

at the time of the marriage or pretended marriage, *e.g.*, the physical incapacity of either party; the kinship of the parties within the "prohibited degrees," as it is called, or some other fact rendering the marriage void, or voidable *ab initio*. A divorce on the other hand is the legal dissolution of a valid marriage.

Nullity of Marriage.

The existence of the causes above mentioned do not *ipso facto* annul a *de facto* marriage. There must be a judicial sentence, and if such judicial sentence is not obtained during the lifetime of the parties, the marriage remains valid for all legal purposes and the issue thereof, if any, is held to be legitimate: see *Hodgins v. McNeil*, 9 Gr. 305.* In England under the Imperial Statute 5-6 W. 4, c. 54, s. 2, all marriages within the prohibited degrees of consanguinity or affinity are absolutely null and void; and that appears to have been also the Roman law: see *Inst. Lib. i. Tit. x. 12*; and it is worth consideration whether that should not also be made the law of Canada.

Divorce.

Prior to the Reformation marriages between competent parties were held to be indissoluble. The spiritual courts for certain specific causes were accustomed to grant a modified form of divorce, which, however, merely amounted to what is now termed a judicial separation form bed and board. It gave neither party a right to re-marry during the lifetime of the divorced spouse. This was called a divorce *à mensâ et thoro*. But an absolute divorce *à vinculo matrimonii* was not

* And see *Re Murray Carrol*, 6 Ont. 685; *Kidd v. Harris*, 3 O.L.R., 60.