

make declaratory decrees conferred by the Legislature is not to be exercised in respect of matters over which the Court has no general jurisdiction."

Where there is insanity—not merely mental deficiency—or drunkenness, there can obviously be no consent to the contract—*A. v. B.* (1911), 23 O.L.R. 261, and *Roblin v. Roblin* (1881), 28 Gr. 439.

Another capacity essential to the marriage contract is the capacity for the consummation of the marriage, the lack of which is known as impotency and is ground for a declaration of the nullity. It must exist unknown at the time of the marriage; physical incapacity arising subsequently is no ground, as the parties have taken each other subject to all the vicissitudes of life which may arise, but on the belief that all is correct at the start. Moreover, in cases of subsequent impotency, the marriage would already have been consummated. The impotency must be incurable—i.e., the contract must be incapable of completion. Usually it will be apparent to medical authorities; but in some cases, it cannot be detected by them; the practice in such cases is to recognise the claim after the lapse of 3 years. In England the practice has been that the fit party must be the petitioner; but in some cases this rule has not been followed, as where the unfitness was not known to the deficient party. In Quebec, the marriage can be annulled for impotency, natural or accidental, existing at the time of the marriage, but only if it be apparent and manifest; the jurisdiction can be invoked only by the party who has contracted the marriage with the impotent person, and only before 3 years have elapsed. According to Bishop, there were in England between 1858 and 1872, 15 reported cases.

4. Legality. In England since Lord Lyndhurst's Act in 1835, (Imp.) ch. 54, marriages within the degrees prohibited by 1537 (Imp.) ch. 7, sec. 7, are void *ab initio* and not merely voidable. The Acts of 1835 however do not apply to many of the Provinces of Canada, and therefore in these Provinces such marriages are merely voidable. In *Cox v. Cox* (1918), 40 D.L.R. 195, 13 Alta. L.R. 285, to take only one case, the Court of Alberta made a declaration of nullity in connection with a bigamous marriage.

Very similar to a nullity suit is a jactitation suit. It is available to the man or to the woman. The former may complain that the latter has improperly boasted of being his wife