

merits. Boyd C. said, at p. 297: " . . . If the alleged marriage has been procured by fraud or duress in such wise that it is *void ab initio*, judgment of nullity may be given by the Court." Mr. Holmsted, in his book *Matrimonial Jurisdiction in Ontario and Quebec* questions at some length the soundness of the reasons given for the judgment. The next case of importance was *T. v. B.*, (1907), 15 O.L.R. 224, where the same Judge decided that the Court had not jurisdiction, drawing a fine and rather doubtful distinction between the two cases. In *May v. May*, (1909), 22 O.L.R. 559, an attempt was made to obtain a declaration of nullity on grounds of consanguinity; the trial Judge held himself bound by *Lawless v. Chamberlain* in regard to jurisdiction, but on appeal this was overruled. In *A. v. B.*, 23 O.L.R. 231, it was also held that the Courts did not have jurisdiction. Clute J., here pointed out that the power to make a declaratory judgment did not enable the Court to do so in cases in which it had no jurisdiction over the subject matter in controversy. There is certainly no inherent jurisdiction over the question of annulment; when Upper Canada was given self government it was given power to establish Courts and confer on them jurisdiction; this jurisdiction it proceeded to define by reference to the Common Law and Chancery Courts in England, none of which at the dates referred to had jurisdiction over the subject in question, this then being in the hands of the Ecclesiastical Courts. Middleton J., took the same view in the *Reid v. Aull*, 19 D.L.R. 309, 32 O.L.R. 68; but in *Peppiatt v. Peppiatt*, 30 D.L.R. 1, 36 O.L.R. 427, the Appellate Division overruled all these cases, and decided that under the power to make declaratory judgments, R.S.O., ch. 56, sec. 16 (b), the Court had jurisdiction. This last decision will hold until it is overruled by a higher Court, but that it is sound law appears to be most doubtful, as if the theory were pressed to its logical conclusions there would be few if any parts of the field of purely Dominion matters which the Provinces could not invade. It would appear that the Court in a recognition of what was desirable as distinct from what existed had pushed a technicality to its limit, if not beyond.

In Quebec, under the French regime, marriage was under the jurisdiction of the French Ecclesiastical Courts; but with the conquest, these Courts, as did all other Church Courts, ceased to have any official status; and such jurisdiction was not conferred on any new Court. True, the Code Civil (ch. 4) en-