

that the facts proved did not justify the decree sought; hence what was said with reference to the jurisdiction of the Court has sometimes been regarded as dictum only. Other cases (e.g., *May v. May*, 22 O.L.R. 559) have, it seems to me, determined that our Courts have not the jurisdiction suggested; and I have, therefore, thought it right that I should investigate the matter independently rather than deal with the case solely in reliance upon the cases in our own Courts cited.

It is to be borne in mind that there is a fundamental distinction between the granting of a divorce and the relief here sought. This distinction is very clearly brought out in an article in 26 *Harvard Law Review*, p. 252. Divorce assumes the previous existence of the marriage status. Its result is to put an end to that status without affecting its existence in the past. The allegation here is that there never was in truth a marriage, and what is sought is a judicial declaration to that effect. It is not in this action sought in any way to affect the status of the plaintiff. She simply seeks to have her status declared.

The view entertained in *Lawless v. Chamberlain*, and pressed by Mr. Watson, is that our Court has no jurisdiction to grant such a decree. The distinction was recognised by the Chancellor in the case of *T—— v. B——*, 15 O.L.R. 224. . . .

The jurisdiction of the High Court is found by reference to the Judicature Act as contained in R.S.O. 1897 ch. 51. By sec. 25, the Court is in the first place given such powers and authorities as by the law of England are incident to a superior court of civil and criminal jurisdiction, and is given specifically the rights and privileges exercised by the Superior Courts of Common Law at Westminster on the 5th December, 1859.

By sec. 26, the Court is also given the like jurisdiction and powers as by the laws of England were on the 4th March, 1837, possessed by the Court of Chancery in respect of certain enumerated matters, including, *inter alia*, all cases of fraud and accident, and all matters relating to . . . dower, infants, idiots, lunatics, and their estates. None of the other enumerated matters have any bearing upon the matter now under consideration.

By sec. 28, the Court is given jurisdiction as a Court of Equity to administer justice where there is no adequate remedy at law; and by sec. 34 jurisdiction is conferred in actions for alimony.

In England the question is free from doubt or difficulty, as by the statute relating to divorce and matrimonial causes, 21 &