voidable and not void. In this case the marriage relation existed de jure from the outset, on the ground that "consensus non concubitus facit nuptias." The marriage is valid in the eye of the law, though there has been no consummation. The injured party may, upon proof before a proper tribunal, obtain a judgment declaring it to be a nullity, but till then it is merely voidable, even if the alleged impotence really exists; it is not void ab initio: Turner v. Thompson, 13 P. D. at p. 41.

The ratio decidendi in Lawless v. Chamberlain has been, I think, legislatively recognized in the late statute passed in Ontario of this year, 7 Edw. VII. ch. 23, sec. 8, providing for cases of infancy where the marriage has been merely a form, and there has been no cohabitation. See also a late American case in equity where the Court adjudicated in case where the alleged marriage was no marriage: Rosney v. Rosney, 54 N. J. Eq. 231.

Jurisdiction in cases of nullity and other matrimonial difficulties is given by the old statute law in Quebec: Gemmill on Divorce, p. 43; but no such legislation enables the Courts of this province to hold suit in cases where the marriage status is involved, and the litigation is really in rem, dissolving the existing marital union. The only forum open to aggrieved spouses is the High Court of the Dominion Parliament, to which body the right appertains: White's Case, referred to in detail in Gemmill, at pp. 111 and 191.

The plaintiff has no right of action in this Court, and his action should be dismissed with costs as between solicitor and client.

---

MABEE, J. DECEMBER 10TH, 1907.

TRIAL.

## STUART v. BANK OF MONTREAL.

*Husband and Wife—Guaranty by Wife of Advances to Husband from Bank — Absence of Independent Advice — Settlement with Bank—Property of Wife Handed over to Bank—Action for Rescission and Return of Property —No Fraud or Misrepresentation — Consideration—Estoppel—Release.*

Action to rescind many transactions entered into by the plaintiff, a married woman, with the defendants, upon the