

acted before Confederation gives grounds for annulment, but it does not confer jurisdiction on any Court—admitted an anomalous state of affairs, and a rather doubtful one in view of the opinion of the Judges in *Board v. Board*, 48 D.L.R. 13, [1919] A.C. 956, as to the impossibility of a statute existing without a Court to enforce it; when this particular part of the Code was adopted, the Ecclesiastical Courts could enforce its provisions; their jurisdiction was abolished—*ipso facto* the Civil Court, one would think, retained jurisdiction. Without, as it would appear, any legal sanction whatever, the Judges of Quebec have chosen to give a legal sanction to the decrees of Roman Catholic Bishops, the latter making declarations of nullity which are enforced by the Civil Court. True, such a practice would be perfectly correct in regard to purely spiritual affairs distinctly within the realm of the church, as it would for example in regard to the rules of a trade union *qua* union, but is distinctly incorrect in matters where civil rights are in question. The attempts of the Roman Catholic Church to have annulled marriages between Catholics celebrated by a Protestant minister are clearly beyond their authority until such an enactment is put on the Provincial Statute Book. This was recognised in the *Hebert* case in so far as lack of jurisdiction on the part of the R. C. Bishop was concerned, but it was apparently not even questioned as to the jurisdiction of the Civil Court itself. The matter appears to have been cleared up at last by the *Tremblay Marriage* case, decided by the Privy Council in 1921, 58 D.L.R. 29, [1921] 1 A.C. 702, 27 Rev. Leg. 209.

5. GROUNDS FOR DIVORCE.

In considering the grounds on which, in Canada, an application may be made for a divorce, it should be kept in mind that the Roman Catholic Church holds strictly to the theory of the indissolubility of a properly celebrated and consummated marriage, and does not recognise divorce on any ground.

Divorce, as pointed out by Senator Gowan in 1888 during the discussion which arose on the proposal to establish a Divorce Court, is not only a question of the effect on the parties themselves, but of the effect in relation to morals and good order—in short upon the well-being of the community. "Divorce has been substantially recognised as a matter involving the happiness and morality of society, and consequently to be treated in the spirit of the moralist as well as of the jurist." (Bourinot's *Parliamentary Procedure*, 4th ed., p. 627.) The position of the