

The qualifications required by the law to enable a man and woman to enter into the contract of marriage may be classified as positive and negative.<sup>42</sup> The former are the essential requirements without which no marriage can exist; if these are not complied with the marriage is *ipso facto* void. The latter are restrictions, the breach of which does not render the marriage void, but (a) may render it voidable or (b) may subject the offending parties to penalties.

A void marriage is good for no legal purpose. Its validity may be attacked by any one at any time and the invalidity subsists without the judgment of any Court. Such, for instance, would be a marriage where either party had contracted a previous and still existing marriage, or where either party is under fourteen or an idiot. A voidable marriage, on the other hand, is one in the constitution of which an imperfection exists which can only be inquired into during the lifetime of the parties in proceedings by one of them to have it declared void. If such a marriage is not attacked by one of the parties whilst the other is still alive, it is as good as any other, and it cannot be attacked collaterally either during the lifetime of the parties or afterwards. Circumstances which would give ground for such proceedings in the provinces having Courts with jurisdiction to entertain them are impotency, error, fraud, duress, or the want of the consent of parents.

## 2. CIRCUMSTANCES RENDERING THE MARRIAGE VOID.

(1) *The legal age of marriage.*—According to the civil law a valid marriage could not be contracted by a man under the age of fourteen or by a woman under the age of twelve years unless to prevent illegitimacy. This provision was adopted by the English common law and remains the law of all the provinces of Canada except Ontario, where the age is fourteen for both men and women,<sup>43</sup> and Manitoba, where it is sixteen.<sup>44</sup>

42. *Ib.* at p. 76.

43. R.S.O. (1914) ch. 148, sec. 16.

44. Statutes of Manitoba (1906), 5 & 6 Edw. VII. ch. 41, sec. 16.