

and the constitutional questions involved are ably discussed by Mr. Alfred B. Morine, K.C., in an annotation to the above case in the last number of the Dominion Law Reports as follows:—

#### I. THE QUESTION INVOLVED.

The trial Judge said:—"The main question involved in this case is whether the legislature of this province exceeded its power in enacting sec. 36 of the Marriage Act," and he was of opinion that it did. The Divisional Court, because of the interpretation it placed upon the Act as to the consequence of non-consent, did not expressly give judgment on the constitutional question thus raised by the trial Judge. But, inasmuch as it did not express any doubt as to the constitutionality of the section, and asserted jurisdiction under the Judicature Act, it impliedly did not agree with the trial Judge's opinion. Meredith, C.J.O., expressed the opinion that, apart from authority (*Marriage* case, 7 D.L.R. 629), sec. 15 of the Marriage Act, requiring consent to the marriage of minors, being in the nature of a restriction upon personal capacity to contract marriage, might be *ultra vires* the legislature, upon the ground, apparently, that status or capacity is part of the "Marriage and Divorce" jurisdiction of Parliament (sub-sec. 16, sec. 91, B.N.A. Act 1867). As a decision on this point was expressly avoided, the opinion of the Chief Justice may be treated as personal. The implication to be drawn from the judgment of the Divisional Court seems, therefore, to be, that the legislature can confer jurisdiction to make a decree of nullity, and inasmuch as the other Judges expressed a general consent to the judgment of Meredith, C.J.O., it is fair to assume that they individually also hold the view that sec. 15 of the Marriage Act is *ultra vires* the legislature.

#### II. THE POWER TO CONFER JURISDICTION.

In cases regarding nullity decided before *Peppiatt v. Peppiatt*, a distinction does not appear to have been made between jurisdiction to hear and determine actions for declaration of nullity, and the grounds upon which jurisdiction, if any existed, should be exercised; or between the power of legislatures to confer jurisdiction to hear and determine actions, and to enact laws affecting the validity of marriages. "Jurisdiction is a dignity which a man hath by power to do justice in causes of complaint made before him" (*Termes de la Ley*). In the exercise of that dignity he does justice according to the law applicable to the complaint. It is submitted that provincial legislatures may confer jurisdiction upon Courts to hear matters within the exclusive legislative jurisdiction of Parliament:—

"The constitution of provincial Courts includes the power to determine the jurisdiction of the Court, and places that jurisdiction beyond the control of the Dominion Parliament." Per Meredith, C.J. (Quebec), *Valin v. Langlois*, 5 Q.L.R. 1.

"The jurisdiction of Parliament to legislate as regards the jurisdiction of the provincial Courts is, I consider, excluded by sub-sec. 14, sec. 92, B.N.A. Act, inasmuch as the constitution, maintenance and organization of provincial Courts plainly includes the power to define the jurisdiction of such