

vided for by this section where carnal intercourse has taken place between the parties before the ceremony."

Surely it is impossible to escape the conclusion from these words, that where no such intercourse had occurred, the Supreme Court "is bound to grant the relief provided for"? The suggestion, for the Attorney-General, that sec. 36 clothes the Court with a merely discretionary power can hardly be acceded to. Within the defined circumstances, an obligation, not a discretion, is imposed upon the Court. Where an Act says that a Court "may" do a certain thing for the general benefit, or for a class of persons specifically pointed out, "words of permission are obligatory" (*Russell v. Russell*, [1895] P. 315; *Rex v. Haverling*, 5 B. & Ald. 691), and "the power ought to be exercised" (*Julius v. Oxford*), 5 App. Cas. 214).

XIV. MARRIAGES ARE NOT VOID.

Finally, we suggest that marriages of minors in violation of sec. 15 of the Marriage Act are not void, that is to say, are not invalid as, of course, as in the case of persons legally disqualified; but those which fall within the limitations set forth in sec. 36 are voidable within three years, or before the death of one of the parties within that period, or if legal proceedings have been taken during that period to question the marriage.

They are not void because (1) the Act does not expressly make them so; (2) they cannot be questioned after a limited time; (3) they cannot be declared null if the parties have had carnal intercourse before or cohabitation after the ceremony; (4) they can only be questioned by one of the parties. A limited portion of them are voidable because (1) with regard to them the Supreme Court is bound to declare that they were not effected or entered into if they are questioned by one of the parties to them within the prescribed period; and (2) because until the Supreme Court has made such a declaration they are good to all intents and purposes. The second proviso to sec. 35, which provides that nothing shall make "valid" an otherwise invalid marriage if either of the parties have "contracted marriage according to law" within the time limited for questioning marriages, seems to imply that marriages in violation of the Marriage Act are invalid, but probably the correct interpretation of the proviso is, that the period of limitation prescribed for questioning marriages does not apply if either party has "contracted matrimony according to law" within it. In a declaration under sec. 36, the Supreme Court would probably declare the marriage void *ab initio*, as Ecclesiastical Courts in England do in reference to voidable marriages. If it be the right view that the Supreme Court has no jurisdiction inherently or under sec. 16 (b) of the Judicature Act to hear and determine as to voidable marriages, it follows that sec. 36 of the Marriage Act confers the only jurisdiction the Court possesses to deal with violations of sec. 15, such as *Peppiatt v. Peppiatt* presented. That may be the answer to the remark of Meredith, C.J.O., that the Court had under the Judicature Act the jurisdiction conferred by the Marriage Act, if the latter rendered invalid the marriages defined by sec. 36. Under the Judicature Act the Supreme Court may have power as to void ceremonies, and under the Marriage Act as to ceremonies voidable under the Act.