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MARRIAGE LAWS OF THE DOMINION.

VOID AND VOIDABLE MARRIAGES—CONSTITUTIONAL LAW—POWERS OF PROVINCIAL COURTS.

A recent case (*Peppiatt* v. *Peppiatt*, 30 D.L.R. 1), decided by the Appellate Division of the Supreme Court of Ontario, brings again to the notice of the profession the unsatisfactory condition of the marriage laws of this Dominion.

In the case above referred to the plaintiff alleged that she, being then under 18 years of age, went through a form of marriage to the defendant in January, 1913, without the consent required by the Marriage Act, R.S.O. 1914, ch. 148, and that the parties had not cohabited and lived together after the ceremony. The trial Judge refused to make any findings on the facts, but as no defence had been filed, and the defendant did not appear, the argument on the appeal proceeded as if the facts were as alleged.

The trial Judge was of opinion that neither inherently, nor by the Judicature Act, nor yet by the Marriage Act, has the Supreme Court of Ontario power to avoid or annul a marriage, or to declare it avoidable or annullable, and that sec. 36 of the Marriage Act is *ultra vires* the Ontario Legislature; but as Boyd, C., has expressed a contrary opinion in *Lawless* v. *Chamberlain*, 18 O.R. 296, he held that he was precluded from giving effect to his opinion and so referred the case.

The conclusion reached by the appellate judges was that the Judicature Act conferred jurisdiction to declare the invalidity of invalid marriages, and that sec. 36 of the Marriage Act was, therefore, unnecessary for that purpose, but gave no reasons for this opinion, and the action was dismissed on the ground that the Marriage Act did not make consent essential to the validity of the marriage of minors.

This judgment and the subject of void and voidable marriages