

Correspondence

MATRIMONIAL JURISDICTION.

The Editor, CANADA LAW JOURNAL, TORONTO:

DEAR SIR,—Under the above title you argue for your previous declaration of opinion that no Court in Ontario has jurisdiction to declare the nullity of a void marriage.

In support you say:—

(a) A de facto marriage can only be annulled by judicial sentence of a Court with matrimonial jurisdiction.

(b) Many marriages liable to sentence of nullity become unimpeachable by efflux of time.

(c) You cite *Hodgins v. McNeil*, 9 Grant 305, and *Reid v. Aull*, 32 O.L.R. 68, as supporting your contention.

(d) Finally, you say that declaratory judgments must be confined to matters within the jurisdiction of the Court which makes them.

To these points I would like to reply:—

(a) A void marriage cannot be "annulled" by any Court anywhere; it never existed (*Eversley* p. 60). The decree even of a matrimonial Court says: "is null and void," not "shall be." "A void marriage has no effect at law; a decree of nullity is not necessary." 16 Halsbury 499. The children of a void marriage are bastards, and no time legitimizes them. For instance, if H. marries a woman, and she marry again, H. living, the last marriage is void, without divorce: *Bath v. Montague*, 1 Salkeld 120. See also *Riddlesden v. Wogan*, Cro. Eliz. 858.

(b) *Hodgins v. McNeil* and *Reid v. Aull* refer to voidable—not to void—marriages. The judgment of Middleton, J., in the latter case is undoubtedly expressed broadly enough—in reference to declaratory judgments—to cover void marriages, but such a marriage was not at issue. But in *Peppiatt v. Peppiatt*, 30 D.L.R., the Appellate Division said that the Supreme Court had jurisdiction, under the Judicature Act, thus impliedly over-ruling *Reid v. Aull*.

(c) This, I admit; but point out that you argue in a circle. The question is, what jurisdiction does the Supreme Court of Ontario possess? Undoubtedly in a suit for dower, for instance, it has jurisdiction to say that the parties are not married, and the real question is, if it can so declare in a suit where consequential relief is sought may it not legally do so under sec. 16 b. of the Judicature Act, 1914, where a merely declaratory judgment is asked? With regard to void marriages, I maintain that it can.

Yours truly, ALFRED B. MORINE.

[It seems useless to pursue this matter further. If the Appellate Division, or our correspondent, could point to any statute