

go there. The trial judge said at p. 123: "This is another of those cases which, though of infrequent occurrence in this Province, invariably, indeed necessarily, direct attention to the uncertain and unsatisfactory state of the marriage and divorce laws of Canada whenever they do occur; uncertainty and unsatisfactory not only in the conflicting and indecisive character of the case-law upon the subjects, but equally so of the statute-law; and so it has been for many years, notwithstanding the fact that it is a thing regarding which it is of the utmost importance, not only to the persons directly concerned, but to the public as well, that there should be certainty and certainty of a satisfactory character . . . How can it be but unsatisfactory for man and woman to be uncertain whether they are really husband and wife; whether they are lawfully married to one another; as well as whether any of the ordinary Courts of law have any power to settle the question The cases are very much opposed to one another; or rather, the expressions of judicial opinion in them are; and they are less helpful as none of them was ever carried to a court of appeal."

With the desirability of a clear decision so definitely set out by the trial Judge, it is to be regretted that the reasons for the decision of the Appellate Division are not more clearly set out than they are. The Appellate Division felt themselves bound by the decision of the Privy Council in *Re Marriage Law of Canada*, 7 D.L.R. 629, [1912] A. C. 880, which held that everything which is included in the solemnisation of marriage is excepted from the exclusive jurisdiction vested in the Parliament of Canada by sec. 91 (26) of the B.N.A. Act, and that this enables the Provincial Legislature to enact conditions as to solemnisation which may affect the validity of the contract. They then considered the question of whether the Marriage Act makes the consent required by its 15th section a condition precedent to a valid marriage. The action was dismissed, it being held that the consent required by the Marriage Act was not a condition precedent to the formation of a valid marriage but merely a direction to the issuer of marriage licenses. The question of the validity of sec. 36 was not decided. Jurisdiction was held to be conferred by sec. 16 (B) of the Judicature Act. This decision appears to have found jurisdiction elsewhere than was found in *Lawless v. Chamberlain* (1889), 18 O.R. 296, and to have overruled *Reid v. Aull* (1914), 19 D.L.R. 309, 32 O.L.R. 68, where Middleton J. said, at p. 78: " . . . The power to