The Legal News.

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In the correspondence of John Lothrop Motley, author of "Rise of the Dutch Republic," recently published, there are some interesting descriptions of English public men. Motley, it may be remarked, was educated for the law, but found other occupations more congenial, and probably more useful to mankind. In 1851, the historian met Lyndhurst and Brougham at dinner. Here is what he writes of the latter: "Brougham is exactly like the pictures in *Punch*, only *Punch* flatters him. The common pictures of Palmerston and Lord John are not like at all to my mind, but Brougham is always hit exactly. His face, like his tongue and his mind, is shrewd, sharp, humorous. There certainly never was a great statesman and author who so irresistibly suggested the man who does the comic business at a small theatre. You are compelled to laugh when you see him as much as at Keeley or Warren. Yet, there is absolutely nothing comic in his mind. But there is no resisting his nose. It is not merely the configuration of that wonderful feature which surprises you, but its mobility. It has the litheness and almost the length of the elephant's proboscis, and I have no doubt he can pick up pins or scratch his back with it as easily as he could take a pinch of snuff. He is always twisting it about in quite a fabulous manner. His hair is thick and snow-white and shiny; his head is large and knobby and bumpy, with all kinds of phrenological developments, which I did not have a chance fairly to study. The rugged outlines or headlands of his face are wild and bleak, but not forbidding. Deep furrows of age and thought and toil, perhaps of sorrow, run all over it, while his vast mouth, with a ripple of humor ever playing around it, expands like a placid bay under the huge promontory of his fantastic and incredible nose. His eye is dim and could never have been brilliant, but his voice is rather shrill, with an unmistakable northern intonation; his manner of speech is fluent, not garrulous, but obviously touched by time; his figure is tall, slender, shambling, awkward, but of course perfectly self-possessed. Such is what remains at eighty of the famous Henry Brougham."

The table talk of these two veterans of the law was not particularly interesting or brilliant. Motley says he does not repeat it because it is worth recording, but because he "trys to Boswellize a little" for the entertainment of the member of his family to whom his letter is addressed:—"The company was too large for general conversation, but every now and then we at our end paused to listen to Brougham and Lyndhurst chaffing each other across the table. Lyndhurst said, 'Brougham, you disgraced the woolsack by appearing there with those plaid trousers, and with your peer's robe, on one occasion, put on over your chancellor's gown.' 'The devil,' said Brougham, 'you know that to be a calumny; I never wore the plaid trousers.' 'Well,' said Lyndhurst, 'he confesses the two gowns. Now, the present Lord Chancellor never appears except in small clothes and silk stockings.' Upon which Lady Stanley observed that the ladies in the gallery all admired Lord Chelmsford for his handsome leg. 'A virtue that was never seen in you, Brougham,' said Lyndhurst."

One of the most interesting things in the book is Bismarck's description of parliamentary warfare. Bismarck and Motley were college companions at Göttingen and Berlin in 1832-3, and the friendship then formed continued throughout life. In a note jotted down in the Chamber (about 1864), Bismarck says:—"You have given me a great pleasure with your letter of the 9th, and I shall be very grateful to you if you will keep your promise to write oftener and longer. I hate politics, but, as you say truly, like the grocer hating figs, I am none the less obliged to keep my thoughts increasingly occupied with those figs. Even at this moment while I am writing to you, my ears are full of it. I am obliged to listen to particularly tasteless speeches out of the mouths of uncommonly childish and excited politicians, and I have, therefore, a moment of unwilling leisure which I cannot use better than in giving you

news of my welfare. I never thought that in my riper years I should be obliged to carry on such an unworthy trade as that of a parliamentary minister. As envoy, although an official, I still had the feeling of being a gentleman; as (parliamentary) minister one is a helot. I have come down in the world, and hardly know how.

"April 18.—I wrote as far as this yesterday, then the sitting came to an end; five hours' Chamber until three o'clock; one hour's report to his Majesty, three hours at an incredibly dull dinner, old important Whigs, then two hours' work; finally, a supper with a colleague, who would have been hurt if I had slighted his fish. This morning, I had hardly breakfasted, before Karolyi was sitting opposite to me; he was followed without interruption by Denmark, England, Portugal, Russia, France, whose ambassador I was obliged to remind at one o'clock that it was time for me to go to the House of phrases. I am sitting again in the latter; hear people talk nonsense, and end my letter. All these people have agreed to approve our treaties with Belgium, in spite of which, twenty speakers scold each other with the greatest vehemence, as if each wished to make an end of the other; they are not agreed about the motives which make them unanimous, hence, alas! a regular German squabble about the emperor's beard; *querelle d'Allemand*. You Anglo-Saxon Yankees have something of the same kind also. Do you all know exactly why you are waging such furious war with each other? All certainly do not know, but they kill each other *con amore*, that's the way the business comes to them. Your battles are bloody; ours wordy; these chatterers really cannot govern Prussia, I must bring some opposition to bear against them; they have too little wit and too much self-complacency—stupid and audacious. Stupid, in all its meanings, is not the right word; considered individually, these people are sometimes very clever, generally educated—the regulation German University culture; but of politics, beyond the interests of their own church tower, they know as little as we knew as students, and even less; as far as external politics go, they are also, taken separately, like children. In all other questions, they become childish as soon as they stand together *in corpore*. In the mass, stupid,—individually, intelligent." This inimitable description would apply to more than the Prussian Chamber.

We might continue our extracts, did we not fear to encroach too far on the domain of our "useless but entertaining" contemporary *The Green Bag*. So we will conclude with a reference to the letter which ended Mr. Motley's functions as Minister to Austria. Somebody whose very name was unknown to him, wrote a letter to Mr. Seward in 1866, charging Motley with being "a thorough flunky," and the like. A copy of this contemptible communication was formally addressed to the Minister, with a request for an explanation, and Motley resigned in disgust. "No man can regret more than I do," writes the chagrined ambassador, "that such a correspondence is enrolled in the Capitol among American State papers." United States secretaries have not all yet acquired a correct notion of what is decent or dignified in State papers.

NEW PUBLICATION.

PARLIAMENTARY DIVORCE, BY JOHN A. GEMMILL, ESQ., BARRISTER, OTTAWA. CARSWELL & CO., TORONTO, PUBLISHERS.

[Communicated.]

This is a work, recently published, calling, from its importance, for special notice.

It is well got up in every respect—showing an amount of careful research and intelligent appreciation of facts and principles of law involved, which stamps the author as an authority on such subject. On this point we are proud to say, that even in England, by such high authorities as ex-Lord Chancellor Selborne, and Mr. Gladstone—a leading legislator on the subject—the merits of the work have been spontaneously expressed in the highest terms. The book, truly, as a compendium of the history, law and *ratio* of this singularly unsettled theme, and as a *vade mecum* for judicial, and even legislative procedure, is an admirable one.

To give a review of the work with any degree of fulness, would exceed the limits of this writing. Suffice it to say:—It gives, con-

cisely and clearly, the origin and history of Divorce in England and Canada—the whole with an array of authorities on each head drawn from standard reports.

Then follow the New Rules, specially framed (*consolido*) by the Honorable Senator J. R. Gowan, (formerly an Ontario Judge), in 1888, from about a hundred of the old rules of the Canadian Upper House, passed from time to time, and which, in their confusion and perfunctory character had become rather an obstruction to due procedure. With the rules are also given, in utmost detail, the forms of procedure at every step.

Then we have a very interesting synoptical report of all the cases before Parliament during Confederation, concluding with the leading case of *Tudor-Hart*, from the Province of Quebec—a case of wife against husband, for adultery and cruelty. Counsel for petitioner, *J. L. Morris, Q.C.*, and *J. A. Gemmill*; for respondent, *A. W. Atwater* and *Alex. Ferguson*. We forbear from even stating the numerous facts and legal points set up on both sides and urged with much ability, but desire, in view of their special public importance, to give what may be considered as the highest legal opinions in our Parliament, or at least in our Senate, on the subject. On the report of the Committee charged with the case, the discussion of the House, on the Bill, was markedly animated—not from any party feeling—so far as appears—but from a sincerity of divergence of views on the subject. *For* the Bill the leading speakers were Judge Gowan, and Mr. Abbott, the Leader of the House. *Against* it, Senators Dickey, Kaulback, MacFarlane, Power, and Trudel. The speeches are (in this particular case) given in Mr. Gemmill's work in citation from the official report of Senate Debates. As chairman of the Committee, Judge Gowan opened the debate. We give his words. They are well worth reading—not only for their forensic merit, but for their advanced intelligence on this somewhat obscure and decidedly troublous theme:—

(*Senate Debates*, 1888, *p.* 598 *et seq.*)

"Hon. J. R. Gowan.—In dealing with bills of divorce, the senate is engaged in one of its most important duties. To sever the sacred tie of marriage is a serious act, and the most careful consideration of each case is incumbent upon us all. Not merely because of the operation upon the marriage *status* of the parties concerned, but because Parliament, unlike a Court of Justice, is not tied by fixed limits, but may bring in view considerations of expediency or public advantage when making a law, may, and I think should, have in regard the effect in relation to morals and the well being of society." . . . "The senate, as a constituent of Parliament, is possessed of this case, and Parliament, I maintain, in passing a law touching the *status* of the parties is not limited or restrained, — any law it may deem in the interest of morals and the good order of society. In this, therefore, it differs from ordinary tribunals."

Addressing himself to another point, in answer to the pretension that precedents from the English House of Lords should guide us, he said, "Under the Constitutional Act of Canada, Parliament has no restrictions, and none can exist, except as imposed or enacted by Parliament itself. The Senate and the House of Commons can each regulate its own procedure, but neither body nor both bodies together could diminish or control the substantial action of Parliament, or the Constitution would be at an end. In shaping action or legislation on a bill of divorce upon facts in evidence before us, we naturally look to the House of Lords, hoping for light, and to see what others have done in cases similar to those in which we are called upon to deliberate and act. But we have never bound ourselves to accept their decisions as authoritative and conclusive. We follow 'precedents' where they commend themselves to our judgment, and we decline to follow them where they do not; and rightly so, for the decisions of the House of Lords on bills of divorce have not the weight that attaches to the decisions of the regular legal tribunals. The majority determines, and in the minority, on a vote, may be found men of learning, wisdom, and experience, expressing opinions adverse to the determination, more in accordance with the eternal principles of truth and justice. The 'precedents' in the House of Lords reach back for some 200 years before 1858, when the Divorce Court was establish-

ed. These precedents abound during times not conspicuous for purity in social life, or when legislation exhibits any marked effort for promotion of morality. The manners and customs, if not corruptions, of classes fashioned opinion, and the higher moral tone and the controlling power of the healthy public opinion of modern times was, in those times, little known." . . . "I must say, one does find old cases before the House of Lords where it is difficult to reconcile the decisions with Christian ethics, and occasionally some indications appear of notions and sentiments (due probably to a higher artificial condition of society) not in unison with our simple common sense views of right and wrong. We have never accepted the 'precedents' of the House of Lords in matters of substance as our rule of right, nor are we bound to follow their action, or shape our decisions to square with theirs. We have our own to refer to, and eleven" (in fact thirteen out of twenty-six, during Confederation, from Ontario and Quebec) "are at the suit of women."

On this point it is to be observed that previous to the English Divorce Act (20 & 21 V. c. 85) the wife, in England, had no right to divorce for adultery of the husband, except in cases of aggravated enormity, such as incestuous intercourse with the wife's relations; on the other hand the husband had such right against the wife on mere adultery under any circumstances. By 20-21 V. c. 85, sec. 27, this was modified to the extent only of adding to the above exceptional grounds of exclusion to the wife, "adultery" (by the husband) "coupled with such cruelty as would "give ground for divorce *à mensâ et thoro*, and "with desertion, without reasonable cause, "for two years or upwards."

In fact, in England, up to 1858, the wife, practically, had no recourse against the husband for adultery, *per se*; while on the other hand, *he* had against her: even to this day, the difference—with a mitigation which but confesses the invidious wrong—exists as an Imperial rule of Court.

On this point of *inequality* of right of relief, the observations—incisive and eloquent—of the Leader of the senate (Mr. Abbott) in closing the debate commend themselves to our regard as expressive of the true principle, *ad hoc* of our social constitution as a Christian and civilized people. (See speech of Mr. Abbott, 11 Leg. News, 195.)

Amongst other notes, *à propos*, in the same strain by Mr. Gemmill to this masterly address, he, in page 243 gives the following:—"The sound principle which the Leader of "the senate thus boldly enunciated very "soon after received ample endorsement in "the decision of the Lambeth Conference" (œcumenical)—in the following words—"There is no difference between man and "woman in the sinfulness of the sin of "unchastity; on man in his God-given "strength of manhood rests the main responsibility." The principle—as Mr. Gemmill tells us (p. 243 note) "found expression in the "philosophy of Ancient Rome-when *Musoni-*"*us*, a stoic philosopher, who flourished in the "time of Nero, taught that the whole of civi-"lization rests upon the institution of mar-"riage, and held that what was wrong in a "woman was equally wrong in a man, or "rather more disgraceful to a man, inasmuch "as he claimed to be the stronger being, and "therefore more capable of controlling his "passions."

In the eloquent words of Mr. Gladstone, as cited in the same foot note:—"If there is one "broad and palpable result of Christianity, "which we ought to regard as precious, it is, "that it has placed the seal of God Almighty "upon the *equality* of man and woman with "respect to everything which relates to their "rights."

The general tenor of the debate, on both sides, seems to be in favor of retaining such cases under the immediate control of Parliament. But one objection was mooted—not urged, however—as to this, viz., by Judge Gowan. Referring to the fact of the Roman Catholic members of both Houses, habitually, as a matter of conscience, voting against all divorce bills, that fact, he said, was a reason, *to him*, for giving that matter to the *Courts*.

On this point there is much to be said on both sides. Nearly two-fifths of Parliament—it may be assumed—are Roman Catholics. *Tanto*, every application to Parliament is handicapped. The right to a purely judicial

decision—a fair trial—and nothing less, or more, can be desired in the public interest—is, in the measure of such absolute negation, impaired by such a system: the administration of justice, in the light of public order, as well as in consideration of individual civic rights involved is, so far, imperfect and perfunctory.

The Right of Divorce: Its Nature and Scope.

Marriage, *per se*, apart from its incidental effects or character as a civil contract—for whether a "sacrament" or not, it, in its secular relations is always that, is a matter of *status* in the national constitution. It is so *ex natura rei* and *Jure Gentium*. In this sense it is an essential of highest public order. On it—its due maintenance and safeguard—depends the life, growth, and welfare of nations—yea of the human race. The history of the human race: the rise and fall of nations: civic life in every clime and time prove it as a law of nature itself. In the national systems of law from which Canada has drawn—France and England—in their earlier and also subsequently, latterly, in their most virile eras, the principle—of divorce *à vinculo—sub modo*—has ever been admitted. The statement may clash with general preconceptions on the subject, but it is nevertheless historically and substantially correct. At the conquest of *La Nouvelle France*, in the *régime* of Louis XV there was, it is true—as Mr. Abbott says—no law of divorce in Canada. The rule *ad hoc* of the Council of Trent in deference to the Greek church, however, qualifies that canon, viz., thus, "*Si quis dixerit Ecclesiam errare, quum* "*docuit et docet* juxta evangelicam et apostoli- "cam doctrinam, propter adulterium alterius "conjugum, matrimonii vinculum non posse "dissolvi; vel etiam innocentem qui causam "adulterio non dedit, non posse, altero con- "juge vivente,aliud matrimonium contrahere, "mœchariqueeum quí,dimissâ adulterâ,aliam "duxerit, et eam quæ, dimisso adultero, alii "nupserit, *anathema sit.*" (Pothier, Mar. vol. 5, part 6, c. 2.)

We give the passage, for it, virtually, abnegates in its introductory terms (italicised) the canon, in its absolute,—the terms of which are—"Sciendum est legitime contrac- "tum matrimonium dissolvi non posse, "quippe à Deo conjuncti, ab homine separari "non debent nec valeat." (Inst. Jur. Canonici, lib. 2, tit. 16). But follows the qualification which would seem to apply the rule *against the wife*, with liberty to the husband to put away (Query How ?) the errant wife—the interpretation runs thus—"Quamdiu "vivit vir, licèt adulter sit, licèt sodomita, "licèt flagitiis omnibus, co-opertus, et ab "uxore proper hæc scelera derelictus, maritus "ejus reputatur, cui alterum *virum* accipere "not licet." (Cons. 32 Quæst. 7, c. 7.) Query —What as to flagitiousness on the part of the woman? Does the exception prove or indicate a rule otherwise? We do not propose to here discuss the question. We give these authoritative extracts simply to show —that the so-called Canon of Indissolubility is, with its qualifications, not absolute, but to be held as the *arbitrary interpretation* of the Roman Catholic Church, as represented in the Council of Trent—in the passion of that struggle—three thousand years after Sinai; two thousand after the Twelve Tables of pristine Rome itself; fifteen hundred after Christ declared, and at a time when all Europe still held to the primal sacred rule for the well-being of the race of man.

On this question of *status*, in the abstract, of the institution of Marriage, in relation to the State, it may be allowable to cite a leading French authority, when speaking of it under both conditions of the law, viz., as it was before 1792, granting divorces, and after 1816, when (under the Bourbons) it was (for a while) abolished.

Speaking as to the question of implied contract in the act of marriage, between the parties to it, as to its dissolubility or indissolubility, he denies it as a subject of personal contract, and says:—"Ce n'est ni par consé- "quence ni par interprétation de l'intention "dans laquelle a été contracté le mariage, "que le divorce est permis ou prohibé. En "le permettant, comme en le prohibant, le "législateur ne s'arrête ni doit s'arrêter à ce "que les époux ont ou sont censés avoir voulu "au moment où ils sont unis; il ne s'arrête et "il ne doit s'arrêter qu'aux considérations "*d'ordre public* qui lui paraissent en com- "mander impérieusement la faculté ou la "prohibition d'après la conduite respective

" des époux," · · · " parceque à l'une et " l'autre hypothèse s'appliquerait nécessaire- " ment la grande maxime consacrée par l'ar- " ticle 6 du Code Civil, *qu'on ne peut déroger* " *par des conventions particulières aux lois qui* " *intéressent l'ordre public et les bonnes mœurs.*" (Merlin, tome 16, sect. 3. § 2, art. 6, p. 232).

The law of "*L'ordre public*," under the conquest, was that of the conqueror, as declared by Act of State (The Proclamation) and by Imperial Statutes *ad hoc* for the peace, welfare and good government of the new subjects of the Protestant Crown of Great Britain. The proposition requires no argument.

Reverting to the questions of *status* and implied contract we hold, in the words of *Burge* (Conflict of laws, vol. I. p. 681), that— " The contract or consent on which the " *status* of husband and wife is founded, " should be considered as perfectly distinct " from the *status* itself. The latter is *juris* " *gentium*, and its relations extend so far be- " yond the parties themselves, that, unlike a " contract, it is not in their power to prescribe " for themselves the rights which it shall con- " fer, or the obligations which it shall im- " pose on them. It cannot, like an ordinary " contract, be dissolved by mutual consent.

" The *municipal law* of every country takes " upon itself to define and declare the rights, " duties, and obligations which shall be in- " cident to the *status* of marriage, whether " that *status* has been originally constituted " under its own law, or under that of any " other country."

Addressing ourselves to these two distinct aspects of the question, we submit—

1. That the duty—of first importance—of a national government, is to encourage, facilitate, and when formed, jealously guard the divine institution—as the very seed and soul of national existence. Whether, for that, functional governance should be in Parliament, a Governor and Council, or in a proper legal tribunal, has, we think, been shown by the experience of the British people throughout their extended empire, and in the civilized world generally. That experience suggests, we think, the policy of leaving such matter to the *Courts*, where, within the lines prescribed by the national law, the administration of such law may be regular and determinative.

This—so far as we understand—would seem to be the view and policy of our Imperial Government; not only as to England, but as to the rest of the Empire, even India, where practicable. In 1859, the Imperial Government so instructed Canada; elsewhere in her North American Colonies, as in Nova Scotia and New Brunswick, it was—as we shall hereafter more fully explain—carried out.

True, that in some of the United States of the great Republic south of us, and also in France, in re-opening, in 1884, the remedy of judicial dissolution, the privilege has been sadly abused; but that should be only a warning calling for proper safeguard. For that, all we require is honest legislation in the light of modern civilization.

2. As to the other aspect of the subject, viz., the incidental civil rights between the consorts arising from the marriage, or in their relation to others, that, under federal constitution must be left to the several provincial or subordinate jurisdictions in which they happen to respectively fall. On this head our Constitution is clear. (B. N. A. Act sec. 92, sub-secs. 12, 13.) On the other hand, Federal attribution as to "Marriage and Divorce" is equally clear. (B. N. A. Act, sec. 91, sub-sec. 26). This, we take it, is on the question of *status per se*, its determination, relation, and regulation as an element of civic constitution.

When, in 1867—ten years after the Imperial Government had given the matter to a special Court of law in England—the same Government delegated its powers to the Dominion Government of Canada for such dealing, it may be fairly assumed that it was with a view to such dealing in like manner, namely, by reference to a proper legal tribunal. As the result of centuries of experience in such matter, the Imperial Government had, evidently, arrived at the conclusion that trained skill in the administration of justice —the very highest and ablest legal minds available—and not the accidental vote of a parliament of laymen, should pass such grave judgment.

In saying thus much, we mean no reflection on our public men, in Senate, or Commons, as a class. On the contrary, in this very mat-

ter, as in all others within their scope of duty, we have had no reason to complain, so far. But it is of the system *quoad hoc*, and its immediate tendencies that we complain, and to which we would draw attention. We are aware—for on several occasions it has been manifested—that in our legislative bodies—bodies of much mixed faiths—there is a general repugnance to touching the thing; and in consequence the old evil is left to itself. The argument *ex inconvenienti* comes into play. But, in the meantime the evil exists; and existing, grows. If a thing is bad and be left to itself, in its own corruption, whence—it may be asked—is that "progress" which Mr. Abbott speaks of to come and continue? To-day, we happen, happily, to have the light and weight of his Protestant advocacy in such argument; but when another—say the Hon. Senator, Mr. Scott, leader of the opposite party—a Roman Catholic, should have the leading of the House, what chance would there be for *any* Bill of Divorce? We question no man's liberty of conscience. As we desire ours to be respected; so theirs; but in the higher and supreme matter of "public order," as above explained, that higher law must prevail. What it dictates in such policy trenches on no conscience, for under it the individual is left free to act for himself. The doors of a Divorce Court may be open to all, and yet no one be obliged to resort to it against his will. If in fault against one entitled to such remedy, and using it, that is the penalty of his or her own sin. No "Sacrament" can cover civic crime.

To leave the matter—as now—entirely to a Parliament, so constituted, is, in effect, to bow the knee to an *imperium in imperio*, and an abnegation of British right and self-respect.

In these observations the writer is expressing only his own opinion; without suggestion from the work under notice. The author (Mr. Gemmill) is studiedly reticent on these political points. His task has been rather that of the historian and reporter, and this he has done most admirably.

Statistics of Divorce.

Amongst other facts he gives a condensed statement of the Statistics of Divorce, the world over. The general proportion in the United States is given (p. 259) as one in ten, of marriages, while in Canada (p. 257) it is, on an average during the last twenty years, "1 to 10, 222 married people"—so it is put—*i.e.* 1 in 5, 111 marriages. This, compared with European countries, viz., Italy, France, England and Wales, Denmark, Belgium, Holland, Sweden, Switzerland (highest, viz., 46 in 1,000), Wurtemburg, Saxony, Baden, Alsace-Lorraine, Hungary, and Russia, is abnormally low. One country alone is lower, viz., Scotland, where, since 1692, (if not long before) the Courts alone had jurisdiction, with right of appeal (after the Union) to the House of Lords in England, where, by the "Law Lords" (as a Court of Appeal) ultimate adjudication, according to the law of Scotland, vested. In Scotland the figures are decimal ".11 to .29 for each 1,000 (one thousand) "marriages"—say 2 in ten thousand marriages—four times less than in all Canada, including Nova Scotia, New Brunswick, British Columbia and all the other Provinces. In the three last named Provinces the matter is judicial; only in Ontario and Quebec, and we may add, Manitoba and the Northwest Territories is it not so. Prince Edward Island has the adjudication in the Lieutenant-Governor and Council, with power to the Governor to appoint the Chief Justice of the Supreme Court in his place.

Why Ontario should stand in so exceptional a position, we have not seen explained, but we can readily conceive that as an integral of Old Canada, she was restrained by the law of Lower Canada, as asserted by the dominant French of Lower Canada, and which, to this day, in its (Quebec) Code of Civil Law, is thus stated: "Article 185"—"Marriage can only be dissolved by the na-"tural death of one of the parties: while both "live, it is indissoluble."

That, in its dogmatism, is the dictate of Trent, denying divorce *à vinculo* under any circumstances, and practically ignoring all political considerations of status—civil status—involved in the question.

In so far as the divorced should not, according to Christ's inculcation, marry any other during the life of both, there may, morally, and as a question of ethics, be indis-

solubility save by death, but that is not "divorce" in the sense of our public law, and of all public law, save, possibly, that of Spain, Portugal and Austria, in the civilized world. State and Church are distinct. We give "unto Cæsar the things that are Cæsar's: unto God the things that are God's."

The mind that ignores such doctrine is unfit for self-government: unfit to rule Canada in its enlightenment: and in every regard, is not in "harmony with the spirit of the age."

What we want, require, and by Imperial suggestion, are called upon to establish and govern, is a Divorce Court for the whole Dominion, with rules of procedure, practically opening it to all subjects, however poor, and with every convenience in procedure to those who may require such relief. M. M.

*COURT OF QUEEN'S BENCH—MONTREAL.**

Foreign Corporation—Action against—Service—Arts. 34, 49, 64, *C.C.P.—Cause of action.*

HELD:—That a corporation whose principal place of business is in a foreign country, may be served with process at any place in the Province of Quebec where it has an office for the transaction of business. So, where a foreign corporation had an office at Montreal, for the sale of sleeping car tickets, and the plaintiff, who had bought a ticket from the defendants at New York, for a sleeping car berth from that city to Montreal, brought an action of damages, alleging that he had been unlawfully expelled from the sleeping-car, it was held that the service of his action at the office of the Company in Montreal, was a sufficient service to give the Court in Montreal jurisdiction. Further, that although the expulsion took place beyond the province line, yet as it continued until the plaintiff reached Montreal, (he being forced to ride in a first-class car) the cause of action arose in this province.—*N. Y. Central Sleeping Car Co. & Donovan*, Dorion, C.J., Monk, Ramsay, Cross, Baby, JJ., May 27, 1882.

Fraud—Person purchasing property of relative and agreeing to pay his debts—Composition with creditor ignorant of such purchase.

HELD:—That a person who buys the property of his brother-in-law in order to assist him, agreeing to pay his debts (which exceed the value of the property), may licitly contract with a creditor who does not know of the sale, to take less than the face value of the debt,—more especially where the creditor had previously endeavored to sell the debt at such reduced amount, and the transaction is advantageous to him.—*Blouin & Brunelle*, Monk, Ramsay, Tessier, Cross, Baby, JJ., Nov. 20, 1882.

Jurisdiction—Appeal—Non-appealable cases consolidated with appealable case—Arbitration—Fees of Counsel—Quebec Consolidated Railway Act, 43-44 *Vic.*, *c.* 43, *s.* 9, *ss.* 20, 37.

HELD:—1. Where several non-appealable actions in the Circuit Court are consolidated with one that is appealable, as involving the same question, the whole will be adjudicated, on an appeal in the principal case.

2. A Judge of the Superior Court may, in his discretion, allow fees to counsel on an arbitration to fix the indemnity to be paid for lands taken by a railway company, conducted under the provisions of the Quebec Consolidated Railway Act, 43-44 Vic., c 43, s. 9, ss. 20, 37; and there is no power in the Court to revise such taxation.—*La Compagnie du Chemin de Fer de Montréal & Sorel & Vincent et al.*, Dorion, C.J., Monk, Ramsay, Tessier, Baby, JJ., Nov. 24, 1884.

Sale—Hypothec—Clause of "franc et quitte."

HELD:—In an action to oblige the vendor to execute a deed of sale of real estate, or pay damages: where the vendor's agent wrote to the purchaser as follows:—"I can offer you the house at $4,300 on the following terms: $1,000 cash, $1,000 in about two years; balance $2,300, mortgage on ground, can remain as long as buyer requires;" that this was equivalent to the clause of *franc et quitte* with the exception of the hypothec mentioned in the letter, and that the vendor thereby promised and was bound to give a clear title with the exception only of the $2,300; and he not having executed such deed, and having sold the property to a third party, the judgment, which condemned the vendor to $300 damages, was confirmed.—*Gauthier & Ritchie*, Dorion, C.J., Monk, Ramsay, Tessier, Cross, JJ., (Ramsay and Tessier, JJ., diss.), Jan. 20, 1883.

*To appear in Montreal Law Reports, 4 Q.B.