

(2) *Insanity* is a bar to marriage on the ground that without reason there can be no consent. Mere weakness of understanding is not enough. It is necessary that the insanity should have existed at the time of the alleged marriage. A valid marriage may be entered into in a lucid interval, provided the individual has not previously been found a lunatic by commission.

Drunkenness at the time of the marriage may or may not be a ground for nullity, depending upon the circumstances of each case.

(3) *Existing previous marriage*.—If there is an existing valid marriage on the part of either of the spouses, the subsequent marriage is bigamous and void and the offending party is liable to the penalty provided by the Criminal Code.

3. CIRCUMSTANCES RENDERING THE MARRIAGE VOIDABLE.

(1) *Impotence*.—At common law capacity for consummating marriage is implied in the marriage contract, and its absence renders a marriage voidable. A suit for nullity on this ground, however, must be brought within a reasonable time and during the lifetime of the parties. Neither party may set up his or her impotency for the purpose of dissolving the marriage.⁴⁵

In the Province of Quebec such an action must be brought within three years of the marriage.⁴⁶

(2) *Consent, error, fraud or duress*.—According to the common law the will or free consent of the parties is the very essence of the contract. If, therefore, a marriage is entered into when the parties or one of them is acting in error or is subject to fraud or duress, the marriage may be set aside by this party.

Error may be as to person, condition, fortune or quality according to the common law. If a party is tricked into marrying the wrong person, this is a ground for having the marriage set aside. The other three kinds of error—as to condition, *i.e.*, whether slave or free; as to fortune—whether rich or poor; and as to quality, whether a virgin or not, or of noble birth or not—are now of no avail.

45. *Norton v. Seton* (1819) 3 Phillimore's Reports, p. 147.

46. Civil Code of Quebec, Art. 117.