

BOYD, C.:—The question of jurisdiction was raised in regard to the power of the Court to entertain an action by the husband to have his marriage declared null and void by reason of the alleged incapacity and impotence of the wife, who is the defendant. The ceremony of marriage was in September, 1906, and the action is brought in November, 1907, and, according to the plaintiff's statement of claim, the parties have "lived together as man and wife," though without consummation. The defendant denies this last allegation, and affirms the fact of sexual intercourse having existed for a time, though discontinued from physical causes in the husband. The parties were of the ages of 35 and 22 when they were married. This case is now brought before me on the sole point in law as to the jurisdiction of the Court. It is a novel attempt to enlarge the jurisdiction in a case where the parties are of age, competent to contract, and have contracted to enter into the relationship of husband and wife, and have lived in marital companionship for over a year.

In 1868 Sir J. P. Wilde said: "It may be safely asserted that the question of impotency as a ground of nullity, has never yet been raised in the temporal courts of this country. . . . A suit for the purpose of obtaining a definitive decree declaring a marriage void which should be universally binding, and which should ascertain and determine the status of the parties once for all, has, from all time up to the present, been maintainable in the ecclesiastical courts or in the Divorce Court alone:" *A. v. B.*, L. R. 1 P. & D. 559, 561. In cases of nullity the marriage status exists down to the time that the decree dissolving or annulling the marriage is made absolute: *Foden v. Foden*, [1894] P. 307.

*Lawless v. Chamberlain*, 18 O. R. 297, was a very different case from this. There both parties were under age, the ground of complaint was that the consent had been procured by duress and intimidation, and that there had been no coming together of the parties afterwards either in domestic or marital relations. The circumstances, if proved, were such as to shew that the alleged marriage was void *ab initio*, and that the ceremony performed was a mere unmeaning form.

Here the marriage has been validly solemnized and matrimonial relations established for many months, and the fact of alleged "impotence" would only render the relation