

ling, for any cause, a contract of marriage which was originally valid, ever having been conferred upon any of the courts of justice, it follows, that a divorce can only be granted by an act of the General Assembly.(n) But all questions concerning alimony, even under the provincial government, were considered as having devolved upon the Court of Chancery. It was however provided,(o) that the general court should have power, on an indictment or by petition of either party, to inquire into the *validity* of any marriage, and might declare any marriage, contrary to the marriage act, or any second marriage, the first subsisting, null and void. This law, as it would seem, may now, since the abolition of the general court, on proper application, be executed by a county court. This court has been clothed with no such authority to determine the validity of a contract of marriage; but, by virtue of its general jurisdiction in matters of fraud affecting contracts, it would seem, that, considering marriage as a mere civil contract, it may, at the instance of either party, declare a marriage to be null and void, which has been procured by abduction, terror and fraud.(p)

In England, the validity of a marriage which is not absolutely *void* but merely *voidable*, can only be drawn in question and determined, in a suit instituted for that purpose, in the ecclesiastical court. But, as by the death of the husband, or the wife, the marriage is at an end, so any then depending suit, which may have been instituted during their lives for that purpose, is thereby immediately abated, and cannot be, in any way, revived or further prosecuted; nor can any other judicial proceeding be thereafter instituted, in the ecclesiastical courts or elsewhere, for the purpose of declaring a marriage, which has been thus terminated by the death of either party, to have been null and void, for the purpose of bastardizing the issue of such marriage, or barring the husband of his courtesy, or the widow of her dower; nor can any one, by any judicial proceeding be bastardized after his death, who had carried the reputation of legitimate during his life; because wrongs, and personal defects die with the individual; and the peace of families and the nature of the testimony by which alone pedigrees are capable of being traced, in cases where a party makes title by

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(n) *Utterson v. Tewsh*, Fergusson's Rep. 23; *Mrs. Levett's Case*, Ferg. Rep. appen. note G. 382.—(o) February 1777, ch. 12, s. 15.—(p) *Portsmouth v. Portsmouth*, 1 Hag. Rep. 355; *In matter of Fust*, 1 Cox. 418; *Ex parte Turing*, 1 Ves. & Bea. 140; *Ferlat v. Gojon*, 1 Hopk. 473.