

Court has no power to dissolve a marriage for impotence. We have," he said, "no judicature authorised to determine by a substantive and effectual sentence that marriages are legal or illegal." In *P. v. P.* (1831), 2 Paige Ch. 501, Chancellor Walworth held that by virtue of a local statute he had power to grant a divorce *a mensa et thoro*, and, in referring to the decisions of Kent and Sanford, he pointed out, that, while they had asserted jurisdiction as to marriages void *ab initio*, Sanford, C., had denied it as to voidable marriages, which distinction he approved. As to marriages void *ab initio*, Chancellor Walworth said:—"That part of the common law of England which rendered a marriage void . . . was undoubtedly brought to this colony, and formed part of the common law of this country. . . . When the rights of the parties existed independently of any peculiar remedies which were entrusted to the exclusive cognizance of a particular Court, it was competent for the Superior Courts of the colony to administer such relief as was consistent with their ordinary forms of proceedings in other cases. . . . As the right to dissolve a marriage merely voidable could only be exercised by the aid of the Ecclesiastical Courts in England, and no such Court was ever organized here . . . it may reasonably be presumed that the right did not exist. Such a jurisdiction cannot now be exercised here by any Court without the direct or implied sanction of the legislature."

If, therefore, the marriage in *Lawless v. Chamberlain* was voidable only, not void *ab initio*, the American cases cited by Boyd, C., were really opposed to his decision, which gives point to our suggestion that he treated the marriage as void, not voidable.

VIII. JURISDICTION UNDER JUDICATURE ACT.

There has been much discussion upon the question whether that section which is now 16 (b) of the Judicature Act, 1914, confers jurisdiction to declare the nullity of marriage ceremonies. The majority of the Judges who have discussed the matter say "No," but the Divisional Court apparently said "Yes" in *Peppiatt v. Peppiatt*. The section is as follows:—

"No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not."

In *Reid v. Aull* (1914), 32 O.L.R. 68, a declaration of nullity was sought on the ground that the marriage ceremony had been procured by fraud, and was performed while the plaintiff was under the influence of intoxicating drink. Middleton, J., dismissed the action, on the intervention of the Attorney-General, on the ground that the Court had no jurisdiction. He held that the opinion expressed by Boyd, C., in *L. v. C.*, had been overruled by a Divisional Court in *May v. May*, 22 O.L.R. 559, but examined the subject independently, and came to the conclusion that no part of the jurisdiction exercised by Ecclesiastical Courts in England had been given in any way to the Supreme Court here. He made no distinction between void and voidable marriages, and, as to sec. 16 (b) of the Judicature Act, said that "the power to make declaratory decrees is not to be exercised in respect of matters over which the Court has no general jurisdiction," citing *Barroclough*