

proceeding for a declaration of the invalidity of the marriage contract. The first assumes what the second denies, namely, the existence of the marriage status. The distinction is especially important in the Province of Quebec, and from the point of view of the Roman Catholic Church, which sets its face steadily against divorce, but tolerates and is sometimes said to encourage proceedings for a judicial declaration. Thus the Church has frequently countenanced suits to annul marriage where, the parties or one of them being a Roman Catholic, the ceremony was not performed by a priest of the Roman Church.

As a general rule, throughout the Dominion, the Court or tribunal which has authority to decide questions relating to divorce has also jurisdiction to declare a marriage to be null—and no other. Notwithstanding its undoubted power to declare a marriage to be void, the Dominion Parliament discourages applications of this nature, and has only exercised its authority in this respect on two or three occasions.

In England, prior to 1858, Parliamentary divorce was the only available method of obtaining the dissolution of the marriage bond. The Ecclesiastical Courts could only give relief by separation. To bring divorce within the reach of others than the wealthy classes, a Court of Divorce and Matrimonial Causes was established in 1858. Later, by the Judicature Act, the jurisdiction of this Court was vested in the High Court of Justice, and administered by the Probate and Divorce Division. The jurisdiction of this Court includes (1) the dissolution of marriage, (2) the right to decide upon the nullity of marriage, (3) judicial separation, (4) the restitution of conjugal rights, (5) alimony, and (6) the custody of children.⁷¹

According to the statute law of England, a divorce can be granted for (1) the adultery of the wife, or (2), in the case of the husband, incestuous adultery, bigamy with adultery, rape, adultery with cruelty, or cruelty accompanied by desertion. A decree of nullity may be pronounced for (1) impotence, (2) the

71. Imperial Statutes, 20 & 21 Vict. ch. 85, sec. 6; 36 & 37 Vict. ch. 66, sec. 31.