

SECOND DIVISIONAL COURT.

MARCH 26TH, 1920.

RANGER v. RANGER.

*Marriage—Bigamous Marriage—Action for Declaration of Nullity—
Jurisdiction of Supreme Court of Ontario—Marriage Act,
R.S.O. 1914 ch. 148, secs. 36, 37.*

Appeal by the plaintiff from the judgment of MIDDLETON, J., dismissing the action.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

T. F. Slattery, for the appellant.

A. C. Heighington, for the defendant, respondent.

MULOCK, C.J.Ex., reading the judgment of the Court, said that the action was brought for a declaration that the marriage solemnised between the parties was illegal, null, and void ab initio, and should be set aside.

The plaintiff alleged that on the 28th October, 1916, he and the defendant were married, and that he had since been informed, as the fact was, that the defendant was the lawful wife of John Mitchell, who was living at the date mentioned.

The action was dismissed in the absence of the plaintiff and his counsel; an application was made to MIDDLETON, J., to vacate the judgment; but he refused to do so.

The learned Chief Justice said that, if the plaintiff had no cause of action, no useful purpose would be served by sending the case back for trial; and, therefore, it was proper for the Court to determine whether or not the Court had jurisdiction to grant the relief asked.

The Marriage Act, R.S.O. 1914 ch 148, secs. 36 and 37, and amendments, purport to confer jurisdiction on the Supreme Court of Ontario to declare certain marriages invalid. Only so far as thus empowered has the Court jurisdiction to declare a marriage invalid. Even if the Legislature has power to do so, it has not seen fit to give or to purport to give to the Court jurisdiction to declare a bigamous marriage invalid. Therefore, the Court is powerless to grant the relief asked. It is unnecessary to express an opinion as to whether any of the provisions of the Act or amending Acts are or are not ultra vires.

The appeal should be dismissed with costs.

This disposition of the case does not interfere in any way with the plaintiff's right to proceed to have the defendant restrained from harassing him.

Appeal dismissed.