

Fraud is a good ground for having a marriage set aside, especially if the person defrauded is an infant. In the case of adults the fraud perpetrated must be in respect of the essentials and not mere accidentals of the marriage. If the fraud is the fraud of third parties relief will not be granted.

Duress or force may be either corporeal or mental. In either case a marriage brought about by these means may be set aside. The amount of coercion required to be proved varies with the strength of the person affected. Fear of harm happening to the party coerced or to some third person must be established.

The provisions of the Civil Code of Quebec are the same as the common law in this respect, but after six months' cohabitation, and after having acquired full liberty or become aware of the error, the person coerced or in error, as the case may be, cannot have the marriage annulled.⁴⁷

(3) *Relationship within the prohibited degrees.*—Consanguinity is the relationship of parties who are descended from the same ancestor, and is either in the direct or collateral line. In the direct line of ancestors and descendants, marriage is absolutely unlawful, however remote the relationship may be. In the collateral lines all beyond the third degree according to the civil law computation may contract valid marriages. Thus, first cousins may intermarry. Affinity is the relationship which arises from marriage, and is an impediment to the same extent as consanguinity, with the exception that Dominion legislation has permitted marriage between a man and his deceased wife's sister or niece.

In England since Lord Lyndhurst's Act (1835) all marriages between persons within the prohibited degrees of consanguinity and affinity are "absolutely null and void to all intents and purposes whatsoever."⁴⁸ But Lord Lyndhurst's Act has been held not to be applicable in Canada, and Canadian marriages within the prohibited degrees are therefore merely voidable as such marriages were in England before 1835, not "absolutely null and void."

47. Civil Code of Quebec, Arts. 148 & 149

48. Imp. Stat., 5 & 6 Wm. IV. ch. 54.