

Where a marriage is voidable (as opposed to void ab initio), the court will refuse a decree of nullity if one of three "bars" exists.

A petition is barred by s.13(1) of the Matrimonial Causes Act 1973 if the respondent can show that the petitioner, knowing the marriage to be voidable, behaved in such a way as to make the respondent think he would not petition for an annulment, and that it would now be unjust to the respondent to grant the annulment sought.

A petition based on lack of consent, mental illness, venereal disease, or W's pregnancy by another man is barred by s.13(2) if brought more than three years after the marriage, subject to the court's discretion to extend this period where the petitioner has been under a mental disability during that time.

A petition based on venereal disease or W's pregnancy by another man is barred by s.13(3) unless the petitioner can show that he was ignorant of the relevant facts at the time of the marriage.

Scott v Scott [1959] 1 All ER 531, Sachs J

H and W married in their 40s, and W gave up a well-paid job with pension rights. Before the marriage W said she did not want sexual intercourse, and H replied that while he hoped she would change her mind, it would not matter if she did not. Several times within the first two years of the marriage H tried to persuade W to agree to intercourse, but after being rebuffed each time he stopped trying. After six years H (who was now seeing another woman) sought an annulment for wilful refusal to consummate, but the judge refused. H's acceptance of the situation, knowing that W's refusal could be grounds for annulment, barred his petition.

Morgan v Morgan [1959] 1 All ER 539, Latey QC

A bachelor H (aged 67) and a divorcee W (aged 54) became friends, and four years later they married on a "companionship only" basis. The marriage was never consummated; in fact H was impotent without knowing it. H subsequently petitioned for nullity, but his petition was denied: in view of the parties' age and the agreement, it would be contrary to justice and public policy to allow H to rely on his own impotence. Moreover, any mental reservations could not nullify a formally valid marriage. (See also Brodie v Brodie above.)

D v D (nullity) [1979] 3 All ER 337, Dunn J

H and W were married, but the marriage was never consummated because W had a physical impediment to consummation and refused to undergo surgery to correct it. Ten years later, after the couple had adopted two children, H left to live with another woman and petitioned for nullity on the grounds of inability or refusal to consummate. W withdrew her objections before trial, but the judge considered whether the petition was barred by H's acceptance of the situation. Allowing the petition, he said approbation alone was no longer enough: the statutory bar required both the petitioner's conduct and injustice to the respondent. In the instant case, there the respondent made no objection and so clearly would not suffer injustice if the decree were granted.