in

40 the action and his counsel. The witnesses were called as they were required. The Clerk was about to close the door leading from the library into the hallway but was directed by the trial judge not to do so. It is admitted that one or more of the regular Court rooms were at that time available for the trial. The trial judge gave evidence at the present trial and by request of both counsel his evidence was not taken under oath. He states that he selected the library as the

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*continued.*

place of trial on his own motion and without any intention of shutting anybody out. The date of the trial had been arranged in advance at the request of counsel for the plaintiff to accommodate a witness who was being brought from Saskatoon.”

Since on the argument before this Court great stress was laid on a part of the evidence given by the Judge who granted the decree nisi, to which Ewing J. does not allude, it is proper to add to the foregoing statement of the facts the following extract from the evidence :—

“ Q. May I ask if Your Lordship made the arrangements for hearing in this room to save the feelings of the plaintiff in view of his position ?—A. Well I imagine that would be it, to lessen the publicity but not for the purpose of excluding any person who might have a right to attend at the hearing. 10

“ Q. I am not suggesting that.—A. But I think that is correct.

“ Q. It is correct to say it was done to save Mr. McPherson’s feelings and to avoid publicity in his case as a public man ?—A. No, not to save Mr. McPherson’s feelings but perhaps to lessen the publicity by reason of the position which Mr. McPherson occupied in this Province and his relation to the public.”

The Appellant’s contentions based on the foregoing facts are these :— 20  
First, that it must be found that the trial leading to the decree nisi was not held in open court ; secondly, that this being so the appellant is entitled to a declaration that the trial and the decree nisi and decree absolute which followed, are nullities.

Dealing with the first submission, I may say that in my opinion it is to be taken as the settled law of this province that Courts of Justice must administer the law so openly and so publicly that it may be truly said that a Judge trying a case is himself on trial at the bar of public opinion. The only exceptions to the application of this rule are in cases affecting wards ; in lunacy proceedings ; in cases where secrecy must be maintained unless the 30  
very purpose of the trial is to be defeated, such as in trade secret cases ; and lastly in cases in which it is necessary in order that justice may be done that the court should exclude the public, for example, a case in which the judge has judicially determined that he cannot get the truth or all the truth from the witness in the presence of an audience. See *ex parte Norman*, 1916, 85 L.J.K.B.203 at 205 ; *Norman vs. Matthews*, 85 L.J.K.B.857, affirmed 32 T.L.R.369. See also *Rex v. Lewes Prison (Governor)* 1917, 2 K.B.254. The exceptions in the case of wards and lunatics are based on the reasoning that the judge represents the sovereign as *parens patriae*.

The most valuable discussion of open courts is to be found in the 40  
leading case of *Scott v. Scott*, 1913, A.C. 417. In this case an order was made in a nullity suit for the hearing of the case in camera. After a decree nisi had been pronounced the petitioner sent copies of a transcript of the official reporter’s notes to a number of persons. The respondent then moved to commit the petitioner and her solicitor for contempt. It was held that they were guilty of contempt and they were ordered to pay the costs of

the motion. An appeal was taken to the Court of Appeal and was there dismissed as incompetent. From this dismissal the appeal was then taken to the House of Lords where it was held that the order to hear in camera was made without jurisdiction and that the adjudication as to costs on the motion for committal, was bad. It is to be noticed that although a decree absolute was granted, no question arose as to the validity of the Decree granted following the hearing of the case in camera and consequently it cannot be said that the precise point which now engages the attention of this court was the subject of decision in that case, but the strong views expressed by the Lords who took part in the judgment with respect to Judges' performing their functions in open court, have ever since been accepted as the Law of England and I think must be accepted and followed as the law of this country. The exceptions to which I have referred were fully discussed. I quote from the several judgments short extracts which have a direct bearing upon the general principle.

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*continued.*

10

Viscount Haldane (at page 438) :—

“ Unless it be strictly necessary for the attainment of justice, there can be no power in the Court to hear in camera either a matrimonial cause or any other where there is contest between parties.”

20

Earl of Halsbury (at page 440) :—

“ I am of opinion that every Court of justice is open to every subject of the King. . . . I believe this has been the rule, at all events, for some centuries, but, as I will attempt to show presently, it has been the unquestioned rule since 1857, unquestioned by anything that I can recognize as an authority.”

Earl Loreburn (at page 445) :—

“ I cannot think that the high Court has an unqualified power in its discretion to hear civil proceedings with closed doors. The inveterate rule is that justice shall be administered in open Court.”

30

Lord Atkinson (at page 463) :—

“ The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means for winning for it public confidence and respect.”

Lord Shaw of Dunfermline (at page 476) :—

40

“ I am of opinion that the order to hear this case in camera was beyond the power of the judge to pronounce. I am further of opinion that, even on the assumption that such an order had been within his power, it was beyond his power to impose a suppression of all reports

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of what passed at the trial after the trial had come to an end. But in order to see the true gravity of what has occurred, these two things must be taken together. So taken, my Lords, they appear to me to constitute a violation of that publicity in the administration of justice which is one of the surest guarantees of our liberties, and an attack upon the very foundations of public and private security.” . . .

“ Consider for a moment the position of the appellants. The case of *Scott v. Scott* was heard in camera. All interruptions or impediment either to the elucidation of truth, or the dignity or decorum of the proceedings—conceived to be possible by the presence of the public—had been avoided. The Court had passed judgment in private and the case was at an end. And now judgment has been passed upon the appellants in respect of disclosing what transpired in Court by exhibiting an accurate transcript of what had actually occurred, and the appellants are enjoined to perpetual silence. And against this—which is a declaration that the proceedings in an English Court of Justice shall remain for ever shrouded in impenetrable secrecy—there is, it is said, no appeal. I candidly confess, my Lords, that the whole proceeding shocks me.” 10

At 477 :—

“ There is no greater danger of usurpation than that which proceeds little by little, under cover of rules of procedure and at the instance of judges themselves. I must say frankly that I think these encroachments have taken place by way of judicial procedure in such a way as, insensibly at first, but now culminating in this decision most sensibly, to impair the rights, safety, and freedom of the citizen and the open administration of the law.” 20

At 484 :—

“ For the reasons which I have given, I am of opinion that the judgment of Bargrave Deane J. cannot be sustained. It was, in my opinion, an exercise of judicial power violating the freedom of Mrs. Scott in the exercise of those elementary and constitutional rights which she possessed, and in suppression of the security which by our Constitution has been found to be best guaranteed by the open administration of justice. I think, further, that the order to hear the case in camera, was not only a mistake, but was beyond the judge’s power.” 30

The *Scott* case of course dealt with an order of a judge that a cause should be heard in camera, but it seems to me that no one can doubt after reading all of the judgments throughout, that it was intended in that case not merely to decide that such an order could not be made in that case but to re-establish and place upon sure foundations the principle that all courts must function in the full light of public opinion. This is the view of the 40

Scott case taken by Lord Merrivale, in *Greenway v. Attorney General*, 71 S.J. (1927) 882, in which case he said :—

“Publicity, as the Attorney General has said, is essential where status is at issue.....I do not regard it as part of the law, that, if publicity deters a person from taking proceedings, he should be allowed to bring his case in camera.”

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In the matter of the Petition of *A.B.* 97 L.J.P. 104, Lord Merrivale said :—

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*continued.*

10 “The general law of England was long ago declared to be that the Courts of this land exercised their powers in public, unless by some means they are directed to exercise them otherwise. The passage was cited by Lord Halsbury in *Scott v. Scott* (83 L.J.P. at p. 86; (1913) A.C. at p. 443) from the judgments of very learned Judges long years before that case was heard, where three learned Judges determined that the Divorce Court had no power to sit otherwise than with open doors. That was founded upon an ancient principle of law.”

20 “As to the other matters, it seems to me that, apart from *Scott v. Scott*, it must be recognised here that the general rule of judicial administration in this country is that justice is to be administered publicly unless the Legislature shall otherwise direct.”

In the case of *Reid v. Aull*, 16 D.L.R. 766 (1914) Latchford J. calls attention to the case of *Daubney v. Cooper*, 1829, 10 B. & C. 237, which as he points out, was not referred to in the Scott case, and approves of the language of Bayley J. who in delivering the judgment of the Court, said :—

“We are all of opinion that it is one of the essential qualities of a Court of Justice that its proceedings should be public.”

30 It seems to me having regard to all of these cases that whether the “open court” rule be adjective law or substantive law, one cannot escape the conclusion that it became so firmly embedded in the law of England which we adopted, that it now must be said to be a settled rule of law that our courts must function openly and in the view of all men who wish to attend their sittings. I emphasize this view by repetition because it has been suggested that an open court is any place in which a judge is holding court, from which he has not excluded anyone by order and to which he has not precluded entry by order. In my view the words “open court” when used in their proper legal sense mean a court that is open to the public as distinguished from one that is held in secret. I have no manner of doubt that if a judge were to hold court in the glade of a forest or in the furnace room of  
40 the Court House, without public notice he would be as surely sitting in secret as a Judge who while sitting in Court in the Court House, ordered that a cause be heard in camera.

The necessity for the making of the order that the cause be heard in camera arises only because the judge is sitting in a court room to which the public resort. The purpose of the order is to provide a secret hearing.



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That purpose may be equally achieved by a Judge removing himself to a place to which there is no possibility of the public resorting.

The court is held as an open court or it is not. This is a question of fact which must be determined having regard to all of the circumstances surrounding each particular case that may come under review. In a new country such as this, Courts are frequently held in Fire Halls, Town Halls and picture theatres for the lack of any other proper accommodation for the Court; my Lord the Chief Justice has referred to a sittings of the Court held in an Indian tepee; the use of the rooms of the Mounted Police Barracks as places for holding Court has been quite common in this country; but it cannot be said with truth that the holding of the courts in any of these places in times past was cloaked in secrecy, nor can it be said that the North West Territories Act or any other Act has given power to a Judge to hold a secret Court in this country. 10

In our Cities we have court rooms fitted up with the usual accompaniments of the jury box, the witness box, the Bench, and all of those other external signs of a Court room to which Lord Coleridge alludes in *Kenyon v. Eastwood*, 57 L.J.Q.B. 456. The other extreme is for the example the Indian Tepee to which I have alluded. Between these two extremes we have instances of the holding of Courts in places which are but a shading 20 off towards one extreme or the other. In my view it matters not at all where a court be held, provided that in the circumstances of the particular case it may be said that the Court was held openly and publicly, so that all the members of the public interested in so doing, had the opportunity of attending without hindrance of any kind. Equally I am of the opinion that subject to the exceptions mentioned, the holding of a Court in a secret fashion whether by order of the Court or by reason of the holding of the court in a secret place, at which place members of the public have not the opportunity of attending, is a reversion to Star Chamber methods which should not and will not be tolerated in this country. 30

Turning now to a consideration of the facts upon which Ewing J. based his judgment, I will first deal with the declaration of the Judge that he was sitting in open court. Such a declaration has not infrequently been made when a Judge sitting in Chambers, who is conducting the chambers proceedings in an open and public manner, is requested to make some order that should be made by a Judge sitting in court; but it seems to me that this affords not the slightest justification for saying that a judge who is holding court in secret may by declaring that he is sitting in open court, convert a secret court into an open court; and so the question still remains, was this an open or a secret court? 40

I attach no importance to the instances of what other judges have done, that have been mentioned in evidence. In each instance they either were or were not sitting in open court. If they were, the proceeding was unassailable; if they were not, they were acting contrary to the law of the land. I adopt the language of Sir Barnes Peacock in delivering the judg-

ment of the Judicial Committee in *Palmer vs. Hutchinson* 50 L.J.P.C. 62 at 67, in which case he said :—

“Their Lordships think it right to say that no practice of the Court can confer upon it any power of jurisdiction beyond that which is given to it by the charter or law by which it is constituted.”

I do not attach the importance which the appellant does to the evidence of the trial judge in the divorce proceedings as to his reason for making use of the Judge's library. In my view it is of no interest what  
 10 was in the Judge's mind so long as there is no suggestion, as there has not been and could not be here, that the learned Judge was acting in collusion with one of the parties. He either was sitting in open court, or he was not, and it seems to me that his hope as to how many or how few people would be present as spectators has no bearing upon the question to be decided. Even if it be conceded as suggested that it was the learned Judge's ambition to hold a secret court, it must still be decided by this court as to whether or not in the circumstances of this case, his ambition was realized.

Turning then to the balance of the evidence, there is in support of  
 20 the appellant's contention, the evidence that one of the doors leading to the place of the hearing was marked private; that the case was heard at an unusual hour by a Judge who was not presiding at the regular sittings of the Court in Edmonton that week. On the other hand in support of the respondent's position there is the evidence that there was no contest, that the judge who took the trial had arranged so to do in advance to accommodate a witness from another Province; that he sat in a room in the Court house which was quite suitable for the hearing of an undefended divorce action; that since he says he desired to lessen publicity by the selection of this room it is to be inferred that he expected some publicity  
 30 in the room so selected and that his expectation was not without foundation; that all of the court officials were present at the hearing; that the clerk of the court was notified of the holding of court in this room and so could have informed anyone inquiring as to where the case was being proceeded with; and that the door leading directly into the room in which the sittings was held, was left open during the proceedings at the Judge's direction.

This case is near the line. However, after giving careful consideration to all of the evidence I have come to the conclusion, not without hesitancy, that I cannot say that Ewing J. was wrong in holding that the divorce  
 40 trial was not held in secret but was conducted in open court.

In the view I take of the case it becomes unnecessary to consider the further question as to whether the failure to hold a divorce trial in open court is merely an irregularity which does not make the decree invalid, or is a matter going to the jurisdiction of the Court (in that the conditions essential to the exercise of divorce jurisdiction are absent) with the result that the decree is a nullity.

*In the  
 Supreme  
 Court of  
 Alberta  
 (Appellate  
 Division).*

No. 20.  
 Reasons for  
 Judgment  
 (e) McGillivray, J.—  
*continued.*

No. 20.  
Reasons for  
Judgment  
(e) McGil-  
livray, J.—  
*continued.*

I cannot refrain from adding that no question can or does arise as to the bona fides of the trial judge or as to his absolute impartiality in this divorce case, as in all other causes. His desire not to have more people than need be attend this undefended divorce action is something of which one may not approve and yet quite understand as a generous impulse rather than an attempt to hold a secret court.

I would affirm the judgment and dismiss the appeal with costs.

No. 21.  
Notice of  
Application  
for leave to  
appeal to  
His Majesty  
in Council,  
2nd  
March 1933.

No. 21.

**Notice of Application for leave to appeal to His Majesty in Council.**

IN THE SUPREME COURT OF ALBERTA.  
APPELLATE DIVISION.

10

Between

CORA LILLIAN MCPHERSON - - - - *Plaintiff (Appellant)*

and

ORAN LEO MCPHERSON - - - - *Defendant (Respondent).*

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL TO HIS  
MAJESTY-IN-COUNCIL.**

TAKE NOTICE that an application will be made upon behalf of the above named Cora Lillian McPherson, plaintiff (Appellant) before the Appellate Division of this Honourable Court, at the sittings thereof commencing at the Court House, Edmonton, on Monday, the 6th day of March, 1933, at the hour of 10.30 o'clock in the forenoon, or as soon thereafter as the application can be heard for leave to appeal to His Majesty-in-Council from the judgment or order in this action of the Appellate Division of this Honourable Court bearing date the 21st day of February, 1933, and for an order fixing the conditions of appeal, all pursuant to the provisions of the Imperial Orders in Council dated January 10th, 1910, in that behalf, and all amendments thereto, and to the Statutory Rules and Orders governing appeals to the Privy Council, in that behalf, upon the ground that the said judgment or order is a final judgment and that the question involved in the appeal is one which by reason of its great general or public importance, ought to be submitted to His Majesty-in-Council for decision, and upon such other grounds as may appear. 20

AND FURTHER TAKE NOTICE that in support of such application will be read the affidavit of the above named plaintiff (Appellant) and of G. H. Van Allen filed, and such other material as counsel may advise. 30

DATED at the City of Edmonton, in the Province of Alberta, this 2nd day of March, A.D. 1933.

H. A. WHITE,  
Solicitors for the plaintiff (Appellant).

To Woods, Field, Craig & Hyndman,  
Solicitors for the defendant (Respondent).

To R. P. Wallace, Esq.,  
Registrar of the Appellate Division, Edmonton.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division).*

No. 21—  
*continued.*

No. 22.

10 **Formal Judgment Dismissing Application for leave to appeal to His Majesty in Council.**

IN THE SUPREME COURT OF ALBERTA.

APPELLATE DIVISION.

Between

CORA LILLIAN MCPHERSON - - - - *Plaintiff (Appellant)*

and

ORAN LEO MCPHERSON - - - - *Defendant (Respondent)*

Before THE HONOURABLE THE CHIEF JUSTICE OF  
ALBERTA

THE HONOURABLE MR. JUSTICE CLARK  
THE HONOURABLE MR. JUSTICE MITCHELL  
THE HONOURABLE MR. JUSTICE LUNNEY  
THE HONOURABLE MR. JUSTICE MCGILLIVRAY

} Monday the 6th  
day of March,  
A.D. 1933.

No. 22.  
Formal  
Judgment  
dismissing  
application  
for leave to  
appeal to  
His Majesty  
in Council,  
6th March  
1933.

Upon the application of the plaintiff (Appellant) for leave to appeal to His Majesty-in-Council from the judgment or order of the Appellate Division of this Court bearing date Tuesday the 21st day of February, 1933, in presence of Counsel for the defendant upon reading the notice of application for leave as aforesaid and proof of service thereof, the affidavits of George H. Van Allen, Cora L. McPherson and Oran Leo McPherson filed, and the exhibits therein referred to and upon hearing  
30 what was alleged by Counsel aforesaid.

1. This Court Doth Order that the said application be and the same is hereby dismissed with costs.

R. P. WALLACE,  
Registrar.

Entered this 6th day of  
April, A.D. 1933.

R. P. WALLACE,  
C.S.C.A.

*In the  
Supreme  
Court of  
Alberta  
(Appellate  
Division).*

## No. 23.

**Reasons for Judgment dismissing Application for leave to appeal to His Majesty in Council.**

No. 23.  
Reasons for  
Judgment  
dismissing  
application  
for leave to  
appeal to  
His Majesty  
in Council.

HARVEY C.J.A. (for the Court): The application for leave to appeal is dismissed on the simple ground that while there are matters of great public interest incidental to the issue, yet in so far as what is essential to the decision is concerned it is a question of only the private interests of the parties to the action. Moreover there is no ground for the contention of the appellant's counsel that the members of the Court differed in their reasons for judgment on the question of public interest, as a perusal of the reasons rather than the headnote, shows. 10

*In the  
Privy  
Council.*

## No. 24.

**Order in Council granting special leave to appeal in formâ pauperis to His Majesty in Council. (Extract.)**

No. 24.  
Order in  
Council  
granting  
special  
leave to  
appeal in  
*formâ  
pauperis*  
to His  
Majesty in  
Council,  
22nd March  
1934  
(extract).

AT THE COURT OF BUCKINGHAM PALACE.

The 22nd day of March, 1934.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.  
LORD CHAMBERLAIN.  
EARL STANHOPE.

VISCOUNT BRIDGMAN.  
MR. CHANCELLOR OF THE DUCHY OF LANCASTER. 20

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of March, 1934, in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Cora Lillian McPherson in the matter of an Appeal from the Supreme Court of Alberta (Appellate Division) between the Petitioner Appellant and Oran Leo McPherson Respondent setting forth . . . 30

\* \* \* \* \*

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto and the Petitioner by her Counsel under-

taking not to proceed further in the meantime with her Appeal to the Appellate Division of the Supreme Court of Alberta from the Judgment of the said Supreme Court dated the 11th day of July 1933 Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal in formâ pauperis against the Judgment of the Appellate Division of the Supreme Court of Alberta dated the 21st day of February 1933.

*In the  
Privy  
Council.*

No. 24.

Order in  
Council  
granting  
special  
leave to  
appeal in  
formâ  
pauperis  
to His  
Majesty in  
Council,  
22nd March  
1934  
(extract)-  
continued.

10 " And Their Lordships do further report to Your Majesty that the proper officer of the said Appellate Division of the Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20 WHEREOF the Lieutenant-Governor or Officer administering the Government of the Province of Alberta for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

Exhibits  
and  
Documents.

## EXHIBITS AND DOCUMENTS

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No. 1.  
Marriage  
Certificate.  
Appellant  
and Re-  
spondent,  
21st April  
1908.

### No. 1.—Marriage Certificate. Appellant and Respondent.

#### STATE OF ILLINOIS, COUNTY OF WASHINGTON. MARRIAGE CERTIFICATE.

THIS CERTIFIES THAT

<p>Mr. O. L. McPHERSON of MODESTO in the State of Ills. were at ASHLEY together in</p>	<p>and and of</p>	<p>Miss CORA FARMER ASHLEY in the State of Ills. in the said County by me joined</p>
--	-----------------------	--

10

HOLY MATRIMONY

on the 21st day of April in the year of our Lord, 1908 in the Presence of  
 IRENE A. HARGRAVE. FRANK M. AGNEW,  
 N. H. LEVERETT. Minister of the Gospel.

---

No. 9.  
Order in  
Council of  
the Pro-  
vince of  
Alberta,  
25th April  
1927.

### No. 9.—Order in Council of the Province of Alberta.

PROVINCE OF ALBERTA.

O.C.446/27.

Order in Council of the Province of Alberta, dated Monday, April 25th, 1927,  
approved by His Honour the Lieutenant Governor.

Upon the recommendation of the Honourable the Attorney General, 20  
 dated April 14th, 1927, the Executive Council advises that, under the  
 provisions of The Public Service Act, The Attorney General's Act, and any  
 other authority in this behalf enabling, GEORGE BURWASH HENWOOD, of  
 the City of Edmonton, in the Province of Alberta, be and he is hereby  
 appointed KING'S PROCTOR in and for the said Province, as and from the  
 First day of April, 1927, to have and exercise in the Province of Alberta  
 powers and functions similar to those had and exercised by the King's  
 Proctor in England in Divorce and Matrimonial Causes.

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## No. 4 (including No. 3).—Court Record in Divorce Action.

IN THE SUPREME COURT OF ALBERTA.  
 JUDICIAL DISTRICT OF EDMONTON.  
 TRIAL DIVISION.

Between

ORAN LEO MCPHERSON . . . . . *Plaintiff,*  
 and  
 CORA LILLIAN MCPHERSON . . . . . *Defendant.*

Exhibits  
 and  
 Documents.  
 —  
 No. 4  
 (including  
 No. 3).  
 Court  
 Record in  
 Divorce  
 Action, 17th  
 March 1931.

## RECORD.

10 IN THE SUPREME COURT OF ALBERTA.  
 JUDICIAL DISTRICT OF EDMONTON.  
 TRIAL DIVISION.

Between

ORAN LEO MCPHERSON . . . . . *Plaintiff,*  
 and  
 CORA LILLIAN MCPHERSON . . . . . *Defendant.*

## STATEMENT OF CLAIM.

1. The Plaintiff and the defendant both reside in the City of Edmonton, in the Province of Alberta.

20 2. The Plaintiff was on the 21st day of April A.D. 1908 lawfully married to the defendant, then Cora Lillian Farmer, Spinster, by the Reverend Mr. Agnew, a Minister of the Baptist Church, at the home of the defendant's parents in Ashley Town, in the State of Illinois, One of the United States of America.

3. After the said marriage the plaintiff lived and cohabited with the defendant at the following places, namely:—

From the date of the said marriage till the month of February A.D. 1909 at Modesto, in the State of Illinois; from February 1909 to November 1918 at Vulcan, in the Province of Alberta; From November 1918 to January  
 30 1928 at Calgary, in the Province of Alberta, and since January 1928 at Edmonton aforesaid, and the Plaintiff and the Defendant have had issue of their said marriage, four children, namely:—

Eugene Lorraine McPherson, now aged 17 years  
 Coran Lyman McPherson, now aged 15 years  
 Marian Moffet McPherson, now aged 13 years  
 Donald Keith McPherson, now aged 5 years.



Exhibits and Documents. No. 4 (including No. 3). Court Record in Divorce Action, 17th March 1931—*continued.*

4. The Plaintiff and the Defendant are domiciled in the Province of Alberta.

5. On the 24th day of January A.D. 1931 and on other days between that day and the 27th day of January 1931 the Defendant committed adultery with one Leroy Mattern at the Flanagan Hotel, in the City of Saskatoon, in the Province of Saskatchewan.

6. The Plaintiff has not connived at or condoned the adultery committed by the defendant and no collusion exists between the Plaintiff and the defendant to obtain a dissolution of their said marriage.

WHEREFORE THE PLAINTIFF CLAIMS :

10

- (a) Dissolution of the said marriage between the plaintiff and Defendant
- (b) Custody of the said Eugene Lorraine McPherson, Coran Lyman McPherson, Marian Moffet McPherson and Donald Keith McPherson, the children of the marriage
- (c) Such further and other relief as to this Honourable Court may seem meet

DATED at Edmonton, in the Province of Alberta, this 17th day of March A.D. 1931, AND DELIVERED by Messrs. Lymburn, Reid & Cobble Dick, 822 Tegner Building, Edmonton, Solicitors for the Plaintiff, whose address for service is in care of said solicitors, AND ISSUED out of the Office of the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton.

R. P. WALLACE, C.S.C.  
(SEAL)

*Praecepto to note.* Defendant in Default in Divorce Action, 16th April 1931.

**Praecepto to note. Defendant in Default in Divorce Action.**

11067.

IN THE SUPREME COURT OF ALBERTA.  
JUDICIAL DISTRICT OF EDMONTON.  
TRIAL DIVISION.

Between

30

ORAN LEO MCPHERSON - - - - - *Plaintiff,*  
and

CORA LILLIAN MCPHERSON - - - - - *Defendant.*

The 16th day of April A.D. 1931.

REQUIRED the Clerk of this Court to note the above named Defendant in default.

LYMBURN, REID & COBBLEDICK,  
Solicitors for the Plaintiff.

To the Clerk of the Supreme Court,  
Edmonton, Alberta.

40

No. 6.—Transcript of evidence and proceedings at trial of Divorce Action.  
 IN THE SUPREME COURT OF ALBERTA.  
 JUDICIAL DISTRICT OF EDMONTON.

Exhibits  
and  
Documents.

No. 6.  
Transcript  
of evidence  
and pro-  
ceedings at  
trial of  
Divorce  
Action,  
22nd April  
1931.

Between  
 ORAN LEO MCPHERSON - - - - - Plaintiff,  
 and  
 CORA LILLIAN MCPHERSON - - - - - Defendant.

(Suit No. 22420)

Transcript of shorthand notes taken by T. A. Powell, Supreme Court  
 10 Reporter, of the evidence and proceedings at trial of this action before the  
 Honourable Mr. Justice Tweedie, at Edmonton, on Wednesday April 22,  
 1931.

Mr. Mayne Reid, Counsel for plaintiff.  
 Undefended.

ORAN LEO MCPHERSON the plaintiff being called as a witness on his own  
 behalf and having been duly sworn was examined by Mr. Reid and testified  
 as follows :

Q. Your occupation is Minister of Public Works for the Province?—

A. Yes, sir.

20 Q. And you live in Edmonton?—A. Yes, sir.

Q. The defendant is your wife and her full name is Cora Lillian  
 McPherson?—A. Yes.

Q. How old is she?—A. Forty four.

Q. Is that a photograph of your wife the defendant in this action  
 (produced)?—A. Yes, sir.

Said photograph marked Exhibit 1.

Q. When were you and Mrs. McPherson married?—A. April 21st. 1908.

Q. Where?—A. In Ashley, Illinois.

Q. Before whom?—A. A Minister of the Baptist Church.

30 Q. What is that (produced)?—A. That is the original marriage certifi-  
 cate.

Said Marriage Certificate marked Exhibit 2.

Q. Where did you reside after you were married?—A. For a year in  
 the State of Illinois and in Alberta since that time.

Q. When did you come to Alberta and what year would that be?—A. I  
 came in February of 1909.

Q. When you came to Alberta was it with the intention of temporary  
 residence or permanent?—A. No, I came as a permanent resident.

Q. Have you ever changed your intention since then?—A. No, sir.

40 Q. At what places have you resided in Alberta since you came in 1909?  
 —A. At what is now Vulcan, Alberta, from the time that I came until the  
 spring of 1918.

Exhibits  
and  
Documents.  
—  
No. 6.  
Transcript  
of evidence  
and pro-  
ceedings at  
trial of  
Divorce  
Action,  
22nd April  
1931—  
*continued.*

Q. On a farm in that district?—A. Yes.

Q. Since then?—A. My family was in Calgary from then until I came to Edmonton in January 1927.

Q. And you have resided here with your family since?—A. Yes.

Q. Now when did you first suspect anything in connection with your wife?—A. In February of last year was the first indication I had that there was anything other than mere friendship or acquaintance of the parties that she had been bringing to the house.

Q. Who was the party you are referring to?—A. She struck up a friendship with Mattern. 10

THE COURT: What is his first name?—A. Leroy.

Q. Did you ever have any discussions with your wife about her relations with Mattern?—A. Well, when I noticed that simply by actions and looks and general conduct that there was something beyond the ordinary acquaintanceship or friendship, I did, yes.

Q. Did you tackle her with it?—A. Yes. I did not know at the time just what her attitude was. But I did suggest to her that the conduct should be changed.

Q. Did she make any admissions to you?—A. No, not at that time she did not. As time went on I saw that the thing was perhaps more serious 20 than I had at first realized. And I suggested that the acquaintanceship be broken off explaining to her and arguing with her that it was hardly possible to carry on our own relationship satisfactorily and without difficulty if anything of that nature should continue.

Q. What did she say?—A. Well, being a very determined person, she did not accept my suggestion at all. I insisted later to the point of—well of insisting that the acquaintanceship—the relationship—should be broken off and that no more should be seen of these people. I carried it to the point of trying to force the issue with the result that I was met with an absolutely determined resistance and the threat of leaving which I tried to 30 avoid. I did my best to work out the situation up to that point and thought that I was on the right track by trying to force the issue, but knowing the determined spirit that she had I knew that that resolute determination would carry out just the threat she had made and she would leave. And naturally one does not contemplate the breaking up of a home very lightly. From then on I hoped that the situation would, as many others that I have known of and we have all known of, I suppose, pass over—hoping that it was not anything but just a passing fancy and not serious—I hoped it would be worked out and did not take the move of breaking it absolutely at that time and take the chance of her carrying out her threat of leaving my home. 40

Q. When did she leave?—A. She left on January 19th of this year.

Q. Did she say where she was going?—A. She did not indicate to me at the time where she was going. She later advised me.

\*Sic

Q. She later advised you what?—A. She advised me that she had\* going to the City of Saskatoon.

Q. How many children are there of the marriage?—A. Four.

Q. Give their names and ages, will you.—A. Eugene Lorraine, seven-teen; Coran Lyman, fifteen; Marian Moffat, thirteen; Donald Keith, five.

Q. Where are they residing now?—A. With me in Edmonton.

Q. And you are seeking the custody of them?—A. Yes.

Q. Has she made any approaches to you regarding the custody of them?  
—A. She is very desirous of having the younger child.

Q. But you are resisting that?—A. I have simply answered her by saying that as far as I am concerned the child's own welfare would be my first consideration.

10 Q. And for that reason you wish the child with you?—A. Yes.

Q. What did you do when you knew that she had gone to Saskatoon?  
—A. I engaged a man here in Edmonton. I was fairly sure of the reason she had gone there was to have an opportunity of seeing this man.

Q. You mean Leroy Mattern?—A. Yes. I engaged a man to watch his actions and—

Q. And who was the man you engaged?—A. Hammick.

Q. Now since your wife went to Saskatoon have you seen her?—A. I have not.

Q. Have you condoned her offence—forgiven her in any way?—A. No  
20 I have not.

Q. Was there any collusion between you and her. That is to say, was there any scheme under which she would commit this offence with a view to getting you and herself released from the bonds of matrimony?—A. She did not know what my actions would be. She did not know that I would bring action for divorce.

Q. So there was no collusion?—A. No there was not.

THE COURT: What is this Mattern?

Mr. REID: He is one of the officials in connection with the Airways Company. I think he is a travelling representative?—A. No. I believe he  
30 is the Manager of the Airways—Western Canada Airways.

Q. Who is that a photograph of?—A. That is my wife.

Said photograph marked Exhibit 3.

LAURENCE A. HAMMICK, being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Reid and testified:—

Q. What is your occupation?—A. I am a private detective.

Q. Living where?—A. In Edmonton.

Q. Tell me what instructions you received from Mr. McPherson?  
—A. To go to the air port in Edmonton and watch the plane leaving for  
40 Saskatoon and see if a certain party got on the plane and if he did to go to Saskatoon and see what happened.

Q. Did Mr. McPherson give you the name of the party?—A. Yes—  
Mattern.

Q. Then did he give you any photographs of his wife?—A. Yes.

Exhibits  
and  
Documents.

No. 6.  
Transcript  
of evidence  
and pro-  
ceedings at  
trial of  
Divorce  
Action,  
22nd April  
1931—  
*continued.*

Exhibits  
and  
Documents.

No. 6.  
Transcript  
of evidence  
and pro-  
ceedings at  
trial of  
Divorce  
Action,  
22nd April  
1931—  
*continued.*

Q. See if you can identify this.—A. He gave me that one (referring to Exhibit 3), and I have seen this one (Exhibit 1) but I did not take this one with me.

Q. Did you find Mattern did take the plane to Saskatoon?—A. A man answering the description given to me of Mattern did take the plane.

Q. And what did you do then?—A. I notified Mr. McPherson and then I went on the train to Saskatoon on Saturday night.

Q. What date was this?—A. On the 24th of January, 1931.

Q. And when you arrived in Saskatoon what did you do?—A. I arrived in Saskatoon on the Sunday morning and I went to several hotels to see if anybody by the name of Mattern had registered and I eventually found at the Flanagan Hotel the name of Mattern on the register. 10

Q. Did you see the register?—A. I did.

Q. Is that the sheet with the signature you saw at the time?—A. Yes. Sheet from hotel register marked Exhibit 4.

Q. Now what is the name that you saw on that? What is the signature?—A. Mr. and Mrs. L. R. Mattern, Edmonton.

Q. Did you register in the hotel yourself?—A. I did.

Q. I show you that?—A. Room 8. That is my signature.

Q. As registering on what date?—A. On the 25th of January. 20

Sheet from hotel register marked Exhibit 5.

Q. On Exhibit 4. What date is that? What date did they apparently register on that?—A. On the 24th of January.

Q. And what did you do then?—A. I showed the hotel clerk the photograph which I had and asked whether he could tell me—

Q. Is that the photograph?—A. Yes, (referring to Exhibit 3). I asked him whether he could tell me whether the lady appearing like that photograph had registered with Mattern and he said he had not seen them come in because I think he was off duty at that time and I made further inquiries from him and learned that they had had meals brought to them in the room. 30

Q. Did you see Mattern?—A. No not at that time. I saw him at 8.15 p.m. on Sunday.

Q. Was anyone with him?—A. Yes.

Q. Who was?—A. A woman that answered the description of the photograph and the description given to me by Mr. McPherson.

Q. Are you positive that that is a photograph of the lady you saw?—A. I am quite certain.

Q. Well what did they do?—A. I was sitting in the sitting room of the hotel and they came through from the office and went straight to their room. 40

Q. What number?—A. 81.

Q. What did you do?—A. I watched them go to the room and I heard the key turn in the door and I had previously had my room changed from room number 8 to room 76 which is very nearly opposite room 81. And I occupied a room quite close to them.

Q. Did they leave the room at all after that that evening?—A. Not to my knowledge. And I was there the whole time.

Q. Were you watching to see or were you endeavouring?—A. Yes I was watching.

Q. You were watching to see if they did leave the room?—A. Yes.

Q. And as far as you know they did not?—A. Yes.

Q. And what happened next morning?—A. The next morning—

Q. That would be Monday morning?—A. Yes. Monday morning about half past eight I was waiting at the desk at the hotel expecting them to come out, and if you move to the other side of the desk you can look along the passage and see who comes out of the rooms. And I saw them come out together. They both went to the desk. She stood a little bit away and he checked out of the hotel.

Q. Now was the lady you saw then the person whose portrait appears on Exhibit 3?—A. Absolutely.

Q. And what happened after they had checked out?—A. I followed them and they walked along one of the avenues in Saskatoon until they came to a place known as the Elliott Printing Company. They stopped there and the man said something to her and turned around and walked past me back to the hotel and she walked on towards the Y.W.C.A. building.

Q. What did you do?—A. Just as she was going in I stopped her and asked her whether she was Cora McPherson. And she looked surprised. I had a little parcel that had been given to me by Mr. McPherson with that name written on it. And I told her I had a parcel to give to her and showed it to her and she said she was Cora McPherson, and took the parcel.

JOHN JAMES MCKENZIE, being called as a witness on behalf of the plaintiff and having been duly sworn was examined by Mr. Reid and testified :

Q. What is your occupation?—A. Clerk.

Q. Where are you employed?—A. Flanagan Hotel, Saskatoon.

Q. I show you Exhibit 4. What is that?—A. Hotel guest register sheet.

Q. Of the Flanagan Hotel?—A. Yes.

Q. Of what date?—A. Saturday, January 24th, 1931.

Q. That is the original is it?—A. Yes, sir.

Q. And these are the signatures put on by guests at the time?—A. Yes throughout the day, yes.

Q. Now I draw your attention to that signature. What is that?—A. Mrs. L. R. Mattern.

Q. Were you present when they registered?—A. Yes, sir.

Q. Do you remember having some talk with Mr. Hammick here?—A. Yes.

Q. Did he show you a photograph?—A. Yes.

Q. Can you identify it?—A. Yes, sir.

Exhibits  
and  
Documents.

No. 6.  
Transcript  
of evidence  
and pro-  
ceedings at  
trial of  
Divorce  
Action,  
22nd April  
1931—  
continued.

Exhibits  
and  
Documents.

No. 6.  
Transcript  
of evidence  
and pro-  
ceedings at  
trial of  
Divorce  
Action,  
22nd April  
1931—  
*continued.*

Q. Which of these was it, if any?—A. This one (referring to Exhibit 3).

Q. Is that photograph a photograph of the lady who was registered under the name of Mrs. L. R. Mattern?—A. I am quite sure it is.

Q. Now on the nights of the 24th or 25th of January was that lady occupying the same room as Mr. L. R. Mattern?—A. As far as I know she was.

Q. Well do you know at all that she was?—A. I seen her enter the room with Mr. Mattern.

Q. It is possible to see the room from the desk?—A. Not from the 10 desk. You have to walk out a little ways.

Q. And were you present when they checked out?—A. No I was not.

Q. How about their meals. What can you tell me about their meals? Where did they get their meals?—A. On the morning of the 25th, Sunday, they had their meals during the forenoon—they had breakfast, I imagine it was brought in to them.

Q. Are you sure they did get their breakfast?—A. Oh I am quite positive. They had something to eat there. I am quite sure it was breakfast.

20

Q. Did you see a meal carried in or did you get instructions?—A. He phoned out for a meal himself and it was sent in. I was on duty when a meal was sent in.

Q. Did you notice whether it was set for two or one?—A. Two.

ORAN LEO McPHERSON, recalled.

Q. THE COURT: Was your home originally Illinois?—A. Yes from the time I was about three years old.

Q. And when you left Illinois you left with the intention of not returning there to live again?—A. No, I entered for a homestead by proxy in Alberta before I left there and came here with the intention of 30 settling here.

Q. And you had abandoned your domicile in Illinois?—A. Yes.

Mr. REID: That is all the evidence. I would ask for the usual Order.

THE COURT: Decree Nisi in three months unless cause to the contrary is shown.

Mr. REID: And I ask for the custody of the children.

THE COURT: And custody of the children to the plaintiff.

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## No. 7.—Court Docket. Pages 440-447 (including Divorce Action).

Exhibits  
and  
Documents.

## Page 440.

No. 7.  
Court  
Docket,  
pages 440-  
447  
(including  
Divorce  
Action).April 21st 1931  
#21478  
Oliver, Ltd.Mr. Justice Boyle presiding.  
Mr. Dafoe for the Pltf.  
Geo. Steer K.C. for the Defd.

vs.

W. J. Brickman. 11·00 Court resumed. (All evidence in Argument only)  
 Claim \$1253·69 11·05 Mr. Steer addresses the Court.  
 Mr. Ellis 11·18 „ Dafoe „ „  
 10 Reporter His Lordship sums up the evidence.  
 Pltf. entitled to Judgment for notes.  
 Defd. „ „ Damages on Counter-Claim.  
 Reference to Clerk to take evidence as to damages.  
 Further judgment reserved as to basis of assess-  
 ment of damages.

Costs for amendment not allowed.

Costs awarded :—

20

Pltf. entitled to costs of action based upon.  
 „ not entitled to costs of amendment.  
 Defd. successful in C.C. & entitled to costs of  
 C.C. on basis of defended action.  
 Costs to include Discovery. Rule 27 not to apply.  
 Column left undecided until damages computed.

12·14 Court adjourned.

“ T. W. Henderson.”

Thursday April 23rd 1931  
21979Before His Lordship Mr. Justice Boyle.  
Mr. Johnson for Plaintiff.Grace Viola Mahoney  
andApplication for Decree Absolute.  
Undefended.

30 Sylvester David Mahoney.

Decree Absolute granted.

“ R. L. North ”

Clerk.



Exhibits and Documents.	No. 7.	22008	Thursday April 23rd 1931.	Page 441.	
Court Docket, pages 440- 447 (including Divorce Action)— <i>continued.</i>		Andrew Shymka	10.40 a.m.	His Lordship Mr. Justice Ewing presiding.	
		and	10.43 a.m.	Mr. E. E. Cross for Plaintiff. Mr. Guy Patterson for Defdt.	
		Jacob Matuchak	11.15 a.m.	Mr. Cross & Mr. Patterson address the Court.	
		et al.	11.22 a.m.	1st Witness—Andrew Shymka—sworn.	
				Exhibit 1. Statement showing all goods purchased from Plaintiff.	
				2nd Witness—Paul Yakimchuk—sworn.	
				Andrew Shymka—recalled.	10
				Exhibit 2. Four Ledger sheets Matuchak account.	
				3rd Witness—Jacob Matuchak—sworn.	
				Exhibit 3. Counter slip dated May 13th 1928.	
				12.02 p.m. 4th Witness—Andrew Matuchak—sworn.	
				Exhibit 4. Counterslip dated.	
				12.15 p.m. John Schlamp sworn as Ukrainian interpreter.	
			5th Witness—Mrs. Ellana Matuchak—sworn through interpreter.	20	
			12.20 p.m. 6th Witness—George Eluschuk—sworn.		
			Andrew Shymka recalled.		
			12.37 p.m. Judgment. Estate liable for Andrew Matuchak account and George Matuchak account, but not liable for Jacob Matuchak account. In- terest at the rate of five per cent.		
			12.45 p.m. The Court adjourned.		
			Continued on Page 442.	30	
			Thursday April 23rd 1931.	His Lordship Mr. Justice Boyle presiding.	
		22380		Mr. J. A. Ross for Plaintiff. Mr. A. L. Marks for Defendant.	
		Ali M. Tarrabain	3.00 p.m.		
		and		Mr. A. L. Marks addresses the Court.	
		Naiff S. Jaissy	4.30 p.m.	Mr. J. A. Ross addresses the Court.	
		& Edree Jaissy	6.25 p.m.	The Court adjourned.	
			April 24.		
			11.25	Court resumed. (Argument continued.)	
				Judgment reserved.	40
			11.55	Court adjourned.	

“ T. W. H.”

## Page 442.

Exhibits  
and  
Documents.

Friday April 24th 1931. Before—His Lordship Mr. Justice Ewing presiding.

Mr. E. E. Cross for Plaintiff.

Mr. Guy Patterson for Defendant.

No. 7.  
Court  
Docket,  
pages 440-  
447  
(including  
Divorce  
Action)—  
*continued.*

22008

Andrew Shymka  
and  
Jacob Matuchak  
Mr. Ellis  
Reporter.10.50 a.m. Mr. Patterson addresses the Court.  
Mr. Cross addresses the Court.  
11.12 a.m. Judgment: \$406.40 for Plaintiff.  
This sum arrived at after crediting \$225.00  
paid by Jacob Matuchak on account.  
Jacob will be entitled to deduct \$75.00 from  
account owed by him.  
Costs in appropriate column.

10

April 27th 1931

#20946

Alfred Thomas Smart  
and  
Beatrice May Smart  
Claim Divorce.

Mr. Justice Ives presiding.

H. G. Johnson for the Pltf.

Mr. Johnson makes application for the Decree  
Absolute and intimates that all formalities have  
been comp.  
Decree Absolute granted.

20

" T.W.H. "

#21967

Velma E. Johnston  
and  
Harold G. Johnston  
Claim Divorce.

H. G. Johnson for the Pltf.

Decree Absolute granted.

" T.W.H. "

#22036

John Colburn  
and  
Martha Colburn  
Claim-Divorce.

Col. Jamieson for the Pltf.

Decree Absolute granted.

" T.W.H. "

30

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Exhibits  
and  
Documents.

No. 7.  
Court  
Docket,  
pages 440-  
447  
(including  
Divorce  
Action)—  
*continued.*

April 27th 1931.

21933

Frank Ernest Wilson  
and

Helen Anneta Wilson Decree Absolute Granted.  
(Claim-Divorce)

Alfred Riedel  
and

Johanna Martha Krysik Riedel.  
(Claim-Divorce) Decree absolute granted.

#22542

Lewis Emery Pettie  
and

Anna Belle Pettie.  
(Claim-Divorce)

Mr. Powell  
Reporter.

Page 443.

Mr. Justice Ives presiding.

H. A. Dyde for the Plaintiff.

“ T.W.H.”

Jas. A. Ross for the Pltf.

10

“ T.W.H.”

Jas. D. Adam for the Pltf.

The Defendant was not represented by  
Counsel.

Ist Witness—Lewis Emery Pettie—sworn.

Exhibit I. Marriage Certificate.

Decree Nisi granted not to be made absolute for three  
months.

“ T. W. Henderson.”

20

Page 444.

April 29th 1931.

#22247

Otto W. & Lulu Fiedler  
and

Isaac D. Reber.

10.00 Court resumed.

Mr. Friedman advises Court of appointments  
administrators.

Claim ;

Spec. Damages Par. 1. \$1451·55

„ 2. \$5000·00

Gen. Damages \$1000·00

Ist. Witness Otto W. Fiedler—sworn. 30  
Exh. 1. Lease March 6th 1930 Reber to  
Pltf.

Declaration re lease.

„ 2. Copy of Journal Ad.

„ 3. Letter, Sept. 6th 1929, Late  
Deft. to Pltf.

Mr. Powell.  
Reporter.

„ 4. Letter, Sept. 10th, 1929, Late  
Deft. to Pltf.

- |    |  |                             |
|----|--|-----------------------------|
|    | Exh. 5. Receipt for \$200.00, Oct. 15, 1929, Reber to Fiedler. | Exhibits and Documents.     |
|    | „ 6. Photos (3) showing weeds.                                 | _____                       |
|    | „ 7. Notice, Mch. 2nd 1931, to vacate.                         | No. 7.                      |
|    | „ 8. Notices of Seizure (2).                                   | Court                       |
|    | „ 9. Notice to destroy weeds (July 25, 1930) & Report.         | Docket, pages 440-447       |
| 10 | „ 10. Letter Aug. 11th 1930, Fiedler to Defdt.                 | (including Divorce Action)— |
|    | „ 11. Letter Nov. 17th 1930, Fiedler to Defdt.                 | <i>continued.</i>           |
|    | „ 12. Caveat, Oct. 25th 1930.                                  |                             |
|    | „ 13. Plan.  |                             |

2nd Witness. Otto R. Fiedler—sworn.  
 3rd „ Wm. Simpson Wiseman—sworn.  
 Exh. A. Weed Inspectors Report.  
 Mr. Friedman reads from Discovery of Reber.

- |       |   |  |
|-------|---|--|
| 12.12 | Pltf. rests.                            |  |
|       | 4th Witness. Jacob Guthrie Reber—sworn. |  |
| 20    | 5th „ Wm. Edward Reber—sworn.           |  |
|       | 6th „ Charles Henry Rendleman—sworn.    |  |

12.30 Court adjourned. Court resumed.  
 7th Witness. John Eugene Hansen—sworn.  
 Exh. 14. Exh. A. for identification.  
 Mr. Burgess reads from Discovery of Otto Fiedler.

2.10 Defence concludes.  
 Mr. Burgess addresses the Court.

2.24	„ Friedman „ „	
30	Judgment : Damages :—	Pltf. allowed costs of action.
	Seed \$168.27	Costs in 3rd Col. Rule.
	Rent \$200.00	27 excluded on taxation.
	Moving \$143.00	Costs to include discovery.
	Gas & Oil \$138.00	Lease determined. C.C. not allowed
	Labor on land \$500.00	for balance of year's rent. Order
		to remove Caveat & to vacate.
	<u>\$1149.27</u>	
	Destroying weeds 75.00	
40	<u>\$1224.27</u>	

“ T.W.H.”

Exhibits  
and  
Documents.  
—  
No. 7.  
Court  
Docket,  
pages 440-  
447  
(including  
Divorce  
Action)—  
*continued.*

Page 445.

April 30th, 1931

Mr. Justice Ives presiding.

#22299

W. A. Miller for the Pltf.

Friedrich Wilhelm Bruderrek

Deft. not represented by Counsel.

*vs.*

Marie Bruderrek  
(Claim Divorce)

9.30 Court resumed.

Mr. Miller produces certain documents.

1st witness—Friedrich Wilhelm Bruderrek—sworn.

Exhibit 1. Certified copy of Marriage certificate.

Exhibit 2. Photo—

10

Mr. Powell  
Reporter

2nd witness—Fanny Stock—sworn.—

3rd witness—Martin Kabach—sworn.—

9.50 Pltf. rests—

Judgment :—Decree Nisi, not to be made absolute for  
three months.

T. W. Henderson  
Clerk.

#21863—

Margaret Lindsay

C. F. Newell and Mr. Lindsay for the  
Pltf. 20

*vs.*

Leroy Goldsworthy,  
Margaret Mooney  
and John Steel Smith

S. Field for the defendant,  
Leroy Goldsworthy.

P. Dunne for the defendant,  
Miss Mooney.

Claim :

W. R. Howson for the defendant,  
Dr. John S. Smith.

Spec. damages \$900.00

Gen. „ \$4000.00

10.00 Court continued.

1st witness—Margaret Lindsay—sworn.

Exhib. 1 { Acct Misericordia Hospital \$299.60  
Dr. R. B. Wells 109.00  
Dr. Weinlos 330.00

30

2nd witness—Const. Geo. Robt. Bone—sworn.

3rd „ Adam Stuart Matheson—sworn.

4th „ Coulter—sworn.

Exhib. 2. Plan showing position angle of  
incidence of cars at accident.

5th witness Dr. Moses Weinlos—sworn.

6th „ Dr. Robt. Bruce Wells—sworn.

7th „ Lillian A. Robb—sworn.

8th „ Jessie Mercer—sworn.

9th „ Dr. Kenneth Alex. Hamilton—

sworn.

40

Mr. Lindsay reads from Exem. of Dr. Smith.

12.30 Court adjourned. 2.00 Court resumed.

April 30th, 1931 (Continued)  
#21863

Mr. Justice Ives presiding.

No. 7.  
Court  
Docket,  
pages 440-  
447  
(including  
Divorce  
Action)—  
continued.

Margaret Lindsay Mr. Lindsay continues reading Exam. Dr. Smith  
*vs.* " " reads from Exam. Margaret Mooney

Leroy Goldsworthy et al " " " " " Goldsworthy

10th witness—George Lyman Parney—sworn.

Exhib. 3. Plan showing angle of incidence of cars

11th witness Leroy Deland Goldsworthy—sworn (Field)

12 " Margaret Eliz Mooney—sworn

13 " Ernest Wm. Stibbards—sworn.

Exh. 4 — Photos (3)

Mr. Field reads from Commission evidence of one  
Raymond Kale.

4.15—end of Mr. Field's case.

14th witness—John Bradley—sworn.

4.35—Court adjourned.

May 1st 10.00 Court resumed.

15th witness—Mrs. Daisy Bradley—sworn.

Exh. 5—Diagram of scene of accident.

16th witness Wilson Metcalf Conoly—sworn.

17th witness Dr. John Steele Smith—sworn.

Mr. Howson reads from Exam. of Pltf.

" " " " " " " Leroy D. Golds-

worthy (objected to and not put in).

11.14 Evidence all in—

Mr. Field addresses the Court.

Judgment :—Pltf. entitled to recover against defendants  
Mooney and Goldsworthy jointly and  
severally, in sum of \$1414.60 special  
damages made up as follows :—

Loss of earnings 52 wks. 780.00

Dr. Wells acct. 75.00

Dr. Weinlos ,, 260.00

Hospital Acct. 299.60

\$1414.60

General damages—Pain, suffering and injury \$2500.00.

Pltf. to have costs against defendants. costs to  
to include discovery—Rule 27 excluded. Deft.

Smith entitled to costs against Goldsworthy  
and Mooney. Costs of Commission.

11.30 Court adjourned.

T. W. Henderson,  
Clerk.

Exhibits and Documents.	May 2nd, 1931	Page 447.	
No. 7.	#22178		
Court	John Macdonald	10.00	Mr. Justice Ives presiding.
Docket,	<i>vs.</i>		H. A. Mackie, K.C. for the pltf.
pages 440- 447	Arthur Pantel		N. Romaniuk for the deft.
(including Divorce Action)— <i>continued.</i>	Claim \$900.00 compensation.	10.25	Court resumed.
			1st witness—John MacDonald—sworn.
			Exh. 1. Letter Sept. 3rd 1930 Morrison to Pantel
			Pltf. rests.
			2nd witness Arthur Pantel—sworn. 10
			3rd „ Elizabeth MacDonald—sworn.
			4th „ Fred Yaskiw (Pantel) sworn.
	Mr. Ellis Reporter.		Mr. Romaniuk reads from questionnaire prepared by Rev. Lafond.
		10.50	Defence concludes.
			John MacDonald recalled—rebuttal.
			Judgment:—Pltf. given judgment for period which child was at his expense after death of wife in sum of \$90.00
			costs to follow event but only in scale of 20 amount recovered.
		10.55	Court adjourned.
			T. W. Henderson Clerk.
	#22420.		Edmonton, April 22nd, 1931.
	O. L. McPherson		Before Mr. Justice Tweedie
	<i>vs.</i>		
	C. L. McPherson		Mayne Read for plaintiff.
		1st	Oran Leo McPherson
			Exh. No. 1 Photograph 30
			„ No. 2 Marriage Cert.
			„ No. 3 Photograph.
		2nd	Lawrence Almeric Hammick
			Exh. No. 4. Hotel Register Sheet
			„ „ 5. „ „ „
		3rd	John James MacKenzie
			Decree Nisi granted three months
			Custody of children granted pltf.
			W. F. H. Mason D.C.S.C.A.J.D.E. 40

*Note.*—“Notes in proceedings *McPherson vs. McPherson* written on separate sheet of paper and pasted in docket book.”

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Decree Nisi in Divorce Action.

IN THE SUPREME COURT OF ALBERTA.

JUDICIAL DISTRICT OF EDMONTON.

TRIAL DIVISION.

BETWEEN

ORAN LEO McPHERSON - - - - - Plaintiff.

AND

CORA LILLIAN McPHERSON - - - - - Defendant.

BEFORE THE HONOURABLE }  
10 MR. JUSTICE TWEEDIE, }  
EDMONTON, ALBERTA. }

Wednesday the 22nd day of April A.D. 1931.

THIS ACTION having come on for trial this day, upon hearing the evidence adduced on behalf of the Plaintiff and upon hearing Counsel for the Plaintiff, there being no appearance by or on behalf of the Defendant :

IT IS ADJUDGED AND DECREED that the marriage had and solemnized on the 21st day of April, 1908, at Ashley Town in the State of Illinois, one of the United States of America, between the Plaintiff and the Defendant be dissolved by reason that since the celebration thereof the said Defendant has been guilty of adultery, unless sufficient cause be shown to the Court  
20 why this decree should not be made absolute within three months from the making thereof.

AND IT IS FURTHER ADJUDGED AND DECREED that the Plaintiff do have custody of the four children of the said marriage, namely :—

Eugene Lorraine McPherson,  
Coran Lyman McPherson,  
Marian Moffet McPherson, and  
Donald Keith McPherson

O. K  
W.F.H.M

R. P. WALLACE  
C.S.C.

30 ENTERED this 22nd day of  
April A.D. 1931

R. P. WALLACE  
C.S.C. M

(SEAL)

Exhibits  
and  
Documents.

Decree Nisi  
in Divorce  
Action,  
22nd April  
1931.



Exhibits  
and  
Documents.

**Decree Absolute in Divorce Action.**

IN THE SUPREME COURT OF ALBERTA.

Decree  
Absolute in  
Divorce  
Action,  
28th July  
1931.

JUDICIAL DISTRICT OF EDMONTON.

TRIAL DIVISION.

BETWEEN

ORAN LEO MCPHERSON - - - - - *Plaintiff,*

AND

CORA LILLIAN MCPHERSON - - - - - *Defendant.*

BEFORE THE HONOURABLE }  
MR. JUSTICE TWEEDIE, }  
EDMONTON, ALBERTA. }

Tuesday the 28th day of July A.D. 1931

10

UPON APPLICATION made this day to the Court by the Plaintiff, and upon hearing counsel and it appearing that upon the 22nd day of April A.D. 1931 it was adjudged and decreed that the marriage had and solemnized on the 21st day of April, 1908, at Ashley Town, in the State of Illinois, one of the United States of America between the Plaintiff and the Defendant, be dissolved by reason that since the celebration thereof the said Defendant had been guilty of adultery, unless sufficient cause be shown to the Court why the said decree should not be made absolute within three months from the making thereof, and no such cause having been shown. 20

IT IS ADJUDGED AND DECREED that the said marriage be and the same is hereby absolutely dissolved.

AND IT IS FURTHER ADJUDGED AND DECREED that the Plaintiff do have custody of the children of the said marriage, namely:—

- Eugene Lorraine McPherson
- Coran Lyman McPherson
- Marian Moffet McPherson, and
- Donald Keith McPherson.

T. M. TWEEDIE

J.S.C.

30

ENTERED this 28th day  
of July A.D. 1931

R. P. WALLACE  
C.S.C.

(SEAL)



**Affidavit of Mayne Reid filed in Divorce Action.**

Exhibits  
and  
Documents.

IN THE SUPREME COURT OF ALBERTA.

JUDICIAL DISTRICT OF EDMONTON.

TRIAL DIVISION.

Affidavit of  
Mayne  
Reid  
filed in  
Divorce  
Action,  
28th July  
1931.

BETWEEN

ORAN LEO McPHERSON- - - - - *Plaintiff*

AND

CORA LILLIAN McPHERSON - - - - - *Defendant.*

I, Mayne Reid, of the City of Edmonton, in the Province of Alberta,  
10 Barrister at Law, MAKE OATH AND SAY :

THAT I did on Tuesday the 28th day of July A.D. 1931 search in the Office  
of the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton,  
and found that no Demand of Notice had been filed in this action, and no  
one had intervened in the said action, as appears by the record on file in  
the said Office.

SWORN before me at the }  
City of Edmonton, in the } MAYNE REID.  
Province of Alberta, this }  
28th day of July A.D. 1931 }

20 W. F. H. MASON,  
A Commissioner for Oaths.



Exhibits  
and  
Documents.

**Court Docket. Pages 508 and 509. (Including Divorce Action.)**

**Page 508.**

Court  
Docket,  
pages 508  
and 509  
(including  
Divorce  
Action).

Below is a copy of pages 508 and 509 of the Supreme Court Docket for 1931.

Before the Honourable Mr. Justice Ives, Friday, June 26th, 1931.

*Fred Witzka v. George Ruff and Teresa Ruff.*

L. Y. Cairns for the Plaintiff.

G. D. Noble for the Defendant.

(A list of exhibits and witnesses not noted here.)

Judgment for the Plaintiff as claimed. 10

Order Nisi and costs of action including examination for Discovery and excluding Rule 27.

22687 Before Mr. Justice Tweedie at Edmonton, June 26th, 1931.

*Mattern* R. P. Richards for the Plaintiff.

vs. Exhibit 1. Statement of Claim and Affidavits.

*Mattern.* Witness 1. Helen Irene Gorden Mattern.

Exhibit 2. Marriage Certificate.

Witness 2. Lawrence A. Hammick.

Exhibit 3. Hotel Register Sheet.

Decree Nisi granted (absolute in 3 months). 20

\$75·00 per month alimony.

Costs of action against defendant.

Thursday The Honourable Mr. Justice Boyle presiding.

July 2, 1931.

22321

An application for Decree Absolute.

P. G. Thompson for  
the Plaintiff.

Gwen Tupper  
Landison.

James Carr  
Landison.

Decree Absolute granted.

Mr. Ross for the  
the Defendant.

Thursday,  
July 14th  
1931.

The Honourable Mr. Justice Tweedie presided. 30

S.C. 22716

Mr. George O'Connor, Counsel for Plaintiff.

Esther Cecilia  
Stubbs.

(List of witnesses and exhibits.)

Arnold Clare  
Stubbs.

Decree Nisi to be made absolute in three months—custody of child—\$15·00 per month maintenance for child. 40

Divorce  
1120

undefended.

## Page 509.

Exhibits  
and  
Documents.July 28th  
1931.

His Lordship Justice Tweedie presided.

22420.

Oran L.  
McPherson  
and  
Cora L.

Declared sitting in open Court.

Application for Decree Absolute granted. (Mr. Reid.)

Court  
Docket,  
pages 508  
and 509  
(including  
Divorce  
Action)—  
*continued.*

10 McPherson.

Amelia Thompson  
and  
Clarence Thompson.  
July 28th, 1931.An Application for Decree Absolute. Mr. Miller.  
Granted when order to bring Motion is filed.  
Order for leave to proceed given.

## No. 8.

Letter Clerk of The Executive Council to G. H. Van Allen, K.C.

Edmonton, Alberta,  
November 18th, 1932.20 G. H. Van Allen, K.C.,  
Barrister, etc.,  
2, National Trust Building,  
Edmonton, Alberta.No. 8.  
Letter  
Clerk of  
The  
Executive  
Council to  
G. H. Van  
Allen, K.C.,  
18th  
November  
1932.

Dear Sir,

In compliance with your request, enclosed herewith are copies of orders in council 1537/24, 74/27 and 446/27 dealing with the appointment of King's Proctor. There are no special regulations, you will note that the order provides that the appointee shall exercise in the Province of Alberta powers and functions similar to those exercised in England in Divorce and Matrimonial Causes.

30

Yours truly,

JOHN D. HUNT,

Clerk of the Executive Council.

No. 2.—Photograph of Appellant. (Not printed.)

No. 2.

No. 5.—Plan of Second Floor of Provincial Court House, Edmonton. (*Separate Document.*)

No. 5.

In the Privy Council.

No. 25 of 1934.

*On Appeal from the Supreme Court of Alberta  
(Appellate Division).*

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BETWEEN

CORA LILLIAN McPHERSON  
*(Plaintiff) Appellant)*

AND

ORAN LEO McPHERSON  
*(Defendant) Respondent.*

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RECORD OF PROCEEDINGS.

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LAWRENCE JONES & CO.,  
Lloyd's Building,  
E.C.3.  
*For the Appellant.*

BLAKE & REDDEN,  
17, Victoria Street,  
S.W.1.  
*For the Respondent.*